SB
723

COMMITTEE REPORT

SENATE

2/5/82

FURTHER: Judiciary

Date: 4-12-82

Mr. President:

The Committee on HEALTH, EDUCATION AND SOCIAL SERVICES has had SB 723

child custody

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for ____ [ ] same title [ ] new title

and recommends ____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the ____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K Street
Anchorage, Alaska 99501

(907) 264-0428

FRANCIS M. STEVENS, ACSW
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ARDIS J. CRY
Custody Investigator

April 28, 1981

Representative Donald Clocksin, Chairman
House Health, Education & Social Services
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Clocksin:

I want to thank you for the opportunity to participate in the teleconference hearing which was held Wednesday, April 22, concerning House Bill 210, Shared Custody. I would like to expand on the testimony that was given verbally, and react to some of the testimony t at I listened to during the hearings.

For the purpose of background, I am a social worker, a member of the Academy of Certified Social Workers, and have been a practitioner in social work, or related fields, since 1950. I am currently a member of the Association of Family Conciliation Courts, and I am on the Board of Directors, and in the past have been Program Chairman and 2nd Vice-President of that organization. I am not speaking for the Association of Family Conciliation Courts, and wish to have the committee know that there is no one in the State of Alaska authorized to speak on the behalf of the Association other than myself as a member of the Board of Directors. I have been employed with the Alaska Court System for over 8 years and have been a custody investigator for the Alaska Court System for over 5 years. In the course of employment with the court system, I have participated in approximately 1,500 contested custody or visitation cases. I have testified as an expert witness in the matters pertaining to child custody and visitation well over 100 times. I believe that I do have first hand knowledge of the issues involved and can present a professional perspective to the Bill that is involved.

As noted in my oral testimony and memorandum, which was included in prior testimony in Juneau, I am not opposed to joint custody. I, along with many others, believe that joint custody, which is the condition that exists when children are living with both parents under one household, is probably the best arrangement for children. I am opposed to the concept that joint custody, when parents are not living together, but are separated or divorced, is to be presumed to be the preferential method, or the best method for all children. It has been my experience that there are many, many families, which because of the psychological make-up of the individuals, cannot or will not share the parenting responsibility even when they are living together and much less so when the marriage is terminated. To assume that joint custody would be effective for these people would be doing the children a great disservice. The Bill does address the possibility that joint custody should not be awarded to some families and makes a provision whereby the Court is required to give the reasons why it is not awarded. I believe that this factor in the Bill would create substantial problems for many families. I would draw on my own experiences where joint custody is being attempted as panacea for one parent, or as a result of maneuvering, manipulation, coercion and threats, or as a means to get a speedy divorce and not face planning for the children. If in the course of a custody evaluation, these factors are disclosed, and are felt to be strong enough reasons to deny joint custody, the very problems that the parties are not dealing with then becomes part of a public record, and I would doubt that it would be possible to defuse these people, and to help them to see the responsibility they both hold in continued parenting for their children. We have come a long way in our divorce process to attempt to maintain the integrity of the parents, particularly with the no-fault concept; to destroy the integrity of the parents on a court record in order to establish they are not capable of handling joint custody, in my opinion, is a step backward.

In the course of testimony given by various parties there were references to statistics, and numbers were thrown around as if they were facts. I would caution the Committee that it is not likely that any one source of statistical data has a true picture of the "fact" as it pertains to divorce and custody. In the five years that I have been doing custody work in Anchorage, we have determined one significant bit of statistical data, and that is that consistently, ten percent of the cases that are heard in the Anchorage District involving divorce do result in contested custody or visitation disputes. The current figures for divorces in the Anchorage area indicate that roughly 2,500 to 2,700 divorces will take place this year. Of this, approximately 270 of these cases

will involve a dispute over custody, and the remaining 2,400 plus cases will have been settled by the litigants without the use of the Court and by agreement by the litigants. These cases will, for the most part, be cases where custody is stipulated by the father to the mother without any request on his part to be involved in the custody planning. The figures that are used, 4 percent, 6 percent custody to father primarily come out of this block of custody cases. The figures that I cited in my testimony,while hurriedly collected and representing a brief sample of the experiences in our office, indicated that in the first three months in 1981, 22.5% of the cases, custody went to father; 21.2% of the cases, custody was awarded as joint custody; and in 13.8% of the cases, which involved a number of children per family, there was a splitting of the children with one or two or more going to each parent, based on the needs of the children, the ages of the children, and the abilities of the parents. In 42% of the cases, custody did go to mother, following an evaluation. We have found that between four and five percent of the cases that are contested and are not resolved in the process of investigation and evaluation do go on to court to be litigated.

I am taking the liberty of forwarding to you two publications which may be of value to you and your committee. The first is a joint custody handbook for judges, lawyers, and counselors, which was developed through the Association of Family Conciliation Court's staff, giving a fairly comprehensive collection of citations and some fairly good reviews of material pertaining to joint custody. The second one is the most recent publication that I am aware of by a group that does not have an axe to grind, and this is the publication, "Divorce, Child Custody, and the Family" done by the Mental Health Materials Center in New York. These are both my personal copies, and I would appreciate having them back, but feel that they are of enough value that I would like to share them with you.

At the time of the teleconference, I indicated that I had been directed to present a position to the presumptive aspects of the Bill. The judges who specifically were polled and authorized that their names be used in opposition were the Presiding Judges of all Districts, that is: Judge Moody, Judge Blair, Judge Stewart, Judge Tunley, and in addition, Judge Carlson, Judge Buckelew, and Judge Ripley, of the Superior Court in Anchorage and had expressed their desire to have their position known. I point this out, in that, in later testimony, there was a statement made that judges were in favor of the Bill. I believe that it was Mr. Johnson who made the statement, and while he may have talked to specific judges, the judges indicated in my testimony definitely have a position, and I was authorized to state that position.

In reviewing the legislation, it is apparent to me that this is a copy of California legislation, which was introduced around the first of 1980. The introduction of this legislation in California did have some cost factor tied to it, and it did take into consideration that in the State of California, there is a system of Conciliation Courts, which provides for the process of evaluation, counselling and mediation, in order to assist the parties going through the divorce and resolving any custody matters prior to litigating. There has been an additional piece of legislation mandating mediation, which went into effect January 1, 1981. There has been recognition in California that personnel must be trained to implement the mandatory Mediation Bill and a training program has to be funded in Los Angeles, California for the purpose of training such personnel. As a member of the Board of Directors of the Association of Family Conciliation Courts, I have frequent contact with the directors of the various conciliation court programs in California, and I do not have any awareness of anyone using the figures that have been cited by one of the witnesses to the effect that 60% of the custody cases in California are now going joint custody as a result of mediation. The information that I have from the contacts that I have in California does not indicate anywhere near that statistical number and does indicate that there is great concern about giving a mandate to the effect that joint custody must be used and will work for everyone.

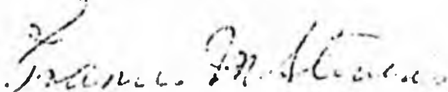
In summary, I would repeat my earlier position that joint custody is an effective method for planning for children, but the ingredients to make it work are not universally available in the adults that are involved in litigation. I believe it should be used selectively, just as custody to father, or custody to mother should be selectively based on a combination of factors. These factors must include the ability of the adults to understand the responsibility as parents; their willingness to share the parenting role even though they cannot share other roles and responsibilities one with the other. There must be the ability to place the child's interests before the adult's interests. There also must be an ability to function, probably more effectively than they had functioned when living together as parents. The children must be able to know that the parents are working in concert on their behalf to provide them with the optimum parenting. In the absence of these conditions, joint custody is likely to be detrimental to the children and to the adults. In the absence of a willingness to maintain a unified parenting picture for the children, the children become the negotiators between the parents, they become the communicators, and the children learn to be manipulators, telling each parent what they perceive the parent wants to hear, frequently, anything but the truth.

I would hope that this Bill would be given very, very serious consideration for a change within the Bill. I see no problem with the legislature affirming what already exists; that is, that joint custody is one of the options. I do see the creation of extreme emotional problems for people during a time that they are not functioning in a capable manner emotionally if a standard it set where the Court must show they are not capable of doing the parenting role as joint parents in order to protect the children.

Again, I wish to thank the Committee for the concern the Committee is showing over this piece of legislation, which when casually looked at appears to be a good piece of legislation, and one that would be of best interests to the parties involved. I feel very strongly that an indepth look at this legislation, based upon the experiences that I have had as a Custody Investigator, and in the experiences that many of my colleagues throughout the country have had, would indicate that there are some pitfalls in the legislation, and that it could create substantial problems, not only for the Court, but for the parties involved.

Thank you for your consideration.

Very truly yours,



Francis M. Stevens
Custody Investigator

FMS/lfs

Enclosures

cc: Justice Rabinowitz
Judge Moody
Judge Carlson

SEP 1 1 1981

1850 Roberts Road
Fairbanks, Alaska 99701
September 9, 1981

Senator Charlie Parr
543 3rd Avenue, Suite D
Fairbanks, Alaska 99701

Dear Senator Parr:

Thank you for the time you gave me to discuss House Bill 210, which would provide joint custody for children and would allow children the right to have a continuing loving relationship with both parents after a dissolution of a marriage.

In most states, including Alaska, a form of no-fault divorce exists that leaves no stigma on either party and neither partner need decimate the other in the public record. Though we have learned to deal with marriage dissolutions responsibly, we do not yet have a mechanism established to handle how children can obtain equal parenting from both parents as long as one parent objects to this arrangement. Because we have not yet learned how to handle this problem, the usual situation that exists in the courts today is that one parent must prove the other unfit and hence gain sole custody. This is a no-win, catch-22 situation because the very act of such allegations will destroy that parent's relationship with the children. House Bill 210 could provide a way out of this trap.

In the State of Alaska today there is an inconsistency among the courts of the various Judicial Districts with respect to the aid provided to individuals so that some children are given a greater opportunity to receive equal parenting from each of their parents after a marriage is ended, while other children are deprived of this constitutional right.

As we also discussed a related issue is the mediation services offered by Mr. Francis Stevens's program in the Third Judicial District. The success rate of this program is astounding--96% of cases are sucessfully mediated and go into court uncontested, i.e. only 4% go into court contested. (Reference: letter from Mr. Stevens dated May 1, 1981, copy enclosed). This is a dramatic statistic in favor of counseling and mediation and the positive approach toward the rights of children. Even if the success rate were only a mediocre 50% at least half the children would have the chance for equal contact and a continuing loving relationship with both parents. It is unfortunate that no such services are offered in Fairbanks where some divorce cases are still handled in an atmosphere that can only leave bitter, hostile, and acrimonious feelings with the children left in a catch-22, no-win situation.

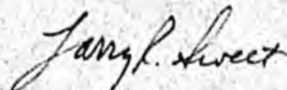
The attached sheets summarize the attitudes and practices of the various Judicial Districts in Alaska today and are based on correspondence in the files of Representative Brain Rogers. The summary sheets show that in the First Judicial District some judges do not oppose a joint/shared custody arrangement that could allow equal parenting. In the Third Judicial District mediation services are available within the office of the Custody Investigator. Unfortunatly nothing exists in Fairbanks to help children.

During the teleconference April 22, 1981, on House Bill 210 some Fairbanks parents testified that they were frustrated by the courts in the Fourth Judicial District in their attempts to have a joint custody arrangement with their children and others stated that attorneys told them that the court would not grant joint custody or that it did not exist. A few Fairbanks parents have been able to get a joint custody arrangement through the Fairbanks courts. This information is on file in the office of Representative Don Clocksin, who was the chairman of the House HESS committee at the time.

These inconsistencies among the three Judicial Districts cited are discriminatory toward children and parents who are trying to work out a mutually agreeable arrangement.

I look forward to working with you on the concept of joint/shared custody which I think can provide a positive and responsible approach to child custody in a dissolving marriage.

Sincerely,



Larry R. Sweet

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(Address requests for a reprint to John A. Larsen, Ph.D., Midwest Christian Counseling Center, 4620 J.C. Nichols Parkway, Suite 403, Kansas City, MO 64112.)

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Joint Custody and Co-Parenting: Not By Law But By Love

THEODORE ERNST
RUTH ALTIS

In recent years, joint custody and co-parenting of children after divorce or separation has received considerable attention. The authors advocate wider recognition of this option to sole custody and visitation, review pertinent legal and other literature, identify indications and contraindications, and briefly discuss the implications for social workers.

In the late 1970s the practices of joint custody and co-parenting began to attract national attention. This was due in no small part to the nearly simultaneous appearance of two books: *Co-Parenting: Sharing Your Child Equally* by Galper [8] and *The Disposable Parent: The Case for Joint Custody* by Roman and Haddad [14]. Response to the award-winning movie *Kramer vs. Kramer* helped direct attention to the option of joint custody.

Though inextricably related, joint custody and co-parenting differ conceptually and affectively. Joint custody may be legal custody only, without the shared physical custody or commitment to shared parenting that

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is a feature of co-parenting. Many of the proponents of joint custody have been attorney fathers denied custody of their children after divorce, as many of those who promote co-parenting have been social worker parents. Attorney fathers denied sole custody, even after appeal, often seem to have espoused or advocated joint legal and/or physical custody only as a second alternative. Estranged social worker parents seem to have more frequently opted for shared parenting and then established legal bases for their commitment to co-parenting. Joint custody and co-parenting are further complicated by conflicting legal-adversary ("fathers' rights") positions as opposed to cooperative-consensus positions. The so-called fathers' rights movement often proposes that sole custody more often be awarded to fathers in contested custody situations, or that fathers be awarded more generous visitation rights, with joint custody only as a second alternative.

Definitions

Joint custody, both legal and physical (also known as split, divided, or shared custody, and even co-custody), is defined legally by Fineberg:

> In contrast to the split or alternating order, joint custody (or shared custody, as it is often called) *preserves*, at all times, both parents' joint, legal responsibility for the child's upbringing upon their separation. The crux of the order is that the separated parents continue to act as parents, sharing as equally as possible the authority and responsibility for the decisions that significantly affect the life of their child. Physical care and control is not isolated from legal custody nor do the parents divide custody in its broadest sense in such a way that it alternates between them during various times of the year. [6:433]

Many writers would disagree with the last portion of Fineberg's definition and include such alternating arrangements under a broader definition of joint custody.

Elsewhere, we have defined co-parenting as follows:

> Co-parenting is the planned, shared parenting of one or more children by divorced or separated parents. Co-parenting makes it possible for parents who are divorced or separated to continue to experience parenting as a responsibility and as an opportunity for a close, loving, caring relationship with a son or daughter. [5:678]

There are many varieties of joint custody and co-parenting ranging from custody and care splitting on school year vacation periods, to split week, alternating months, alternate six-month periods, alternate school years (depending on the age of the child), and even "bird's nest" arrangements, in which children of divorced parents remain in the same home (sometimes placed in trust for them), and former spouses alternate between the home of the children and a separate apartment or home, sometimes shared.

At the very heart of joint custody and co-parenting are specific ideas about what the notion of "family" includes. Advocates of this take as a given that the intact nuclear family is not the only viable family arrangement. Family forms they recognize are single-parent families; extended families, whether on multi-generational or other extended kinship bases; "blended" families, i.e., stepparent families. Divorced or separated families are seen as "reorganized" families. All such family arrangements (together with other social institutions) may and do successfully carry out family functions for children: physical care and protection, affective nurturance and love, status placement, role modeling, socialization, acculturation, recreation, education, religion, and so on.

Legal and Literature Review

The origins of joint custody and co-parenting in the United States as an alternative to traditional dispositions of children after divorce are somewhat uncertain. Historically, for many centuries in English and American common law, children of divorce almost always "belonged" to fathers; they were considered "property." Later, under the "tender years" doctrine, children were almost always placed in the legal and physical custody of mothers. Foster and Freed cite a 1944 "Symposium on Child Custody" as one of the earliest considerations of joint custody, as well as a 1968 student note in the Journal of Family Law [7]. However, most appellate decisions concerning joint custody are from the 1960s and 1970s; there are only a few earlier decisions. Goldstein, Freud, and Solnit, in *Beyond the Best Interests of the Child*, added complications to the issue

[9]. Stack's article in *Social Problems* in 1976 is seminal [15]. However, most of the literature concerning joint custody and co-parenting has been published since 1978. Freed and Foster in the United States [7] and Fineberg in Canada [6] have best summarized recent legal precedents and opinions in regard to joint custody and co-parenting. In recent years a number of nonlegal writers have also dealt with joint custody and co-parenting, including Abarbanel [1], Ernst [4], Galper [8], Greif [11, 12], and Roman and Haddad [14].

Nonlegal writers generally view joint custody and co-parenting favorably. Many of them view it as the most desirable custody disposition for children of divorced or separated parents. In fact, Grate and Weinstein title their article "Joint Custody: A Viable and Ideal Alternative" [10]. Some advocate that by statute it become the presumptive (but rebuttable) disposition for children of divorce, as it has in a number of states. Writing in 1980, Japenga reports that this has already occurred in four states: California, Iowa, Oregon, and Wisconsin [13]. Earlier, Buser indicates that there are already six states that have such statutes, but he does not name them [2]. In effect, many proponents of this approach take an adversary stance in regard to joint custody—that it may, even should, be imposed even when contested. As we indicate further in this article, we believe that cooperation, communication, and basic trust and agreement are necessary conditions for joint custody and co-parenting to work successfully in "the best interests of the child."

Goldstein et al. v. Roman and Haddad

An important statement about permanency planning for children, *Beyond the Best Interests of the Child* by Goldstein et al. [9], has had a major impact on judicial decisions concerning child custody, especially for dependent or neglected children. In *The Disposable Parent*, Roman and Haddad [14] correctly identify *Beyond the Best Interests of the Child* as one of the most potent arguments against joint custody and co-parenting after divorce or separation.

Goldstein et al. have made an important contribution concerning child custody and the importance of psychological parenthood. Roman and Haddad have made an important contribution concerning possibilities for joint custody and shared parenting, but they are mainly interested in the courts awarding joint custody even when contested. However, unless

Goldstein et al. and Roman and Haddad consider the possibilities of positive shared parenting by permanently separated spouses, they avoid the real issue.

Unfortunately Goldstein et al. have influenced courts not to consider joint custody for children of marital dissolution for whom neglect and/or dependency are usually not the real issues. They cogently argue that in contested custody only the "psychological parent," whether biological, foster, adoptive, or "common law," should have permanent, non-divided custody, with total, unchallengeable "parental power," e.g., total control of visitation with the other (noncustodial biological parent) [9:98]:

> If the choice, as it may often be in separation or divorce proceedings, is between two psychological parents and if each parent is equally suitable in terms of the child's most predictable developmental needs, the least detrimental standard would indicate a quick, final, and unconditional disposition to either of the competing parents. [9:62]

Despite their obvious bias, even Goldstein et al. leave an "out":

> Children have difficulty in relating positively to, profiting from, and maintaining contact with two psychological parents *who are not in positive contact with each other* (italics added). [9:38]

The point that Roman and Haddad and Goldstein et al. miss is that the core of joint custody and co-parenting are positive communication and cooperation between former spouses who are both still psychological parents. Evidence is accruing that many former spouses can cooperate about co-parenting their children even though they may disagree about nearly everything else.

Indications and Contraindications for Joint Custody and Co-parenting

Joint custody and co-parenting may be an alternative for only a relatively small but significant number of divorced or separated parents. Most writers agree that there are indications and contraindications for this arrangement [1, 6, 9, 12].

All authorities agree that there are four essential conditions that must exist if joint custody and co-parenting are to be successful.

1. Former spouses, despite their continuing differences, must agree and be able to communicate about parenting their children. They must be able to support each other and make flexible arrangements. There must be agreement about implicit rules for parenting and co-parenting schedules, details, and life styles. Joint custody and co-parenting, in fact, cannot be court ordered. To be successful it must be initiated by the parents themselves. In her definitive article, Fineberg reiterates this point [6].

But agreement does not mean "live and let live." The concern is love for the child, not parental ways or style. Co-parents may have different life styles, but the children must know that they have two strong advocates who trust each other about their children and their parenting.

2. Necessary logistical supports, including geographic proximity—especially in the ideal types of joint custody and co-parenting—must be present.

3. The children must genuinely agree to such an arrangement. The agreement may not be 100 percent, but it must be basic and with few important reservations.

4. All other contraindications to joint custody and co-parenting must be absent.

Galper, in *Joint Custody and Co-Parenting: Sharing Your Child Equally*, offers practical suggestions for scheduling; financial arrangements; communications between former spouses who are co-parenting; and children's adjustments to the consistency, differences, and enrichment of having two homes. The discussion of the resolution of differences and the possibilities for communication between former spouses is perhaps the most important part of her book. Successful co-parenting involves negotiations about food preferences and differences in two homes; school arrangements; agreement about sexual attitudes and behaviors, as well as religious beliefs and practices; shared clothes and laundry responsibilities; compatible bedtime hours and rituals; relatives (including former in-laws); sharing holidays equitably, and so forth [8].

Legal Bias

There is at least one other major consideration: the attitudes and biases of the courts and attorneys. Foster and Freed find that some courts and attorneys are negatively biased toward joint custody and co-parenting although even where statutory authority for joint custody does not exist as

it now does in more than a dozen states, no states (with the possible exception of Louisiana) prohibit joint custody awards by statute. In a handful of states, common law precedent seems to prohibit such determinations. But Foster and Freed argue that the courts and attorneys are not really biased against such judiciously approved arrangements. Rather, they believe that the courts have wisely been reluctant to award such arrangements when the necessary conditions are not present [7:31]. Many judges and attorneys fear that joint custody awards will return to court for further litigation. The only studies that address this issue have found that the opposite is true: joint custody awards return to court less frequently than contested sole custody and visitation awards [6, 11, 12]. We agree with those who state that the attitudes and opinions of judges and attorneys are still obstacles to joint custody determinations [16].

Benefits of Joint Custody and Co-parenting

Co-parenting permits former spouses to remain equally involved in parenting even though they have different homes and separate lives. As the subtitle to Galper's book, mentioned above, indicates, divorced or separated parents and their children are still "family." Co-parenting can especially reduce sexism in the role models parents provide their children since co-parented children see both parents carrying out many similar, shared responsibilities. Co-parenting also provides respite from parenting pressures, a point widely noted as valuable for parents of retarded children and abusing parents that is no less valid for all parents. As Galper presents it, co-parenting stands in its own right as a parenting style, not as a therapeutic substitute or pick-up-the-pieces alternative to traditional intact nuclear parenting. [5].

Role of Social Workers

The role of social workers in regard to joint custody and co-parenting is three-fold: practice, research, and social action.

Practice. Social workers should consider this alternative with divorcing parents when the conditions for its success are present. They can also help parents create such conditions. In addition, social workers can be in-

volved in planning details and arrangements and, in some situations, can interpret joint custody and co-parenting to attorneys and judges.

Research. Further research concerning joint custody and co-parenting is needed. First, the actual incidence of de facto co-parenting is unknown. Many divorced parents practice some version of co-parenting without a formal joint custody award. Nearly all of the published research consists of successful case studies. Only the legal literature mentions parents who have tried joint custody and failed to carry it out successfully. Cox and Cease especially call for research concerning the impact of various custody arrangements upon children at different ages and stages of development [3].

Social Action. Social workers can more widely interpret joint custody for parents and children of divorce and can assist in developing necessary supports for co-parenting, such as job sharing, more adequate day care facilities, more favorable legislation, helping teachers understand that co-parented children really do have two actively involved parents (not just "mothers"), and abolishing restrictive rental or housing conditions.

Social workers are often in the best position to appreciate that joint custody and co-parenting cannot be forced upon unwilling parents, legally or otherwise. Co-parenting is not by law but by love. ♦

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(Address requests for a reprint to Dr. Theodore Ernst, Division of Social Work, New Mexico Highlands University, Las Vegas, NM 87701.)

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SUMMER

Family Advocate

A Practical Journal by the ABA Family Law Section

JOINT CUSTODY
what does it mean?
how does it work?

Jan. 21-82

Dear Senator Parr;

Enclosed are some articles regarding Joint Custody that may further explain the issues of it.

Donna made copies of the other Documents I referred to when we Discussed the subject prior to the session.

I hope these articles help.

What little Coverage Fairbanks has done on the session, it sounds as your Doing an outstanding job as usual. Hope this session goes well, and thank-you for hearing my input on Joint Custody.

A supporter,
Shirley Dean

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Children Who Cope in Spite of Divorce

Marital Breakups Don't Have to Cripple a Child's Developments

David Attie

BY
JUDITH S. WALLERSTEIN, M.S.W.
Principal Investigator, Children of Divorce Project,
University of California, Berkeley

Few children are unaffected by the divorce of their parents, but some are more effective than others in dealing with the changes in their homelife.

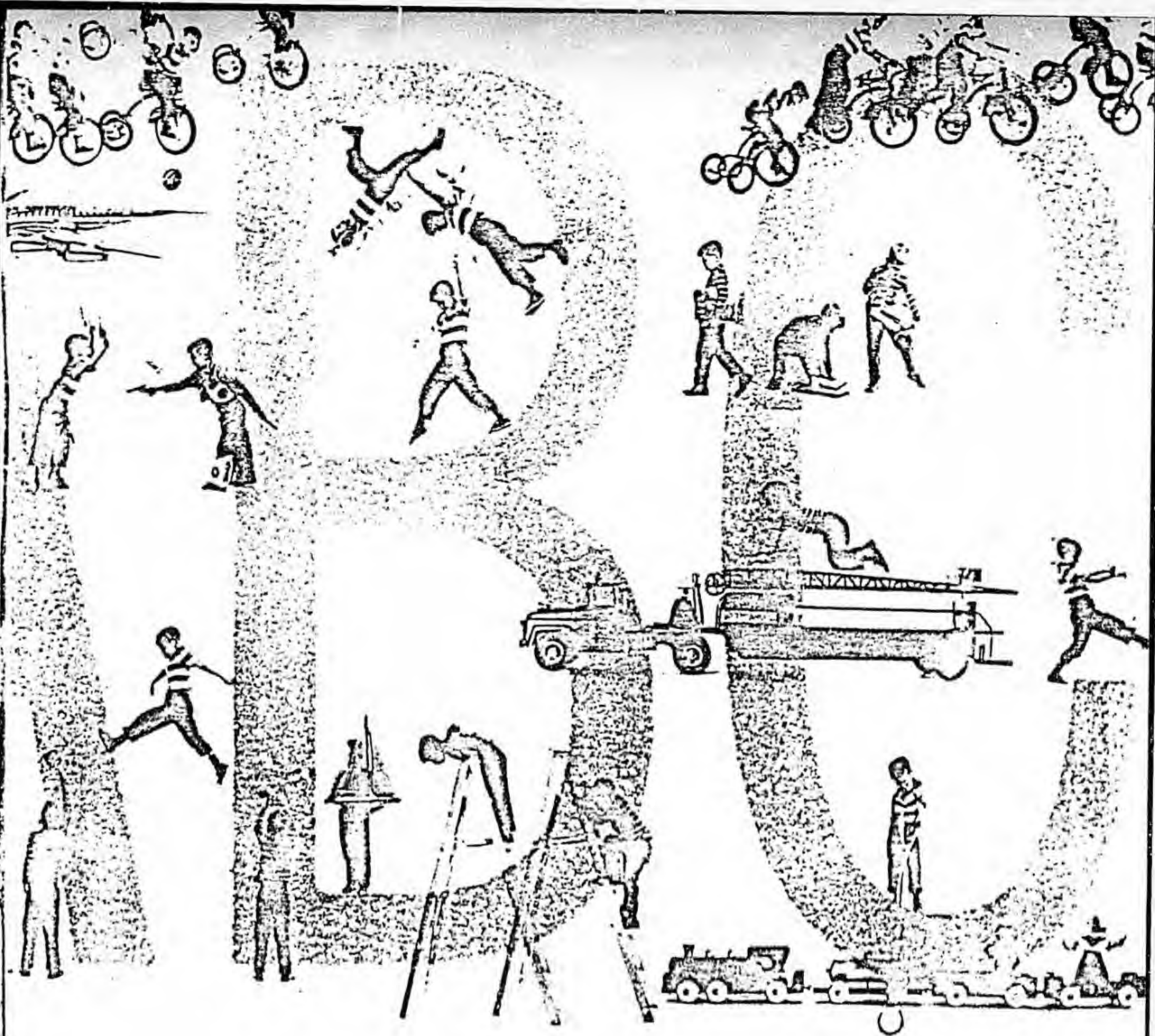
In a study of 34 preschool children who were interviewed shortly after their parents separated, 14 youngsters (42 percent) appeared able to overcome the disruption of their families and to continue their development. It is important to identify the differences existing in the family relationships of the children who were able to cope with their parents' divorce.

After follow-up interviews, the initial responses of all the children were compared. The research showed some of the psychological attributes that characterized the stress-resistant children. It also uncovered some of the support systems which the improved children had available to them or which the youngsters themselves constructed in their efforts to maintain their development.

*Adapted from CHILD PSYCHIATRY: TREATMENT AND RESEARCH, edited by Mae F. McMillan and Sergio Henao, Brunner/Mazel, New York, 1977.

THE YOUNGEST GROUP

The youngest children in our preschool group, who were between two years, six months and three years,



three m[illegible]en first seen in the study, form a small cluster [illegible], four boys and five girls. All of these children [illegible]y responded to the family disruption with a wide range of behaviors, including acute regression, heightened aggression and irritability, fearfulness, separation anxiety, bewilderment, acute sadness, and tears. Although the extent and duration of each child's distress and symptoms varied, regressive behavior occurred in all the children.

The four of these nine children who seemed in reasonably good psychological condition a year after this initial contact (three of five girls and one of four boys) did *not* appear different in their initial reactions from the children whose progress was considered poor. Indeed, for two of the children who were later considered to be doing well, the initial reaction was especially severe because separation of the parents resulted in the loss for them of their primary caretaker, the father for one little girl and the mother for one little boy in this subgroup. The initial response to separation was seen, therefore, to have little predictive or prognostic usefulness at this young age.

All four of the improved children in this youngest preschool group experienced a diminution of turmoil in the parental struggles and increased order in their homes during the invervening year. Other research has shown

that the household disorder usually peaks at about one year post-separation.[1] By contrast, the intensity and sense of ongoing conflict and/or depression were relatively unchanged or even heightened in the home of the three children who appeared worse at follow-up. Although still unsettled in their various new roles, three mothers of the improved children had nevertheless begun to make progress in jobs, in return to school, and in finding new and more gratifying social and sexual relationships. The one custodial father, although still in distress, had gradually during the year come to terms with the finality of the divorce he had not wanted. These four custodial parents had established adequate caretaking arrangements for the children, routines had become reestablished, and life had become a reasonably predictable experience. Visits with the noncustodial father were regular and emotionally supportive for two of the children. Although two others continued to feel disappointed in the relative disinterest of the visiting parent and the infrequency of the visits, there was no outright rejection or desertion.

All of these custodial parents had, in response to our brief six-week intervention, been able to modify their behaviors with their children in ways that would assure the child of the parent's continued caretaking and concern. Our data indicate that the parents of the children who improved were those who were able to make good use of our counseling and, by the same token were, perhaps, parents who brought psychological intactness and sensitivity to their parenting role, despite their sometimes distraught behavior at that time. On the contrary, the parents of the children who got worse had difficulty in using advice constructively. For example, one mother of a severely depressed child rejected our suggestion that the father's departure be discussed with the boy, insisting that he was too young to understand.

Perhaps the central point of difference of the children's experience in these two groups was the fact that the parents of the children who improved did not place the child centrally in the continuing parental struggles. The parents of the improved children were able to maintain a separation between their anger at each other and the child's needs. Two parents of the children who did poorly in this group brought their children into the orbit of their anger and depression and maintained the young child as their constant and often only companion. A third mother seemed, in her restless agitation, almost oblivious to the needs of her children and was angrily arranging a move to a distant city, with no plans for continued contact with the children's father who had been visiting regularly.

The stability of the environment of these four improved children can at best be considered marginal, and their improvement, therefore, may reflect as well the stress resistance and coping capacities of the children themselves. As judged at the one-year follow-up, their environment still held many risks. Thus, one child had

[1] E.M. Heatherton, M. Cox and R. Cox, "Beyond Father Absence: Conceptualization of the Effects of Divorce," presented to the Society for Research in Children Development, Denver (1975).

Who Coped & Who Didn't: How the Research Was Done

Ms. Wallerstein's findings are based on an ongoing longitudinal study of the effects of parental divorce on 131 children and adolescents drawn from a nonclinic population in a suburban community in northern California. In 1974, Ms. Wallerstein and her co-investigator, Joan B. Kelley, Ph.D., reported on the children in the group who seemed in significantly worsened psychological condition at the time of the first follow-up, one year after initial assessment. This article focuses on the preschool children who were judged a year later to be maintaining their previous good developmental pace or recovering from an acute regressive reaction to the stresses of family separation.

Of the entire sample, a total of 34 children (18 boys and 16 girls) were between the ages of two-and-a-half and six years at the time the parents separated and filed for divorce. All of these children suffered intensely from fear, bewilderment, worry, and profound sorrow

had a better adjusted child

been left by his mother and was being cared for by his devoted but hard-working father, at great psychic cost to the father; three mothers were working full-time for long hours, with limited skills and poor pay. Two of the improved children were repeatedly hurt and disappointed in their relationship with the visiting father.

The complexity of the task, the successful struggle of the child, as well as the possible psychic cost to the child, are illustrated by Karen, who was two-and-a-half years old at the initial contact. After her parents separated, Karen regressed in her toilet training, exhibited frequent temper tantrums, refused to eat her breakfast, exhibited irritability, whining, demanding, clinging behavior, and a profound sadness accompanied by silent crying when alone in her room. To the bewilderment of her mother, she became suddenly preoccupied with staking out claims throughout her world, asserting crossly "This is mine. That is mine." Karen and her hard-pressed mother were locked into an escalating cycle of frustration and mutual irritation which peaked daily when the mother returned from work. Her father, who had been a major parenting figure, visited irregularly.

A year later, Karen at age three-and-a-half appeared bright, lively, outgoing, and fairly sunny. Still in a somewhat unstable living arrangement, she was dividing her week among the separate homes of her two parents and her baby-sitter, spending several days each week with her mother who worked full time, several with her father and his steady girlfriend, and all day long some days in the home of her baby-sitter. She seemed able to make these complex transitions without visible strain and with a clear sense of reality that astonished us in such a young child. She volunteered cheerily, referring to her father's female friend, "I have two mommies and one daddy." In an extraordinary summary of her situation and functioning, she balanced a little toy chair perilously on the gabled roof of the dollhouse, noting "It's safe. It won't fall." The child's relationship with both parents was improved at one year. The father had resumed an important role in her care, and the mother, with considerable advice from us which she had been able to use well, had deescalated her own activities and organized her life with the child. The mother also was beginning to feel both relief and some happiness in her work and her social life, although she was still under considerable pressure.

Seen almost three years later, Karen appeared to be a bright, assertive, no-nonsense, sturdy six-year-old. She aggressively explored the consulting room in its entirety, playing every game in the office. To our surprise, she remembered the dollhouse and the toys. More to our surprise, she remembered the house where she had lived before her parents separated, when she was two years and one month old. She recalled their fights at that time. She said, matter-of-factly and without discernible sadness, that her parents still fight: "I'm used to it. They just don't like each other at all. They even fight over what's good for me. I'm used to that, too." She

(Continued on page 35)

at the divorce of their parents. Before the family disruption, all of these children had been considered by their parents and teachers to have reached appropriate developmental milestones. The children and their families were seen individually through interviews extending over a six-week span.

Families were referred by attorneys, schools, physicians, and other community agencies within no more than a year after the parental separation and preferably as close as possible to that separation. Initial data obtained in these four to six interviews with each family member over a six-week period were supplemented by independent information obtained from the children's schools. All family members were interviewed again individually by the same member of the interdisciplinary clinical team, within about a year following this initial extended contact. Most of the follow-ups occurred about 18 months after the parental separation.

In consideration of the extraordinarily high return of the families for follow-up (58 of the original 60 families), and the finding of such high incidence of continuing or increased distress among the children, the researchers decided to follow the original group further, and in 1976 completed another round of examination of the same youngsters, who were four to five years older at that time. Some of the data from the second follow-up is included in this article.

In identifying the children who coped successfully, the researchers used a combination of approaches. They employed the comparative judgment of the same examiner, assessing each child against the baseline of how he or she appeared to the same therapist a year later in the context of the clinical relationship. In addition, all children considered improved met accepted developmental norms which reflect educational, intellectual, and social achievements.

David Attie

Shared Custody

Demanded by Parents, Discouraged by Courts

BY PERSIA WOOLLEY

The difference between the professional reaction to shared custody and that of the people who are practicing some form of it is often amazing. During the last two years I have been researching and writing *The Child Custody Handbook* and have talked with numerous attorneys, psychologists, and judges on the subject. Not infrequently, I'd spend the day listening to learned arguments as to why such arrangements can't possibly work, and then have dinner with people who, not knowing that it was impossible, found it to be an eminently sensible way of doing things!

Although there are no actual statistics, I would say that at least 10 to 15 percent of the divorced parents in the United States have agreed to share in some fashion the problems, costs, privileges, and responsibilities of raising their children. That figure may be closer to 35 or 40 percent considering the number of teenagers who are sent off to live with their fathers after several years of living with mama.

WHAT IS SHARED CUSTODY?

For purposes of my work I have defined *shared custody* as any method that permits the children to grow up knowing and interacting with each parent in an everyday situation, whether that comes about by splitting the time on a fifty-fifty basis each week or by having the children go live with the other parent for several years or more. The overall result is the same in both

cases; that is, the youngsters have an opportunity for a more realistic, normal relationship with each parent. In addition, shared custody allows each adult to feel that he or she has had a chance to pass on to the children his or her own beliefs, standards, and social concepts.

The most common form of sharing is the block-time arrangement, often lasting a year or more in each household. Many parents arrive at this more by accident than by design. It's not uncommon for the mother who has sole custody to find that as the child gets older he or she becomes more rebellious, harder to handle, or frankly out of control. At this point the alternative of sending that child to live with the father is often accepted simply because it's preferable to turning the youngster over to the the juvenile hall or looking for a foster home.

This is rarely thought of as sharing, since it's more a question of default than of choice, but it does in fact provide for a more even input on the part of both parents where that youngster's life is concerned. The adjustments to this situation are a little more hazardous than when the parents agree to share for positive reasons, since there is frequently a large amount of guilt, rejection and resentment present between the child and the now noncustodial mother. However, with time and a little effort this arrangement can become as productive as any of the other means of sharing and just because it was arrived at via the "back door," so to speak, doesn't invalidate its usefulness.

Taking turns with the children on a large block-time basis seems to be an appropriate solution for school-aged youngsters if the parents live a great distance apart, or if there is continued conflict in the original custodial home, such as increasing sibling rivalry. Generally it is an open-ended arrangement, to be changed as the needs, circumstances and age of the child change, or to be left as is until the offspring is full grown. Sometimes, however, it is for a specified period of time, such as alternate years.

If the children are involved in many social activities in school, they may resist the idea of changing locations each year, in which case most sharing parents arrange for a 9-month/3-month division. Although this is not exactly an equal time system, it does provide for normal contact with both homes, and is certainly an improvement over the weekend visits which noncustodial parents are traditionally limited to.

SPLIT WEEKS

If the parents are willing to stay within the same school district (and for many who want to share on a much shorter term basis this is a fundamental agreement that they both adhere to), it's possible to set up the time division on anything from split weeks to alternate months. The child continues to go to the same school, maintains the same peer group, and simply goes to whichever home happens to be on the schedule that day

It is not necessary for a divorced couple to like each other as people to

after school. This system seems to work admirably for both the youngster and the parents.

When it is a split-week arrangement the offspring usually make the shift on Wednesday afternoon, going home to the other household after school and then returning to the first home on Saturday night or Sunday morning. Often the parents take turns fetching or delivering their youngsters, or if the children are old enough to use public transportation, they can make the trip by themselves. This system allows each parent to have a weekend night and day to himself or herself, as well as one with the youngsters, and I know of cases where the adults occasionally trade off whole weekends to allow for trips out of town, or special excursions with the children.

When parents with very small children wish to share custody, they frequently set up an alternating day system, which takes into account the time element and need for continuity. Generally these young parents both work and can make arrangements to pick up and deliver the infant to the day care center which looks after the child during working hours. This means that they never have to have personal contact, unless they specifically wish to, and the baby has the same stable day care he or she would have if the parents were still together. A system of this type does require that each household have a supply of diapers, baby foods, safe toys, etc., but everyone agrees that's a small price to pay for the advantages of continued and consistent contact with the youngster.

For the parents with toddlers and pre-schoolers, sharing is a bit more complex. Somehow, once they reach the "terrible twos," children become over-reactive to their surroundings, and often have difficulty in changing environments on a too-frequent basis. Thus many of the parents I've talked with who had children in this age group found that sharing on a month or two at a time schedule was best for everyone. These youngsters often go through a readjustment period of several days before settling into the new routine, and if the sharing schedule is based on alterntive weeks, half of the time is spent trying to help the child adapt to the change of residence. Children of this age group are old enough to withstand longer separations from each parent, and the alternating monthly or bi-monthly method doesn't seem to be a problem for them, particularly if the nonparenting adult keeps in contact by phone and occasional visits.

BIRD'S NEST ARRANGEMENT

There are several other, unique or unusual methods of sharing which I encountered, and while they aren't suitable for everyone, they're worth mentioning. One such is the "bird's nest" arrangement, where the children and the family home stay together and the parents take turns "living in" or "living out," like birds on a nest. Usually this is accomplished by the renting of a single apartment, which is then used by the parent presently "living out." Most of these cases involve a shift once a week, at a designated time, when each parent must leave their immediate domicile clean, neat and ready for the other to move in.

There are several advantages to this system and some specific limitations. First, the children not only maintain the same school and peer group from their past, they also have the comfort and convenience of being in their usual home. Secondly, it provides each parent with a chance to get adjusted to single life without sudden displacement. Third, if there is a good deal of conflict over what is to be done with the house, it provides more time in which to negotiate an amicable settlement. On the negative side, there is a distinct territorial imperative that comes to the fore eventually where the single apartment is concerned; one adult wants to hang pictures, and the other finds that to be an invasion of territory, for instance. Then too, most future spouses would take a very dim view of moving in and out of two different abodes on a regular basis, and would resent not having a place of their own to boot!

This arrangement usually works best as a transitional mode, and in at least one California court it is frequently agreed to simply as a temporary solution to the problem of who moves out and what becomes of the home. I have heard of cases where each adult has been able to afford a completely separate home, however, and after extending the time period to monthly or bi-monthly shifts, settled into this pattern permanently. Some even put the family house in trust for the children, a situation that creates its own separate legal headaches! Yet while this solution may seem a little bizarre, it has worked well for some people.

And then there is the free-access method, which is very satisfactory if the children are mature enough to accept the responsibility involved, and the parents dedicated enough to work it out. This involves only a minimal schedule, which is completely flexible according to the needs and desires of both children and adults. In several instances the parents have bought condominiums at opposite ends of the same complex, which means the youngsters can trot back and forth with a minimum of difficulty and the adults always know the other is close by in case of an emergency. These parents find it essential to keep in close phone contact, so that the children don't get lost some time when each parent thinks they are with the other. It is crucial that the children recognize the need to keep everyone informed as to where they are going and when, however, as there are few scenes more chaotic than two parents each blaming the other for having misplaced the offspring!

to trust each other as parents

MONEY MATTERS

It became obvious in the course of my interviews that sharing is a very individual matter; what works for one family won't work for another, and there are solutions that some people have devised that others would never consider. It's not surprising, therefore, to find that each family works out its own finances in its own way. In cases where both parents work and there are an equal number of youngsters living with each adult, the parent usually assumes financial responsibility for those children living in his or her home. I've met women who voluntarily sent their ex-husbands child support money if the men took over the parenting function on a block-time arrangement. In one case the father, who has full-time custody, hired the mother to be housekeeper and after-school babysitter, pays her a regular salary, and deducts it as part of the cost of child care. This mother is a student at a nearby college, needs the part-time afternoon work, enjoys being with the children daily, and treats the money as she would any other income (it is not alimony). The IRS has assured me that as long as she is not his dependent there is nothing nefarious in this arrangement, provided that he withholds the required amount of taxes and she files her own, separate income tax return.

Interestingly, money was very low on the list of problems or considerations where sharing parents were concerned, and since my sample of interviews covered a broad range of financial situations, I feel it is an honest reflection of sharing parents' attitudes. The father who has more contact with his children is less likely to resent paying for them, and the mother who knows she can rely on her ex-husband for more than just economic help is more apt to be understanding of the financial pinches that everyone encounters. By far the most important considerations mentioned were the need for communication between the adults, the desire to stay in the same school district for the children, and an overriding belief that the youngsters' specific needs and desires should always be considered in making major decisions.

KEEPING IN TOUCH

Parental communication, usually in the form of phone calls, ranged up to three or four times a week if the parents had short-term sharing; it was much less frequent if it was a large block-time arrangement, or there was a great distance involved. Sometimes the parents would meet together for lunch on a regular basis in order to discuss the progress of their offspring, and sometimes they didn't have personal visual contact for months or years at a time, even though they talked frequently on the phone.

Not only does this kind of communication help establish the reliability of each parent in the other's eyes, it also short-circuits any potential threat of manipulation on the part of the youngsters. Manipulation only works if one is able to stir up the other person's emotions before they have a chance to understand what is happening. If the two parents are in regular contact and can check with each other before hitting the panic button, misunderstandings, misinformation or actual untruths from the children can be straightened out with one calm phone call, averting a major battle.

Most parents continued to have contact with the children when the youngsters were at the other's home, by the way, and if it was for a month or more at a time, whoever didn't have the children frequently took over the usual weekend or mid-week visiting of the traditional system.

Where short-term sharing was concerned, many of the parents had a specific agreement about staying in the same locale, and I've talked with several people who turned down job advancements because such promotions would mean leaving the area and thus losing shared contact with the children.

STILL FRIENDS?

It should be made clear that although many sharing parents became friends after they had been sharing for a while, many others did not. It is not necessary to like each other as people, even though they trust each other as parents. Nor was the sharing necessarily agreed to without stress and strain. In several cases the couple were prepared for a pitched battle in court and only agreed to sharing as a compromise on the courthouse steps.

In addition to the surprising number of people who are sharing, the most unexpected finding of my research was how incredibly individualized each case is. The people involved often came up with very ingenious solutions and even more unusual explanations for why they were doing things a certain way. The process of working out their own sharing arrangement was a positive factor in each family's achieving a constructive divorce, even if it took place years after the legal dissolution of the marriage.

In view of the number of successfully sharing parents, one wonders why shared custody is not suggested to the pre-divorce clients who come into the offices of therapists and/or attorneys. Not only are such arrangements not mentioned, they are usually specifically discouraged, even when the couple announce that they're in agreement about it.

In searching the reasons for this attitude, I found many predicated on social assumptions rather than actual fact. Invariably attorneys told me shared custody wouldn't work and in one or two cases a lawyer felt it was an ideal and therefore unrealistic solution.

(Continued on page 33)

Joint Custody

What Does It Mean? How Does It Work?

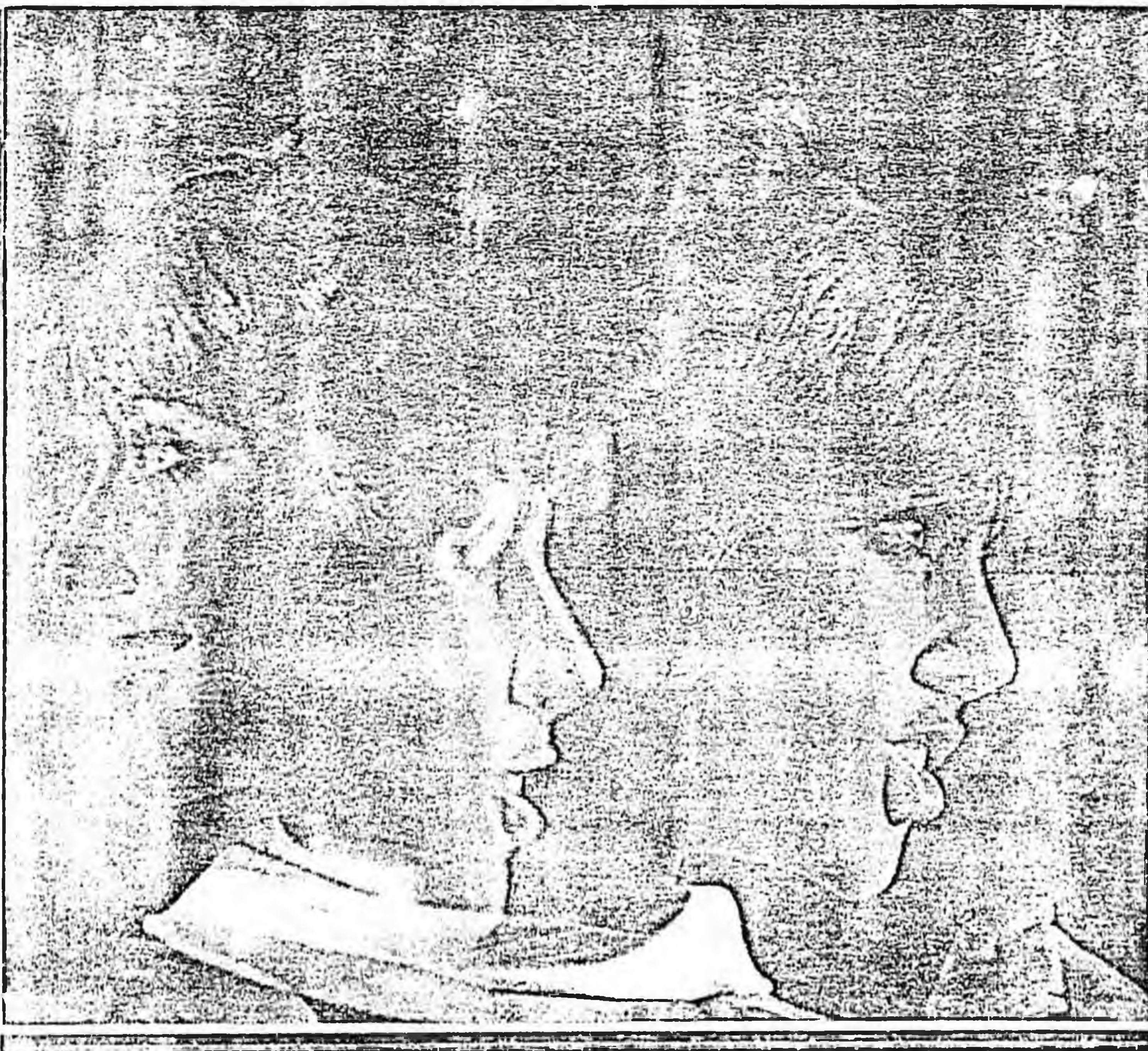
David Attie

Through the years courts have used various terms in opinions regarding custody fairly consistently so that they have become words of art. The most common custody arrangement is sole custody which means the children live with the custodial parent, who has full authority and responsibility for their care and control. The noncustodial parent has no legal right to make decisions regarding the rearing of the child.

Historically, most arrangements other than sole custody are called "divided custody" or "alternating custody" by the courts, terms which appear to be synonymous in the opinions. Divided custody in the majority of opinions describes an arrangement where each parent has physical custody, legal authority, control and responsibility for a designated period of time. The most common divided custody arrangements provide for the children to spend alternating six-month periods with each parent, if the parents live in the same school district, or nine months with one parent and three months with the other if they live in different districts.

BY MARY JANE TRUESDELL COX and LORY CEASE

Mary Jane Truesdell Cox is an attorney at law in the Denver area and Lory Cease is a graduate student in the School of Social Work, University of Denver.



Some courts have used the term "divided custody" when one parent is given custody of some of the children and the other parent is given custody of the remaining children in that family. This arrangement is more commonly referred to by the courts as "split custody."

The term "joint custody" has been used by some courts to describe the divided custody arrangement. This is understandable since to effectuate divided custody, legal custody must be granted "jointly" to both parents. However, joint custody, as it is being used in the drafting of separation agreements by attorneys today, and as it is being practiced by joint custodians, goes beyond the concept of divided custody.

The New York Family Court has stated that joint custody means giving both parents an equal voice in the children's upbringing, education and general welfare. It may or may not mean that the parents are physically with the children for an equal amount of time, but they are required to consult with each other regarding all im-

portant matters concerning the children, reaching decisions just as they probably would have had the marriage remained intact. Both have full custodial rights.

Susan Wendall Whicher, a family law attorney in Colorado, has suggested an additional term for the legal profession—"shared custody." The term would be used to describe a joint custody arrangement where the parents agree to share the major parenting decisions and also to designate a residential parent, who would make the day-to-day decisions. Although this arrangement would be similar to sole custody awards with liberal visitation rights for the noncustodial parent, perhaps the psychological advantage of having both parents feel that neither of them had "lost" is sufficient reason to use it in some cases.

COURTS FAVOR SOLE CUSTODY

Although joint custody is a current topic, it would be misleading to convey the impression that courts frequently award it or favor it. Prior to 1908 it was common for courts to award divided custody, but most courts today are skeptical of divided or joint custody arrangements, as well as split custody arrangements.

A quick scanning of 27B Corpus Juris Secundum, Divorce, Section 308 shows courts have ruled that divided custody should be avoided whenever it is reasonably possible to do so, that divided custody would not be approved except under very exceptional circumstances and that divided custody is not considered to be in the best interests of the child. Yet a closer reading of the many cases cited in that section leaves an impression that in many opinions the courts have ordered or approved divided custody using the same facts that it may have relied on in other cases to condemn divided custody. A reliable conclusion may be that generally courts are suspicious of awarding divided or joint custody, but in the proper case or where the parents both pray for it, they have not refused to do so.

When do courts award joint custody and under what authority? Normally the first prerequisite is the fitness of both parties seeking to be custodians. In the admittedly atypical case of *Stamper v. Stamper*, decided by the Michigan Circuit Court of Wayne County in 1977, the court held that two less than fit parents, a lesbian mother and a passive workaholic father, *should* be awarded joint custody. Secondly, some courts may look to the rights of the parents. Then usually the court considers the possible effects on the children living in two households, looking specifically at the geographical distance between the two residences as well as the social and economic differences between the homes of the parties.

Some opinions state that when the homes of the prospective custodians are similar and geographically close, the strains on the children of divided or joint custody are minimized. In addition, if problems do develop, it is easier for the children to adjust to living with a sole custodian with the noncustodial parent near. Yet these same facts have led other courts to deny joint custody because visits could be frequent or it is convenient for the children to visit the noncustodial parent. A court of the latter opinion will often award divided or alternating custody only where there is a substantial geographical distance between the homes of the parties.

AGE A FACTOR

Another fact that a court may consider is the age of the child, usually with the resulting presumption that a young child is best left in the sole custody of one parent until he or she is old enough to withstand the strains of the two environments of divided or joint custody. This age is usually fixed at six or seven, but is not conclusive.

Courts are often very reluctant to award divided or joint custody if the arrangment provides for periods of less than six months or for periods which do not correspond with school enrollment and summer vacation.

In spite of a court's lack of enthusiasm for awarding joint custody, the authority to do so exists in most states. Many courts have awarded divided custody, which vests legal custody in both parents, under the common types of statutes which authorize an award of custody "as the case may warrant" or as "is necessary" or as "the children's interests may require." The statutes of only one state, Louisiana, appear to prohibit joint custody by saying custody shall be in the party obtaining the divorce or if need dictates, in the other party. North Carolina provides for divided custody in its case law, *Griffin v. Griffin*, 75 S. E.2d 133. In the Winter 1978 *Family Law Quarterly*, Henry H. Foster and Doris Jonas Freed examined the laws of all 50 states and the District of Columbia and noted that in 21 states, both parents have equal rights to custody. In 27 states the "tender years doctrine," *i.e.* a mother should have custody of the children if she is fit, is controlling. In three states the law is in conflict. Interestingly, in 13 states where statutes say both parents are equal in reference to custody, the tender years doctrine still prevails.

Practically speaking then, most courts have the authority to award joint custody if both parents are fit and equal or it is in the best interests of the child. In those states where the tender years doctrine controls, the court could award joint custody if the mother is slightly less equal or fit.

In spite of the fact that courts do not favor joint custody, it is not uncommon to read of recent cases where joint custody was awarded or to talk to someone who is or who knows a joint custodian. In a vast majority of all divorce cases, the parties present an executed separation agreement to the court for approval which contains custody provisions. These parents can opt for a joint custody arrangement in their agreement and the

court will rarely interfere, although the United States Supreme Court has ruled in *Ford v. Ford*, 371 U.S. 187 (1962) that the court has continuing jurisdiction over the children of divorcing or divorced parents. Non-consensual joint custody awards or orders are rare, which is not surprising since the very nature of joint custody is cooperation between the parents.

However, opinions are becoming more prevalent in which the courts have awarded joint custody during modification proceedings or where upon examination of the facts, joint custody appeared to satisfy the best interests of the child more than sole custody with either parent. One such decision was made where the father traveled in his business and the mother was unable to tolerate prolonged stress.

WORKING IT OUT

For those parents who decide to exercise joint custody there seems to be an endless number of ways to make it work. Joint custodians often attempt to live in the same neighborhood, the same school district and provide homes of equal size, furnishings, etc., so that the children's environments remain similar. Disciplinary procedures are often worked out in advance to ensure stability. One extremely flexible and innovative couple maintains a home and an apartment in the same neighborhood. The children always remain in the house while the parents alternate living in the house and apartment, thus providing maximum stability for the children. The amount of time each joint custodian spends with the children differs with each family. Some parents split up the week, others split the week and weekends, and others follow the time schedules used in alternating custody arrangements which were discussed earlier. Cooperative parents who are sensitive to their children's needs can work out any number of details to everyone's advantage and convenience.

The most common arguments in support of joint custody are that the close relationship between the child and the noncustodial parent is not severed and the child has the benefit of growing up under the love and influence of both parents. There is evidence that a child has a need for both parents and some courts go so far as to articulate a child's legal right to an ongoing relationship with both his parents and also his paternal and maternal relatives.

Other arguments center on the advantages of sharing the responsibility of child-rearing. Some parents with joint custody feel it is the only way they can successfully earn the extra income needed after a divorce and still adequately parent. It gives each parent both the opportunity to experience the full responsibility of caring for the children and the opportunity to experience a life without children, which allows for a fuller social life. One judge ordered joint custody for similar reasons. In that case the mother had experienced a mental breakdown and needed to avoid stress but had shown herself capable of caring for her children.

Animosity toward parents by children who feel deserted might be reduced by joint custody. Likewise, animosity toward a child by a sole custodian who views the child as a burden might be lessened if joint custody were awarded. Some also feel that sole custody increases the tension and conflict between parents because one has all the authority and the other parent feels stripped of all parental rights.

Presently, when sole custody is awarded, if the custodial parent needs temporary or indefinite relief from the responsibilities of child care due to a stressful time in his or her life, the custodial parent too frequently is afraid to ask the other party for assistance for fear of losing custody. Even if the noncustodial parent agrees to a temporary arrangement, the children's interests will not be best served during the temporary custody period unless the children have already established a good relationship with the noncustodial parent.

MORE FLEXIBILITY

Courts and behavioral scientists have long recognized that as children grow older, it is often advantageous for them to have an adult of the same sex after whom to model their behavior. Joint custody can allow the flexibility to arrange custody as needed as the child grows and several professionals feel that close contact with both parents is especially valuable if one parent dies and the other has sole custody.

Sole custody is often interpreted by the noncustodial parent as a form of punishment, especially when a court declares each parent to be fit. Joint custody avoids that aspect of divorce. Addressing this punishment concept, Justice Barker of Australia wrote in 1966:

> Practical experience in the matrimonial jurisdiction leads to the conclusion that any separation of the responsibility for the child's upbringing and the authority to control it would in most cases end unsatisfactorily and in some cases disastrously. . . . [T]he custody of a child is not to be committed or refused to one party or the other merely as a reward for virtue or penalty for matrimonial guilt.

Finally, any advocate of joint custody cannot avoid answering the recommendations made by Solnit, Freud and Goldstein in *Beyond the Best Interests of the Child*, i.e., that the child should be in the sole custody of the psychological parent and that the noncustodial parent's visits with a child should be subject to the wishes of the custodial parent. One objection to the book is that it does not allow for flexibility or for analyzing individual situations. The book's position totally ignores the child's desires as well as those of the other parent in the name of continuity and autonomy. Neither do the authors acknowledge any rights of biological parents. The further recommendation that there be no modifica-

(Continued on page 42)

Visitation: When Access Becomes Excess

Too Often Lawyers Forget That It Is the Rights of the Children That Need the Greatest Protection

BY RICHARD JOHNSON

Certified Family Law Specialist, State Bar of Texas

Parental visitation, or access as it is frequently called, is one of the most overlooked and underthought portions of a divorce decree. Yet, the experienced family lawyer knows that artful drafting in the divorce decree must be necessarily tailored toward the particular needs of the parties for many reasons.

The well-rounded development of a normal child ordinarily demands an association with both parents. However, divorce inevitably disrupts the constant and continued contact between a noncustodial parent and the child.

The custodial parent usually assumes all parental responsibilities for the child except where financial support is received from the noncustodial parent. The noncustodial parent, however, other than support, has no obligations except moral ones.

Visitation times are fun times without the discipline found at home; there's no homework, no set hours, and no planned meals. These abrogations of the custodial parent's discipline often tend to confuse the child and make him resentful of the custodial parent's demands.

In addition to these reasons, some parents use visitation privileges as the battleground for continuing the fight after divorce.

How many times have attorneys advised a party who will be appointed conservator of the child that the court will allow every other weekend visitation, two weeks in the summer and alternate holidays? Of course, some variations are to be expected if the child is very young or has other recognizable characteristics that restrict visitation. Many times the client fails to tell the attorney of special visitation situations because they assume the court will always order the same schedule. This is not always the case and the court, with knowledge of special situations, will adapt the visitation orders accordingly.

In twentieth century marriages dissolved by divorce, custody to one parent and visitation rights to the other parent are the norm. However, this "norm" evolved from the ancient practices which varied from the Spartan system of state supervision of children from birth to the English Church Courts where divorce was only granted to wealthy lords who could obtain a private parliamentary bill. In neither case was visitation considered a topic of great importance.

MOBILITY CREATES PROBLEMS

In the twentieth century, a new dimension was added that brought its own special problem—mobility. Previously, except for migration to new lands, families almost without exception would live and die within a radius of a few miles. Mobility has not only brought jurisdictional problems but easy travel and business transfers have made it difficult, if not impossible, to draft orders that foresee all the migratory situations of the parties. These and other factors combined with a very unrealistic view that parents who are the bitterest of enemies are usually able to resolve matters of visitation between themselves without specific court order, have led to the development of *reasonable visitation* orders as follows:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the care, custody and control of the minor children born of this marriage should be awarded to the Petitioner, with the Respondent having reasonable visitation with such children; or

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Petitioner shall have the care, custody and control of the minor child born of the marriage subject to reasonable visitation by the Respondent; or

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Respondent be appointed possessory conservator of the minor child born of the marriage, having reasonable visitation with such child at reasonable times upon reasonable advance notice.

Many legislatures used the terminology of reasonable visitation in setting the standards for judges to apply to access privileges. As a consequence many attorneys and judges used that terminology in their decrees, without realizing that reasonable visitation should be specifically defined to fit the best interests of the particular parents and child involved. Use of reasonable visitation has often led to more litigation between "unreasonable" parents.

Sometimes appellate courts have used artificial distinctions to arrive at desired results. Two of these have been split custody and increase or change of visitation as a change in custody, thereby requiring a change of circumstances which must be alleged and proven. These distinctions have been used where the original court ordered reasonable visitation without ordering the specific terms that constitute reasonable visitation. In one case the appellate court reversed a trial court which

A new trend is developing in which the courts often consider thene

decided the original reasonable visitation order meant the first and third weekends from 10:00 A.M. Saturday until 6:00 P.M. Sunday. The appellate court viewed the father's application to define his visitation privileges as a change of custody attempt and held he had not proven his burden of change of circumstances. This logic comes from a court whose obligation is to see that the trial court does not abuse its discretion. In replacing its discretion for that of the fact finder, the court went further and said:

> [T]his child should be at home with its mother every night where her food and clothing will be provided as needed and its calls for "mama" will be answered.

In effect, the appeals court terminated the father's visitation rights except at the whim of the mother and stepfather.

In another case, the appellate court substituted its judgment for that of the trial court and actually reformed the reasonable visitation portion of an Alabama decree. The appellate court granted certain specific visitation while declaring the father's application for specific visitation to be a request for change of custody, and discussed the father's burden of proving a change of conditions. The court in effect became the trier of fact. Not only do reasonable visitation provisions often promote litigation, but they may also encourage a desperate noncustodial parent to kidnap the child.

"BEST INTERESTS"

In most jurisdictions, the "best interests" of the child is the test the court must apply. With the spiraling divorce rate, the court often lets the parties and their attorneys determine the child's best interests by means of defaults, waivers and agreed judgments. In large, metropolitan areas, family law courts could simply not handle the case load if they had to do an in-depth study of visitation in each situation. Parties are often so relieved to get some agreement, they are unwilling to delay the proceedings over visitation, often being of the opinion that it will work out after the emotional friction has dissipated. Unfortunately, in many cases, the friction never does dissipate and only causes the parents to realign their emotional battlefield toward visitation issues.

Often access (or denial of it) is a very real basis of one parent's fight to modify custody. Reasonable visitation often arises as a defense tactic for the noncustodial parent who is before the court on a nonsupport charge or an attempt to increase support. Most courts will listen to such arguments without affirmative pleadings and over objection so they can grasp as much of the situation as possible before making a decision. Some jurisdictions consider denial of visitation as a basis for change of custody, while other courts will approve a custodial parent's refusal of visitation based on the meretricious living arrangements of the noncustodial parent.

The Texas legislature attempted to do away with reasonable visitation in the new Texas Family Code. The code retains a change of circumstances test but provides for the court to set the time and conditions for possession of or access to the child. Even with the statutory demise of reasonable visitation some courts continue to authorize it in Texas.

Many states have now come to the realization that specified visitation, although not always perfect, does remove one important area of dispute between the parents.

WEEKENDS AND HOLIDAYS

It is difficult for a child to accept a threat to the security that comes from living with a united and loving mother and father. In most instances the parents do not wish to harm their child's emotional development but the shock of divorce can produce resentment and guilt feelings in a child. Often these feelings, with time, can be calmed by adequate visitation. Experts have differing ideas on what is best for children. Some hold the view that an equal division of time may confuse the child and that the child feels more secure spending most of his time in one home. The courts have generally adopted this rule and frown on split or divided custody. Because of this attitude, a typical order specifying visitation might provide for alternate weekends, alternate holidays and some time in the summer.

Weekend visitation has generally been handled in one of the following ways:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That Respondent shall have possession of the child on the first and third weekend of each month from 6:00 P.M. Friday, January 27, 1978.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That Respondent shall have possession of the child on every other weekend from Friday at 6:00 P.M. through Sunday at 6:00 P.M. commencing Friday, January 27, 1978.

To further limit conflict and for enforceability purposes, the following clause should be included in every visitation order:

> THE MANAGING CONSERVATOR IS HEREBY ORDERED, To surrender the child to the Possessory Conservator at the beginning of each period of possession.
>
> THE POSSESSORY CONSERVATOR IS HEREBY ORDERED, To return the child to the Managing Conservator immediately at the end of each period of possession.

Because such provisions require an affirmative duty on the parent, refusal to surrender or return the child is then punishable by the contempt process, in most jurisdictions.

Holiday visitation should be carefully considered before drafting. There are national, local and religious holidays to consider. Also, the careful planner should

make additional provisions for division of the Christmas holidays when school usually recesses two weeks. Christmas holidays can be divided in many ways. Some divisions are based on Christmas school vacation such as:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Possessory Conservator shall have visitation for a period of one week during the child's Christmas school vacation, with said week to begin at _______ o'clock ______.M. on the first day that school recesses and to end at _______ o'clock ______.M. seven days later.

This provision could be a regular period or could be alternated yearly by insertion of the words *in even numbered years*. If the visitation is to be alternated yearly, the following clause should also be used:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Possessory Conservator have visitation in the odd numbered years, for a period of one week during the child's Christmas school vacation, with said week to begin at _______ o'clock ______.M. on the day that is seven days prior to the day school reconvenes and to end at _______ o'clock ______.M. on the day before school is to reconvene.

There are instances when age, distance or employment creates difficulties and the week possessory period is unrealistic or burdensome. In such an event, Christmas vacation can also be divided on the basis of Christmas Eve/Christmas Day as follows:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Possessory Conservator pick up the child at 9:00 o'clock A.M. on the 24th day of December of each year and return said child at 9:00 o'clock A.M. on the 25th day of December of each year.

This also could be made on an alternating basis by including the "odd numbered years" language and adding an "even numbered years" clause to switch the days.

Other holidays that might be assigned are Easter, Thanksgiving, or Rosh Hashanah. These can also be alternated yearly if desired.

The usual summer vacation period amounts to two weeks, sometimes correlated to the noncustodial parent's vacation but often to be designed upon thirty days written notice such as:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Possessory Conservator have the child for a period of fourteen consecutive days during the period of June through August upon thirty days written notice to the Managing Conservator.

All of the foregoing provisions could be adapted to provide automatic increases in time for visitation as the child grows older.

In regards to specified visitation, generally only the noncustodial parent is considered. However, a new trend is developing wherein the courts, relying on the expert guidance of psychiatrists and psychologists, often consider the needs of the custodial parent. In the typical situations, the custodial parent has the tasks of feeding, clothing, schooling and disciplining, in addition to keeping a regular eight-hour a day employment. While a custodial parent may see a child more, they may be enjoying it less. Without some uninterrupted time for the custodial parent and child, they may never really develop a properly balanced relationship. More and more courts are taking the position that custodial parents should have a period of time during the summer, usually thirty days, uninterrupted by the visitation rights of the noncustodial parent.

Although courts have generally frowned on split or divided custody, in many situations the best interest of the child might well be served by a divided custody arrangement, depending on the child's age and the location of the parents. Joint managing conservatorship has been approved in some cases with possession remaining with one parent. In modification situations, either custody or visitation, such an arrangement might relieve the required proof from change of circumstances to a less stringent burden. In custody situations, this might not be desirable, but for visitation it would give the court the flexibility to reexamine access. Such an option might promote settlement of cases by allowing one parent to "save face."

SCHOOL ACTIVITIES

Courts are now considering the wishes of children regarding sports participation and other school-related activities in preference to stated visitation periods. Such activities are necessary for the child to develop a proper relationship with his peers.

However, if summer camp or summer school or work is the program, then there may be a clash with ordered visitation. Often a custodial parent is unwilling to force the child to abandon summer plans to comply. It may be necessary as the child grows older and more involved in outside activities to put the burden directly on the child to make arrangements with the noncustodial parent. Regular telephone contact would help to develop the necessary rapport. In one instance, the court reduced the ordered visitation from every other weekend to one weekend each month and two weeks in the summer. The mother and child had moved to a smaller town several hours drive away where the child became active in school sports and activities. The court followed advice from a psychologist in that particular case over strenuous objection from the father. Such a decision could have been acceptable with regular telephone contact, flexibility and understanding from the mother and stepfather, but that was not the situation in this case.

Many family law attorneys know of instances where custodial parents have thwarted visitation orders of the court. Specified visitation orders are not necessary for

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Equal Rights, Visitation, and the Right to Move

BY BRIGITTE M. BODENHEIMER
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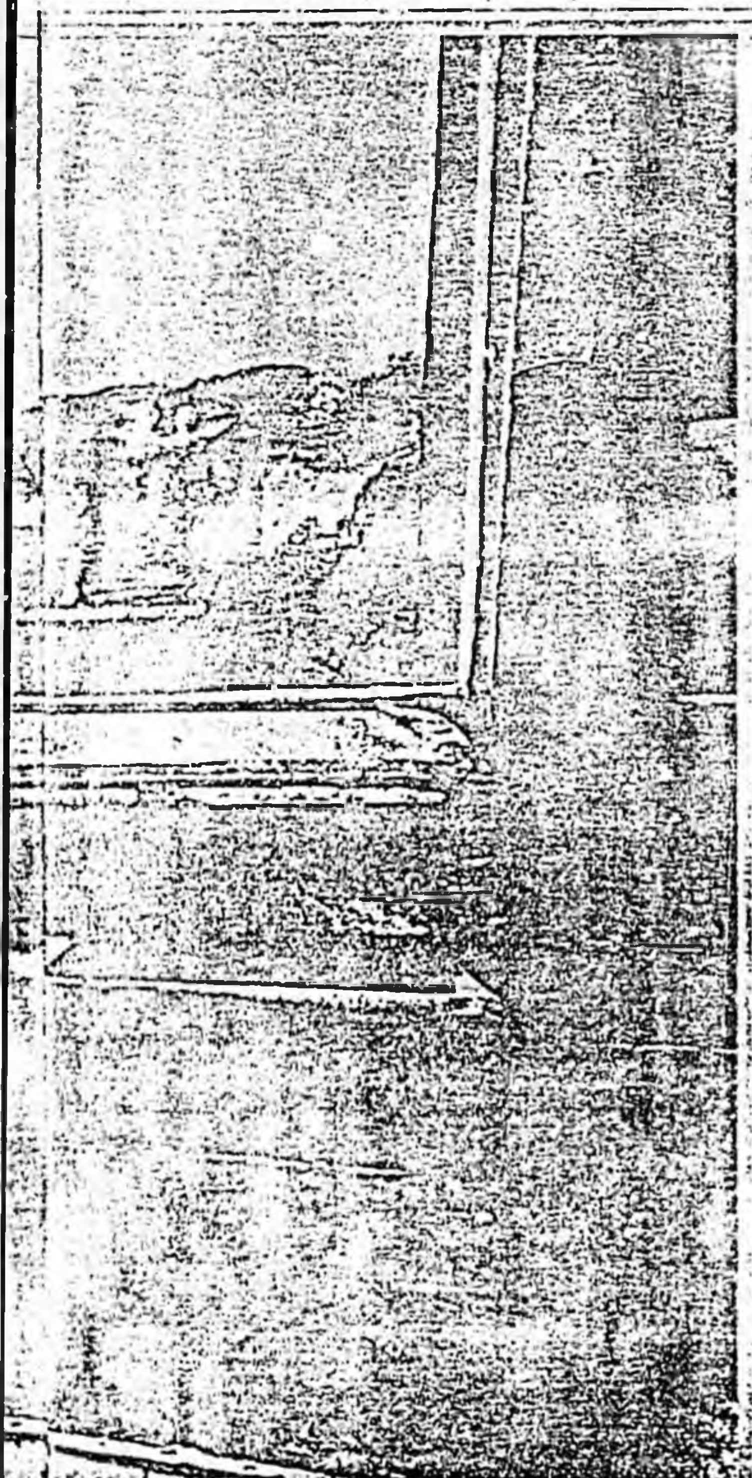
David Bentley



Few quarrel with the demand for equality of opportunity of fathers and mothers to obtain custody of their children at the time of divorce, but the quest for equality goes further. Some argue that equality of opportunity to become the custodial parent is not enough, and that to achieve real equality, there must be equal rights to custody *after* divorce. Child custody must be common and equal, they contend, although the common household has been dissolved, the marital relation has ended, and the spouses have gone their separate ways. Unfortunately, this is a practical impossibility. The closest approximation is joint custody, but it is already becoming clear that this requires a determined and sustained effort on the part of former spouses to transcend their differences and collaborate fully for the sake of their children. Few divorced couples are equal to the task. *Dodd v. Dodd,* which discusses the difficulties experienced, including harm to the children, is a case where joint custody was a failure.

Therefore we are left with the more traditional formula of legal custody to one parent and visitation rights to the other. This seems to be the only workable model for the great majority of ordinary mortals. Under this formula, there is ample room for the sharing of child care rights and responsibilities, but legally speaking, the custodial parent remains the primary caretaker.

Yet, persistent demands for "more" equality, and illusions about the practical attainability of this objective, have led some courts to blur the distinction between custodial and noncustodial parents. A court in New York, for example, elevated the stature of the right to visitation to a "right to raise one's children and to be with them," and characterized the change of residence of a parent who had custody as being "not dissimilar" to "child-snatching." *Entwistle v. Entwistle,* 402 N.Y.S.2d 213 (App. Div. 1978). And a Florida court abandoned prior case law and prohibited a custodial mother's change of residence because recent law had "substantially increased a father's rights to custody and visitation." *Scheiner v. Scheiner,* 336 So. 2d 406 (1976).

Both of these cases, and others like them, denied the custodial mother's freedom to move to another state.

Judicial restrictions on moving cannot be expected to be obeyed

Whether custodial fathers, whose number is growing, might also be forced to stay in the state where the marriage floundered remains to be seen.

Decisions like these are disturbing because the consequences for children are often disastrous. Parents who have virtually complete freedom to divorce find it hard to comprehend that, as a result, they may lose their freedom to move. Free and easy mobility is part of the way of life of the contemporary Western society. Parents do not willingly accept confinement within one state or county for perhaps fifteen or more years. Repressive measures of this kind breed evasion and resistance on the part of the most law-abiding citizens. Rather than face the possibility of a restraining order or to circumvent such an order, a parent may secretly move and thereby conceal the children's whereabouts. This sets the stage for an all-out battle for possession of the children.

Entwistle is a typical example. Prior to divorce, the father obtained a court order preventing the mother from removing the children, 2 and 6 years old, from New York. The parties then stipulated to the mother's custody and the father's visiting rights, and the mother's right to move to Greenwich, Connecticut, with the children. Upon court approval of the stipulation, the removal restriction was lifted. Soon after, the mother remarried and moved to Illinois with her new husband and the children. Although she immediately registered the New York divorce in Illinois and asked for a redefinition of visitation rights, she concealed her whereabouts for some time.

The father then asked the New York court to punish the mother for contempt and to have custody transferred to him because of the mother's disregard of his visitation rights. The court was incensed about the deception perpetrated on it, assuming the mother never intended to reside in Connecticut. Punishment by way of a contempt adjudication and a transfer of custody to the father was held justified.

If Illinois does not recognize the punitive custody change (*see Brooks v. Brooks*, and *Berlin v. Berlin*) the father in *Entwistle* may not let things rest. Anyone familiar with cases of this type can easily predict what will follow. Child-snatchings and counter-snatchings are likely, along with more litigation that may go on for years. In short, a life of misery and fear is forecast for two young children.

The father's lawyer will argue that all this is due to the fault of the mother; that she did violate the visiting provisions, and that she did move to a destination not permitted by the court. Had the father received custody and then secretly moved, contrary to a court order, he would have been treated no differently, he might add. Perhaps so. However, temporary moving restrictions will be lifted if "good reasons" for a change or residence are shown. In the only case I know of involving a custodial father, a court permitted the father to move from Wisconsin to New York with the children because of a betterment of his employment situation. *See Bennett v. Bennett,* 280 N.W. 363 (Wis. 1938). Custodial mothers have not fared as well—even when career opportunities were involved. *See Ryan v. Ryan,* 219 N.W.2d 912 (Minn. 1974). *Cf. Fritschler v. Fritschler,* 208 N.W.2d 336 (Wis. 1973).

Should we place the blame for the children's suffering primarily on the father or mother who resisted or circumvented the refusal (or the possibility of a refusal) of a court exit permit? True, court orders were violated. But the major cause of these unhappy cases are the moving restrictions themselves which cannot realistically be expected to be obeyed by freedom-loving Americans. The violation of the order in turn places the noncustodial parent in the advantageous strategic position of having the other parent branded as a lawbreaker and lining up on his side the court's wrath and moral indignation over the affront to judicial authority.

Nothing is gained and a great deal is lost by prohibiting changes of residence of custodial parents and their children. Law-abiding persons become criminals and fugitives, children are carried back and forth across the country and into hiding places, and a civilized solution to the custody and visitation question becomes impossible.

Proponents of moving restrictions say they are necessary to protect the visitation rights of the noncustodial parent. As the *Entwistle* case demonstrates, moving prohibitions do not, in fact, guarantee visiting rights. On the contrary, the apprehension of exit restraints deters proper parental planning prior to departure for out-of-state visits and the allocation of travel expenses.

Visitation rights are not lost by moving. Innumerable children travel to other states one or more times each year to see their absent parent. Moreover, visitation rights will be enforced in the twenty-one or more states which have adopted the Uniform Child Custody Jurisdiction Act (UCCJA), and in other states which follow the act's policies.

Some will insist that the right to convenient and frequent local visits in the state is lost if the custodial parent is allowed to move. The question is whether there is such a right to frequent visits in one particular locality that is enforceable by restraints on leaving the state.

The interests of the noncustodial parent and the children in free and easy access to each other clashes with the custodial parent's constitutional freedom to move. This freedom is clearly impaired if the parent is allowed to leave only without the children. Impediments on changes of residence held unconstitutional in recent years (e.g. *Dunn v. Blumstein,* and *Shapiro v. Thomp-*

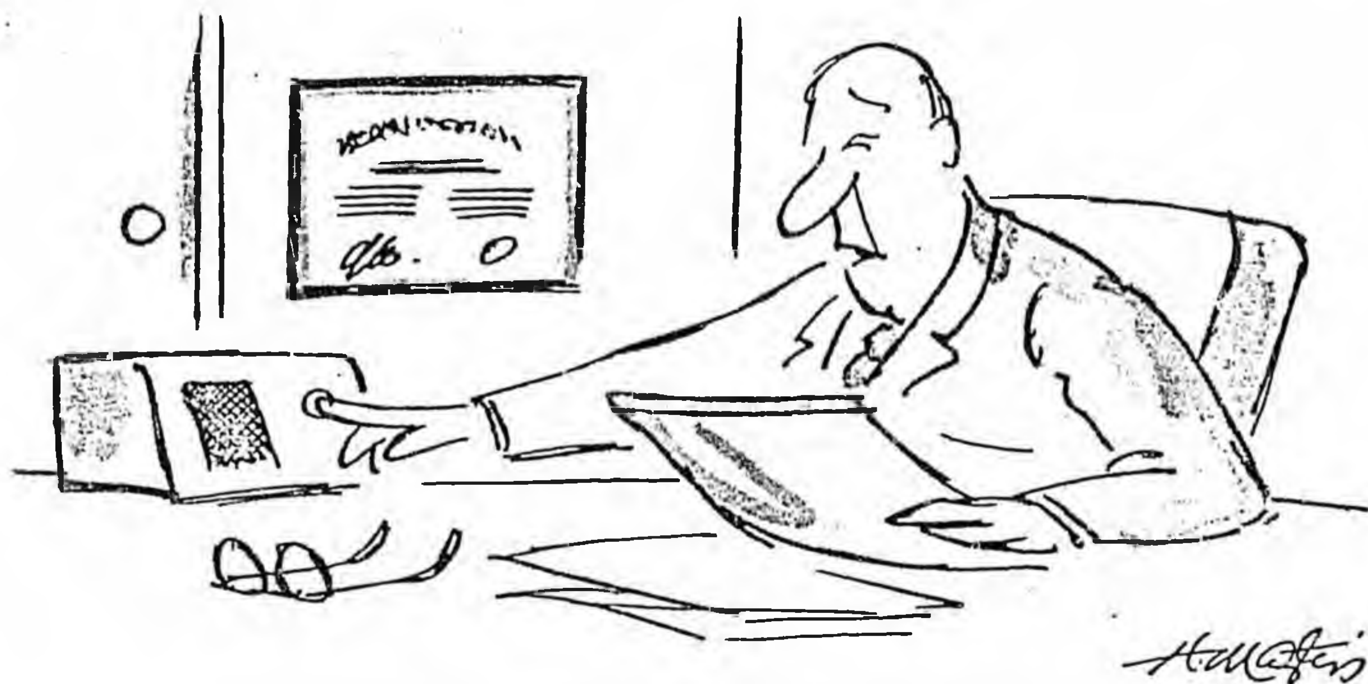
by freedom-loving Americans

son) are minimal, compared with the predicament placed upon a parent to make a choice between the children and freedom to move. *Cf. Ex parte Rhodes,* 352 S.W.2d 249, 251 (Tex. 1962). The imposition of such a choice places an intolerable burden upon the exercise of this freedom.

The final question is whether this abridgment of freedom may be justified by a legitimate, even compelling, state interest in keeping ex-spouses with children in the state. It is difficult to find a plausible justification for such a state objective. In the first place, no moving restrictions are placed upon noncustodial parents, although their departure also interrupts frequent and convenient child-parent contact. Second, moving restrictions are imposed at the request of the noncustodial parent and are enforced only if that parent sets the court process in motion—in other words—only if friction has developed between the parents. Hence, the court is being used to aid a private feud. In fact, there is good reason, in the case of dissension, "to put some distance between the parents" because friction between them causes emotional stress to the children. (*In re Guttemuth,* 246 N.W.2d 272 (Iowa 1976). *See also D'Onofrio v. D'Onofrio*, 365 A.2d 27, 30, *aff'd*, 365 A.2d 716 (N.J. App. 1976).) Finally, as has been shown, moving restrictions hardly ever achieve their purpose of safeguarding visiting rights within the state. On the contrary, such restraints fan the flames of conflict and fail to produce even that minimum degree of cooperation that is necessary to make visits possible.

There is justification, however, for some narrowly defined restraints. One is a restriction on moving while a custody proceeding is in progress. In cases involving the custody of children, it is important to have both parents and the children present. Several provisions of the UCCJA, while avoiding restraints on moving, are based on a policy to encourage the presence of all custody contestants and the children. Another legitimate restraint, of course, would be an injunction prohibiting departure of an abducting noncustodial parent. Beyond such specific narrowly limited situations, regardless of how the constitutional question will be authoritatively decided (so far there is no decision on the point), the states have a strong and growing interest in *avoiding* judicial control of [illegible] in custody cases. Such controls, in many cases, are counterproductive and bring about the very evils which the UCCJA and other state and federal legislation is attempting to prevent.

We seem to live in a period of enhanced combativeness of divorced parents, whether they reside in different states or not. Not long ago, we thought that we had overcome the archaic notion that parents "owned" their children, and that the children's interest and the public interest in the growth of stable, healthy personalties was paramount in our society. Yet today, each parent demands "a part" of the child, and the cries for "equal rights to custody," 'fathers' rights," and "parents' rights" abound. Children's rights seem to be taking second place again. The question of child custody after divorce cannot be solved by reference to various kinds of "rights," all in collision with each other. A solution can only be found if combativeness is overcome and is replaced by parental planning, with the aid of attorneys and mediators, for the children's years of growth. ■



"Miss Williams, will you bring in my contract lenses?"

Making Visitation Work: Dual Parenting Orders

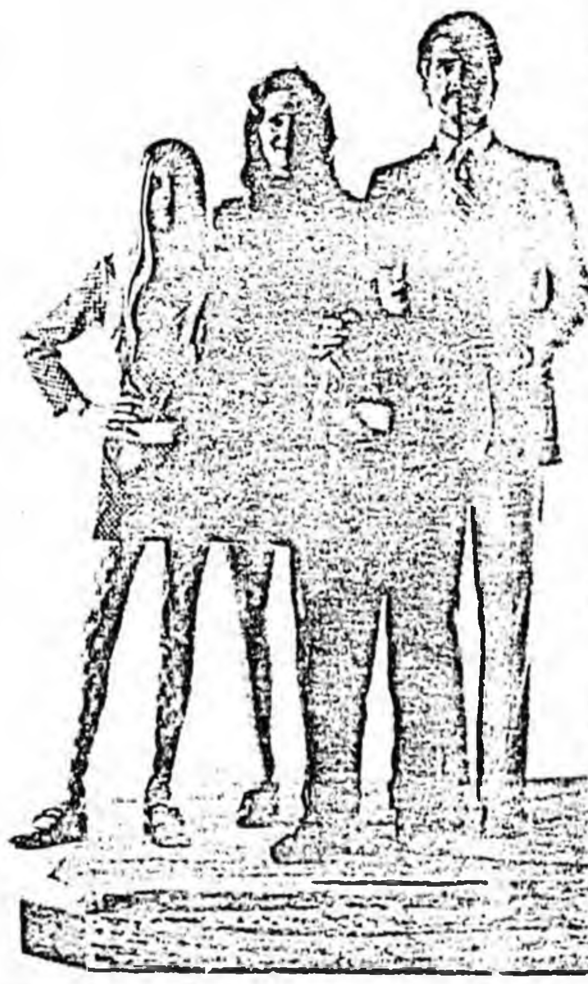
New Perspectives on the Traditional Tug-of-War

When James and Christine Wasko, both high school teachers, separated in 1972, they agreed that they should share both the costs and the child care responsibilities for their daughter, Sandra. Their separation agreement included a requirement that Mr. Wasko take custody of Sandra "on alternate weekends during the year . . . and for two weeks during the summer. . . ." Two years later, however, when Mrs. Wasko complained to a New York divorce court that Mr. Wasko had never taken custody of their children during the summer and had frequently changed his school-year plans on short notice, leaving her to cancel her own commitments or hire babysitters on his scheduled weekends with Sandra, the court refused her request for additional child support to cover her increased costs. An appellate court affirmed without opinion. (*Wasko v. Wasko,* Suffolk Co. No. 74-4558 (May 30, 1974), *aff'd mem.* 364 N.Y.S.2d 1007 (App. Div. 1975).)

More than a million additional children are affected by parental divorce each year in this country. For the Waskos and countless others, parent-child relationships will be maintained, if at all, in the context of custody and visitation arrangements. How can these parents, although divided, best preserve their ability to rear their children in as healthy an environment as possible? How can the law facilitate and encourage their efforts?

THE ROLE OF LAW

In general, law works in at least two ways. It sets standards for acceptable behavior and it resolves disputes. Most people simply prefer to do as the law requires, minimizing their interaction with legal proceedings. Only rarely do people choose to become directly involved with attorneys and courts—generally only when a



David Attie

BY CAROL S. BRUCH
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serious problem has arisen that they cannot resolve in any other way.

The typical involvement of the law in visitation matters provides an illustration. Most states, if they have specific laws concerning visitation at all, simply provide that a noncustodial parent will have a reasonable right to visit with the couple's children who are in the other parent's care. And, not infrequently, when custody orders are made, judges do not spell out exactly how often visits may take place, but instead order only that reasonable visitation be permitted by the custodial parent to the other parent.

How can such a vague order resolve anything? In the great majority of cases, a court order ends the matter so far as formal legal proceedings are concerned. Having been told by the court that he or she must allow the other parent time with their children, the custodial parent makes and lives with one scheme or another and the children are permitted to visit when the other parent wishes. These arrangements probably are permitted not so much because that is what the custodial parent would prefer, but because it seems a reasonable request for society to have made through the judge, and the custodial parent is used to living a life that comports with society's norms.

On the other hand, of course, there are the relatively infrequent but highly disturbing cases in which the custodial parent refuses to obey the court order either because that parent feels that it is unfair or because he or she is so angry with the other parent that paying any price (personal inconvenience, the children's unhappiness, or the court's displeasure) seems worth it. Anything to avoid sharing the children with the former spouse! These cases, of course, are the ones that are likely to end up back in court. When they do the court ordinarily attempts to use whatever means it has at its command to insure future compliance with its orders. Depending on the state, it may merely lecture the custodial parent, it may punish the custodial parent with a loss of support money if visits are not permitted, it may hold the parent who has disobeyed the court's order in contempt of court and place him or her in jail, or it may order a change of the children's custody to the other parent.

Between these two extremes—the typical case in which people abide by the court's standards without any undue discomfort and the less frequent but highly visible one in which a custodial parent will endure the court's displeasure rather than permit visitation—lies a third category. These parents, if left to their own devices, would avoid visitation regardless of society's expectations or a court order, were there not a sanction to enforce the court's decision. These are the parents who permit visitation reluctantly, but in the end do permit it precisely because they have been informed by the court or their attorneys (or their friends!) that they will be jailed or deprived of their children or support monies if they do not comply.

To the extent, then, that laws on visitation set standards for acceptable behavior, what is their impact? Their message for the parent who is given custody of the children is clear: permit the other parent to visit with the children as frequently as the court order requires. But what statement, if any, is made about the behavior of the parent who is not living with the children? What is expected of that parent? What should be expected?

To place the issue in perspective, let us review the roles of family members during the period when the family is intact, then ask what differences divorce ought to make in those roles.

GENDER-BASED PARENTING

Twenty or thirty years ago, it would have been a fairly simple matter to describe the typical family. Father worked to earn the living and mother remained at home to rear the children. World War II was behind Americans, and media as well as society at large agreed that this family structure was the correct order of things. Upon divorce, the theory was that fathers would continue to earn the living for their former families and mothers would continue to care for their children and remain at home.

Divorce law reflected these assumptions. It granted mothers custody in almost all cases, relying upon a presumption that children "of tender years" should stay with their mothers. It also authorized alimony awards that, when added to child support, in theory maintained the father's role as breadwinner and allowed the mother to maintain her full-time role as caretaker. Life was probably never as simple, however, as these stereotypes suggested. For example, although "alimony drones" become a popularized notion, it is unlikely that more than 10 or 15 percent of divorced women ever were awarded (let alone collected) any alimony at all, and it is not at all clear that fathers met these idealized obligations or that mothers could in fact afford to stay home with their children following divorce. (*See* Weitzman, *Legal Regulation of Marriage: Tradition and Change,* 62 CALIF. L. REV. 1169, 1186, 1195 (1974).) The model, however, was consistent and visitation schemes were a natural adjunct to it. Fathers were primarily responsible for financial comfort; if they chose to take paternal pride in their offspring, visitation was their prerogative. Women, on the other hand, were responsible for child and housecare functions. While they could not expect assistance from their former husbands with such activities, they could demand financial support.

Just when things began to change is not entirely clear. Perhaps it was with Dr. Spock and his generation of advisors on the tasks of parenthood. Perhaps it was with

the increasing participation of women in the work force and the resulting shortage of full-time caretakers within the home. Whatever the causes, the roles of husbands and wives began to change.

Increasingly, fathers in intact families were expected to share in the joys and burdens of child care. No longer was it sufficient to bring home the bacon on payday. From baby bottles to Little League to father-daughter activities, fathers too had a role in nurturing their children. By the time that notions of equality in housework and women's liberation appeared on the scene, fathers were already well-integrated into many aspects of child care that had once been the exclusive province of women. With the advent of concern for equality between the sexes, a movement firmly begun was accelerated. Women, too, were changing the nature of their contributions to the family. Increasingly, they participated in the work force during marriage and their earnings were essential to the family's economic survival.

This revolution, with its increased recognition of women's roles outside the family and its emphasis on sexual equality within the home, has prompted major changes in divorce laws. Interestingly enough, however, most of the changes have been at least initially to the benefit of men. First, new theories of spousal support recognized the growing economic activity of women by cutting back sharply on the availability of alimony. Although alimony may have been a hollow promise at best, new spousal support laws combined with no-fault divorce laws have led to a model of divorce that emphasizes the woman's return (if she had ever left) to the work force and economic self-sufficiency. At present, even those women who might wish to remain at home with their children are increasingly being encouraged or even forced to become wage earners.

At the same time, the increased interest of fathers in their children as persons rather than belongings has prompted attacks upon custody laws that give a preference to mothers simply because they are women. Because of stereotypes and because most families continue to place the majority of nurturing responsibilities upon mothers, however, this change has not yet had a significant impact on the percentage of custody awards going to mothers; it is still the norm for women to be awarded custody, almost always by agreement of the parties. There have been no revisions, however, of laws concerning visitation. Accordingly, noncustodial parents (who continue to be men primarily) continue to have visitation privileges that they may exercise at their option.

To summarize: during marriage, both women and men in contemporary society share to one degree or another both the financial support and the emotional and caretaker support of their offspring. Upon divorce, however, these roles may or may not continue, depending upon the pleasure of the noncustodial parent. Even where child support is collected regularly, the custodial parent continues to share the economic burden of the family with the other parent. But in almost all cases the custodial parent bears the sole defined responsibility for the care and nurture of the couple's children. This disparity has resulted in a phenomenon—today's single-parent family—that is increasingly drawing the attention of disciplines ranging from economics to mental health.

THE CHILD'S BEST INTERESTS

What is life like for the single parent, and of what relevance is the law of visitation? Government statistics establish that most single-parent families are poor. In 1976, the median income of female-headed families was $6,500, only about half of the $13,374 median for male-headed families. Given the striking disparity of wages for men and women, and the dismal statistics on the enforcement of child support obligations, these figures, though grim, are not surprising. What is, perhaps, surprising to those who are not members of the mental health professions or have not themselves experienced life in a single-parent household, is the impaired quality of emotional relationships for many members of these families.

In a series of articles that report the results of their studies on the impact of divorce upon children, scholars at the University of California at Berkeley and the University of Virginia have outlined multifaceted detriments to children of divorce. (*See, e.g.*, Wallerstein and Kelly, *Divorce Counseling: A Community Service for Families in the Midst of Divorce*, 47 Amer. J. Orthopsychiat. 4 (1977); Hetherington, Cox and Cox, *Divorced Fathers*, 25 Fam. Coordinator 417 (1976).) There is, of course, the initial trauma of their parents' separation. There is, in addition, the anguish and grief over the loss, even in part, of the parent who will no longer live with them. While these pains are inevitable so long as parents divorce, there are other pains identified by these authors that may be avoidable, at least in part.

One of these problems is that of abandonment. Children are fully capable of distinguishing emotionally between the parent whose partial absence is necessitated by a divided living arrangement, and the parent who simply chooses not to visit with the child (even upon those occasions that remain available after divorce). Total absence of contact with the noncustodial parent is a gratuitous pain—one that divorce does not require the child to bear, or at least one that divorce should not require. In addition, in many families the Hetherington and Wallerstein studies have documented a striking decrease in the quality of the parent-child relationship between the child and the parent who *retains* custody!

(Continued on next page)

This finding suggests that children may be doubly bereft of their parents following divorce: the quality of their relationship with the parent who has left home is decreased as their time together is lessened; their relationship with the parent with whom they live may be injured in a way that these researchers tell us is significant.

This finding concerning the frequent deterioration of the parent-child relationship between those who remain together following divorce deserves analysis. The custodial parent, after all, is given a pretty heavy load to carry. Not only is he or she (most likely, she) *in fact* left with almost the entire financial support burden for the family in a society where a woman's earning capacity at best probably only allows her to skim somewhere slightly above the poverty line; she is left to handle the responsibilities of nurturing and caring for her children without reliable assistance from society or her former spouse. (A recent Oxford Centre study found that fewer than 50 percent of the noncustodial parents in England and Wales whose cases were sampled were in fact visiting their children; the custodial parent had refused access in only 17 out of the 290 reported cases of nonvisitation. (*See* J. Eekelaar and E. Clive, Custody After Divorce, Table 16 (Oxford Centre for Socio-Legal Studies, Family Law Studies, Number 1, 1977).)

The rhetoric of the "joys of parenthood" has a hollow ring when one surveys the problems left to the custodial parent. This individual is expected to work full-time, to stretch limited funds, to care for the physical needs of the children and the household during off hours, and to supervise the children's intellectual, social, and moral growth. One wonders where any one person is to find the time, the skills, or the emotional and physical stamina for such demands. Surely there is no time left for personal growth or recreation, especially if money is in short supply and babysitters are a luxury for which there is no room in the budget. Is it any wonder that this person becomes less than the ideal parent and that relationships with children cannot be maintained as they were when both parents participated in at least some of these tasks?

Perhaps visitation following divorce has a more profound role than that of retaining access rights to children. The law requires that the "best interests of the child" dictate the nature of custody decisions, including visitation matters, in most states. In the majority of cases visitation is essential not as a matter of parental rights, but as one of children's rights—their best interests—for two reasons. First, through continuing contact with both parents, the children will be relieved of the specter of abandonment that haunts some children of divorce. At the same time, if the parent with whom the children live is given some respite, however brief, from the duties imposed by the single-parent household, there is an enhanced opportunity that the children's previous relationship with this parent will not be severely disturbed and the children will benefit.

DUAL PARENTING

If we can agree that in most cases it would be helpful to children—both in their relationshps with noncustodial parents and in their relationships with custodial parents—to have regular, generous visitation, what kind of legal structure is most likely to facilitate that result?

As mentioned earlier, reasonable societal expectations that are included in a court's judgment will be obeyed by the majority of people. And, for a smaller number, these will be obeyed even begrudgingly if there is a sanction that attaches to disobedience. Only in a small number of cases need we anticipate that active disagreement with the court's pronouncement will result.

Accordingly, my first suggestion is that courts begin to order noncustodial parents to visit with their children on a regular basis. (Of course, such orders would be made only when there is a reasonable possibility that parental cooperation can be secured and when the parties live nearby or can make reasonable transportation arrangements.) In my view, this is a tremendously important order, both as it affects the parent-child relationship directly and as it affects the child's welfare through its relationship with the custodial parent.

To be most meaningful, visitation should take place at times when normal parent-child interaction occurs. Thus, visits should take place both during playtimes and during times when chauffeuring of children, visits to the dentist, or trips to the grocery store are apt to take place. Children, in my view, need to know that the noncustodial parent is a whole person—one who may need to go to the hardware store, or one who may wish to go out with a friend at the cost of a babysitter—and not an idealized playmate who suddenly appears when it is convenient only for entertainment purposes. Not only will this provide the child with a more realistic picture of the two whole people who are his or her parents; it will provide a more meaningful break in routine for the parent who bears the responsibilities for the less glamorous aspects of child rearing during most of the week. At the same time, a good visitation program should leave some of the valuable weekend or vacation time to be shared by the child and the custodial parent. They, too, need time to play together.

Obviously this approach is a far cry from our traditional model of visitation. Because it is predicated on the need for continuing cooperative parenting by divorced parties with children, I suggest a name for this proposal: dual parenting. ("Joint custody," sometimes called "shared custody," is a quite different legal concept, which calls for equal legal control over the child

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Making a Federal Case

by Harvey C. Dzodin
Council to the White House Conference
on Families

Recent unprecedented and profound changes have occurred in American families and the laws affecting them. In examining those changes, the White House Conference on Families announced by President Carter for 1981 will rely heavily on the expertise of the American legal community and the unique resources of the American Bar Association's Section on Family Law.

In announcing the conference, President Carter said that its main purpose "will be to examine the strengths of American families, the difficulties they face and the ways in which family life is affected by public policies. The conference will examine the important effects that the world of work, the mass media, the court system, private institutions and other major facets of our society have on American families."

The conference is now in its early planning stages. Our recent efforts have been focused on the selection of a permanent staff and identification of candidates for our National Advisory Committee. In addition, because we are committed to an open conference that reflects the pluralism and diversity of American families, we have been seeking the counsel of a broad spectrum of individuals and organizations such as the ABA. In this regard the Section on Family Law has been most cooperative in supplying help and advice and the conference staff members look forward to a continuing interaction.

As part of this interaction, the conference will be sending a representative to the ABA's annual meeting in New York, not only to speak but to hear from your speakers and especially from individual Family Law Section members. Your ideas and comments will be most helpful and welcome because laws affecting families promise to be an important component of the conference.

Possible topics of interest to the Section on Family Law that have been suggested to us include child advocacy, domestic violence, child snatching, parental and children's rights, foster care versus institutionalization, subsidized adoption, and an adoptee's rights to know his roots versus parental right to privacy. Also suggested as possible topics are nonjudicial settlement of disputes, family dispute settlement through arbitration and mediation, neighborhood justice centers as well as the diminution in the legal effects of marriage and the dejurification of family law. An important further possibility is the effect of legislation on families, e.g., tax and welfare laws.

We also project an international dimension for our conference. For instance, we have had enthusiastic contact with academics, lords, barristers and solicitors in Britain. Additionally, we hope to have significant input from the International Union of Family Organizations in Paris who are currently in the process of setting up an International Documentation Center which would gather and provide comprehensive information concerning the family from all countries.

Members of the legal profession can get actively involved in the White House Conference on Families in a number of significant ways. These will be discussed by our representative at the annual meeting. In the meantime, because many states are in the process of organizing their own state conference, those who are interested in participating are urged to write their governor and make their desires known. Those who have any questions about the conference should feel free to contact us at the White House Conference on Families, Room 541-F Hubert H. Humphrey Building, Washington, D.C. 20201.

We see the White House Conference on Families as a process that will include state conferences, regional meetings and privately-sponsored seminars and discussions. Rather than regarding the conference as culminating in a five-day meeting in 1981, we view this event as only the beginning of a continuing effort.

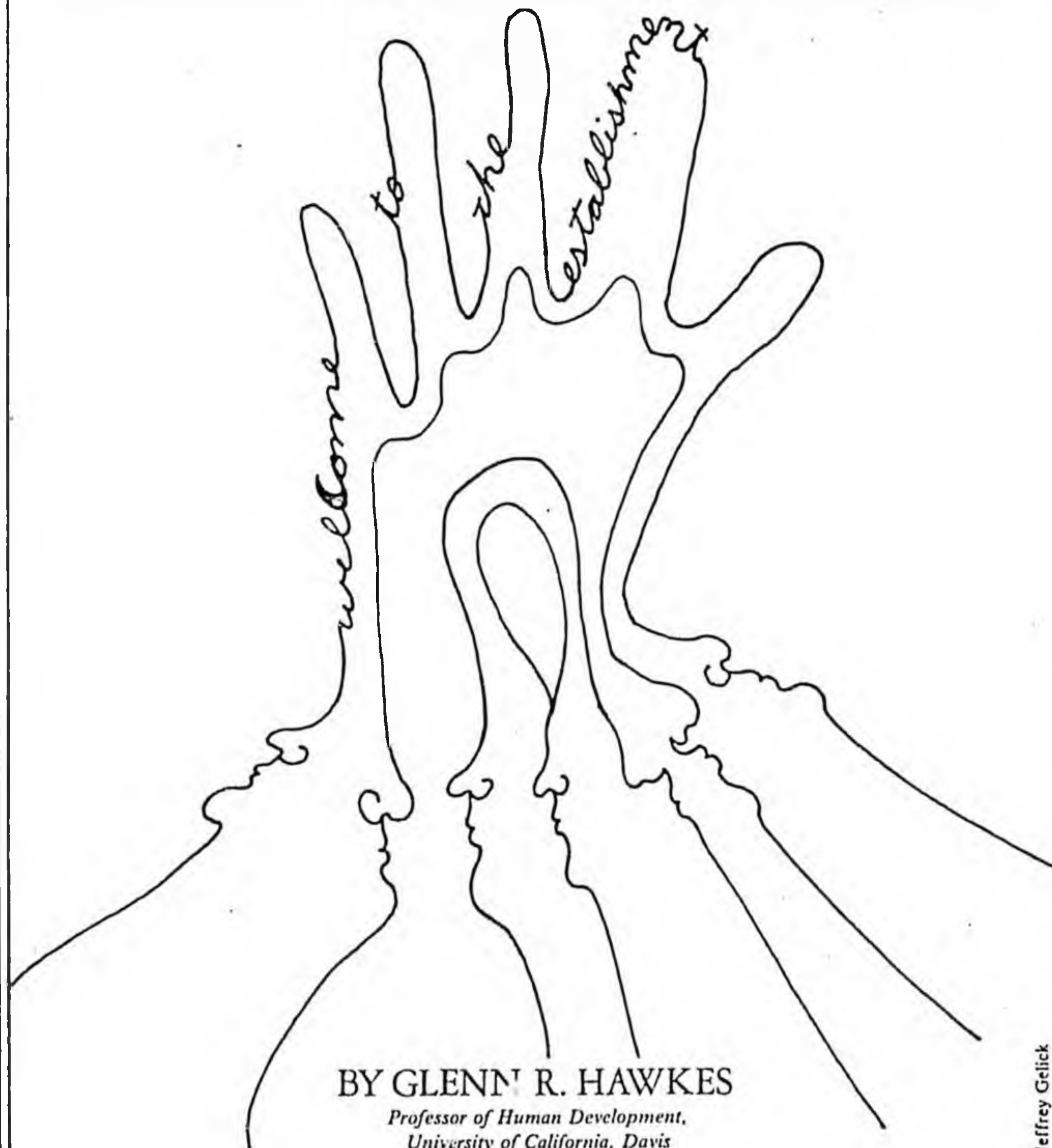
We see the conference as a significant opportunity—an opportunity for family members, researchers, policy makers and practitioners to examine the strengths and concerns of families. That opportunity must, however, achieve a balance which reflects input from all these important constituencies. This perception of the conference as an opportunity for initiating a process, rather than as a response to the pathology often attributed to the interest in families, is one that we hope will help set a positive tone for the White House Conference activities that will carry on long after the conference is ended.

As President Carter said: "Families are both the foundation of American society and its most important institution. In a world becoming more complex every day, our families remain the most lasting influence on our lives."

We look forward to working with you on this unique and exciting conference.

Working With Big Brother

Attorneys Are Now Counseling Families on How to Get the Most Out of Local Bureaucracies.



Jeffrey Gelick

BY GLENN R. HAWKES

Professor of Human Development, University of California, Davis

The concept of the family as a complete social unit with the virtues of autonomy, self-sufficiency, and the capacity to solve all of life's basic problems is a carry-over from the idealized myth associated with the agrarian past. It little resembles the bureaucratic pattern evolved in this era of industrialization and technological development.

Independence and autonomy may be desired by and for families, but for some families such independence may lead to more problems than it solves since the family lacks the resources to capitalize on independence. Under conditions of father absence, economic instability, and isolation some external help may foster sufficient resources to keep the family from becoming a casualty in a complex and perplexing world.

What is needed is a theory (and a program growing from it) that fosters a *fit* between the family and bureaucracies created to help and, in some cases, supplant the family in tasks traditionally tied to the family alone, such as social development.

In the early stages of its formation, the young family is usually operating with limited resources and developing a sense of its own autonomous structure and function. The period is characterized by the need for young parents to develop themselves further and to shape their roles as individual adults as well as mothers and fathers.

The theory of shared function is the notion that formal organizations and families coordinate their efforts if they are to achieve their goals. It calls for mutual planning and articulation. It suggests clarification of goals and the development of mechanisms to achieve goals.

The early stage of the life cycle is an optimum time for developing shared function. Attorneys counseling families faced with child-rearing problems should consider encouraging the idea which would allow the family to draw upon the economic and psychological resources of the agencies.

Whatever scheme is developed, it must be clear that the bureaucratic structure and the family are not in competition with each other; in many cases, their concerns will conflict, but a sense of cooperation must prevail. It must be explicit that a family has not failed simply because it is assisted by the bureaucratic segment of society. A family pays a high price for help if the members are allowed to feel inadequate and subordinate to the professional expertise of the bureaucracy. Guilt and hostility, consequences of such lopsided partnership, are disabling to the family, not facilitating. In advising clients seeking help, attorneys can point out that sharing involves a reciprocal process of being able to influence as well as being influenced.

An understanding of the goals and functions of both the bureaucracy and the family will enable attorneys to work with the two groups.

DEFINITIONS

Bureaucracies are social structures developed by society to achieve certain goals. They are instrumentally role-oriented in operation and emphasize objectivity and impersonality. They are usually built on merit, stressing performance as criterion for advancement in the organization and, for that matter, for perpetuation of the organization.

They are generally planned to have high stability and to exist for long periods. Codes and rules are part of their planned structure. They are also subject to public scrutiny. Whether part of the private or public sector, bureaucracies are developed with an eye to stability even though permanency of membership is generally not a common characteristic.

Families are primary groups usually described as a group of people living in a single household tied by bonds of marriage, blood, or deep commitment. They are expressive role-oriented and emphasize nepotism and subjectivity. The family provides continuing membership regardless of age or performance. It provides for primary face-to-face contact, and membership is retained merely through staying alive. Nepotism rather than objectivity characterizes its personal policies. Because of its size and the diffuse nature of its function, it is well-equipped to react with speed and flexibility to non-uniform events. It is a private operation and essentially not subject to scrutiny for efficiency or economy of operation. The family also provides a setting for the use of skills which a bureaucracy is ill-equipped to handle: feeding, elementary protection, exhibiting and reciprocating affection, etc.

Adapted from Professor Hawkes's article "Who Will Rear Our Children?" which appeared in the April 1978 issue of *The Family Coordinator.*

It would be very easy, given the nature of the bureaucratic spirit, to

Through the theory of shared function, the family and bureaucratic organizations can be examined in a way which maximizes the contribution each can make to the betterment of the human condition. For shared function to play such a role, the point at which the independent systems meet or interface must be developed so certain services are not overrepresented or wasted. It is also important that the autonomy of each sharer be protected and that the dominance of either in given circumstances be related to its function. It would be very easy, for instance, for the bureaucratic structure to attempt to standardize families. One function of a bureaucracy is standardization to ensure uniformity of response—a goal which tends to stifle the uniqueness and adaptability of the family unit.

REVIEW PROCESSES

The theory of shared function assumes also that needed services are constantly being reviewed in light of changing social conditions. A mechanism for such review seems to be one of the most difficult tasks. Leaving the review to the bureaucratic interface may, indeed, tend to give dominance to the bureaucracy. The family is at a disadvantage in that it has neither the expertise nor the resources to anticipate unmet needs and visualize ways in which these needs might be met.

One compelling reason for citizen participation on boards and regulatory agencies is to make certain that the needs of the citizenry are not overlooked. Another useful way of informing planning groups of the needs of a population is the public hearing. A recent requirement that planned social-service programs and expenditures be advertised and hearings be held may be developing a model that can be exploited in a theory of shared function. Such developments should be watched to determine whether this model can bring the bureaucrat and the citizen together.

How can a theory of shared function relate to the task of guiding the child's social development? Social development means equipping the child with the skills and attitudes basic to effective functioning in this culture. Socialization should focus on developing skills and fostering attitudes which will make a child a competent and productive member of society. Developing these competencies in the child calls for inculcating a strong learning drive, developing attitudes and skills which foster maximum physical growth and development, building a strong sense of emotional security, and laying a foundation for effective interaction with others. Individual priorities may vary, but they will generally contain elements of sound mental and physical health and techniques to foster their growth and development.

SUPPORT SYSTEMS

As men and women become parents they must develop roles for which they may have great or little preparation. Much disruption can be mitigated by the development of support systems in the bureaus of society. When support systems are nonexistent and families have dysfunctional child-rearing practices, familial stress can have a violent impact on young children. The disruptive potential that the birth of a child can have in a family is demonstrated in the 2300 cases of abuse and neglect of infants under the age of one reported in New York City in 1975.

Examples of support systems designed to ameliorate child-rearing, already implemented in England and the United States, include:

- Parental stress hotlines that are staffed by sympathetic volunteers trained to listen and refer clients to other social services.
- Parenting groups that are facilitated by city and county agencies to provide an intimate forum for voluntary discussion of parenting problems.
- Education for parenthood programs sponsored by state and federal agencies to provide adolescents with child-development background and experience in interacting with young children.
- Adult education programs that are sponsored by school districts to provide parents with participatory nursery school experience.
- Extended family centers that provide resources for isolated parents who are acting out violence against their children.
- Health visitor programs so that parents with newborn and young children are provided with a professional expert.
- Developmental family centers, such as the Martin Luther King Family Center, that provide home visits and pre-school facilities to "help families to help themselves."
- Child care services designed to provide for care for children, in and out of the home.

Bureaucratic support services for the early stages of social development have traditionally been of very limited diversity even if physical/medical evaluation of the newborn is included. Public health, as an example, is concerned with eliminating children's diseases. Toward that goal they have developed programs to blanket the young with immunizing shots. Pediatricians, school nurses, mass media, and religious and social groups have been recruited to urge acceptance and participation of the public in such programs. Success has been great when a clear and immediate threat has been perceived, as with polio, and less great when the threat has seemed vague.

A clear partnership between the bureaucracy and the family can often ensure greater success. If programs and procedures can be developed by both parties sharing responsibility, their chances of success are improved. In

(Continued on page 44)

Family Characteristics

Able to adapt with speed in meeting non-uniform events
High nepotism
Minimal qualifications for membership
Repository of low level skills; *i.e.*, feeding, safety
Privately operated

Bureaucracy Characteristics

Capacity to deal with large numbers
Subject to public scrutiny
Standardized
High stability
Transitory membership
Generally has access to public or private resources

Family Function in Education

Get child to school
Supervise homework
Reinforce school
Provide psychological support

Bureaucracy Function in Education

Provide standardized mass education
Provide stabilized funding
Teacher certification
Standardization in curriculum building

INTERFACE BETWEEN FAMILY AND SCHOOL

Elected School Board Members

Figure 1. Shared function of education.

Family Function in Education

Get child to school
Supervise homework
Reinforce school
Provide psychological support

Institution's Function in Education

Provide standardized mass education
Provide stabilized funding
Teacher certification
Standardization in curriculum building

INTERFACE

Parent participation in classrooms
Parent involvement on advisory committees
Parent-Teacher Association activities

Figure 2. Expanded interface between family and schools.

Young Family Characteristics

Limited economic resources
Limited psychological resources
Exploring role of parent
Exploring role of spouse
Developing sense of family structure and functions

Bureaucracy Characteristics

Capacity to deal with large numbers
Subject to public scrutiny
Standardized
Highly stable
Transitory membership
Access to public or private resources

INTERFACE

Family Collective Characteristics

Psychological support to families
Clearer family goals/functions in child-rearing and parenting
Higher level of ability to assess need for assistance with child-rearing

Figure 3. The Collective as an interface between family and bureaucracy as a mechanism for shared function of child social development.

The Bottom Line

A report recently published by the Bureau of the Census presents a statistical portrait of young Americans. "Characteristics of American Children and Youth: 1976" includes data compiled from U.S. government sources such as surveys, decennial censuses, and vital statistics.

The majority of the data has been published previously in Bureau of the Census or other government reports but this information is collectively published as a matter of convenience to the interested user. The report also includes some data published for the first time.

Focusing on persons under 25 years of age, the report traces changes among children and youth in the areas of population growth and distribution, migration, education, marital status and living arrangements, the birth rate, mortality and health, labor force participation, occupation, income and poverty status, voting, and crime and victimization.

Some of the highlights of the report are:

• On July 1, 1976, American children under 14 years old totaled 48.3 million. As a result of the decline in the birth rate over the past decade and a half, children have become a steadily decreasing proportion of the total population (from 30 percent in 1960 to 23 percent in 1976). Under the Series II population projections, the number of children would drop to about 46.2 million in 1980 and then rise to 52.9 million by the year 2000.

• Data collected in the October 1974 and February 1975 Current Population Surveys indicated that of the approximately 40.8 million children 3 to 13 years old in the United States, about 8 out of 10 were generally cared for by one of the parents while the children were not in school. Fairly small proportions were taken outside their home for care; for example, to the home of a relative or to the home of someone who is unrelated to them (about 3 percent to each), or to an organized day care center (about 1 percent).

• Eighty percent of the children under 18 years old in 1976 lived in families with both of their parents present. Most children not living with both parents lived with their mother.

• In 1976, about 28.2 million children, or 46 percent of all children under age 18, had mothers who were working or seeking work, up from 39 percent in 1970.

• The American youth population 14 to 24 years old on July 1, 1976, was estimated to be 45.1 million. This figure represents an increase of roughly 20 million, or about 84 percent, over the 24.5 million in 1950. Under the Series II projections, the youth population 14 to 24 years old would decline by about 7.1 million persons by 1990 from its 1976 level of 45.1 million. Between 1990 and 2000, the number of youth would increase by 2.8 million.

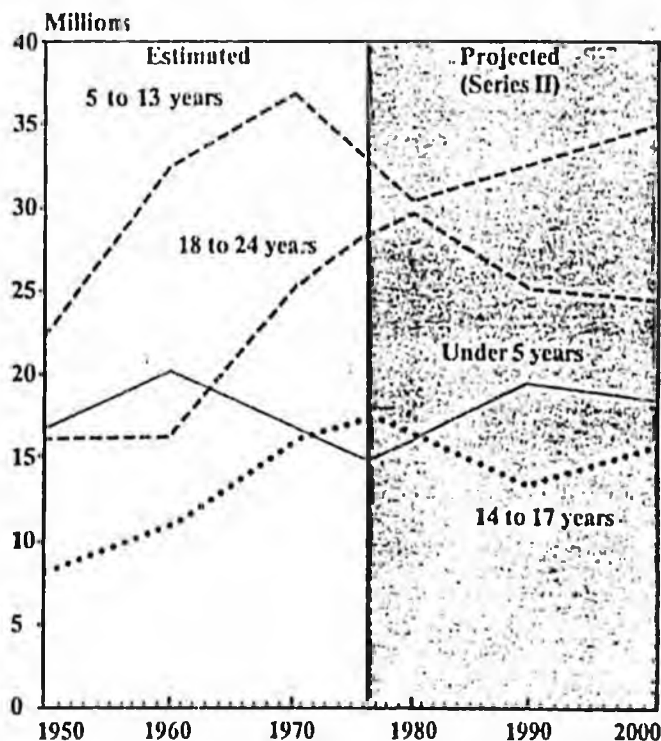
• American youth are a highly mobile group. Rates of residential mobility over a 1-year interval reach their peak at ages 20 to 24; at this age group the rate of moving within the United States in 1975-76 was 38 percent.

• The vast majority of America's youth in 1976 lived in families (generally either their own or their parents'). About 87 percent of young men and 89 percent of young women were members of families. About 25 percent of the men 18 to 24 years old were maintaining a family, and about 38 percent of the women were wives in husband-wife families.

• The median income of husband-wife families with a husband 14 to 24 years old who worked year round full time in 1975 was $12,090. If the wife was in the paid labor force in a husband-wife family, the median income was $13,185.

Population Growth and Distribution of Persons Under 25 Years Old By Age: 1950 to 2000

(Estimates and Series II projections as of July 1, including Armed Forces overseas)



Shared Custody

(Continued from page 9)

One of the major arguments put forth to support this assumption is that people who can't agree to stay married aren't going to be able to cooperate in child-rearing once the marriage is over. This presupposes that the *only* thing married adults can agree to amicably is to stay together and that anything else must be seen as pathologically unsound. Thus divorcing parents are immediately cast in the role of enemies, an idea fostered by the adversary system. While it may be logical for an attorney to view the situation this way, it may be very inappropriate for the needs of the family involved.

Secondly, one continually hears divorcing parents referred to as too immature, too unstable, and far too emotionally upset to work out some reasonable arrangement for the children. But even though the adults may not be successful marriage partners, that doesn't mean they can't be successful parents once the pressures of the marriage are diminished.

Characterizing all divorcing parents as neurotically selfish antagonists who don't care about scarring their offspring as long as they get revenge on each other is highly unfair to the many parents who don't wish to use their children as weapons of power.

A third reason why lawyers are hesitant to encourage joint legal and physical custody is fear that the judge won't consider it as a viable solution. In many cases the parents, who practiced sharing during the months of separation prior to filing for dissolution, were counseled by their attorneys that such solutions were unsuitable, unrealistic and likely to be thrown out by the judge currently hearing family law matters. One lawyer said, "I don't want to raise my client's hopes, only to have everything fall apart when His or Her Honor lets out a hoot of dismay and refuses to consider the question further."

Although I have observed and then talked with some judges who are opposed to any form of sharing, I have also found many who will award joint legal *and* physical custody *provided* that the parents (and their attorneys) know what they are getting into. If the parents are in agreement about who will take responsibility for what aspects of child-rearing, what kind of after-school care is needed, how the bills will be divided, and any other pertinent things the judge wants to ask about, the magistrate is more likely to accept their plan than if they simply petition for some vague, utopian equality of parenting but haven't done their homework about making it a reality.

FATHER'S FIGHT

In one case the judge denied joint custody after both parties had stipulated to it, only to be confronted by the father appearing In Pro Per with numerous letters, witnesses and a very firm appeal for the judge to reconsider. Among those letters was one from the day care center where the shared child had been enrolled for the last year and a half. The teacher made a very telling point when she pleaded with His Honor "to recognize and validate the cooperation and consideration these parents have been willing to show in order to arrive at their request for shared custody." The judge did indeed reconsider and that family now has the security of legal sanction for what the parents might have continued doing anyway.

PSYCHOLOGISTS SKEPTICAL

The idea of providing the children of divorce with two separate but equal homes meets with a fair amount of skepticism within the psychological community as well. Yet just as the attorneys' arguments against sharing are largely based on assumptions of hostility and the inability to cooperate between divorcing parents, the psychological arguments assume parents are unable or unwilling to consider the needs of their children as well as their own.

Psychologists generally attack the idea of dual households as being detrimental to the children for a variety of reasons. It was cautioned that the youngsters wouldn't know where "home" was, would become manipulative or devious in order to promote fighting between the parents, or would suffer from divided loyalties and end up feeling insecure about who has what authority over them. Added to all this was the automatic assumption that the youngsters would be shuttled back and forth, "like a yo-yo" as one professional put it, and forced to comply with some arbitrary timetable set up for the convenience of the parents.

A brief examination of these attitudes in the light of the reality of shared custody puts an end to some of these erroneous suppositions. To begin with, one of the major reasons for sharing custody is to allow the offspring more natural and comfortable interaction with each parent. Consequently the sharing parents I spoke with worked with the children to determine actual timetables of exchange once the system got started. Far from adhering to a rigid schedule, most of these adults were anxious to find whatever method seemed to work best for everyone. Some reviewed their situation on a regular basis, while others simply tried new arrangements when the old ones no longer seemed suitable.

The question of divided loyalties simply did not seem to exist for the children I interviewed. They felt free and comfortable about loving each parent. The youngsters had none of the usual guilts and resentments that stem from continuing to love a noncustodial parent in the traditional sole custody situation. One little girl explained that sharing evolved in her case because "my parents love me enough to let me love both of them."

As far as knowing where "home" was or who has what authority, this problem also appears to be more

theoretical than real. All the families had a firm policy of "when in Rome, do as the Romans do." Children readily understand that certain rules which hold in one home may be different from rules in the other.

Where the youngsters are concerned, consistent communication between the adults generally avoids either accidental or intentional manipulation on their part.

Sharing also has the effect of disarming the child of one very classic angry reaction. The cry "I want to go live with Daddy!" doesn't carry much weight as a threat if, in fact, she is going to live with her father in another few days or weeks anyway.

It should be stated that shared custody as a means of rearing children is not without its problems. But they appear to be the normal, human hazards encountered by any family, whether "intact" or not. And certainly sharing does seem to do away with a number of the negative situations that sole custody usually creates.

There are two arguments advanced by lawyers and psychologists which deserve to be looked at separately because they are both valid and important considerations in every case. Attorneys warn that joint legal and physical custody opens the door for one parent to legally snatch the child and move to another state, wherein he or she can file for sole custody. And psychologists point out that if one or both of the parents has not been able to accept the divorce emotionally he or she may use a sharing arrangement as a way to keep track of the activities of the former spouse.

CONSIDER MOTIVATION

Both of these considerations boil down to a question of motivation; are the parents seeking shared custody for the children's sake or simply as a ploy to mask other intentions? It's quite probable that there have been and will be in the future cases where the good faith of the parties is questionable and these people may see shared custody as a means to other ends. Yet can one honestly suppose that such parents won't find ways to snatch the children, to spy on their ex-partners, or to continue their battles whether or not sharing is available to them? Is it fair or reasonable to deny so many other parents the opportunity to implement sharing simply because a few people *may* seek to misuse it?

Obviously shared custody is not for everyone. Some couples are indeed so locked into their personal battles that they forget their responsibilities as parents. Others simply can't find a way to fit it comfortably into their concepts or expectations of divorce. And some children refuse to participate in such arrangements, particularly if they do not get on well with one of their parents.

But for an increasing number of people it is proving to be a workable and positive solution, one which benefits not only the children but the parents and state as well. Fathers who share are far less likely to disappear, leaving their ex-wives and youngsters to rely on welfare. Mothers who are not burdened by the sole responsibility of raising their children alone are less likely to hassle and harangue either offspring or ex-husbands, creating endless battles over money, visitation hours and various other complaints. And the children have the advantage of two loving and supportive homes, a real knowledge of and interaction with each parent, and the security of experiencing both parents' love in action, not just in words.

Surely it is time for the professionals in the divorce field to recognize the validity of shared custody and be willing to suggest it as an option to their divorcing clients. Not every family can or will want to make use of it but for those who are interested in exploring the possibilities, working out the details of a sharing arrangement can be the first step in turning an angry battle into a constructive situation. To fail to point out this alternative to the traditional sole custody system is to continue to rob the children of divorce of half their birthright and thereby add needless trauma to an already painful situation. ■

Visitation

(Continued from page 17)

parents who can work together but it seems that those are few indeed. Orders must be drafted with the thought of enforcement and the careful draftsman must also consider such items as travel expenses and mode of travel provisions if one parent moves. Also, a clause allowing a noncustodial parent access to a sick child can cause remarkable recoveries.

No visitation discussion would be complete without consideration of grandparents. Many states now recognize grandparent visitation as an independent right. Access for grandparents of noncustodial parents could vary from one weekend per month when they reside in the same area to one week in the summer. Some factors to consider are allowing the grandparent to pick up the child when the parent is unable and the subsequent rights of grandparents where a noncustodial parent dies and adoption by a step-parent looms on the horizon. Careful planning can provide the grandparents with a court ordered relationship that at the minimum would require notice to them and an opportunity to contest such an adoption.

When considering visitation privileges, attorneys should remember that people can and do change and careful reflecting on future changes is essential. Judges are always appreciative of well-thought-out recommendations and with careful draftsmanship, a knowledgeable family law attorney can anticipate many of the problems ahead and plan for them. ■

Children Who Cope

(*Continued from page 5*)

added, with some disdain, "They fight over little things." When asked what she does when they fight, she retorted, "What do you think I do? I leave the room, of course." The only clue she gave to continued underlying upset was her response when asked for advice regarding what to tell a six-year-old whose parents were undergoing divorce. She hesitated considerably and then offered, "I'd tell her a joke, or make her laugh. I don't like to see children unhappy. It makes me nervous." At school, Karen was reported to be an excellent student but given to tense, shrill verbal outbursts and having some difficulty in making and holding friends. The teacher found that she could calm the child best by placing her on her lap and did so on occasion. The school was also aware that the child spent a lot of time after school without adequate supervision, and that she sometimes came to school without lunch, at which time the teachers scurried about to provide for her. Sometimes the child would suddenly make remarks to the teacher: "My mother bought me fifteen dresses yesterday." Or, "My mother gave me lots of money yesterday. Just lots and lots." The teacher had been moved to considerable caring and compassion by what she sensed as Karen's loneliness. Some mothers in the neighborhood will not permit their children to play with Karen because, in their view, she has so little supervision.

This case highlights several conceptual issues in this subsample of the children who improved. Karen has been able to get and maintain adult attention, to use adults as resources, to learn well, to show pride in her achievement, and to express a desire and interest in growing up. She has demonstrable competence in her capacity to deal successfully with her environment, in response to the perceived threat. Specifically, Karen makes good use of her intelligence, perceptiveness, clarity, excellent memory, aggressiveness, courage, and flexibility, and of her capacity to reach out and maintain emotional contact with people. Yet, she has been and remains lonely and at times intensely unhappy. Much of her neediness, her unfulfilled longing to be cared for, her desperate concern with what belongs reliably and predictably to her, is in the process of being covered up, denied, and transmuted into a bratty, sometimes hard, sometimes jaunty early independence, reflected in her manner and in her precocious, almost adolescent, jaundiced view of her parents. Her interviewer remarked wryly, "This is no child to entrust with family secrets at a party." Karen's need to avoid and deny emerges most clearly in her suggestion that the unhappy child whose parents are divorcing should be told a joke, as well as in her sudden assertions to the teacher of her mother's extraordinary indulgence and bounty. We may ask, what is this youngster's capacity to be responsive to her own feelings, to her needs for comforting, to many needs that remain unmet? To what extent, also, is it possible for Karen and other children like Karen to receive from other adults, namely from teachers and other people in their environment, the affectionate care and consistent concern that Karen feels are lacking in significant ways at home, despite the efforts of both her parents and their genuine, albeit conflicted, concern and affection?

Finally, we must ask, at what point in her development is it appropriate to observe and assess outcome? For example, the degree to which Karen's defensiveness is related to her entry into latency and her consequent need to resist regressive pulls and reject intense feelings may only become evident from the hindsight of observation in later life stages.

Karen's overall psychic state at this time can best be summarized by her parting story at our last interview. She drew a building on the blackboard and told the following story: "It's a hospital. A little boy just came home from the hospital. He was hit by a car, but now he's OK." And she sailed out.

If we look at the other improved children in this youngest subgroup, at least three are bright and perceptive and well able to make use of language to communicate with their parents and with us. "Daddy, let's have another talk," Jimmy said, as he started to cry on the way home from their visit with his mother. These children showed a good sense of reality discrimination and seemed able at an early age to separate fantasy and reality. They did not seem to take blame for the divorce in their family. We were somewhat surprised at their responsiveness and pleasure in their contacts with us, some of which must also have been evident in their relationships with their teachers and baby-sitters and may well have resulted in the development of their own support system. Only a few weeks after his mother had suddenly left the family, Jimmy, with sweetness and not a little flirtatiousness, threw his arms around the interviewer and surprised her with a kiss as he left his second hour. All of these children struggled hard to understand and explain the family disruption and to deal with the loss. They used projection: "My sister is a crybaby. *She* cries for my daddy." They used denial through fantasy: "My daddy sleeps in my bed every night." But when pushed, the child admitted sadly, "I don't really see him enough." They reversed the loss and transformed it into a gain: "I have two families now. I have two mommies and one daddy." And they held steadfastly and loyally to their relationship with their mothers and fathers. Karen rejected her mother's boyfriend's overtures crossly: "You are not my daddy!" Among the responses we saw at the end of the first year in many of the improved children were stoical accepta[illegible] [illegible]urage,

early independence, sometimes brattiness, an early capacity to modulate needs and feelings in relation to others, and a capacity to bear loneliness and psychic hurt without enduring regression.

THE MIDDLE PRESCHOOL GROUP

The middle preschool group consisted of 11 children, five boys and six girls, age three years, nine months to four years, 10 months at the time of the first assessment. Although the turmoil around these children was moderate and no custody battles were threatened, the incidence of poor outcome in this group was dismayingly high. Seven of the ten children whom we reached at follow-up, two boys and five girls, were worse than when first seen. Three children appeared better: two boys and one girl. And of these, one boy who had initially been considered by us in serious psychological difficulty, had been referred at the assessment time for psychotherapy. Accurately, therefore, only two children of 11, one boy and one girl, in this middle preschool group can be considered within a category of relative stress-resistance.

The two children shared at the outset the worries, fears, and preoccupations of their peers who became worse. Like all the children in this group, they, too, were initially painfully bewildered by the family disruption, and frightened at what they considered to be their own replaceability and the possible loss of the remaining custodial parent. Unlike the other children in this group, these two children who improved seemed less blaming of themselves for the family disruption and the father's departure.

Frank was one of the children who improved. First seen at age four years, three months, Frank had been his mother's favorite child, and his self-esteem, although shaken, was still high. At the time that we saw him, he was frightened. He was fearful of losing both parents and had become clinging, tearful, petulant, and sulky at home. He refused to discuss the family rupture with our interviewer and denied any unhappiness, although he was obviously in considerably psychic pain. He offered, with a conscious effort to save face, "I don't miss my father. I see him all the time. It's just like always." Our gentle efforts to probe led him to question his mother on the way home from the interview. He asked, "Is Daddy going to get another wife? Another dog? Another little boy? Who is to blame?" Although he allowed himself to ask these questions of his mother, at no time with us or with his mother did he express the many acute feelings attached to these questions. Throughout his several hours of contact with us, Frank produced many drawings of animals, of flowers, sometimes a family portrait that included both parents. Otherwise he spent his time straightening up the office, lining up pens, papers, and toys in rows to his liking. We were interested in his nonexpression of fears, anger, or concerns directly, either in conversation, play, or art, and his use of the office as a microcosm in which he could reestablish the order, continuity, familiarity, and control that were absent in his world at that time. We were also interested that he complained when his sessions ended.

By the first follow-up, Frank had reorganized. He appeared charming, confident, calm, serious, and poised. He seemed to have made an early entry into latency, was proficient in sports and considered an excellent student. He was intensely competitive in school and with his peers.

Frank was eight years old and in third grade when he was seen again in the second follow-up. He had sustained severe stresses in his life in the intervening years, including one parent's major operation. He had begun to show some strain, which was reflected in complaints of fatigue, difficulty in concentrating at school, and preoccupation with fantasy superheroes. Yet, in all, he was still doing exceedingly well. He had entered a new class that year, in a new school, with very aggressive boys who banded together to exclude him. Frank had learned judo, and by the end of the year had established himself by "socking a kid in the mouth." His intense competitiveness with peers continued in school and on the playground. He was described as having good relationships with parents and teachers. The interviewer commented, "Frank struck me as a fine boy with a great deal of intelligence, sensitivity, and good looks. Yet, I missed a sense of humor and the playlike features that one finds in many eight-year-olds whom I see. His pleasures seem tied to competition—hard competition—and winning." When asked for advice for a child whose parents were divorcing, Frank said seriously and stoically, "I'd tell the kid to live with it (the divorce)—to try not to worry. It will turn out OK." For the parents, he advised, "Take care of him. Have fun with him. Have some treats for him, too." Frank also raises issues similar to those represented in Karen, namely, the question of the extent to which his capacity for pleasure and play may have been sapped by his extraordinary and successful response to the many severe stresses of the past few years. His intense competitiveness and drive to win may have served him in good stead in maintaining his developmental course. They may propel him to very high achievements but may also have a psychological toll, whose full effects on his emotional life and capacity for contentment may not yet be evident.

Although we shall not attempt to generalize about this group from these two children, Frank also illustrates one of the important findings with these children, namely, that there is little evidence in our study that preschool children who are able to articulate their feelings necessarily do better than those who deny, avoid, or otherwise shy away from such expression. It is difficult to assess how much of any child's behavior reflects restraint, reserve, conscious avoidance, and/or denial, or an admixture of these. Nevertheless, the fact remains that several of the preschool children who improved were not able or willing, in their contacts with

us, to express in play or conversation or drawing the feelings that could be inferred from their tenseness, restlessness, and symptomatic behaviors. Our evidence is that they did not talk to other adults, either, at this time.

These improved or stress-resistant children, by and large, did have, in our experience, a remarkably clear and differentiated perception of happenings in their particular world and of many of the details and implications of the family rupture. This clarity was often not found in their peers who did poorly, in whom we more often found a denial of the events, a clinging to fantasy remarriage or reconciliation, and a lack of clarity in separating wishes from reality. It seems important, in this regard, to distinguish denial of the reality from denial of painful feelings or fears. The improved children seem clear about reality but are able, often, to avoid, deny, or conceal painful feelings until they can deal with these in their own good time. These observations have obvious implications for clinical assessment as well as programming. It is important to intervention theory that such avoidance or denial of feelings at the initial contact, namely at the time when the stress is at its height, is not predictive either of the adjustment at a later date, or of the later capacity to deal with these feelings successfully.

THE OLDEST PRESCHOOL GROUP

The oldest group of preschool children included 14, nine boys and five girls, whose ages ranged from five years to five years, 11 months at the initial assessment. At the time of the parental separation, many of these children experienced heightened anxiety and aggression, which became manifest in their restlessness, whininess, moodiness, general irritability, and symptomatic behaviors that included phobias, sleep disturbances, compulsive eating, aggressive outbursts, and a driving search for physical contact and attention from adults. These initial responses to the family rupture seemed more diverse, from the outset, when compared with those of the younger children.

In addition, one of the distinguishing attributes of this older preschool group was the greater consistency between their predominant psychological stance at first observation and the characteristic patterning of defensive and coping mechanisms evident at the year's end. The children who were worse at follow-up were, with one exception, very troubled at the initial counseling. Similarly, all but one child in this age group were improved or in relatively good shape at the initial counseling. Therefore, these initial clinical findings may have somewhat greater predictive value and can, perhaps, be used somewhat more reliably for early intervention and referral than those of the two younger preschool groups.

Several of the oldest children seemed, from the start, capable of maintaining some degree of psychological distance or perspective vis-a-vis the parental conflict. One boy expressed what seemed to be genuine relief at being separated from his father. Several others, despite their anxiety, sadness, and anger, appeared able to continue their lives in school, play, and with peers without significant impediment. At follow-up, these children were members of the group that was doing well. In all, seven of the 14 children in this older preschool group (50 percent), six boys and one girl, may be considered to come within a subgroup of stress-resistant children who had indeed been able to experience the family separation and the ensuing year of disequilibrium without evident long-term detriment to their psychological development. The vulnerable children included four girls and one boy who appeared significantly worse at the first follow-up, and two additional children, both boys, who continued to appear as vulnerable at follow-up as they had at the earlier examination, although they had not lost ground.

Much like that of the younger improved children, the mother-child relationship of these improved youngsters seemed to have improved by follow-up. The intense turmoil and parental fighting present in five of the seven children's families at the time of the initial evaluation had diminished. And in all except one of the families, the mother was feeling better than at the time of the initial examination.

Several of these mothers had special relationships with the boys who improved. Of the six boys in the improved group of older preschool boys, three were the only boys in a sibship of three and enjoyed a preferred relationship with their mothers, especially when compared with their older sisters, whose relationship with their mothers was burdened by overt conflict and anger. The pattern of preferential treatment of the boy was particularly evident in the two families in which the one boy was also the youngest child. The one girl in this group of children who improved was also the youngest child and had been, from the start, closely identified with her mother. Her older brother was encountering considerable difficulty in his adjustment in the family.

Yet, by and large, it should be said that most of the six mothers of the improved children were undergoing considerable stress in the year following the parental separation. Only one mother was, in fact, competent and intact in her functioning at follow-up. Three mothers had a history of serious somatic illness complicated by psychological components and sequelae. two of these families were in serious economic straits; after painfully extricating themselves from a humiliating marriage in which they had suffered physical and psychic abuse over many years. A fifth woman was suffering from chronic depression. At least two of these families were in serious economic straits; three mothers had begun to work for the first time after the parental separation; all but two were worried about finances. Yet, with one exception, none of these women burdened their children's visitation with their fathers, nor were the children subjected to criticism or rejection if they expressed interest or eagerness in seeing their

fathers. In brief, these children were not made to feel central in the continuing parental struggles, despite resentments that continued to smolder in four of the six families.

Of the six oldest preschool boys who improved or held on to previous good adjustment, two openly regarded the diminished contact with the father as an opportunity to establish a not unwelcome distance. David, age five, the youngest of four children, had been the object of his father's most significant attachment during the marriage, as well as the target of his frequent, bitterly sarcastic, critical outbursts. His mother attributed the deterioration of the marriage in part to parental rivalry over the child's affection. David appeared, in his initial contact with us, as a whiny, immature, unhappy little boy who was anxiety-ridden at school and on the playground and stridently tyrannical at home. After the parental separation, the father began to visit weekly, but his visits included all of the siblings together, and the relationship with David became, as a result, less intense, less all-encompassing, and less geared to serving the father's changing moods and pressing needs. David expressed satisfaction with this new arrangement. At the end of the first year, the boy appeared to have made almost two years of growth; he was significantly freer to use aggression in his relationship with his peers, considerably less fearful, and surging ahead in academic and social learning. At the four-year mark, the report we have indicates that the boy, now age nine, is still doing splendidly and is a source of pride to his mother and his teachers. Before the second follow-up, the family had been living for several years at a considerable distance from the father. It may well be that circumscribing the pathological relationship with the father has promoted this youngster's development.

If one looks at the quality of relationship between these fathers and the improved subgroup of oldest preschool boys, it seems that four among six had fathers whose relationships with these children were profoundly disturbed. The attenuation of these relationships, however painful to the children, may have nevertheless set the children free from bonds that were impeding their development. All but one of the children in this subgroup saw their fathers four times a month during the first year. None of these fathers deserted or overtly rejected their children. One father moved to a distant city and saw his son on holidays and weekends. The father's relationship with the one little girl in this improved group was closer and warmer at follow-up than at the time of the separation, when he refused to visit for several months because of his pain and jealousy.

Of the three mothers who had remarried at the time of the first follow-up, two of the children had important and loving relationships with their stepfathers. For example, Frances, whose mother remarried shortly after the divorce, acquired a new stepfather and several older brothers at the same time. Frances occupied a special place in this household as the only girl and the youngest child. This role seemed to enhance her feminine identification as well as her closeness to her mother. The child's unusual prettiness, charm, and warmth were significant factors in evoking the gratifications she received.

At least three of the children in this oldest preschool group seemed to have been protected from the pressure of parental needs and from exposure to parental violence and seduction by the presence of another sibling who more directly sustained the pressures of the parental needs and conflicts. It is of interest that of two brothers in one family in this oldest preschool group, the older boy showed signs of considerable psychological deterioration at the end of the first year, whereas the younger one seemed to have negotiated the year's hurdles with more success.

Academically and socially, the seven improved children in this older preschool group were doing well at follow-up. One child had a minor speech problem for which he was in therapy, and another seemed to have some minor reading difficulty. Three of the children about whom there had been mixed reports at the time of the initial evaluation were now considered excellent students. Larry, for example, whose teacher had reported mood swings, daydreaming, and reading difficulties at the time of the first assessment, was considered a model student at follow-up. By and large, these children related well to peers and to their teachers. These reports stand sharply in contrast with the findings regarding the children in this age group who deteriorated, where we were particularly concerned with the number of serious learning difficulties and disturbed relationship with peers.

These children were using their relationships with teachers and other students to provide themselves with needed supports and were, in effect, constructing their own support systems. This emerged in part from the pleasure and warmth with which many of their teachers discussed these youngsters. Furthermore, the reports on these children who were doing well at school were sometimes at minor variance wth their behavior at home, suggesting that these children were able to shift their behavior in response to the demands and gratifications of the setting. Our finding regarding the significance of the school in providing support for these children has important implications for the school and for the teacher. It seems that the school and the classroom often provide the only continuity available to the child at the time of the divorce.

In noting other support systems available, it should be mentioned that a somewhat higher percentage of these children than the children who did poorly had grandparents who were concerned with their welfare and were helpful to the children directly or to the custodial parent. Two of the extended families lived close by, and the children visited them frequently. Others provided vacation homes and financial help.

An accelerated push toward increased maturity seems

to characterize the older preschool children who improved. In a sense, their turning away from the stresses of the family disruption, and their wish to escape the conflicts between their parents, moved them more quickly into the next developmental stage, whose hallmarks are increased independence from the family, diminution in the intensity of parent-child relationships, and movement outward toward school and playground with new adult models and new peers.

Each of these children seemed able to make his way into the new early-latency territory, to perform at least adequately in various new roles, and to become the kind of child who engenders positive responses from the new adults, in effect to be bright, responsive, highly motivated, and capable of mastering the rules and meeting the requirements of her or his peer society. Moreover, these same children were able to adapt to new stepparents without overwhelming conflict and without sacrificing their attachment to the noncustodial visiting parent.

We were often impressed with the acute social sensitivity of these children. Tom drew himself with large eyes and enormous ears, reflecting perhaps both the intensity and the strain of needing constantly to assess the world around him. The children seemed able, despite their own pain, to distinguish clearly their wishes for reconciliation from the reality they perceived. John told us how much he missed his father and how much he wished to live with him. He added, with great sadness, "But, he does not want to live with us anymore." The children worked hard at explaining the separation, even when it made no sense to them at all. Frances insisted that her parents divorced because of fights about "mail and taxes." The children made judgments about right and wrong. Tom, who was surrounded by adult violence which included gun possession and threats of killing, told us that it was wrong to give vent to anger. Several children showed a capacity for planful, independent, multistep activities.

Of the entire group of 14 improved children at the one-year point, we were able to reach 13 at the four-year mark. For these, our very preliminary analysis reveals that a goodly number of family changes have occurred in their young lives, including several remarriages, a second divorce for one, a pending divorce for another parent, and a partial reconciliation. Only three of the 13 children were found to be in overt distress. The remainder, who were examined by the original clinician, were considered to be still within appropriate developmental norms and doing adequately or well in their psychological and social functioning. All three of the children who had deteriorated in this interval seem profoundly affected by what they felt to be their fathers' disinterest or rejection.

SUMMARY

Of 34 preschool children seen shortly after the parental separation, a total of 14 seemed one year later to have weathered the initial postseparation period and to have resumed the developmental progress which had been briefly interrupted in most instances. Factors that emerged as important in the environment of these improved children included the capacity of the divorcing parents to keep continuing anger and conflicts separate from their relationship with the children; the availability of a good school system and teachers with time and sensitivity to offer individual support and encouragement to the child; appropriate distancing from a pathological parent-child relationship, where this preceded the divorce; and the absence of overt rejection or desertion by either parent. Siblings seemed, as well, to offer a buffering support to younger children, sometimes at the price of their own increased conflict with a distressed parent. Relationships with a stepparent, particularly the marriage partner of the custodial parent, seemed also to have growth-promoting and comforting potential for some children.

The initial responses of the younger preschool children who improved at one year were indistinguishable at the time from those whose psychological and social functioning later declined. By kindergarten age, differences could more often be distinguished at the outset, with the children who declined during the first few months after the separation showing more troubled behavior a year later.

The children who seemed to cope successfully with the stress of the family disruption were intelligent, perceptive, and courageous, and they had the capacity to make do with less time and less caretaking and to become increasingly independent, as well as to develop their own supports outside of the immediate family. They were propelled by this adaptation along the developmental ladder toward greater independence and earlier entry into the next developmental stage. Some seemed able to make this complex adaptation without openly expressing their intense feelings and fears, as long as they were able, cognitively, to face the reality of the divorce and to be assured by trusted parents of continued love and care.

Our findings are that the children who were improved at about 18 months after the parental separation had, by and large, fought a successful battle to overcome their initial acute fright, conflict, self-blame, and grief. As part of this adaptive process they were able to circumscribe, to bypass, or to deny their wishes and/or their expectations for the parenting and caretaking that had been their experience before the family rupture. It seems likely that a significant underlay of sadness, neediness, and unfulfilled longing is a significant aspect of their childhood experience during the several years following the parental divorce. This persistent underlying sadness, combined with early self-reliance and early entry into the next developmental stage, seemed to have important implications for character development, including particularly self-concept and relationships with adults and peers. ■

A SPECIAL PUBLICATION ON THE FAMILY AND THE LAW

THE FAMILY COORDINATOR

Linda Henley Walters, Guest Editor

New insights concerning the impact which the law has on the family are revealed in an enlarged Special Issue of *THE FAMILY COORDINATOR*, which appeared in October. Leading researchers in North America summarize major findings of the latest research on all aspects of the family and the law. An extensive bibliography containing over 1,000 references is included in the issue.

Distinguished researchers discuss such topics as: *the equal rights amendment: its potential impact on family life . . . males, fathers and husbands: changing roles and reciprocal legal rights . . . rights of children . . . non-traditional lifestyles: legal regulation of personal and family lifestyles . . . sex laws and alternative life-styles . . . legal problems of cohabitation . . . children in communes: some legal implications of a modern lifestyle . . . children of family change, who's helping them now? . . . The effects of the penal environment on familial relationships . . . protecting the child's rights in custody cases . . . emotional aspects of divorce and their effects on the legal process . . . the role of counseling in the reform of marriage and divorce procedures . . . the law and divorce in Canada . . . lawyer and counselor as an interdisciplinary team: points for a woman to ponder in considering the basic finances of divorce . . . premarital counseling for minors: the Los Angeles experience . . . conciliation counseling: the court's effective mechanism for resolving visitation and custody disputes . . . Michigan's friends of the court: creative programs for children of divorce . . . family impact analysis: application to child custody determination . . . parent group training programs in juvenile courts: a national survey . . . law and the family life cycle: an innovative program . . . teaching on TV: the law in your life . . . bringing outsiders into the legislative process: a brief report from a pilot project in the black community . . . family law and family studies: professors' views . . . changing laws, legal literature, and the family life specialist . . . the family and the law: selected references.*

Write: THE NATIONAL COUNCIL ON FAMILY RELATIONS

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Dual Parenting Orders

(*Continued from page 26*)

but does not necessarily resolve questions of physical placement.) Because this model focuses on the continuing role of parents in the nurturing function, I prefer dual parenting to an equally precise but more legalistic term (such as dual custody) that might be developed. Dual parenting implies that both parents have an important role to play in the rearing of their children following divorce. This role continues without regard to the legal custody arrangements that are made for the child. I envision court orders that will read, for example, "Dual parenting is ordered with custody to the mother, the child's periods with the father to be as follows. . . ." From the child's point of view, this is clearly desirable. I believe that the parent who will not live with the child during much of the year will be equally pleased with dual parenting. It recognizes both the child's needs for two parents and that adult's continuing parental responsibilities. Indeed, the availability of dual parenting orders may well result in fewer requests for joint custody, a model that frequently poses more difficulties than it resolves.

RELUCTANT VISITATION

If my thesis is correct, and many people do what is expected of them, a reasonable dual parenting order pronounced by a judge at the time of divorce (one that emphasizes the benefits to the child that derive from a continuing relationship with both parents) will prompt many more absent parents to visit than now do so. But what of those parents who would resist visitation unless forced? What would be the impact on a child of spending time with a parent who does not want to be there? While I do not dismiss lightly the specter of unwilling parents, I am not very concerned that this "horrible" occurrence will often come to pass.

Probably all parents have had many days when they have not wanted to be with their children. Many of us, for example, have had to cancel social plans in order to care for a child who was ill or to attend an open house at school. Children know and appreciate it when they are important enough to come above other more pleasurable activities in their parents' schedules. Consequently, some sense that a parent might have been elsewhere were it not for parenthood is not a startling prospect. Undue concern with this possibility overlooks the fact that the child's alternative is to spend those very hours when visitation might have taken place in the care of a probably harried custodial parent. Indeed the mental framework of this overworked custodian might well be much less cheerful than that of the parent who is asked to take out only a day or a few hours during the week in the child's behalf. Finally, those who shy away from regular visitation ignore the fact that parents who spend time with their children on a regular basis are less likely to become alienated from their children and resentful of the caretaking functions associated with visitation than are parents who have had a complete break from such duties.

Except in the case of divorced parents, our society has never accepted the proposition that parents should be free to ignore the care or needs of their children simply because it is inconvenient or unpleasant for them as adults. A societal norm that condones total parental freedom for selfish purposes simply because divorce has occurred is far from desirable. The supposed obligation of a custodial parent to do all for his or her child because of the attendant "joys" has a certain self-serving air. Children are a joint undertaking; no logic requires that an inevitable consequence of divorce be the replacement of two parents by one.

SANCTIONS

If these arguments, or at least some of them, are persuasive, how would courts go about enforcing shared parenting orders? As I have suggested, courts currently enforce visitation *rights* by imposing contempt or financial sanctions against a custodial parent who interferes with the other parent's visitation. Would similar sanctions make sense when visitation *obligations* were breached?

Contempt, of course, is rarely used because of its drastic nature. One may well question its advisability in any visitation context, where extreme disagreement with a court's order will probably result in various kinds of mental warfare, even when pro forma compliance is undertaken in order to avoid incarceration. One must seriously wonder how children can ever benefit when their parents are fighting so desperately.

There are, however, other means that make very good sense in this context. Divorce laws have increasingly taken the battle out of the courtroom. Fault is now irrelevant in many states and courts do not wish to hear the sordid details of the marital breakdown. However, in the custody area parental indiscretions and misbehavior remain the subject of judicial scrutiny in many instances. And a marriage that is dead in all other senses may remain a veritable battlefield for years to come as former spouses wage a running war, with the children turned into both the armaments and the carnage of the battle. Failure to visit is all too often one such tool. Many are the cases in which the visiting parent does not appear just when the custodial parent has a final examination or a planned social event. Many are the children who become innocent victims when the noncustodial parent stays away not out of disinterest in them, but because he or she begrudges the custodial parent free time and its implication of a new life.

Parents who do not visit, whether for these reasons or merely because they have a social engagement, are in

fact utilizing custodial parents as unpaid babysitters. Just as custodial parents must hire outside help when their personal plans prevent their exercise of custodial duties, noncustodial parents should be expected to take on the responsibility of hiring babysitters if they wish to be away over the weekend or for the evening scheduled for visitation. If they do not do so, it is entirely appropriate for court orders to specify an amount that must be paid to the custodial parent as an increment of additional child support to cover the costs of increased child care requirements that such decisions have imposed upon the custodial parent. Such financial costs, in addition to recognizing the economic reality and the moral obligation of the parties' responsibilities, have an additional attraction.

What will happen in these cases when noncustodial parents realize that a failure to visit will only increase financial support burdens and not keep custodial parents at home? After all, custodial parents will be entitled to increased support, and can use those funds to hire babysitters. (All of this is predicated, of course, upon the assumption that child support monies can be collected. Although historically that has not been a correct assumption, as more and more states improve their collection mechanisms, it is a realistic possibility in many cases.) My sincere belief is that once noncustodial parents are told by the court that their presence is essential to the growth of their children and that their children will benefit to the fullest only if they continue to provide assistance and support to custodial parents in their functions as nurturing parents, and once they realize that their absence cannot harm custodial parents, more and more absent parents will assume a continuing role in their children's development following divorce.

Perhaps it is premature to think that state laws on visitation might be interpreted to permit such court orders in all appropriate cases; I think not. But surely there is no reason for a court to refuse to enforce an agreement entered into between the parents themselves that requires visitation on a regular basis.

Divorce is a fact of life in our society. Children of divorce surround us in increasing numbers. The quality of life for these children cannot be maintained exclusively by concern for their monetary support, although such support is vital. Courts cannot expect custodial parents to be all things to all people without the active support of noncustodial parents. Through counseling, through statements of reasonable goals, and through even-handed enforcement of visitation obligations under dual parenting orders, much of the human devastation that follows divorce for children may be alleviated. To quote Elizabeth Dancey, "[A]t least we should demand that the law doesn't compound our injuries and intensify our pain." ■

Joint Custody

(Continued from page 13)

tion of custody has been criticized by both opponents and proponents of joint custody.

The main argument of opponents of joint custody is that two people who couldn't get along well enough to stay married cannot agree on how to rear their children. Some maintain that joint custody might be tough on parents since the other parent's wishes must always be considered. Another argument is that children need the stability of one residence and one parent making major decisions.

DISCRIMINATION AGAINST FATHERS

The concept of joint custody has not been readily accepted by society, according to reports of parents who are giving it a try. One father reports that teachers and other mothers discriminate against him when he has physical custody. They view the father's desire for joint custody as an act of revenge against his former wife at the child's expense. One manifestation of this attitude is the school's insistence on calling only the mother when there is a problem at school or the child is ill. If this negative attitude of the schools and the mothers in the neighborhood affects the children, then it is an argument against joint custody. Also, fathers with joint custody have encountered suspicion from social acquaintances of the opposite sex. Reasons for this are only speculative. Perhaps other women are afraid that he is only looking for a housekeeper or a babysitter or perhaps they are uncertain about the nature of his relationship with his former wife.

When the subject of joint custody was brought up at a Family Law Section meeting of the American Bar Association in 1975, negative opinions were expressed.

The Honorable Referee Frank Conry of the Denver District Court in Colorado, who hears non-contested dissolution actions, feels that couples who agree to joint custody are just delaying a final decision because they are not ready to dissolve their relationship with each other. He opposes joint custody because he fears it will result in further litigation when the court must modify to provide for sole custody. However, if the separation agreements provide for shared custody arrangements, he usually will approve them.

It is obvious that for joint custody to work, the children must agree to spending time with each parent and the problems of access and arriving at mutual decisions regarding the child must be minimal. Opponents do not think the problems will be minimal.

MORE RESEARCH NEEDED

In deciding if joint custody is in the best interests of the child, the legal profession should consult the profes-

sionals in the behavioral science field where psychologists have been able to identify children's needs at each developmental phase. Psychological theory appears to be consistent with judicial guidelines in deciding custody, i.e. children need love and adequate care as well as stability and continuity in their relationships and environment. The interrelated needs of love and adequate care are considered more important than continuity. There is some agreement by theorists that there may be periods in a child's life when the need for stability and continuity is greater than at other times. But there is no overall agreement as to the ages when continuity is more or less important beyond the widely held view that a child's ability to tolerate interruptions in relationships increases as he grows older. Theory also postulates that normal sexual identification is facilitated by the presence of a role model of the same sex in the child's family environment.

Unfortunately, the psychological theory and the judicial guidelines work only in the easy cases, not the hard ones, because psychological theory is too general in its formulations and the consequential harms are too vague. The invalidity of the method of psychologists interviewing parents and children and then predicting future behavior on present personality theory has been established in well-documented studies. More important, even if one could predict how the adults would act, there is no information on how the adult actions affect the children. In addition, psychological tests to form judgments about future behavior are not eligible because the evaluator would have to draw on personality theory to interpret the tests.

Empirical findings directly or indirectly relevant to difficult cases are virtually non-existent. Probably the best source of data would be studies of the long-term effects on children of various court-ordered custody arrangements. Few have been done. However, it is generally well-accepted that children of divorce can experience a mourning reaction at the loss of the noncustodial parent. Some studies have been done on the effect on children because a father is absent from the home, but this is not sufficient research to predict the effect of joint custody, or for that matter, sole custody, on children. Courts are left with the task of balancing the possibility that children might experience disorientation and a lack of a stable example because of joint custody against the advantages of giving the child the advice and training of both parents.

"NO-FAULT" CUSTODY

It is too soon to determine if joint custody will become *the* solution to the custody dilemma. It should be noted, however, that House Bill 2601 was introduced in the Commonwealth of Massachusetts proposing that the probate court of that state be allowed to award joint custody. Two earlier Massachusetts joint custody bills were not passed. It has also been proposed that uniform statutes regarding child custody be adopted, providing that joint custody be given to parents, unless the courts find an overriding reason why it would be in the child's best interests to award custody of the child to only one parent, or unless one of the parents waives his or her right to custody.

Perhaps public acceptance that marriages do not always last for lifetimes will affect the area of child custody, as it has influenced the adoption of no-fault divorce laws and the courts' recognition that fathers are often as capable as mothers in nurturing their children. Maybe the next step is "no-fault" custody laws. Regardless of a court's decision, parties to a divorce still remain the only parents the children of the dissolved marriage have.

DRAFTING AGREEMENTS

Because a practitioner may be faced with the need to draft separation agreements with joint custody provisions at the request of clients, it is important to know what to include and what the possible pitfalls are.

Guidelines for how the children's time with their parents is to be split should be spelled out carefully with a clause allowing flexibility of physical custody when mutually agreeable to all and when it is in the children's interests. These guidelines may be required to obtain the court's approval of the separation agreement, but more importantly they force the parents to give serious thought to how they are going to parent after the divorce. Consideration of the child's needs are crucial at this stage. Not only must the child's modeling needs be considered, but also his social needs. The Honorable Judge Luis Rovira of the Denver District Court cautions divorcing parents that as the child grows older, more and more of his time naturally will be spent in activities outside the home or with people other than his fa[illegible]ily members so parents should accept and plan for that.

It is n[illegible] to prepare for the possibility that joint custody m[illegible]. When a party who has agreed to joint custody later desires sole custody, the courts have required that the change of circumstances burden be met. Nevertheless, so stating this requirement in the agreement may help protect a client from losing joint custody. Clients should be counseled that at a modification hearing, the court will again look at what arrangement will be best for the child. Perhaps the clients will want to suggest other provisions, such as counseling or arbitration in the event they experience disagreement. Any provision for a change of custody should include court approval if both parties consent or a court order if they cannot agree.

The separation agreement should provide that neither parent shall take the child from the state except for specified vacations, unless the parent has the written consent of the other party or a court order. Failure to include this provision affords either parent the opportunity and right to take the child away from the other party and "child-snatching" laws would be unenforceable as would be the Uniform Child Custody Act.

Support provisions also need to be included. Only in the rare instance where both parents have equal earnings and have agreed to have custody of the children for equal periods of time, should an agreement provide that each party shall meet the children's expenses for the time he or she has physical custody. Even then, provisions should be made for the sharing of extraordinary expenses.

The more common situation is when one parent, usually the father, has a greater income than the other. Then the agreement should spell out the exact amount of money the wealthier parent plans to pay to the other parent and exactly the amount that would abate if the children stayed a specified length of time with the wealthier parent. Depending upon the situation, it is suggested that not all support abate since the parent who does not actually have the children may still have the on-going expense of rent or house payments in order to provide a home for the children when they return. By setting these amounts, the less wealthy parent and the children are protected if the other parent decides not to exercise his right to physical custody.

Specific provisions for the periods of physical custody, suggested earlier, make the support provisions workable.

Clients might benefit from meeting with a skilled counselor. Counselors who do custody assessments for the court are frequently also able to give guidelines for joint custody arrangements. The function of this counselor might be that of educator, furnishing parents with reading materials about their child's needs at various developmental stages and discussing how joint custody parenting might meet those needs. After an agreement has been reached, the counselor might define each parent's responsibilities toward the child and explain to the child each parent's responsibility. Unfortunately, there may be few mental health professionals prepared for such work, but a child psychiatrist or psychologist certainly would be helpful if furnished with guidelines as to what the parents wish to gain from counseling.

CONCLUSION

Since courts generally approve custody agreements entered into by the parties, lawyers need to be aware of the possible situations where it appears the parties might want or could handle joint custody. Attorneys can then explain it, simultaneously pointing out the need for a session with a counselor. If the facts warrant, an attorney might also be successful in asking a court to award joint custody in a contested case, especially if he or she suggests an arrangement which would maximize the child's security and stability.

Perhaps the time has come for no-fault custody. Conceivably, the burden of proof on the parent seeking sole custody should be to show why joint custody will not work rather than why he or she is the most fit parent. Unfortunately, psychology can offer the legal field and the public little assistance in knowing which custody arrangement is best for children. This is a fertile field for research.

In the meantime, it seems preferable for courts to decide custody by closely examining the facts of each case, but including the alternative of joint custody. Hopefully, future research will show whether the present laws favoring sole custody reflect human nature. Perhaps the animosity demonstrated in custody proceedings is a result of laws and practices which allow only one parent to win. ■

Big Brother

(Continued from page 30)

addition, the nuclear family should understand that the social services bureaucracy has a responsibility in certain measures. This is where the attorney, in his or her role as a counselor, can assist the client. Take, for example, the case of a father who has custody of his child. The lawyer can direct the parent to helpful agencies for information and at the same time point out that the individual need not lose his independence in seeking support.

Figures 1-3 summarize essential differences between families and bureaucracies and suggest ways in which the two groups might interface. Figure 1 shows public education's relationship to the primary group with Figure 2 representing an expansion of that interface. The third diagram suggests the possible contributions toward social development by the family unit and groups outside the home. Both figures 2 and 3 demonstrate the interrelatedness that these complementary groups must arrange to achieve satisfactory goals in child socialization.

Shared function not only has strong implications for the way in which families and bureaucracies interface but also describes the interface between mother and father roles. In view of emergent lifestyles and dual-career marriages, shared parenting is becoming an important dimension in the present alteration of family structure. Males and females can be complementary, not competitive, organisms when dealing with the task of child-rearing. Because each sex has instrumental and expressive characteristics, matching these functions to child-development tasks requires thoughtful attention to the profile of the individual family. It is important that the counseling attorney recognize the significant contributions that a bureaucracy or an ex-spouse can make towards helping his client solve child-rearing problems. By understanding and interacting with others, a parent can take advantage of the resources they offer. ■

Initiating

JOINT CUSTODY PLANNING

Encouraging & facilitating joint physical & legal custody plans.

California's new Civil Code Sections 4600 and 4600.5 (Chapter 915 of the Statutes of 1979) propose joint legal and physical custody as an initial preference in a logical progression of choices for custody decisions concurrent with divorce of parents.

For good reason the law dictates no plan requirements.
Parents create their own joint custody plan.

The statute does not specify detailed plan preconditions on the assumption that the diversity of American culture as well as family-initiated solutions should not be limited to the perception of the legislation's authors at the time of the measure's passage. Instead, the statute is designed to encourage voluntary and cooperative plan preparation as divorcing parents assume that the initial consideration of the court will be joint custody prior to consideration of sole parent custody.

Also, a plan can be required before decreeing sole custody.

SEE PAGE 5 LINE 13-16

A parent who prefers not to participate in joint custody is cautioned that, unlike practice prior to Chapter 915 of the Statutes of 1979, the court is empowered to require a sole parent custody implementation plan in advance of the court's custody order as a means of discerning how cooperative a sole custodian parent is likely to be in facilitating frequent and continuing contact by the child with a non-custodial parent. Demonstration of a lack of cooperation, or submission of a sole parent custody implementation plan that foretells curtailment of "frequent and continuing contact" could jeopardize and potentially preclude a court order of sole custody to that parent.

This substitutes for Factors for Consideration by court

Initiating the planning process.

How do Civil Code Sections 4600 and 4600.5 initiate the joint custody planning process?

At the time of, or prior to divorce hearing, each parent has the opportunity to submit, independently, a tentative outline of his/her personal preferences for the administration of joint custody issues. A submission of the tentative outline is similar to the present procedure of submitting a Form 1285.50, Financial Declaration, in advance of hearing. The tentative joint custody plan outline is for use by private or public-agency counselors, intermediaries, or the court. Parents need not compare their separate proposals in advance of hearing unless they desire to do so on the expectation that mutual consultation in advance will facilitate the court's process.

To encourage consideration of joint custody, this is a non-copyrighted procedure and basic plan available for reproduction and adaptation, in part or in whole.
Source: James A. Cook, 10606 Wilkins Avenue, Los Angeles, California 90024

Advantages of submitting joint custody preferences.

Independently submitted joint custody preference outlines, from each parent, have the following advantages:

- Giving evidence to the court of how cooperative each of the parents is likely to be in administering a joint custody plan.
- Providing information. in advance and possibly not previously available. on how each parent envisions conducting co-parenting.
- Relieving the court of dictating decisions that could be unacceptable to one or both parents.
- Providing a clue to preferences of each parent and a means of discerning which preferences coincide. Consequently, preferences upon which there is agreement need not become issues of contention.
- Winnowing-out for further discussion the remaining joint custody implementation plan preferences on which there is disagreement.
- Providing a priority ranking system to assist in the negotiation of those joint custody implementation preferences upon which there is disagreement.

Accommodating changes.

Child custody encompasses years during which children are maturing, needs and interests are changing, and the economic circumstances and other responsibilities of parents may also be changing. Therefore, custody plans created by this statute are not intended to be rigid, categorical or without evolution. By avoiding itemization of specific prerequisites within the statute, California's child custody statute of 1979 avoids making adherence to, or interpretation of, a custody plan an additional or substitute focus for the parents' animosities.

The purpose of custody planning within the statute, on behalf of the child's best interests. is to encourage negotiation in a spirit of cooperation and accommodation and to minimize accusation or the imposition of unnecessary restraints upon the options parents may envision for conducting joint custody.

The statute facilitates the resolving of joint custody issues by parents without state-directed impositions in matters of personal preference.

Customarily, child custody encompasses decisions regarding, but not limited to:

<u>Medical care</u> <u>Education</u> <u>Religion</u> <u>Residence</u> <u>Travel</u> <u>Support</u>

MEDICAL CARE

Propose names of doctors or clinics available or intended to use.

______
______
______

Will you permit and encourage communication by the other parent with doctors and clinics?

Yes ___ No ___ Comment:

Would you be willing to grant either parent the ability to make medical decisions in emergencies when both parents are not available?

Yes ___ No ___ Comment:

Would you provide advance notification to the other parent about proposed and forthcoming medical care?

Yes ___ No ___ Comment:

Would you offer to participate in medical care costs?

Yes ___ No ___ Comment:

EDUCATION

In considering response to the educational questions, it is not necessarily essential that a child remain exclusively in a particular school, especially if grade curricula is uniform in an educational system.)

If education is now in progress, do you offer to assure continuity of schooling?

Yes ___ No ___ Comment:

Would you exchange information of educational deficiencies or strengths?

Yes ___ No ___ Comment:

Would you make available the opportunity for the other parent to visit teachers?

Yes ___ No ___ Comment:

Indicate schools (and locations) available for present and next grade.

Name:	Name:
Address:	Address:

RELIGION

(The following does not purport to imply that the court either favors or discredits the response to questions on religion. Instead. the questions are posed to aid parents in recognizing and accommodating each others preferences.)

Are you interested in and willing to assume a religious education responsibility?

Yes ___ No ___ Comment:

Do you have a religious preference for each child?

Yes ___ No ___ Comment:

Do you have alternate preferences? Itemize

______
______
______
______

TRAVEL COSTS

Offer a solution to the child's travel costs if one or the other parent moves from, or is no longer resident in, the original home locality.

For instance. should the parent moving from the county of original residence be required to pay travel costs to and from the alternate parent's residence?

Yes ___ No ___ Comment:

Should travel costs be apportioned based on income and ability to pay?

Yes ___ No ___ Comment:

Will you assume travel costs of the child to fulfill residence with the alternate parent?

Yes ___ No ___ Comment:

SUPPORT

Initial inquiry to determine the assumption of child support costs.

Alternatives:

Will you assume all child support costs?

Yes ___ No ___ Comment:

Will you assume all child support costs while the child is resident with you?

Yes ___ No ___ Comment:

Will you participate in sharing of child support costs based on need and ability of each parent to pay?

Yes ___ No ___ Comment:

If costs are shared or allocated, will you provide a monthly itemization of actual support costs?

Yes ___ No ___ Comment:

Itemize anticipated child support costs by item on monthly or yearly basis:

RESIDENCE SCHEDULE

(Indication of where the child is resident. either on an alternating basis or consistently, and the sharing of significant calendar dates.)

Under the present statute it is no longer necessary to use the term 'visitation' with its connotations of superficiality, brevity, condescension or permission. A few parents may. or may not, wish to designate a primary and a secondary residence for the child but this ranking is not necessary for those parents'establishing equality in joint custody.

Indicate preference and proposals for sharing residence.

Not all schedules need to indicate an exactly equal sharing of time, and you are encouraged to propose time schedules that are practical, realistic, and suitable for your personal schedule as well as accommodating to the probable schedule of the alternate parent.

In exchanging and allocating time available, consider not only alternate days, but alternate weeks, months, seasons or years as well as the sharing or trading of holidays.

In general, how would you prefer to apportion:

The school year?

The vacation season?

Are the following days important in your scheduling?
(Note: Many of these dates have not heretofore been alternated in conventional custody/ visitation decrees with omissions occurring by intent or oversight. This list is intended to rectify an observation of non-custodial parents that many of these dates were omitted entirely from former visitation schedules.

Yes	No	Date	Preferred resolution
		Child's birthday	
		Your birthday	
		Christmas	
		Hannukah	
		Special religious dates	
		Winter vacation	
		New Year's Eve & Day	
		Washington's birthday	
		Lincoln's birthday	
		Valentine's Day	
		Spring (school) vacation	
		Memorial Day	
		Independence Day	
		Labor Day	
		Halloween	

continued on page 7

Yes	No	Date	Preferred resolution

continued from page 6

Thanksgiving Day
Thanksgiving Holiday
Mother's Day
Father's Day
Other relatives' birthdays
School or teacher-convenient days off

Are there events, club meetings, obligations or opportunities you would like to accommodate on behalf of the child? Itemize.

REMAINING ISSUES

Are there issues or considerations of particular importance to you, which have not been previously itemized, that would be helpful to you and to the child if indicated in a joint custody plan?

Itemize, comment:

While not as critical to the underlying functioning of an implementation plan as the items previously indicated, the following are secondary issues that will help both parents toward implementing joint custody.

Relationships

Do you agree or permit that yours is not the only acceptable and satisfactory way to raise children?

Comment:

Do you recognize that the part-time absence of your child, and joint custody, is not a denunciation or derogatory reflection of your ability to parent?

Comment:

Will you substantiate with your child and with your other contacts that joint custody has established two equally valid homes?

Comment:

Do you agree not to estrange your child from the other parent?

Comment:

Will you respect the other parent's right to opinions and a reasonable freedom of action when with the child?

Comment:

Do you recognize that other people have differing philosophies and that it is permissible for a child to experience and evaluate those philosophies for themselves?

Comment:

If brothers and sisters are also involved, how would you prefer the relationship, residence and other activities be coordinated?

Comment:

How would you approach situations that conventional families usually attend together, such as graduation, recitals, athletic performances, etc.

Comment:

Will you facilitate the child's contact with grandparents?

Comment:

Communications

Describe the level of involvement you can tolerate with the other parent in joint custody implementation.

Comment:

Do you anticipate that your level of tolerance with the other parent will change, and under what possible circumstances?

Comment:

Is oral communication between parents satisfactory for you?

Comment:

Will you require written confirmation of verbal agreements?

Comment:

Will you facilitate telephone calls or chats by the child with the other parent during those times when the child is resident with you?

Comment:

Parenting and Services

Each parent has a different quotient of parenting skills, and varying degrees of interest and effectiveness in parenting skills. For realistic and efficient co-parenting both parents are well advised to recognize and admit these variations without rancor, ridicule or judgement. Insofar as parenting:

Which parenting task do you believe you do best?

Which tasks do you perform least well?

Which services and responsibilities would you most like to assume?

Which would you like least to do?

In making joint custody work, which service or consideration or task would you most like the other parent to do?

If baby sitting or equivalent service is needed, will you give the other parent the first opportunity to do so before selecting or engaging an individual other than the parent?

(Prior to enactment of Chapter 915 (AB 1480), Statutes of 1979, and for no discernible or equitable reason, one parent most often had to assume the expense and inconvenience of picking up and delivering the child so that the child had access to the other parent during "visitation." Since the new statute redresses the imbalance in such relationships, the following question is asked:)

Will you, or can you, pick up and deliver the child to the other parent as frequently as the same is done for you?

Financial (other than child support)

Do you believe your joint custody situation calls for a budget and a mutual understanding about that budget?

Comment:

Do you have preferences or intentions about financial savings for the child?

Comment:

Discipline

Do you have opinions about the child's safety that you would like to guarantee or convey to the other parents?

Comment:

Do you have preferences and opinions about manners, deportment, and how the child behaves that you wish to convey?

Comment:

Do you have proposals or preferences regarding punishment?

Comment:

Will you honor the joint custody implementation plan even though a child's remarks may be counter to the other parent's preferences?

Comment:

Will you concur that if the child is upset at circumstances in one home that they can't merely pick up and move to the other house without communication between the parents?

Comment:

Decisions

Will you agree that the parent having day to day jurisdiction can make decisions of the moment?

Comment:

Do you believe that substantial decisions of longer term consequence should be resolved by consensus?

Comment:

. ' Dispute

Do you ha 2 fears or apprehensions about joint custody not working?

What are they:

Do you believe that a plan should be subject to periodic review?

Comment:

Will you permit input about the plan from the child, even if the child's observations are critical of your preferences?

Comment:

Will you participate in property and custody settlements out-of-court?

Comment:

Would you be amenable to mediation or arbitration in case of serious custody dispute?

Comment:

Information and Records

Civil Code Section 4600.5 (g). Chapter 915, Statutes of 1979, prohibits a custodial parent from prohibiting access to records and information by a non-custodial parent.

So that each parent may anticipate which records and information regarding the child are likely to be desired by the other parent, indicate which of the following are of interest to you.

Medical
Dental
School
Religious

Diet
Rest
Living & sleeping accommodations
Clothing
Pets

Other

Camps
Clubs
Cultural or extra-curricular activities
Friends & associates

Hobbies & interests

Work
Income

Not every question can or need be fully answered.

The intent of this exercise is not to imply that every consideration needs to be resolved before joint custody can be implemented.

Instead, the intent of these questions has been to focus your attention on the practical considerations of implementing joint custody and to do so without the antagonisms or apprehensions that frequently accompany divorce.

Finally, our intention has been to demonstrate that since there is such a wide range of considerations (no single item need be crucial) parents are encouraged to be flexible and accommodating in recognizing each other's preferences and needs.

This is a detailed discussion of the California law.

JOINT CUSTODY, SOLE CUSTODY: A NEW STATUTE REFLECTS A NEW PERSPECTIVE

The legislative evolution of the new California custody law; origins and intent as a guide to understanding and administering joint or sole custody.

James A. Cook*

The greatest impact of California's new child custody Statute is the effect it will have upon the expectations and conduct of parents prior to a court hearing. Secondarily, the new law modifies the options available to the court and the considerations which must be weighed in disposing of custody cases. Transition into the new concept may initially be difficult for the courts. However the burden of change will be lessened as the divorcing public becomes aware, in advance of custody proceedings, of the Statute's intent. The new Statute facilitates preservation of the child's needs for contact with both parents; it reduces use of the courtroom by one parent to destroy the other parent, to the detriment of the child's best interests. This new Statute's emphasis on joint custody is intended to alleviate other problems frequently generated under the former law:

1. Defusing child-stealing and support-avoidance

This legislative recognition of joint custody and its implementation by the courts may defuse and reverse the increasingly menacing recourse by excluded parents to "child stealing" and/or abandonment of financial support for lack of meaningful, frequent and extensive contact with their children. Legal practitioners have been reluctant to apply punitive or confiscatory sanctions in cases of child-stealing or abandonment of support. Observers have been uneasy about a legal solution that focused solely on punishment and support-collection on behalf of custodial parents, when many custodial parents share the responsibility for the provocation. Instead, joint custody provides an opportunity to demonstrate and increase respect for equality under the law while effecting a possible reduction of child-stealing and support-avoidance.

2. Redressing the imbalance between mother vs father custody fights.

Additionally, it is intended that this new emphasis upon joint custody will result in tempering a recent trend of fathers to strive for sole custody. While the opportunity for fathers to compete for sole custody tests the equality of the sexes insofar as sole-custody decrees are concerned, the result is increasingly hostile custody battles because of a heightened expectation of unilateral victory by both parents. The new law will shift the view of equality – from a statistical determination of how frequently fathers rather than mothers achieve sole custody – to a decision based on protecting a child's access to both parents and on encouraging parental sharing of responsibility for the child.

*James A. Cook initiated and authored the initial version of AB 1480, secured sponsorship by California Assemblyman Charles Imbrecht of Ventura, encouraged the fourteen additional Senators and Assemblymen who became cosponsors, and coordinated and monitored the endorsements, hearings and amendments that resulted in passage and signature into law of AB 1480.

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3. Discouraging the use of child custody for intimidation.

The most immediately apparent feature of California's new child custody law is "the message it sends in advance to divorcing parents": a power-play for exclusive child custody, either for purposes of intimidation or to force subservience in negotiation, is less likely to be tolerated by the court. Therein, the new Civil Code Section 4600 and 4600.5 is regarded as one of the most significant evolutions of California's family law since the advent of "no fault" divorce in 1970, which eliminated the airing of "faults" as justification for divorce. Henceforth, the new child custody Statute will largely dissolve the recourse to winner-take-all custody litigation that has heretofore been substituted for the catharsis of airing "faults."

Preference is likely to favor joint custody, or sole custodianship for that parent who demonstrates the most cooperation and tolerance for the child's frequent and continuing contact with the alternate parent. Consequently, an antagonistic and covetous parent is likely to be denied sole custody and may jeopardize the opportunity to participate equally in joint custody.

The intentions and consequences of the legislation, as they evolved during the legislative process and as amended into Section 4600 and Section 4600.5 of the Civil Code, are itemized below. The itemization is not necessarily in the order of importance to petitioners or counselors. For ease of reference the items are in the same sequence as the issues occur in the new Statute.

Policy Statement

Intent

The intention of the original version of AB 1480 was to establish a guide, a goal, and a preference for divorcing parents. By making sole custody less likely to be decreed by the courts, the intent of the original as well as the final version of AB 1480 is to caution divorcing parents who would otherwise be prone to pursuing sole parent custody for purposes of vindictiveness, leverage or extortion. Since the advent of California's "no fault" divorce a decade ago, there has been widespread supposition that the battleground has subtly shifted from personal accusations to custody and visitation fights thus confounding rather than resolving the divorce process.

While serving as a guide to divorcing parents, the original version of AB 1480 placed no restraints on the discretion of the judiciary other than a first preference consideration of joint custody before recourse to sole parent custody.

As an early endorser of AB 1480, Professor Jay Folberg of the Lewis & Clark College, Portland, Oregon, and Executive Director of the Association of Family Conciliation Courts, characterized the intent succinctly: "We too often forget that one of the most noble functions of law is to provide a model of what is expected of people. I believe that the approach of AB 1480, creating a 'preference' for joint custody, is the best alternative."

SB 477, which also made joint custody available to the court, placed constraints of justification on the court's selection of sole parent custody rather than making joint custody a preferred alternative. SB 477 required that the court must state the reasons denying joint custody in cases where (a) both parents sought joint custody, (b) one parent petitioned for joint custody, (c) or a termination or modification of joint custody was objected to by a parent. The legislative conference which resulted in the final version of AB 1480, and which incorporated most of the provisions of SB 477 to assure the likelihood of passage, resulted in AB 1480 adopting these same restraints upon the court's discretion. Thus, although sole and joint custody are co-equal preferences in the new law, the court must justify its decision to award sole custody in specified situations.

The policy statement which introduces the new Statute makes clear the intent of the new law, despite the court's continued discretion to award sole custody.

Frequent and continuing contact

Section I. Section 4600. The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage. . . .

Originally, a policy statement describing custody intent appeared as a concluding paragraph of SB 477, while a briefer policy statement intending "equal access" by a child to both parents appeared at the outset of AB 1480.

In the final version of AB 1480, the policy statement of SB 477 was adopted as the opening and guiding heading to the statute: ". . . to assure minor children of frequent and continuing contact with both parents . . ."

Prior to amendment, the policy statement contained the phrase "close and continuing contact." However, it was conjectured that "close" might be erroneously interpreted to imply a requirement of physical proximity of residence for both parents and, as such, place a proximity qualification on the availability of joint custody. But it was subsequently stressed that physical proximity was not essential for implementation of joint custody, given the availability of modern transportation, and that "frequent and continuous contact" was a goal worthy of precluding any possible misinterpretation of "close" contact.

"Equal access" succumbs to reasonableness

Fairness has been an influential stimulus in the quest for joint custody legislation. Consequently, equality of contact by each parent with the child or children was an initial preoccupation of the proponents. Nevertheless, the proponents also did not want to obscure or jeopardize this humanitarian concept by attempting to define with precision an equal allocation of time. While balance of contact is encouraged by the new law, the limiting requirement of "equal" has been removed, and instead parents are encouraged to seek, and to offer, time with the child or children on the basis of that which is practically and conveniently available. Parents are encouraged not to be exclusively concerned with equitability. This opportunity for flexibility should allow both parents an escape-hatch from the slavery of equitability if it is within their ability to assume more time with a child, or to offer more of such time to the alternate parent.

Encourage parents to share

Section I, Section 4600 . . . and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

Encouragement of joint custody, in the opening policy statement, occurs because of the desire by proponents to enlist the aid of judges, Conciliation Court counselors, and private practitioners to encourage divorcing parents to opt for or acquiesce to the joint custody solution.

The necessity of encouragement and the preferable goal of joint custody now places upon the State, in the form of a policy statement, the obligation to develop imaginative methods for inducing parents to voluntarily prefer joint custody. While the Statute has not specified the mechanism for doing so, the new law may cultivate imaginative means of encouragement.

Initially, the burden will fall heavily upon Conciliation Courts and jurists during hearings. Eventually, a more widespread awareness of the Statute by the divorcing public is likely to precondition divorcing parents to an expectation of joint custody.

The combination of "no fault" divorce and equal division of community property had diminished the courtroom airing of "faults" and reasons for unequal divisions. Faults and contentions are still voiced, but to a lesser degree. Similarly, although reasons for not granting an alternate parent joint custody are likely to be aired, it is hoped that courtroom practice will reflect the spirit and intent of this Act, as occurred with the "no fault" law, with expectation of a joint custody resolution of child care by divorcing parents.

Order of preference: To both parents jointly or to either parent

Section 1. Section 4600. In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. Custody should be awarded in the following order of preference, according to the best interests of the child:

(a) To both parents jointly pursuant to Section 4600.5 or to either parent.

The new law did not spring full blown without attention to previous phraseology. On the contrary, if there was any single phrase in the prior Statute that spawned AB 1480's concept, it was the long adhered-to directive which is repeated in the new law, "Custody should be awarded in the following order of preference." The previous statute permitted no other alternatives than: (a) To either parent, (b) To the person or persons in whose home the child has been living, (c) To any other person or persons deemed suitable.

Proponents of joint custody assumed that the most desirable goal with the least likely trauma for child and parents would be to list joint custody as the first preference, ahead of the other alternatives. An interim version of SB 477 specified "to either parent or to both parents jointly." The word order was reversed when adopted from SB 477 into the final version of AB 1480, so that "To both parents jointly" appears prior to the alternative of "to either parent."

No single issue within this legislation was more vigorously debated than whether "To both parents" should be listed separately and unequivocally as the first preference, or if there should be equal consideration, within the same paragraph, of the alternative of sole parent custody. Ultimately, the "both parents jointly" provision was further secured as a preferred goal by provisions in Section 4600.5 and by the addition of a qualification that if joint custody is not decreed the court must consider which parent will be most likely to facilitate contact between the child and non-custodial parent.

The intention of the proponents for a separate, unequivocal and first preference of joint custody is worth reporting. The intent was to establish a goal that would minimize the necessity for adversary litigation. Presumably, a parent seeking joint custody and willing to tolerate the alternate parent in joint custody would be less likely to conduct an aggressive, adversary litigation attack and consequently be less effective as a litigant. A preference for joint custody was also viewed as the best way to guarantee equal protection of both parental roles in those cases where two parents are competing for the exclusive care of their child.

When given equal ranking with joint custody, the presence of a sole custody alternative inspires an ominous spectre of needing to attack the alternate parent as unfit to be a sole custodian. In addition, an apprehensive parent who would otherwise consider joint custody as acceptable, may be fighting for sole custody because of a fear that an uncertain evaluation between joint and sole custody may result in their loss of custody together.

Conscientious jurists, mindful of the public policy goal of the new Statute, will have to discern whether a parent litigating custody is doing so for purposes of protective self-defense because the new Statute has not clearly and separately itemized joint custody as a first priority consideration of the court.

Considering the parent most likely to allow frequent and continuing contact

Section 1. Section 4600. In making an award of custody to either parent, the court shall consider which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent . . .

The caveat of cooperation as a character trait in selecting a sole custodian, if joint custody is not to prevail, had its origin in simple wisdom.

Responding to the wrangles and dissension that evolved from the leverage inherent in sole parent custody, Dr. Jose Santiago of the University of Arizona Department of Psychiatry suggested (during a Phoenix, Arizona conference on May 22, 1976, at a time when the joint custody concept was still a rarity), "give the child to the parent who will tolerate the most the child's relationship with the other parent." This proposal became known colloquially as 'favoring the most tolerant parent' as a means of both rewarding and inducing cooperation.

The opportunity of giving this proposal the force of law occurred during a final amending session of AB 1480, in August 1979, when Dr. Diane Trombetta of Los Gatos, California suggested this terminology in the version of AB 1480 that succeeded SB 477. This particular provision favoring the tolerant and cooperative parent in sole custody decisions could become one of the most significant and influential changes in evaluating the suitability of sole custodians. As a minimum, it may inspire more guarantees and demonstration of tolerance and cooperation than has been customary of sole custody seekers heretofore.

At a concluding amendment conference, Judge David B. King of the San Francisco Superior Court's Domestic Law Court cautioned that, although important, he didn't consider the cooperation criterion as overriding, that there were also other worthy considerations, and that demonstrated tolerance of the alternate parent should be "among other considerations" and not the sole determinant.

No preference of a custodian because of that parent's sex

Section I, Section 4600. In making an award of custody to either parent, the court . . . shall not prefer a parent as custodian because of that parent's sex.

This qualifier was adopted during an early amendment to SB 477 and ultimately included in its entirety within AB 1480.

In the court's discretion, a plan for implementation of custody

Section I, Section 4600. (b) (i) The court, in its discretion, may require the parents to submit to the court a plan for implementation of the custody order.

One of the unique effects of allowing the court to require a custody implementation plan is that it may also require the submission of a plan for the implementation of sole custody before, or after, decreeing sole custody. In addition, the opportunity of the court's discretion in requiring a custody plan is another means to discern how cooperatively an individual parent would subsequently administer custody.

Heretofore, although the court might hear all manner of testimony about the worthiness, or lack thereof, of a parent to be sole custodian, it was neither required nor customary for the sole custodian to give any of his/her plans for implementing sole custody. Implementation decisions were solely at the discretion of the recipient of custody, frequently to the pain of the excluded noncustodial parent. Challenges and a return to court for new hearings were often fomented by implementing sole custody, without such a plan.

The genesis of a discretionary requirement for submission of a plan was an outgrowth, however, of hearings and debate about provisions suggested for inclusion in an early version of SB 477. The initial version of SB 477 also proposed topics for evaluation within mandatory joint custody plans, while such topics may be prudent for divorcing parents to consider voluntarily when creating a joint custody plan, they were ultimately eliminated from SB 477 as being too great a potential incursion into private decision-making, as being culturally biased against some parents upon whom they would impose, and as requiring more flexibility to accommodate changing economic conditions and the evolution of growing children's interests.

The plan provisions amended into SB 477 in April, 1979, but later removed in response to objections during hearings, were not mandatory

nor essential to the court's granting of joint custody. The provisions were suggested to enable parents to determine the manner of carrying out (a) "the child's education," (b) "daily routine," (c) "association with friends," (d) "religious training," (e) "and other activities." Considering the differences of opinion that most couples ordinarily experience during divorce, the itemization was sardonically characterized as a new selection of controversial topics that the divorcing couple might not have otherwise considered, and sufficiently provocative to make joint custody agreement virtually unattainable. If consensus on such topics is not forthcoming, it may be prudent merely to allow most or all of these considerations to be resolved by each parent for that period of time when the child is in the respective parent's care.

The fact that the plan topics were eliminated from SB 477 during its legislative processing and were never a requirement of AB 1480 may imply to the court that, as such, these topics are not an influential determinant of joint custody but that divorcing parents are prudently advised to consider these issues voluntarily even though they do not influence a decision for or against joint custody.

Out of state residence not a barrier to joint custody. An initial version of SB 477 excluded joint custody when one of the parents lives out of the state and also provided for termination of joint custody if a parent established or was likely to establish a residence in another state. Both of those provisions were eliminated during the amendment process of SB 477. The reasons for their elimination are a useful instruction to individuals administering or adjudicating the new law.

First, the provision would have provided a perverse opportunity for a recalcitrant parent to defeat the implementation of joint custody merely by leaving the state.

Second, a requirement of residence within the state for both parents and children could defeat the availability of joint custody for the numerous families living in California border communities wherein one parent might be living a short distance away in the bordering state. The family would be denied the opportunity of joint custody while other parents residing hundreds of miles apart within California could avail themselves of joint custody.

Third, the prevelance and availability of travel and transportation, regardless of state borders, is already facilitating an exchange of children between parents that should not be denied future petitioners of joint custody.

Plans subsequent to custody orders

Section 1. Section 4600. (b)(1) The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

The version of AB 1480 that was ultimately passed was careful not to specify that, as a condition of granting joint custody, a custody plan must first be submitted to and approved by the court.

A requirement of a plan in advance was considered as potentially hamstringing the goal of joint custody for at least two reasons: First, plans prior to order could tend to inspire the thwarting of joint custody if one party or the other took that opportunity to insist on implementing provisions that would make joint custody unfeasible. Second, the requirement of a plan in advance might redirect the court's energies from the preferred public policy goal of encouraging joint custody into being an arbiter of plan details – a time-consuming task that might make the court long for the expediency of the past wherein a sole parent was decreed custodian, the alternate parent was restrained to visitation, and the custodian was given the relatively unexamined implementation of a plan.

Thus, in the new law the court is permitted to discern whether joint custody would be in the best interests of the child, to so decree, and to require a plan from the parents subsequently.

On the other hand, during the first several months of hearings under this new Code Section, courts may be asking for plans in advance as a means of determining how cooperative the parents

are likely to be, and which parent is more likely to facilitate frequent and continuing contact with his or her co-parent. Since non-cooperation could jeopardize custody altogether, the request of a plan in advance of order could induce cooperation for fear of the alternate consequences.

Custodianship in the home where the child has been living.

Section 1. Section 4600. (b) (2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

With the exception of the opening phrase, "If to neither parent," the remainder of the statement is derived, in its entirety, from the prior law. Customarily, and almost universally, this decision is applied when the child is not awarded jointly or to either parent.

The opening qualifier, "If to neither parent," was added as a precaution just in case a narrow interpretation of the statement without that phrase gave an undue opportunity for sole parent custodianship to the parent who had obtained initial and temporary custody, pending resolution in trial, because of the advantage of an interim period of residence. AB 1480 proponents urging such a qualifying phrase were painfully aware of how influential upon an ultimate custody decision the obtaining of temporary but exclusive custody has been in administering the prior statute.

Custody to other persons; no new 4600 changes

Section 1. Section 4600. (b) (3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

This section is repeated, without change, from the prior law.

A presumption of joint custody where both parents agree.

Section 2. Section 4600.5 is added to the Civil Code to read: 4600.5 (a) There shall be a presumption affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

Reportedly, there have been instances of the court previously refusing to grant joint custody although both parents had volunteered a joint custody resolution of the custody decision. The reasons for refusal covered a broad spectrum, ranging from a lack of authority for the court to do so in the previous law to a supposition about the inability of divorced parents to share parenting decisions.

This portion of 4600, granting joint custody to parents who so agree, was the least controversial provision of the proposed joint custody legislation. Both AB 1480 and SB 477 started with this assumption, and from this base of agreement some of the less tractable proposals emanated.

One observer commented, "It hardly seems necessary to lecture the court about presumption when both parents agree."

". . . or so agree in open court. . ." is the provision within this portion that will probably give jurists the greatest opportunity to advise, guide, caution and to strike a phrase for 4600's policy statement. At the moment of court appearance, the tension and emotion of the events is frequently a high-water mark of both resentments and expectations wherein the voice of authority, prudently

restrained, may elicit the agreement resulting in joint custody. For this reason, the proponents of this measure purposely did not limit agreement solely to that achieved prior to appearance in court.

Court statement of reasons for denial of joint custody.

Section 2. Section 4600.5 (a) If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

This is the first of three times within 4600 wherein the court is required to state reasons for denying joint custody. This portion refers to situations wherein both parents agree to joint custody. The addition of this "reasons for denial" requirement occurred midway in the amendment process, and was accepted without objection when referring to two parents who agreed to joint custody.

Later, during the concluding amendment sessions that led to acceptance of an AB 1480 that would be superseding SB 477, the "reasons for denial" requirement became a vigorously pursued last minute addition to subsequent portions of 4600.5.

Philosophies are legislated as much by coincidence as by deliberate intent. The evolution of the "reasons for denial" requirement is an interesting case in point. Originally, AB 1480 sought a clearcut first-priority, preferential consideration of joint custody by the court before recourse to other custody alternatives. Options other than joint custody were not foreclosed from the court's discretion, however. The intent had been encouragement and inducement toward a joint custody consideration, first. Opponents contended that AB 1480 was imposing mandatory joint custody, presumably in every case, although there was no word or phrase combination in the original version of AB 1480 that imposed a categorical demand upon the court for joint custody. Most significantly, there was no requirement upon the court to justify why joint custody had not been ordered.

On the other hand, SB 477, which was being attacked as not sufficiently assuring of joint custody placated some opponents by amending-in the "reasons for denial" obligations, at least within the portion wherein both parents have agreed to joint custody.

Ironically, SB 477 which initially imposed the least change from prior practice, ultimately became the vehicle that would require the court to justify its 'no joint custody' reasons. In other words, these obligations upon the court's discretion were ultimately to be adopted by AB 1480, a bill which did not originally require the court to justify decisions, but which superseded SB 477 in passage through the legislature.

The effect of this present legislation seems to be a Statute that more narrowly defines the court's goal and discretion, as well as justification for doing otherwise, than any party to the legislation at the outset had envisioned.

But, does a "reasons for denial" requirement make joint custody any more assured? A theory, voiced at the time the phrase was amended-in, contended that such a requirement provided a specific record that could be questioned upon appeal, that it might lead to more joint custody decisions because of the appeal scrutiny and, to a certain extent, diminish the frequency of "reasons for denial" in situations wherein both parents were more nearly equal and fit.

The prime aim: application for joint custody by either parent

Section 2. Section 4600.5 (b) Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases.

No other issue was so vigorously debated than whether an individual parent (as compared to both parents petitioning concurrently) could apply for and successfully achieve joint custody.

Given the competitive and adversary dynamics of divorce, proponents of joint custody contended that joint custody would be less likely to occur if

agreement by both parents were required: such a requirement would leave the power of decision solely within the hands of the least cooperative parent to the disadvantage of children and an alternate cooperative parent.

Altruism rath r than antagonism is more likely to "win" something for each parent by permitting either to apply. The new Act encompasses a principle of successful negotiation: an opportunity for either party to propose a solution that results in both "winning" something from a less than ideal situation.

Heretofore, the decree of sole custody resulted in the appearance of a "winner" and an excluded parent who resentfully nurtured plans and hopes that fueled repeated court appearances. While joint custody may not entirely eliminate return engagements in the courtroom, it is likely that most such hearings will revolve around plan modification rather than another round of the zero-sum game of "exclusion" versus "access."

The court may investigate

Section 2. Section 4600.5 (b) For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to the provisions of Section 4602.

This provision, enabling the court to initiate and direct an investigation to determine the appropriateness of joint custody, resulted from the amendment of a slightly different concept contained in SB 477. SB 477 permitted either party to initiate such an investigation through a request to the court. However, it was feared that giving opposing parties the opportunity to initiate investigations might inspire a wave of costly investigations strategically initiated to catch the other party at a moment when they are less equipped to accommodate joint custody, such as shortly after they are excluded from the former home and while one party had possession of the child's customary living quarters.

By giving the court the discretion of initiation, it was intended to relieve the excluded parent from the implied pressure of scrambling to establish and assume the expense of creating living quarters that would appear, upon investigation, as suitable for a joint custodian even before the parent had been assured of the likelihood of a joint custody decree. Although it is hoped that investigation would center on the quality and sincerity of the eventual joint custodian's parenting, it is recognized that the politics of investigation, as inspired by opponents, seek to reveal inadequate physical quarters, inconveniently located and at variance with the child's pre-separation home.

The court's denial reasons when one parent applies for joint custody.

Section 2. Section 4600.5 (b) If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

This is the second of the three provisions in the new statute requiring the court to spell out justifications if joint custody is denied. Some observers concluded that this provision would permit a parent who had applied for joint custody, and who had been denied, the opportunity to evaluate the possibilities of appeal.

The intent of this statute is not to increase the incidence or provocation of appeal.

It is hoped that, in those situations wherein a denial of joint custody is likely to occur, the court will probe the reasons for denial during hearings wherein interpretations may be resolved, or confirmed, rather than entering the order and leaving appeal as the only recourse for clarifying misinterpretations.

Sharing physical custody, integral to 'joint custody'

Section 2. Section 4600.5 (c) For the purposes of this section, "joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents;

During drafting, this paragraph became the so-called "definition" of joint custody that links physical custody with the goal of the opening policy statement: "assure the child or children of frequent and continuing contact with both parents." The purpose of the paragraph is primarily aimed at an understanding and consideration of the physical aspect of joint physical custody. However, the paragraph purposely does not elaborate with constraining prerequisites such as scrupulously equal contact or conditions of residence. Instead, the parents are encouraged to work out personally the details of sharing physical custody as best befits their circumstances, or through counselors or other helpful intermediaries who will aid the parents in traversing the antagonisms of the just-divorcing period into the implementation of joint custody.

Joint legal custody for parents unavailable for joint physical custody

Section 2. Section 4600.5 (c) : . . . provided, however, that such order may award joint legal custody without awarding joint physical custody.

Of all the provisions of Section 4600 and 4600.5 that may be productive of mischief, or antagonistic interpretation or decree, the opportunity for the court to award joint legal custody without awarding joint physical custody could intrigue the most litigious of counselors and parents.

Curtailment of the opposite parent's 'access' in joint custody to mere legal participation was not the intent of this wording. The opportunity for joint legal custody was inserted in response to the few requests of divorced parents who wished to participate jointly in the legal decisions of custody but, by reason of distance, isolation, circumstances of remarriage or other restraints, were unable to participate in joint physical custody.

Three months after AB 1480 and SB 477 were underway in the legislative process and had left their respective legislative houses of origin, Division Four of California's First Appellate District, on May 9, 1979, handed down a decision In Re Marriage of Neal. In view of the extensiveness of the comments within In Re Marriage of Neal, readers can draw innumerable inferences from the ruling. For divorcing parents the most anxiety-producing observation was that joint legal custody was, in effect, meaningless in comparison with the practical, day-to-day presence of sole parent physical custody. The few individual parents who had joint legal custody were increasingly apprehensive that their sharing opportunities were non-existent. (AB 1480, which was legislatively considered after the In Re Marriage of Neal decree of May 9, 1979 and chaptered on September 21, 1979, supersedes In Re Marriage of Neal as well as imposes a policy that a child must be assured of frequent and continuing contact with both parents regardless of joint legal custody.)

Furthermore, there was, and is, concern that a joint legal custodian will have acquired all the legal responsibilities and obligations of a child's conduct, encounters with the law, creditors and litigants but with none of the frequent and continuing physical relationship that might enable such a custodian to forestall or ameliorate in advance the delinquency resulting in the child's legal problems.

A succinctly worded resolution of this phraseology problem was proposed during the final amendment scramble, and practitioners may wish to adopt the intent of the proposal, although this particular phrase did not find its way into the final text in competition with numerous other considerations elsewhere in the legislative bill. The resolving proposal: That joint legal custody be awarded to a parent who requests joint legal custody only, without awarding joint physical custody.

Modification or termination of joint custody orders upon petition

Section 2. Section 4600.5 (d) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order.

Of all the paragraphed provisions within AB 1480, few are more cautionary to parents about assuring "the best interests of the child" than that regarding modification or termination of joint custody orders.

One parent, both parents, or the court can move for modification or termination, but the operative consideration for change is a showing of detriment to the child's best interests. Heretofore, an excluded parent frequently "gunnysacked" a reserve of complaints about the sole custodial parent's presumed violation of the child's best interests, as ammunition toward a reversal of sole custody or liberalization of visitation rights. At least in joint custody situations the parents can "keep book on each other" with some equality, and perhaps eventually with tolerance and practicality as each experiences similar responsibilities. If each is nevertheless tempted to scrutinize the other parent's child-rearing toward the goal of threatening modification or termination, the overall effect may be a better attention to parenting, responsibility, and moral and ethical conduct than occurs in conventional families. The spectre of "answering up" in court is chastening.

But the deciding proof will lie in "the best interests of the child." There is no certainty that "best interests" are served by isolating a child from experience with conflict, by imposing sameness rather than diversity, by labeling one parent to be "visited" and the other to be custodian, and by depriving a child from access to the alternate parent for substantial periods of time.

Previous interpretations of "best interests" placed more emphasis on routine, discipline and isolation than upon tolerance, forgiveness and accommodation. The latter trio may be among the better interests in preparing a child for survival in a crowded, changing adult world.

Contentions for and against joint custody will probably unearth more novel and provocative insights into a child's best interests than we have heard in the past.

Unilaterally, the court by its own motion will have some difficulty demonstrating that a modification or termination of joint custody is in the best interests of the child if both parents have agreed to joint custody, since Section 4600.5 (a) presumes that under circumstances of such agreement joint custody is in the best interests of a minor child.

Opposition by a parent to modification requires a court's justification

Section 2. Section 4600.5 (d) The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

The third situation in which the court is required to state reasons substantiating orders other than joint custody comes into play if either parent opposes modification or termination of joint custody. Consequently, there is a strong likelihood that for purposes of appeal or remodification, attorneys representing clients about to be excluded from joint custody will oppose modification from joint custody as a matter of protective procedure.

The penalties for objection to an alternate parent who desires to cooperate in joint custody are so uncertain, and so potentially counterproductive as implied by 4600 (b) (1) with its favoritism for the cooperative parent that, rather than moving directly for modification or termination, an unhappy co-custodian is better advised to first test the possibilities of drawing a tighter fence around the alternate parent's freedom of action or of negotiating tradeoffs during conciliation.

Previous orders modifiable to joint custody

Section 2. Section 4600.5 (e) Any order for the custody of the minor child or children of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody in accordance with the provisions of this section.

Will the court be swamped with requests for modification to joint custody? Probably, but requests will be tempered by a consideration of the expense of successful modification, or by apprehension about how successful modification is likely to be. Non-custodial parents who have adapted to the expectation that sole parent custody would always prevail and who have developed another lifestyle may not now seek joint custody.

Because of the incessant requests for information about retroactivity during the legislative process, an accommodation for modification was assured. Since divorce is better comprehended in retrospect than in prospect, and though AB 1480 is intended to benefit children and parents who are not yet aware they will be divorced, it is understandable that most of the followers of this legislation were doing so from retrospect.

The court may not necessarily bear the brunt of the first wave of modification actions. A parent desirous of joint custody may find it expensive, antagonistic, and of uncertain outcome to make the first overture to the alternate parent through court ordered hearing. Instead, the resourceful, parent who does not enjoy easy rapport with the other parent may find it productive to have a counselor (marriage, family, religious or legal) make the initial overture for exploratory conversations leading to joint custody. Joint custody implementation plans worked out between parents, as directly as possible, are probably preferable to risking the court's arbitrariness in decreeing implementation.

California's joint custody decree affecting another state's

Section 2. Section 4600.5 (e) Any order for . . . custody . . . entered by a court in . . . any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody . . .

Qualms about the ability to enforce a California custody decree in other states led proponents of SB 477 to author into an early version the provision that joint custody could not be ordered if one parent lived in another state, and that joint custody could be terminated if one of the co-custodians moved to another state. A similar restraint was not a part of AB 1480, and AB 1480 proponents opposed such provisions in SB 477. The outcome was to mesh these considerations with the protections of the Uniform Child Custody Jurisdiction Act.

Section 5152 of California's Civil Code is similar to Section 3 of the Uniform Child Custody Jurisdiction Act, while Section 5163 is similar to Section 14 of the Uniform Child Custody Jurisdiction Act. Section 5152 requires that California be the home state of the child at the time of commencement of the proceedings or within six months prior to commencement of the proceeding. Or, California could assume jurisdiction if the child and the child's parents have a significant connection with California. Physical presence of the child within the state is influential but that criterion alone is not sufficient to confer jurisdiction.

Section 5163 restrains California from assuming jurisdiction over custody decrees made by another state unless it appears that the court which rendered the decree does not now have jurisdiction or has declined to assume jurisdiction. Even so, California is obligated to give due consideration to the transcript and proceedings that have occurred in another state if California assumes jurisdiction.

Thirty-nine states have now adopted the Uniform Child Custody Jurisdiction Act drafted in 1968. California adopted the UCCJA in 1973. States adopting in 1979 include Arkansas, Illinois,

Maine, Nebraska, New Jersey, North Carolina, Tennessee, Virginia and Washington.

The states that are outside of the UCCJA agreement, as of Fall 1979, are Alabama, District of Columbia, Kentucky, Massachusetts, Mississippi, New Mexico, Oklahoma, Puerto Rico, South Carolina, Texas, Utah, Vermont and West Virginia.

If a parent intends to use the new California law to achieve a joint custody decree not awarded in another state, the provisions of the UCCJA are the first of the obstacles to be considered.

On the other hand, the UCCJA will assist in protecting a California decree in other UCCJA-endorsing states as long as the parents and child adhere to the prerequisites for California to retain jurisdiction.

Using conciliation to ease the court's burden

Section 2. Section 4600.5 (f) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

The new law could facilitate access to conciliation court consultation regarding any custody plan, whether sole parent or joint. "Local rules of court" may limit the availability of court-assisted conciliation as well as the procedures for such access. In California only the larger metropolitan jurisdictions maintain conciliation court services thus far.

At least five consequences are likely to evolve from the new statute, and in particular from paragraph 4600.5 (f):

1. Burden reduction. Utilization of conciliation court assistance will likely have the potential of substantially reducing the hearing court's burden, the consumption of time through adherence to courtroom procedure, and the issuance of decrees that may be unpalatable to one or both parents.

2. Active assistance. ". . . assisting the parties to formulate a plan . . ." places the conciliation court in a more active, goal-oriented role than it has occupied since an earlier era when the court was known colloquially as reconciliation rather than conciliation court. In other words, rather than primarily serving as an instrument for the parties to recognize, accept and "live with" a pending or previous court order, the possibility now exists for a conciliation court to assist parties in formulating plans for submission to the court.

3. Resource accumulating. Implementation plans, particularly for joint custody, are expected to be diverse, individualized, and probably novel. Since parents are invited to participate in the planning, the relative simplicity of the traditional sole parent custody decree will no longer prevail. Consequently, conciliation court personnel are likely to become repositories and resources for a wide range of concepts that can be used to stimulate parental imagination about ways to resolve and implement joint custody. Information exchange about joint custody planning will, by necessity, increase dramatically.

4. Private counseling. There was no known or purposeful intent to exclude access to privately-reimbursed conciliation counseling or to impose exclusive recourse to public, tax-supported conciliation court services. Although passage of the new law will increase the clamor for expansion of conciliation court services, the availability of funds and competing political considerations may restrain the ability of the public system to expand in the same ratio as parental interest in achieving joint custody decrees. The result will probably be increased gravitation to privately-paid counseling as well as that available from non-governmental charitable organizations. The new custody law implies the potential of considerable growth for such private and philanthropic services

5. Stature opportunity. Since so much of the possibility for success in joint custody planning and implementation will hinge on negotiation effectiveness during the planning process, and since

this conciliation service can be such an important assist to jurists, there is now a substantial opportunity for conciliation courts and counselors to achieve a greatly increased appreciation and recognition.

Furthermore, the "resolving of controversy" portion of paragraph (f) could shunt to the conciliation court first those requests for modification or termination that might ordinarily go directly to the hearings court. Arrangement for and success of joint custody is a highly personal matter for the participants. However, skeptics are likely to question the efficacy of joint custody, based on the statistical reoccurrence of hearings requests. The magnitude of those statistics may be affected substantially by how readily joint custodial parents can utilize the conciliation courts prior to hearings.

Access to records by noncustodial parents

Section 2. Section 4600.5 (g) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because such parent is not the child's custodial parent.

The statute's concluding paragraph requiring records about the child to be accessible to noncustodial parents was also one of the last amendments proposed at a concluding amendment-drafting session. As such, the proposal represented the reaction of noncustodial parents to that which they have perceived as an abuse of the exclusivity of sole parent custody. Some observers contended that the provision was not strictly necessary in view of other means available to achieve the same effect. As a caution to the custodial parent, however, the paragraph does imply a measure for evaluating the cooperation of a custodial parent with a noncustodial parent.

Since the paragraph does not limit information to merely medical, dental and school records, it does open up the possibility of seeking information about such other topics as diet, clothing purchases, income, religious activity, clubs and camps, work and rest, and similar inquiries.

Evaluate in its entirety

Because the version of AB 1480 that ultimately passed into law has so many more provisions than the simplicity of the originally introduced version, there may be a tendency to become preoccupied with the ramifications and opportunities for litigation in specific clauses. Therefore, it behooves all parties to pause, place in perspective, and view the statute in its overriding intent. AB 1480 affords a rewardable premium for cooperation and accommodation, to the advantage of a child's continued access to both parents. Frequent and continuing contact, through joint custody or sole custody, is preferred. The opportunity is now available to parents and the court to reduce post-divorce tension and antagonism through joint custody.

Fate of the 1977 proposal

During the 1976-77 two-year session of the California legislature a Joint Senate-Assembly Committee on Judicial Equality was created to examine inequality in California laws and to propose rectification. California's 'no fault divorce' Family Act of 1970 was particularly singled-out for examination. The lack of a joint child custody option was regarded as the single greatest inequity left unrectified when 'no fault' divorce was imposed in 1970. In 1974 the "mother's preference doctrine" (regarding children of tender years) was modified to permit the designation of either parent as custodian based on the child's best interests. But, the statute still provided that custody could be awarded only to either parent or to an outsider just as it had when so-called 'fault' was a consideration in designating a custodian. Thus a parent who demanded it of the court would receive a divorce without showing of cause, while the other parent (who may not have been consulted or wittingly given cause for divorce) could promptly be excluded from the child's life, except for 'visitation' based on a schedule decreed by the court without consulting the excluded parent.

Consequently, a joint custody bill, AB 3475, was submitted and processed through the California legislature in 1977. The bill captured wide public attention when enroute from passage by the Assembly to the Senate it was discerned that the measure capitalized on the humanitarianism of joint custody but made the achievement of joint custody virtually unattainable. 1977's AB 3475 required that both parents agree to petition the court simultaneously for joint custody before the court would consider decreeing joint custody. Instead of facilitating agreement and cooperation toward a goal of benefit to the child, the measure gave a unilateral power of veto to the most recalcitrant, possessive and uncooperative parent with no similar or offsetting advantage for the cooperative and sharing parent.

Several individuals, groups and organizations, including the southern California representative of the National Organization for Women coalesced to endorse and seek a single amending phrase permitting either parent to petition for joint custody. Such an amendment would have cultivated a socially desirable goal: recognition by the court for a cooperative and accepting parent. The California legislative system permits a bill's sponsor to refuse an amendment and to refuse to carry a bill further, regardless of majority legislative support for the amendment and for an amended bill. Amendment of 1977's AB 3475 was categorically refused and the bill remained in the Senate Judiciary Committee until the end of the session a month and a half later whereupon the joint custody issue was effectively dead, legislatively.

Although no publicly outspoken opposition to joint custody was identified at any legislative forum or hearings, the legislative quest for joint custody was foreclosed at the end of 1977 for another year and a half because of doubt that a sponsoring legislator could be identified who would dedicate the energy required to assure passage of such a measure.

Postponement builds demand for specificity

The new California statute is unique in its constraints on the court's latitude, although California is not the first state with a joint custody statute. The intensity of demand for and scrutiny of joint custody legislation in California during 1979 probably spawned the specificity missing in the statutes of the five other states recognizing joint custody (Iowa, Maine, North Carolina, Oregon and Wisconsin.) Most of the five passed joint custody legislation starting in 1977, before the demand had become so insistent as to place specific procedural requirements on the court, as does the California statute. Generally, the other five states simply grant a court the power to decree joint custody or imply the availability of joint custody by defining joint custody.

Pressure for specific legislative support of joint custody and specific constraints on the court's discretion came from a wide range of sources. The initiating or authoring of AB 1480 was not the product of a fathers' rights group, although remarks by opponents following passage of AB 1480 might

lead the public to believe so. At the time AB 1480 was submitted and acquired its initial endorsers I was not an active member of such a group, although as the following implies, their support was crucial. The earliest supporters were among the professionals. A number of professionals in the psychiatric, sociological and counseling fields endorsed the concept of joint custody. A gratifyingly large number of lawyers also endorsed the necessity of joint custody. But the intensity of the need was most vivdly evident in both the ad hoc and the formal groups of divorced fathers. I was also to find this intensity matched by divorced mothers who, (voluntarily and involuntarily) did not have custody. The divorced mother without custody has an interest in joint custody as intense as the divorced fathers who have garnered the lion's share of publicity for warranting joint custody.

The indignation of the ostracized parent has the intensity of the self righteous because a tenet of "no fault" divorce is that a parent can be divorced and deprived of access to an offspring. Hence, innumerable fathers' rights groups are populated by law-abiding and otherwise circumspect fathers who have been deprived of access to their children through imposition by the legal system of a "no fault" divorce.

The net effect was that law abiding fathers whose conduct as fathers and husbands was theoretically not in question, were nevertheless severed from a normal relationship with their children in decrees as severe as if these men had committed a crime. The result was acute disdain for the law as practiced from the bench.

Politicians and propagandists sense the power inherent in justified indignation. Scholars know the dangers to a nation when its legal system is more convenient for severing a family than preserving it.

A rage from righteousness is also dangerous and dedicated. It can also transcend personal safety and self-preservation, as was evident among fathers who spoke threateningly.

Such was the atmosphere within which the ameliorating proposal that became AB 1480 was introduced, and none too soon. As I indicated to the California Senate Judiciary Committee's Advisory Committee at their March 5th San Diego meeting, "It is imperative that the Legislature enact a genuinely equitable joint custody statute before the summer is out because dedicated but disenfranchised fathers are becoming so numerous and the anguish so intense that the reaction is cresting toward personal, unilateral action that will be widely evaluated as justified."

The disdain for "the system" and the skepticism of effecting any peaceful change through the legislature (after the 1977 experience) had become so widespread that, as I told a May 9th Assembly Judiciary Committee hearing, "More than once I have been grabbed by the lapel in men's group meetings with a demand that my diversion of their anxieties toward AB 1480 better damn well not be just another hoax!"

Such was the pressure valve threatening release, or resolution, in early 1979.

Satisfactory joint custody legislation would have another virtue, or diversion . . . depending on your view . . . as expressed to me by Vert Vergon, the pioneer organizer of Fathers Demanding Equal Justice and advocate of joint custody since 1974. "If you succeed in getting joint custody implemented, most of the men's rights groups will probably cease to exist since child custody is the single most important issue that holds them together."

Thus, the scrutiny of the judiciary's latitude that occurred during legislation of AB 1480 might not have been nearly so specific if California had adopted the milder version sought two years earlier.

Sponsorship in 1979

In February and March, 1979, Assemblyman Charles Imbrecht of Ventura offered to assure that the concept and wording proposed to him would be submitted to the Legislative Counsel's office for review and deposited in the legislative bill hopper. Assemblyman Imbrecht's position as Vice Chairman of the Assembly Judiciary Committee was crucially important since that Committee was the legislative forum in which the bill would first be

heard. Thirteen additional Assembly members and Senators were encouraged to become co-sponsors. The first of those co-sponsors was Assemblyman Art Torres of Los Angeles, also a member of the Assembly Judiciary Committee.

The extensive burden of bills processed by California legislators requires that the obligation of sponsoring and guaranteeing a new measure is not lightly assumed. 3,546 measures were introduced into the California legislative process during 1979, of which 1,843 were passed during the 139 days the legislature was in session. As a consequence. the sponsor's burden is numerically large for nearly every legislator. Assemblyman Imbrecht's legislative burden is typical. At any one time during the 1979 legislative session he was sponsoring over 100 different bills and was the primary and lead sponsor of over 30 measures of varying degrees of complexity. In view of these obligations, it is important to a legislator's credibility and effectiveness that a bill's initiating constituents be prompt in response, accurate in representations, comprehensive in gaining adherents, and cooperative in accommodating a legislator's schedule.

In a search for legislator sponsors, the text that eventually became AB 1480 was delivered to all Assembly members and Senators who had seats on the Judiciary Committees in their respective houses. Support for the concept was expressed informally and provisionally during personal follow-up visits with the Assembly members and Senators. During this routine procedure we learned that the Senate Judiciary Committee staff was researching the joint custody topic for possible submission of such a bill by the Senate Judiciary Committee Chairman. Copies of joint custody measures legislated by other states and a copy of 1977's AB 3475 had been received by that staff.

Several months prior, a blue ribbon Citizens' Advisory Committee had been created by the Senate Judiciary Committee to meet monthly for the evaluation of a broad range of proposed family law legislation topics. The Advisory Committee consisted of two Superior Court judges, a law professor, a director of counselling for a county conciliation court, a deputy county clerk, a psychologist and a family law attorney. Los Angeles County Superior Court Judge Robert Fainer served as the Chairman.

Monday, March 5th was indicated as the date for consideration in San Diego by the Committee of child custody concepts, presumably to be considered in creating a joint custody bill. But that presumption subsequently appears to have been misinterpreted. Proponents of the text that became AB 1480 appeared at the March 5th San Diego Advisory Committee meeting, but on the previous Thursday, March 1st, SB 477 had already been placed in the Senate's bill hopper by Judiciary Committee Chairman Jerry Smith. Consequently, the Advisory Committee moved on to family law topics other than child custody during the March 5th meeting after the Advisory Committee Chairman recommended to the proponents of the alternate text that they deliver their concept to the Assembly Judiciary Committee since a Senate version was already underway.

Prior to March 1st, the text that became AB 1480 was already being favorably considered for sponsorship by several Assembly members. While the extensiveness of support was being evaluated, Assemblyman Imbrecht's office temporarily held the text in abeyance until the last calendar date for submitting a text to the Legislative Counsel's office for approval prior to delivery of a bill to the Assembly. Consequently, SB 477 started the formal legislative cycle (on March 1) ahead of the temporarily delayed AB 1480, which was filed with the Assembly on March 29. The effect of this lack of synchronization was that the two bills never coincided for simultaneous consideration in the respective policy committees. Examination and eventual passage of SB 477 occurred without concurrent comparison with AB 1480. Thereupon, AB 1480 became the bill for making changes in SB 477 because it became the last of the two bills to be considered for passage.

That which some observers characterized as the distinctly opposing character of both bills, in their initial versions, increased the intensity of debate and attention to the topic by child custody advocates.

Comparisons & consequences: the original AB 1480

The original version of AB 1480 vas succinct. The original merely added new subparagraphs (a) and (b) to the order of preference statement in California's long standing Section 4600 of the Civil Code:

"Custody should be awarded in the following order of preference:

(a) to both parents in joint physical and legal custody.

(b) to either parent if a preponderance of the evidence establishes that it is in the best interest of the child that custody should be awarded to one parent or if the parents agree that one parent shall assume custody."

Subsequently there was concern that subparagraph (b) imposed the burden of an evidence test on custody litigation. Persia Woolley, author of "The Custody Handbook", had a similar proposal: place the burden of proof on the parent seeking sole custody.

Ultimately, the criteria for sole custody that evolved from amended versions of SB 477 were adopted within AB 1480. For no discernible reasons, the one seemingly agreeable second criterion for sole custody of the original AB 1480, "if the parents agree that one parent shall assume custody" disappeared during hearings and amendment sessions.

Comparisons & consequences: the original SB 477

The original version of SB 477, which was lengthier, did not amend Section 4600 of the Civil Code with its order of preference awarding custody to either parent. Instead SB 477 added Section 4600.5 to the Civil Code spelling out the circumstances wherein joint custody would be presumed in the best interests of the child, ". . . where all of the following factors are present:

1. The parties have agreed in writing to an award of joint custody or so agree in open court. . .

2. The parties have submitted to the court for its approval a written plan for the implementation of the joint custody arrangement.

3. Both parties presently reside in this state and state that they intend to reside in this state in the future."

The proposal also defined joint custody as, ". . . an arrangement whereby the minor child or children of the parents shall be in the physical custody of each parent for a period of time with the parents having equal control of the care, upbringing, and education of the child or children."

Additionally, SB 477 proposed that ". . . joint custody shall be terminated by the court if one parent establishes his or her principal residence in another state." The proposed bill also permitted termination of joint custody by the court after consideration of ". . . evidence of any substantial failure of a parent to adhere to the plan for implementation of the joint custody arrangement . . ."

The ensuing hearings and amendment debates substantially changed most of those provisions. The reasons for doing so are instructive of the legislative intent behind Chapter 915 as enacted in the Statutes of 1979. The major changes to SB 477:

- A coincident series of preconditions were not required to establish a presumption for joint custody.

- Agreement by the parents to joint custody was not to be required since it gave a disproportionate leverage to the recalcitrant parent, to the disadvantage of children and of a cooperative parent.

- Implementation plans are not necessarily required in advance by the court and may be developed subsequent to court order, but the requirement of a plan in advance could result in delays by a litigious parent.

- Residence within the state, and the opportunity to terminate joint custody by moving or threatening to move from the state, were also

dropped since they suggest mechanisms for defeating joint custody, to a child's disadvantage, and with no compensating opportunity for the other parent to protect and ensure joint custody.

• The emphasis on "equal" periods of physical custody or of control in care, upbringing and education were also dropped. The qualifying word "equal" was eliminated so that the focus of the parents would be on such practical considerations as sharing the available time and apportioning responsibilities reasonably rather than scrutinizing the division of time and responsibilities. Trading of duties and responsibilities, one for the other, was considered as desirable as the splitting of a particular duty.

• Failure to adhere to a joint custody plan was eliminated as a cause for terminating joint custody lest antagonistic parents "keep book on each other" with the intent of contesting for sole custody based on plan performance rather than accommodating the vagaries of life

Following the passage of AB 1480, proposals are now being offered for counseling of parents by public and private counselors about the creation of custody implementation plans. Simultaneously, another conclusion for the disposal of such parenting provisions is being voiced: let each parent determine the parenting decisions and styles that take place while the child is with the respective parent.

The omissions that were debated and determined during amendment are as instructive as the final version of AB 1480 which passed into law. The omissions dealt with so many issues that are likely to arise during hearings brought under the new statute that the reasons for eliminating such provisions provide an additional guide to the intention of the statute.

Dissimilar bills but unanimous votes

It is presumptive of me to assign simplistic but different motives to each of the two bills that were so dissimilar at the outset. At the risk of ignoring the complexities, I will assert that AB 1480 sought a clearcut acceptance of joint custody (as the first in a series of considerations) on the confident assumption that there was sufficient approval of the concept to assure the necessary legislative votes in both houses for passage. On the other hand, SB 477 with its many preconditions and hurdles to joint custody, appears to have been predicated on a belief that there were insufficient votes for joint custody to assure passage, that SB 477 could overcome objection by selling it as a modest change merely confirming the few joint custody decrees that were occurring recently in the courts, and that SB 477 could become the first in a series of amendments that would make joint custody legislation more unequivocal in subsequent years, in the style of AB 1480.

The vote intrigues observors. The vote particularly baffles observors who were concerned about the distinctly different consequences of the two bills. Each measure, SB 477 and AB 1480, was voted on, separately, five different times (both Judiciary Committees, both houses, and concurrence). And although slightly out-of-synchronization, the legislative processing alternated back and forth (first on SB 477, then upon AB 1480, back to SB 477, etc.), but never in the same forum simultaneously. Yet, if I am correct in recall, both measures always received a unanimous approval, each of five times, with no objection publicly voiced in debate. (Observors are reminded that the amendment battles, which were vigorous, took place in the respective Judiciary Committees.)

Explanation for such voting patterns depend upon one's point of view. One explanation is that the legislature was prepared to accept any joint custody bill, with the content a matter for the proponents to negotiate. Both passed and both were signed by Governor Brown, although AB 1480 had the more tortuous requirement of passing through the Senate Judiciary Committee, at the expense of assuming many of the provisions of the previously-passed SB 477, whereupon AB 1480 prevailed to become California's second joint custody statute within a month and a half. The competitiveness of the two brought more enlightened debate than might have occurred if only one bill was heard, the exercise worried proponents of AB 1480 into taking less for granted about passage, and it is a credit to the legislators that the competitive nature

of the measures was not allowed to rigidify into a stalemate or stand-off that might once again have killed joint custody legislation.

A mandatory appellation becomes a mandatory assumption

Why is the measure so frequently referred to as California's "mandatory" joint custody law?

Midway in the legislative debates, AB 1480 was offhandedly characterized as "mandatory" joint custody, an appelation most often bestowed by opponents in an attempt to rationalize support toward SB 477. Followers of joint custody have also assumed the statute to be "mandatory".

The reasons for such an opinion seem to lie in an interesting amalgam of law, legislature and literature.

Just prior to introduction of AB 1480 to the legislature, Woodland Hills, California, lawyer Burton Bach had been counseling a divorced, non-custodial mother, who wished to seek the sharing of joint custody with her former husband. Earlier, upon divorce, she had opted for giving custody to the father since she was apprehensive about her ability to obtain work and establish a home and to assume the obligations of custody. But, prior to passage of AB 1480, and despite the aid which Bach could provide, she decided not to proceed in the quest for joint custody because of apprehension that custody litigation would create an atmosphere so antagonistic for child and parents as to jeopardize their already tenuous relationship.

Bach authors a satirical commentary, "The Bach's Score," published in the southern California newspaper for the legal community, The Los Angeles Daily Journal. He was intrigued by AB 1480. With tongue in cheek, and satire so obscure it may have eluded those who were compulsively intent on the joint custody topic, on June 11, 1979 he bemoaned the do-gooders in the legislature, "One of the few areas of litigation still permitted lawyers to make healthy contributions to their Keogh accounts was the good old-fashioned child custody fight, . . . between "no fault" divorce and the kind of clients whose assets usually range between zilch and zilch and a half, all the fun and most of the profit has evaporated from the domestic relations cases. The only thing left for the parties to fight about (and thereby enrich their counsel) is the custody of the children."

In defense of Bach and to rectify an impression most others failed to read, he concluded, "I ask you: Can we accept such a radical concept as that of 'joint custody?'. You bet we can—and the sooner the better!"

But, unfortunately, few read the satire to its conclusion. Instead most remembered the prominent bold face heading of the article, "Mandatory Joint Child Custody Bill—A Help Or a Hinderance to Lawyers?"

The headline became the popular definition of AB 1480. The bill, however, contained no demandingly rigid requirement for the decree of joint custody.

Subsequently, the adoption from SB 477 into AB 1480 of the requirement for the court to indicate reasons for not granting joint custody has caused jurists to remark that the effect is almost tantamount to "mandatory," however.

Transition: Public perception of court implementation

Sole custody defeats the use of divorce as a social remedy by perpetuating the winner, loser antagonisms. On the other hand, joint custody intervenes on behalf of the child's interests to curtail a parent's opportunity for extending pre-divorce antagonisms through captive custody by requiring more equitable access. For the June 6, 1979 Assembly Judiciary Committee hearings, Persia Woolley testified, "I interviewed and listened to literally hundreds of divorced parents with all kinds of child custody arrangements. My research shows this (that joint custody won't succeed unless parents have a "friendly divorce" and initiate joint custody between themselves) to be a completely erroneous assumption on the part of the professionals. It is not necessary to be friends with your ex spouse in order to become an effective co-parent, although most parents who agreed to share their

children reported that their hostilities diminished after sharing was instigated. All sharing parents interviewed reported that the paramount consideration was that each parent must respect the rights and needs of the children to have normal relations with the other parent."

A similar emphasis was conveyed to the legislators in correspondence from Virginia Anne Church, "It makes sense to me to design a therapeutic holding pattern, putting parents on notice that the children will continue to have two parents and that whether or not they love and desire to live with one another they will continue their responsibilities as parents, learning to cooperate, or forfeiting the rights to guide their children." Dr. Church is a psychologist, practicing attorney, former dean of a Chicago law school and past chairmen of the American Bar Association Committee on Marriage Counseling and Conciliation.

We are now in a period of transition. Chapter 915 of the Statutes of 1979 is being implemented. Implementation is being conducted by professionals in the several related fields who counseled, litigated and decreed under the former statute. Many are aware of the failures of the previous procedure, yet some retain a vested interest in past decisions and skepticism about the change. Until more experience is gained and new practitioners enter the field the transition may be uneven. The transition is not entirely the court's responsibility. As stated at the outset, the transition will be aided by the expectations of the parents prior to a court hearing conditioned by their awareness of the new statute. But, now we conclude with the caution of another parameter: the expectations of parents will also be conditioned by their impression of the court's implementation of the law's policy intent and precepts.

Literature and Sources

Throughout the 1970's articles and books for the professional and lay public about joint custody became available in at least three successive contents. First, during the early 1970's joint custody was acknowledged gradually in literature dealing primarily with the effects of divorce on children. By the mid-1970's literature specifically recognizing joint custody and advocating legitimization of joint custody appeared. Recently, a few literary works deal almost exclusively with the implementation of joint custody. Publications in the later category, that of 'how to' implementation handbooks, will probably become more numerous in the early 1980's. Temporarily, the relatively few 'how to' books reflect the concentration thus far by advocates in obtaining recognition of joint custody by legislatures and legitimization by statute. Having achieved legislative approval, those energies are now available for explanations, improvements, and implementation of joint parenting.

A comprehensive bibliography is available upon request from the author of this article.

Additionally, probably the most extensive, convenient and recent bibliography (September 16, 1979) itemizing 354 publications subdivided in 28 categories is available from its compiler, Richard C. Pasco, a newsletter editor of Equal Rights for Fathers, 235 College Avenue, Mountain View, California 94040.

A newcomer to the joint custody topic will find the following recent and relevant publications to be an efficient use of limited time. All were authored by specialists who gave their personal support and endorsement of AB 1480 to the California legislature and for signature into law by Governor Brown.

Diane Trombetta, Ph.D, and Betsey Warren Lebbos, Attorney at Law, "Co-Parenting: The Best Custody Solution." The Los Angeles Daily Journal Report, No. 79-12, pp. 11-23, June 22, 1979 and Conciliation Court Review, December 1979.

For the lawyer, parent and counselor, an annotated itemization of the effects of divorce and sole custody upon children and parents with references to joint custody solutions. An important and essential reference for individuals preparing to confront custody decisions in court.

Persia Woolley, The Custody Handbook. Summit Books, New York. 1979.

Currently the most recent and pre-eminent guide to designing custody arrangements with particular emphasis on joint custody. Highly suitable for independent reading by estranged parents in demonstrating how joint custody plans are ahcieved even though divorced parents are not otherwise communicating.

Miriam Galper, Co-Parenting: A Sourcebook for the Separated or Divorced Family. Running Press. Philadelphia, 1978.

A 'how to do it' handbook with suggestions for schedules, relationship with your ex-spouse, dealing with adjustment, and practical considerations. Lively, handy, fast-reading.

Ciji Ware, "Joint Custody: One Way to End the War," New West, pp 42-55, February 16, 1979.

Opens the imagination to various possibilities for joint custody through interviews with several co-parents in differing situations. Conveys an understanding of joint custody through personal experiences. The publication and distribution of this article to California legislators, concurrently with the distribution of the text that became AB 1480 was an important factor in securing attention for and approval of AB 1480. Ciji Ware is currently authoring a 'how to' handbook: I Win, You Win, to be published by Putnam in 1980.

Jay Folberg and Marva Graham, "Joint Custody of Children Following Divorce," University of California – Davis Law Review, Special Symposium on Children and the Law, May, 1979.

Analyzes the law of joint custody as well as its history, terminology and use. The concerns of attorneys, judges, and others are examined. Suggests criteria for joint custody and advocates its decree more often. An important guide for parents approaching court hearings and for legislative advocates. Jay Folberg, whose endorsement of AB 1480 was helpful in acquiring and reassuring legislator supporters of the measure, is a Professor of Law at Lewis and Clark College, Portland, Oregon, and Executive Director of the Association of Family Conciliation Courts.

Mel Roman and William Haddad, The Disposable Parent: The Case for Joint Custody. Holt, Rinehart and Winston, New York 1978.

A widely read book that has been instrumental in stopping the overburdening of a sole custodial parent and of creating ex-parents from non custodial parents. Melvin Roman, Ph.D., Professor of Psychiatry and Director of Group and Family Studies at the Albert Einstein College of Medicine is one of the nation's pioneering proponents of joint custory.

Isolina Ricci. The following four items by Isolina Ricci, the former director of family services in Santa Monica, California, and currently completing her Ph.D. dissertation at Stanford University, are useful in establishing the legitimacy of joint custody.

"Dispelling the Stereotype of the Broken Home," 12 Conciliation Courts Review 7, Iss. 2, 1976.
"Cooperative Parenting after Divorce: Myth or Reality?," Conference on the Divorcing Family, University of Southern California, Jan. 27, 1979, reported in Los Angeles Times, Jan. 3, 1979, Part IV at 4, Col. 2.
"Shared Custody," Conciliation Courts Review, January 1976. Mom's House, Dad's House, published source unknown.

POSITION PAPER/Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 723

"An Act relating to child custody."

Senate Bill No. 723 provides a statutory basis for shared custody in judgements for custody. The Department feels the Committee Substitute improves on the original Bill. However, we would still question the language in Section 09.55.205(c) due to the deletion of the phrase, "all relevant factors include." This deletion seems to imply that the court's considerations are limited to those factors delineated in the section. It is felt that in the best interests of the child "all relevant factors" should be considered.

In addition, the Department would recommend that the definition of shared custody not necessarily include physical custody. This stems from the concept that, whenever possible, shared physical custody, as well as legal custody, is beneficial but recognizes that shared physical custody is not always possible.

RECOMMENDED BY: John R. Pugh
John R. Pugh, Director
Division of Family and
Youth Services

DATE: 4/2/82

APPROVED BY: Helen D. Beirne
Helen D. Beirne
Commissioner

DATE: 4-5-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title "An Act relating to child custody."
Requested by Parr Date

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected
BRU, Program Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Senate Bill No. 723 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 2/17/82 PREPARED BY [signature] for John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

SB 723 file

1850 Roberts Road
Fairbanks, Alaska 99701
March 7, 1982

Representative Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Brian,

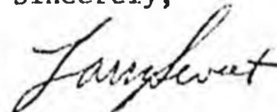
For over a year now, ever since I first became aware of House Bill 210 which will provide the alternative for a joint custody arrangement for children in Alaska, I have kept abreast of the progress of this bill. As you are probably aware I organized many of the joint custody parents in Fairbanks who have testified at the various hearings on this issue. I understand that HB 210 has been passed out of the House HESS committee with a "do pass" recommendation, but with the presumption of joint custody language removed.

I am relieved that Senator Parr has introduced into the Senate a bill which also supports the concept of a joint custody arrangement for children. The Senate bill includes provisions for mediation. No opportunity for mediation exists under current conditions in Fairbanks though other jurisdictions of the State have some support services. This is discriminatory to the children in the Fairbanks District.

Brian, I don't know who actually wrote the original version of HB 210 but they were very experienced or had done a great deal of research on the issue. Only someone who has been through the process can have an understanding for the mechanics of what happens to say nothing of the emotions involved. I hope I have a chance to meet that person someday. It is the presumption of joint custody clause that puts the power in the bill. Properly handled, that clause can be used to stop the courtroom maneuvering and manipulation that uses children as tools, to no one's best interest, least of all the children. It in no way mitigates the awarding of sole custody, which is surely appropriate in many cases.

Thank you for your support--any joint custody legislation is good legislation.

Sincerely,



Larry R. Sweet

cc: Senator Parr

723 Bill 2.

1850 Roberts Road
Fairbanks, Alaska 99701
March 14, 1982

Senator Don Bennett
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Position of Custody Investigator, Fourth Judicial District

Dear Senator Bennett:

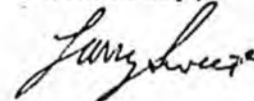
Last fall I corresponded with you regarding the position of custody investigator for the Fourth Judicial District which has been requested by Mr. Charles Gibson, the Area Court Administrator here.

In your response October 7, 1981, you mentioned that you would watch appropriations for this position. Can you tell me if the position has survived budget cuts to date and still exists in the budget request?

The Third Judicial District has had a position of Custody Investigator for several years. Many children in this District are being discriminated against because there is no such counterpart position in Fairbanks. There are no mediation or support services available to them within the Judicial System that can help work out an equitable arrangement which will allow them to have "an open and loving frequent relationship" with both parents as provided for by AS Sec. 09.55.205. As a result many children are left with a shattered tragic situation after their parents marriage is terminated.

I appreciate your help.

Sincerely,



Larry Sweet

cc: Senator Charlie Parr
Mr. Charles Gibson, Area Court Administrator, Fourth Judicial District
Mr. Francis Stevens, Custody Investigator, Third Judicial District

POSITION PAPER

SENATE BILL NO. 723

"An Act relating to child custody."

Senate Bill No. 723 proposes changes to the existing child custody statutes by providing for shared custody. Current statute provides for awarding custody on the basis of the best interest of the child, and states that neither parent is entitled to preference in awarding custody. This Bill also provides for mediation in cases of disputed custody; and, if parents cannot agree on custody following mediation, the judge has the option to either award joint custody, or to award custody to one parent with frequent visitation to the other parent.

Proponents of this Bill argue that despite the fact that the current statute does not give preference to either parent, judges, and attorneys continue to give preference to mothers both in actual awarding of custody by judges, and in advice given to the divorcing parties by attorneys prior to a court appearance. Some consequences of the present imbalance in the current situation include child stealing, the refusal of one parent to allow the child to have contact with the other parent, and, in some cases, the child being held hostage by one parent, the refusal of the other parent to then provide support when so ordered, not to mention the emotional anguish the child experiences.

The first question in considering this Bill is whether the concept of shared custody is good social policy; that is, is it in the best interest of the child? A review of the literature in the last 20 years indicates the importance of both parents to a child's development, and show the profound trauma divorce has on all parties involved, but perhaps most disastrously on children. One study reports that children of divorce are referred for out-patient psychiatric evaluation at nearly twice the occurrence in the general population. There is general agreement in the field of social work and family therapy that children need continuity in their relations, and that a child will suffer less from a divorce if he can continue to have a relationship with each parent. As one author said, "Divorce does not end relationships in post-divorce families, it changes them...joint custody is a concept that provides a better opportunity for the child to maintain a close relationship with each parent and, thus, gain the benefit of two separate but interdependent homes."

What is shared custody, and what does it take for it to be successful? Custody means having possession, power, authority, and responsibility for a person. Shared, or joint custody maintains both parents' legal responsibility for the child's upbringing, sharing as equally as possible the authority and responsibility for the decisions that significantly affect the life of their child. It may or may not include shared physical custody, and it can take many different forms or arrangements, since it requires the parents to negotiate an agreement as to the care of the child.

In order for shared custody to be successful, many writers agree that the following conditions must be present:

POSITION PAPER

SENATE BILL NO. 723
page 2

1. Former spouses, despite their continuing differences, must be able to communicate about parenting and must be able to negotiate agreements about the child's health, education, and welfare. (Both experience and studies have shown this is possible.)

2. Geographical proximity, or logistical ways of sharing parenting must be arranged.

3. The children must be agreeable to shared parenting.

4. No other major contraindications must be present. Examples of valid contraindications include, but are not limited to, physical or sexual abuse or assault of the child or of one former spouse by the other, unless there is evidence of rehabilitation.

The Department supports the concept of shared custody and recommends that the Bill be amended to include the conditions listed above. In addition, the Department has the following comments:

1. On Page 2, Lines 17-18, there appears to be an error, as there is reference to AS 09.55.205(c) which does not exist in present statute.

2. This Bill does not define joint custody. The term can refer to shared legal responsibility between the parents, or it can include shared physical custody as well. The Department recommends that this term be defined by statute.

RECOMMENDED BY: [signature]
for John R. Pugh, Director
Division of Family and Youth Services

DATE: 2/17/82

APPROVED BY: [signature]
Helen D. Beirne
Commissioner

DATE: 2-23-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title "An Act relating to child custody."
Requested by Parr Date

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Senate Bill No. 723 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 2/17/82 PREPARED BY [signature] for John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

FAIRBANKS CHAPTER, P.O. BOX 82254 FAIRBANKS, ALASKA 99708

November 20, 1981

The Fairbanks Chapter of the National Organization for Women supports the concept of House Bill #210 because of our belief in the equality of rights of women and men, as stated in our first letter to your committee.

However, due to further research, we have some reservations about this bill, which include 1) the rebuttable presumption, 2) the possibility of problems with child stealing and 3) the continued accessibility to a battered spouse.

We suggest that the concept of joint custody need not be expressed in the law by means of a rebuttable presumption, and would rather see it as a specific statement in the law that joint custody is possible in a custody dispute. There have been some doubts expressed to us as to whether there is a right to award joint custody under current law.

We support the concept of custody being awarded by what is in the best interests of the child. We believe that an award of joint custody could be in the best interests of the child.

With regard to child stealing, we are concerned that joint custody may increase the problems of enforcing the provisions of the child stealing statutes. We suggest that physical custody under a joint custody arrangement be as specific as possible.

Third, we are concerned that an award of joint custody would give continued access to a battered spouse. We hope the Court would take this issue into serious consideration in deciding to award joint custody, on an individualized basis.

723 Bill 2

1850 Roberts Road
Fairbanks, Alaska 99701
March 14, 1982

Senator Don Bennett
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Position of Custody Investigator, Fourth Judicial District

Dear Senator Bennett:

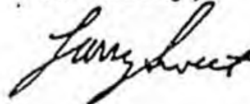
Last fall I corresponded with you regarding the position of custody investigator for the Fourth Judicial District which has been requested by Mr. Charles Gibson, the Area Court Administrator here.

In your response October 7, 1981, you mentioned that you would watch appropriations for this position. Can you tell me if the position has survived budget cuts to date and still exists in the budget request?

The Third Judicial District has had a position of Custody Investigator for several years. Many children in this District are being discriminated against because there is no such counterpart position in Fairbanks. There are no mediation or support services available to them within the Judicial System that can help work out an equitable arrangement which will allow them to have "an open and loving frequent relationship" with both parents as provided for by AS Sec. 09.55.205. As a result many children are left with a shattered tragic situation after their parents marriage is terminated.

I appreciate your help.

Sincerely,



Larry Sweet

cc: Senator Charlie Parr
Mr. Charles Gibson, Area Court Administrator, Fourth Judicial District
Mr. Francis Stevens, Custody Investigator, Third Judicial District

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title An Act relating to Child Custody
Requested by Senate Health, Education and Social Services Committee Date 3/18/82

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Administration of Justice
BRU, Program, Or Subprogram(s) Affected Trial Courts
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		383.7	422.0	464.2	510.6	561.7
200 TRAVEL		40.0	44.0	48.0	53.0	58.0
300 CONTRACTUAL		4.0	4.4	4.8	5.3	5.8
400 COMMODITIES		4.5	4.9	5.4	5.9	6.5
500 EQUIPMENT		18.0				
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		450.2	475.3	522.4	574.8	632.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		450.2	475.3	522.4	574.8	632.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		9	9	9	9	9
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See attached analysis.

IV. DATE 3/31/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Leg[illegible]ator Named)
33-001 (Rev. 12/81)

ANALYSIS OF FISCAL IMPACT OF SB 723

Under this Act, the court would be required to order parties to a child custody dispute to participate in pre-trial mediation.

Mediation services are not currently available through the court system, although the custody investigator in Anchorage occasionally uses mediation techniques in the course of conducting his evaluation.

This fiscal note is prepared with the assumption that the legislature intends that mediation services will be provided by the court.

Current files indicate approximately 6,000 divorces statewide on an annual basis, of which approximately 600 involve contested custody. Approximately 300 of these cases can be expected to settle; another 300 would proceed to trial.

Professional literature and experience in a similar program in California indicate a team approach is required in mediation. This team is comprised of a legal business expert and social/psychological expert. The two experts work together to mediate all issues in the divorce.

It is estimated that custody mediation would require the following time allocations: two months of one team's time in Nome, four months in Fairbanks, four months in Juneau, and two teams year round in Anchorage. These needs would be met by one mediator/administrator (Range 22) to administer the program, six mediators (Range 20), and a two-person clerical staff (Range 10 and Range 12). The mediation program would be based in Anchorage, with substantial travel to other court locations, since year-round positions can only be justified in Anchorage.

An alternative to mediation through the court system would be to contract for mediation services. However, there are no identifiable private mediation programs in Alaska at present. The Anchorage custody investigator estimates that if such programs existed, 10% of custody litigants could afford to pay for private mediation services. Contracted services would be required for the other 90% of custody disputants who cannot afford to pay the cost of mediation. Specific costs of this approach cannot be projected, since no mediation programs exist at present.

FY 83 BUDGET FOR IMPLEMENTING SB 723

Personnel:

Salaries

1 - Mediator Administrator (Range 22)	$41,928
6 - Mediators (Range 20)	218,808
2 - Secretaries (Range 10)	38,712
	$299,448

Benefits

Variable (15.64% of Gross)	$46,834
SBS	17,690
Health Insurance	19,764
Total Salaries & Benefits	$383,736

Travel	$40,000
Contractual	4,000
Commodities	4,500
Equipment	18,000
Total FY 83 Budget	$450,236

POSITION PAPER

SENATE BILL NO. 723

"An Act relating to child custody."

Senate Bill No. 723 proposes changes to the existing child custody statutes by providing for shared custody. Current statute provides for awarding custody on the basis of the best interest of the child, and states that neither parent is entitled to preference in awarding custody. This Bill also provides for mediation in cases of disputed custody; and, if parents cannot agree on custody following mediation, the judge has the option to either award joint custody, or to award custody to one parent with frequent visitation to the other parent.

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POSITION PAPER

SENATE BILL NO. 723

1. Former spouses, despite their continuing differences, must be able to communicate about parenting and must be able to negotiate agreements about the child's health, education, and welfare. (Both experience and studies have shown this is possible.)

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2. This Bill does not define joint custody. The term can refer to shared legal responsibility between the parents, or it can include shared physical custody as well. The Department recommends that this term be defined by statute.

RECOMMENDED BY [signature]
for John R. Pugh, Director
Division of Family and
Youth Services

DATE: 2/17/82

APPROVED BY: [signature]
Helen D. Beirne
Commissioner

DATE: 2-23-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 723
Title "An Act relating to child custody."
Requested by Parr Date

II. FISCAL DETAIL
Agency Affected Department of Health and Social Services
Program Category Affected
BRU, Program, Or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Senate Bill No. 723 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 2/17/82 PREPARED BY [signature] for John R. Pugh, Director
AGENCY Division of Family and Youth Services
PHONE 465-3170

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K Street
Anchorage, Alaska 99501

(907) 264-0428

FRANCIS M. STEVENS, ACSW
Custody Investigator

ARDIS J. CRY
Custody Investigator

May 1, 1981

Larry R. Sweet
1850 Roberts Road
Fairbanks, AK 99701

Dear Mr. Sweet:

I have your letter, along with the copy of the letter that you had sent to John Reese expressing your concerns about the fact that there is a difference of opinion between yourself and Mr. Reese and myself on House Bill 210. I am making available to you the supplemental statement that I sent to Representative Clocksin, and I have underlined portions of it for emphasis for you as I think there is a difference in our perspectives, and I believe that the perspective that I am coming from is somewhat impersonal, and hopefully professionally and without an emotional slant. I would suspect that part of the differences and understanding do come from where we both start from, in that you are a parent with a divorce, with an experience in the Court that apparently was less than what you would expect the Court to have provided.

Apparently there is a distinct difference between management of domestic relations in the various judicial districts in Alaska. The Third Judicial District, having over half of the population of the State as one might expect, would have well over one-half of the domestic relations disputes coming before it, and because of the volume would require some extra attention or some specialization, if you want to use that term. You may not be aware, but about twelve years ago when Justice Boney was on the Supreme Court, there was established by regulation, a Family Court and a judge was hired specifically to head up that particular Court in Anchorage. The Court was separate from the regular calendar, did have a position of Marriage Counselor with it, and did do it's own calendaring. Unless the judge was pre-empted by the attorneys or the parties, all contested custodies

were heard by him. About seven years ago, with the retirement of Judge Butcher, who had been the Family Court Judge, a decision was made administratively to do away with the Family Court concept. I had been here as Marriage Counselor prior to the decision of abolishing the Family Court, and because of about the same time there was a Supreme Court Opinion, Granada Vs. the State of Alaska, which specifically stated the Court could not order custody investigations done by the Division of Social Services in domestic relations, the decision was made by the Presiding Judge in Anchorage to convert the Marriage Counselling position to the position of Custody Investigator. The result of this action by our Presiding Judge, was the establishment of certain practices in Anchorage that probably do not exist in other Districts. All contested custodies are referred to the office of Custody Investigator for evaluation prior to the Court hearing. Custody Investigator is required to be available to testify in the hearings, and is requested to make a recommendation to the Court as to the best interests of the child or children.

In actual practice, what has developed, is a form of investigation, arbitration and mediation within the office of the Custody Investigator resulting in a 96 percent settlement rate of the contested custodies. This, in fact, means that the litigants have reached an agreement as to the best option available for themselves and their children and the matter goes to Court stipulated non-contested. In four percent of the cases, it is not possible to arrive at a mediated or acceptable recommended solution and the matter is litigated.

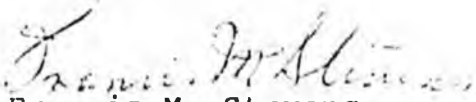
In your letter you indicate that something obviously is missing, and I would have to agree with you. I believe the thing that is missing is adequate support services in the area of domestic relations. They are neither available in the broad community, nor within the Court System. You might be interested in securing the findings of the White House Conference of Families which does address the issues that you are concerned about and strongly urges all Court Systems to establish a Family Court bench, which would result in specialization on the part of the Judiciary and the development of the support services that many professionals, including myself, feel are essential to meet the problem that you and many of the people who are supporting House Bill 210 are concerned with. I don't think you are looking for something particularly different from what Mr. Reese and I have talked about. I believe the distinction comes with an emotional commitment to the thought there is only one solution, and that this solution is joint custody, and it will solve everyone problems. I would have to argue that joint custody is a method, that it does not solve many of the problems that were brought up in the teleconference. It would not

guarantee visitation; it would not guarantee shared parenting; it would not meet any of the guarantees that many of the people were asking about anymore than single custody to father or mother would provide these guarantees.

You mentioned that you are concerned about the very wording that is opposed by John Reese and myself is the same wording that you feel had it existed when your marriage was dissolved, all the parties would be in a better place today. I can accept the position you are coming from and possibly for you that is true. I do not believe, however, that it is true as a general statement for the majority of the parties going through a divorce process and I would have no problem, as I indicated in the letter, my testimony in having legislature acknowledge joint custody as one of the methods, particularly in view of the fact that it has been acknowledged in the Court System for a number of years. I do have a problem though, if it puts the burden on the Court to establish that people are not capable of handling joint custody in order to not grant it in those cases where it is not in the best interests of the children to do so.

I hope that this kind of either clears the air in terms of where I am coming from, or gives you some thoughts as to how to respond and find the common ground, as I do believe that we are both looking for the same thing, but I believe as a professional the pitfalls in this Bill might be very destructive.

Very truly yours,



Francis M. Stevens
Custody Investigator

FMS/lfs

cc: John Reese

Attachments

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Memorandum

To: Charlie Parr, Chairman

From: Peggy Berck, Staff

Date: October 23, 1979

Current Alaska law makes child stealing a crime. AS 11.15.290. In order for criminal liability to attach the child must be under the age of twelve. Punishment for this offense is: by imprisonment in the penitentiary for not more than ten years or less than six months or by imprisonment in jail for not more than one year, or by fine of $500 or both.

The new criminal code establishes the crime of custodial interference in the first and second degrees. Custodial interference is defined as keeping a child or incompetent person from his lawful cutodian with the intent to hold the child or incompetent person for a protracted period. As child is defined as one under the age of 18, the new criminal code provisions are broader in application than existing law. However criminal liability is limited in two respects. First, the perpetrator must be related to the child or incompetent person and, second, the perpetrator must realize that he has no legal right to abduct the child or incompetent person.

Custodial interference in the first degree involves removal of the child or incompetent person from the state. Custodial interference in the first degree is punishable by a Class C felony which carries up to a five year prison term. Custodial interference in the second degree is punishable by a Class A misdemeanor which carries up to a one year prison term.

Copies of both the existing law as well as the new criminal code provisions are enclosed.

I did speak to Larry Weeks, Assistant District Attorney, Anchorage, this morning to attempt to determine any prosecutorial problems not apparent on the face of the existing law and whether the new criminal code provisions would correct any such difficulties. Mr. Weeks was not familiar with any specific problems. He did state that some problems had arisen as a result of interpreting "lawful charge" as contained in current law. In my mind a custody provision would clearly fall within the meaning of "lawful charge". Furthermore Mr. Weeks said that it was really more of a social problem. He said that spouses frequently do not like to send each other to jail and suffer the loss of child support as a result. He said that these persons shouldn't go to jail.

Mr. Weeks did refer me to another assistant district attorney in Juneau. I intend to pursue this issue with him in the immediate future. However I thought that you might want to relay this statutory information to your constituant who brought this matter to the attention of the House Judiciary Committee at its public hearing in Fairbanks. (Carla Slaughter, Director WIC, was the witness who brought this matter to the Committee's attention.)

P.S. Charlie, I would be happy to write Ms. Slaughter on your behalf, but I can't find an address for the WIC in the Fairbanks phone book in our office.

Sec. 11.15.260. Kidnapping. A person who knowingly and without lawful reason kidnaps, abducts or carries away and holds for ransom, reward or other unlawful reason another person, except in the case of a minor by his parent, is punishable by imprisonment for a term of years or for life. (§ 65-4-25(a) ACLA 1949; am § 1 ch 99 SLA 1957)

Distinction between kidnapping and child stealing.—The kidnapping statutes, which were applicable alike to adults and children, more generally viewed the offense as one against the person unlawfully taken, while the statute against child stealing (AS 11.15.290) has in view principally the right of the parent to the custody, dominion, and care of the child so that stealing the child from its parents is primarily an offense against the parents. State v. Metcalf, 278 P. 974 (Ore. 1929), construing the Oregon statutes.

Am. Jur., ALR and C.J.S. references.—31 Am. Jur., Kidnapping, § 1 et seq.

Forcing another to transport one as constituting offense of kidnapping or abduction, 62 ALR 200.

Secrecy, or intent of secrecy, as necessary element of kidnapping, 68 ALR 719.

Belief in legality of the act as affecting offense of abduction or kidnapping, 114 ALR 870.

1 C.J.S. Abduction § 1 et seq.; 51 C.J.S. Kidnapping §§ 1 to 7.

Sec. 11.15.270. Conspiracy to kidnap. If two or more persons conspire to violate § 260 of this chapter and one or more of them does any overt act to effect the object of the conspiracy, each is punishable by imprisonment for a term of years or for life. (§ 65-4-25(b) ACLA 1949; am § 1 ch 99 SLA 1957)

Cross reference.—As to distinction between kidnapping and child stealing, see note to AS 11.15.260.

Am. Jur. and C.J.S. references. — 11 Am. Jur., Conspiracy, § 13.

15 C.J.S. Conspiracy § 49.

Sec. 11.15.280. Receiving, possessing, or disposing of ransom. A person who receives, possesses, or disposes of money or other property or a portion of it which at any time has been delivered as ransom or reward in connection with a kidnapping under § 260 of this chapter, knowing it to be money or property delivered as ransom or reward, is punishable by a fine of not more than $10,000, or by imprisonment for not less than one year nor more than 10 years, or by both. (§ 65-4-25(c) ACLA 1949; am § 1 ch 99 SLA 1957; am § 9 ch 43 SLA 1964)

Cross reference.—As to distinction between kidnapping and child stealing, see note to AS 11.15.260.

Effect of amendment.—The 1964 amendment substituted "less than one year nor more than 10 years" for "more than 10 years" at the end of the section.

Section inapplicable to offense committed before October 1, 1961.—See 1961 Op. Att'y Gen., No. 8.

Sec. 11.15.290. Child stealing. A person who maliciously, forcibly or fraudulently takes or entices away a child under the age of 12 years, in a manner other than as provided in § 260 of this chapter, with intent to detain and conceals the child from its parent, guardian, or other person having the lawful charge of the child, is punishable by imprisonment in the penitentiary for not more than

Current Alaska law re: Child Stealing

10 years nor less than six months, or by imprisonment in jail for not more than one year, or by a fine of not more than $500, or by both. (§ 65-4-26 ACLA 1949; am § 2 ch 99 SLA 1957)

Distinction between kidnapping and child stealing.—The kidnapping statutes, which were applicable alike to adults and children, more generally viewed the offense as one against the person unlawfully taken, while the statute against child stealing has in view principally the right of the parent to the custody, dominion, and care of the child, so that stealing the child from its parents is primarily an offense against the parents. State v. Metcalf, 278 P. 974 (Ore. 9129), construing the Oregon statutes.

A child is incapable of consent to seizure and removal, and, being taken from its lawful custody, it must be deemed to have been taken without its consent as a matter of law State v Metcalf, 278 P. 974 (Ore. 1929), construing the Oregon statute.

Cited in United States v. Meyers, 16 Alas. 368, 143 F. Supp. 1 (D. Alas. 1956).

ALR and C.J.S. references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent or one in loco parentis, 77 ALR 317.

51 C.J.S. Kidnapping § 1 et seq.

Sec. 11.15.295. Use of firearms during the commission of certain crimes. A person who uses or carries a firearm during the commission of a robbery, assault, murder, rape, burglary, or kidnapping is guilty of a felony and upon conviction for a first offense is punishable by imprisonment for not less than 10 years. Upon conviction for a second or subsequent offense in violation of this section, the offender shall be imprisoned for not less than 25 years. (§ 1 ch 144 SLA 1968)

Cross reference. — As to weapons generally, see AS 11.55.

Legislative committee report.—For report on ch. 144, SLA 1968 (HB 333), see 1968 House Journal, p. 434.

Sec. 11.15.300. Blackmail. A person who, either verbally or by written or printed communication, (1) threatens injury to the person or property of another or to the person and property of a person standing in the relation of parent or child, husband or wife, or sister or brother to such other; or (2) threatens to accuse another of a crime, or of immoral conduct which, if true, would tend to degrade and disgrace him or to expose or publish any of his infirmities or failings; or (3) threatens in any way to subject him to the ridicule or contempt of society, with intent to extort pecuniary advantage or property from him, or with intent to compel him to do an act against his will, is punishable by imprisonment in the penitentiary for not more than five years nor less than six months, or by imprisonment in a jail for not more than one year nor less than three months. (§ 65-4-27 ACLA 1949)

Object of section.—The object of this section is to forbid persons from assuming the character of prosecutor for crime for the purpose of extorting gain for themselves. Elliott v State, 36 Ohio St. 318, construing the Ohio statute.

"Extortion."—Extortion is the obtaining of money or other valuable thing, either by compulsion, by actual

(Effective January 1, 1980)

* **Sec. 11.41.320. Custodial interference in the first degree.** (a) A person commits the crime of custodial interference in the first degree if he violates § 330 of this chapter and causes the victim to be removed from the state.

(b) Custodial interference in the first degree is a class C felony. (§ 3 ch 166 SLA 1978)

ALR and C.J.S. references. — Fiction of loss of services as condition of action for abduction of child, 72 ALR 847.

Kidnapping or other criminal offense by taking or removal of child by, or under authority of, parent or one in loco parentis, 77 ALR 317.

51 C.J.S., Kidnapping, § 1 et seq.

Sec. 11.41.330. Custodial interference in the second degree. (a) A person commits the crime of custodial interference in the second degree if, being a relative of a child under 18 years of age or a relative of an incompetent person and knowing that he has no legal right to do so, he takes, entices, or keeps that child or incompetent person from his lawful custodian with intent to hold him for a protracted period.

(b) Custodial interference in the second degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Sec. 11.41.370. Definitions. In §§ 300 — 370 of this chapter, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with his liberty by moving him from one place to another or by confining him either in the place where the restriction commences or in a place to which he has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the victim, if the victim is under 16 years of age or is an incompetent person and his lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

Article 4. Sexual Offenses.

Section
410. Sexual assault in the first degree
420. Sexual assault in the second degree
430. Sexual assault in the third degree
440. Sexual abuse of a minor
445. General provisions
450. Incest
455. Unlawful exploitation of a minor
470. Definitions

* new criminal code provisions

1850 Roberts Road
Fairbanks, Alaska 99701
October 10, 1981

Representative Bette Cato
P. O. Box 775
Valdez, Alaska 99680

Ref: House Bill 210--Joint Custody for Children

Dear Mrs. Cato,

At the teleconference hearing April 22, 1981 regarding House Bill 210 you asked questions of many of the people who testified about what they considered to be an age at which a child could reasonably state which parent they chose to live with. We have discussed this subsequently and I still have strong feelings that this can put many children in an impossible situation which can give them psychological problems in the future.

House Bill 210 starts with a positive approach by presuming that a child has two loving and responsible parents (most do) and that each parent wants to maintain "an open and loving frequent relationship between the child and his other parent." (1). The second step in the preference of award in HB 210 would be to give custody to the parent who would "allow the child to have frequent and continuing contact with the parent not granted custody."

I have a situation in which the children have 50% time with each of their parents. This is a situation I have found that many other fathers would like to have because it is equal. I asked my sons, individually, what they think of the present arrangement. They both responded in the affirmative, and stated that they could not think of a better or more equitable arrangement and said, "besides, we get twice as many birthdays and Christmases and have two homes".

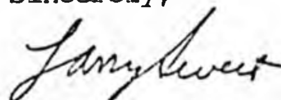
I know other children in similiar circumstances and they like it, whether or not their parents live in the same town.

The following statement made by Ms. Karen DeCrow, Past President of the National Organization for Women (1975-77) on August 28, 1980, sums things up:

> "(Joint custody is) definitely the custody arrangement of the future.
>
> The practice of nearly always awarding custody of children to the mother reflects negatively on women who aren't awarded custody; the public automatically thinks they are unfit to care for the children."

Mrs. Cato, I have deeply appreciated our open discussions and I hope you can support HB 210 this next session.

Sincerely,



Larry Sweet

cc: Representative Mike Bierne, Chairman, HESS
Senator Charlie Parr
Representative Brian Rogers

(1) Alaska Code of Civil Procedure, Sec 09.55.205 JUDGEMENT FOR CUSTODY, paragraph (6).

FAIRBANKS CHAPTER, P.O. BOX 82254 FAIRBANKS, ALASKA 99708

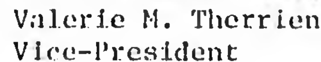
"Joint custody is definitely the custody arrangement of the future.

The practice of nearly always awarding custody of children to the mother reflects negatively on women who aren't awarded custody; the public automatically thinks they are unfit to care for the children."

House Bill 210 is good legislation because it removes bias, is equal, and facilitates preservation of the child's needs for contact with both parents; it reduces use of the courtroom by one parent to destroy the other parent, to the detriment of the child's best interests.

We urge you and the committee to vote favorably on House Bill 210 so that more children in this state can be allowed to have an "open and loving frequent relationship" with both their parents after a marriage is terminated.

Sincerely yours,



Valerie M. Therrien
Vice-President

cc: Representative Terry Martin
Representative Bette Cato
Representative Sally Smith
Representative Hugh Malone
Senate Judiciary Committee
House Judiciary Committee
Senate HESS Committee

FAIRBANKS CHAPTER, P.O. BOX 82254, FAIRBANKS, ALASKA 99708

Representative Mike Bierne
Chairman, HESS Committee
PO Box 4-1539
Anchorage, Alaska 99509

Re: House Bill 210 Joint Custody for Children

Dear Representative Bierne:

The Fairbanks Chapter of the National Organization for Women supports House Bill 210 because it is consistent with the statement that "equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

House Bill 210 is also consistent with the intent of current Alaska Statutes governing the granting of custody of minor children because it provides a positive framework so that after a marriage is terminated, the children can maintain "an open and loving frequent relationship with (both parents)" (Sec. 09.55.205, Judgment for Custody, paragraph 6).

In most states, including Alaska, a form of no-fault divorce exists, in which it is not necessary for one parent to decimate the other in the public record, which is to no one's advantage. Joint or shared custody for children is the companion to that process because it removes the stigma of sole custody and will tend to prevent bitter, acrimonious and hostile custody battles, which are to no one's best interest, least of all the children who are defenseless in a process that can have far reaching consequences to their future lives, if handled improperly.

The preference for joint custody is an important concept because it provides a positive basis for each parent to continue their parenting responsibility.

If a joint custody relationship is not desired after a marriage is terminated, the second step in the preference for award process, provides for granting sole custody in a traditional fashion "to the parent determined by the court to be most likely to allow the child to have frequent and continuing contact with the parent not granted custody."

House Bill 210 is consistent with the following statement by Ms. Karen DeCrow, Past President, National Organization for Women (1974-1977) on August 28, 1980:

SOCIAL CHANGE IN SWEDEN

No. 19
September, 1980

RECEIVED
SEP 29 1980

"YEAR OF THE CHILD" PROVIDES NEW RIGHTS FOR SWEDEN'S KIDS AND PARENTS

by Amelia Adamo

Amelia Adamo, a free lance journalist, has written this article in consultation with Bertil Ekdahl, legal adviser to the Swedish Ministry of Justice, and Bo Carlsson, children's ombudsman of Sweden's Save the Children Federation.

Sweden's unflagging concern for children and their welfare received added thrust under the impact of the International Year of the Child. Attention focussed on a wide range of questions which included such subjects as: Habitat --.the child in his neighborhood, at school, at home; child abuse; children's rights; providing for immigrant children.

There is no doubt that most of the initiatives taken would have been realized eventually. However, the significance given to 1979 as a special Children's Year served as a catalyst to speed decisions and bring them to fruition within the specified period.

In addition to reforms adopted at national and local levels of government, the unique nature of the year was observed by national agencies, schools, public libraries and special interest organizations with varied events, debates, exhibitions, theater presentations and other children-oriented programs.

The main reforms and activities which marked Sweden's observance of the International Year of the Child are described briefly below.

Ban on corporal punishment

Corporal punishment has been prohibited as of July 1, 1979 by the Parenthood and Guardianship Code, the section of Swedish law governing the relationship between parents and children. The Code actually says that children must not be subjected to corporal punishment or any other humiliating treatment. The background to this law is as follows.

It has long been agreed by child psychiatrists and child psychologists that corporal punishment of children is a reprehensible practice. The use of violence can inflict physical and mental harm on children, and possibly result in physical disabilities and prolonged mental disturbances. Their ability to develop contact with and affection for other people may be stunted. Individual punishments can cause children of any age to suffer from shock, and repeated punishments may result in profound changes of personality. Even lenient punishments can entail risks. Quite often they lead to progressively severe punishments and, at worst, brutality.

It is possible for humiliating treatment to produce the same effect as corporal punishment, namely, lack of self-confidence and a change of personality which may dominate childhood and adolescence and leave its mark on adult life as well.

Swedish law now forbids all forms of corporal and mental punishment. Mental punishment -- referred to in the Code mentioned above as "humiliating treatment" -- includes, for example, locking a child in a closet, or subjecting it to threats, intimidation, ostracism or direct ridicule.

Previously, Swedish law contained no express ban on corporal punishment, with the result that many people believed it to be permissible. The new provision incorporated in the Code has eliminated this lacuna. No specific penal sanction has been attached to the ban on corporal punishment, but corporal punishment inflicting bodily harm on a child or causing pain which does not rapidly subside is regarded as criminal assault. The amendment to the Code makes it impossible for a parent charged with child assault to plead that he believed he was entitled to administer corporal punishment.

Parental education

A general program for parental education, in effect as of January 1980, is gradually being introduced under the aegis of the county councils. The basis for the legislation was a report from the Commission on Child Care concerning parental education in connection with childbirth. During the spring of 1980 the Commission presented a final report on parental education for parents of pre-school and school children.

Parental education in connection with childbirth is to be provided as part of the activities of maternity care centers, maternity wards and child health centers. It proposed that these activities should be conducted on a group basis, with groups of about ten parents meeting for eight or ten sessions with the staff before and after confinement.

Participation in this general scheme is optional, but as an incentive parents are offered leave of absence from their jobs and compensation out of social insurance for any loss of earnings involved by attendance. The purpose of this parental education is to make parents better informed about the development and needs of children, about relations between children and parents and between adults themselves, about social conditions and about social benefits for young families, and also to provide opportunities of contact and shared experience between parents themselves and between parents and staff. The questions discussed by the parental groups relate to the goals of parental education activites, and the curriculum is decided jointly by parents and staff. Aspects of pregnancy and childbirth, baby care and personal development are discussed, together with social topics like housing conditions, child care amenities and so on.

Parliament has emphasized that difficulties confront immigrant parents and as a consequence special attention must be devoted to planning parental education for immigrants. The National Board of Health and Welfare and the National Immigration and Naturalization Board have been specially instructed to submit detailed proposals on this subject.

Bilingual language instruction

Several reports have focussed on the difficult linguistic situation of immigrant children. One of the important viewpoints that has emerged is that each individual needs to have full command of one language in order, among other things, to be able to learn other languages properly.

For this reason, native language instruction is offered to all elementary and upper secondary school pupils who have at least one parent with a language other than Swedish, if that language is regularly used in the home. One of the aims of mother tongue instruction is that the students become actively bilingual. The National Board of Education ensures that municipal authorities offer all immigrant children the opportunity to have native language instruction, which is provided partly during regular school hours. The costs entailed by this instruction are borne by national authorities. Some municipalities have classes at the junior and intermediate levels of elementary school consisting entirely of immigrant pupils speaking one and the same language, in which case all teaching is conducted in the pupils' native language.

Parents not accepting the offer of bilingual instruction for their children will be contacted in their homes.

Municipal pre-schools are also responsible for the linguistic development of immigrant children. Home country language training for all eligible five-and six-year-olds attending municipal pre-schools has been financed by the State since July 1979. Increasing numbers of day nurseries have established single-language groups for immigrant children. This gives the children a better opportunity of developing their command of their native language and preserving their cultural identity.

Children and divorce

The first report presented by the Commission on Children's Rights contained the proposal that corporal punishment be made illegal. The second report of the Commission deals with the rules concerning custody, right of access and the execution of judicial decisions concerning custody. This report has been circulated to a large number of public authorities and organizations for comment.

Proposed new arrangements include the following:

The main principle contained in the report is that parents, whether married or unmarried are to share the custody of their children. This joint custody is to continue even after divorce or separation if neither parent demands otherwise.

In certain situations it will be possible for custody to be transferred from biological parents to other persons, e.g. foster-parents, if a child has been living in a foster-home for some time and has "taken root" there.

As soon as their age and developmental level permit, children are to be enabled to influence their own situation in matters which concern them, e.g. divorce proceedings.

The Commission wants it to be the duty of municipal authorities to offer parents involved in divorce proceedings assistance in resolving the conflict between them and in assuming responsibility for decisions to the benefit of all concerned. This assistance is to be provided in the form of interviews with, for example, a psychologist or family counsellor.

It is proposed that right of access should imply that a child is entitled to associate with both parents, even if they are living apart.

Children are to be eligible as parties in proceedings concerning custody and right of access, and they are to be entitled to legal assistance. Each child litigant is to be represented during proceedings by a Child's Attorney appointed by the court.

The social welfare committee is to be empowered to appoint a special liasion officer to help and support the individual child deprived of parental support - for example, in a marital crisis.

Finally, the Commission proposes that a Children's Ombudsman be appointed in every municipality in order, among other things, to provide the public with an advisory service in various matters concerning children.

The Children's Ombudsman

The Children's Ombudsman, appointed by the Swedish Save the Children Federation, is an official with no counterpart in any other country. The Swedish Save the Children Federation is a voluntary organization working for the benefit of children both in Sweden and in other countries. The Children's Ombudsman acts as the children's spokesman, mobilizes opinion and disseminates information concerning children's needs and works to strengthen children's rights. He does not have any legal powers of intervention in particular cases. His duties can be summed up as follows.

1. To publicize the situation and needs of children through such channels as news media, lectures, publications and seminars.

2. To put pressure on public authorities and policy makers.

3. To propose and initiate actions which can improve conditions for children.

4. To help children faced with particular problems, e.g. immigrant children, foster children, maltreated children.

5. To support research about children.

6. To induce more people to work for the promotion of children's interests.

7. To maintain a telephone emergency service for the support and assistance of individual children in distress.

The basic purpose of the activities of the Children's Ombudsman is to generate a positive attitude towards children so as to increase the number of people siding with them. Another important aim is to

induce all adults to assume responsibility for all children. Children will alway grow up primarily on the terms defined by the adults in their immediate surroundings, and it is therefore important for children to have in their immediate surroundings many adults with whom they can feel secure. The Children's Ombudsman encourages these efforts, for example, through his efforts to transform the attitudes of adults.

From the very outset, the work of the Children's Ombudsman has also focussed heavily on questions relating to children and violence. Violence affects many children directly, and the Children's Ombudsman is endeavoring to overcome the various violent tendencies in society and to assist individual children subjected to violence.

War toys

In 1979 the National Board for Consumer Policies and the Play Environment Council concluded a voluntary agreement with the toy trade to discontinue the sales of war toys. The purpose of this agreement is to end the exploitation of the two world wars. Playing at war means learning to settle disputes by violent means. Children need an outlet for their aggressions and tensions in form of play and play materials, but this can be accomplished by means other than war toys.

The agreement covers toys depiciting modern warfare from 1914 onwards, and the category "war toys" includes weapons, games and model soldiers among other things.

Parental insurance

Beginning in 1980, parents are entitled to nine months leave of absence from work, plus compensation out of social insurance for loss of earnings in order to care for a new baby. Three of these nine months can be saved up and utilized at any time before the child reaches the age of eight or completes its first year of school, and parents can divide the total period between them.

A parent is entitled to stay at home from work and receive compensation out of social insurance for up to sixty days per annum in order to provide temporary care for a sick child. A medical certificate is required after the first seven days.

Activities during the International Year of the Child

Needless to say, many activities took place during the International Year of the Child. One which attracted particular interest was a day when children took charge of all radio broadcasts. The children produced all the programs broadcast on the three radio channels on an ordinary Saturday between 6 a.m. and midnight. For example, they read the "Poem of the Day," held the daily act of worship, made live broadcasts of sports events and made interviews and commentaries. It was such a success that the broadcasting company plans to make it a regular feature. Opinion polls indicated unusually high listening figures.

Another widely publicized arrangement was a week of seminars, debates, exhibitions, lectures, theatre performances, sing-songs etc., organized by the Swedish Save the Children Federation on the subject of children and with children participating. These activities were attended by 45,000 people and received coverage in all daily newspapers and on radio and television.

The initiative taken by the Swedish trade union movement to invite parents to take their children with them to work for a day was also appreciated. On the designated day, large numbers of children invaded Sweden's workplaces to see what things were like there and what their mothers and fathers did at work.

Further information is obtainable from the following:

The Ministry of Justice, S-103 33 Stockholm, Sweden. (Ban on corporal punishment, children and divorce)

The Ministry of Health and Social Affairs, S-103 33 Stockholm, Sweden. (Parental education, parental insurance)

The National Immigration and Naturalization Board, P O Box 6113, S-600 06 Stockholm, Sweden. (Home language instruction)

The National Board for Consumer Policies, Fack, S-162 10 Stockholm, Sweden. (War toys)

The Children's Ombudsman, Rädda Barnens Riksförbund, P O Box 5866, S-102 42 Stockholm, Sweden. (The activities of the Children's Ombudsman)

TRAVEL GRANTS FOR RESEARCH IN SWEDEN

Qualified American citizens with well-developed projects in the fields of political institutions, public administration, interest organizations, working life, human environment, mass media, and education, are invited to apply for travel grants from the Swedish Bicentennial Fund.

Grants of approximately $2,500 will be made to support three to six week study visits to Sweden, beginning late summer 1981. There is also opportunity to apply for a three to six month research grant for a project carried out in Sweden at a research institution or university.

Application deadline: February 13, 1981. Awards announced: around May, 1, 1981.

For information and application form write:

Swedish Information Service
Bicentennial Fund
825 Third Avenue
New York, NY 10022

"THE DEFENSELESS CHILD" - A SERIES OF SEMINARS

on the prevention of child abuse and neglect, arranged by the Swedish Information Service in cooperation with the Swedish Embassies in Washington and Ottawa, will be held in Washington, New York, Chicago, Los Angeles and Ottawa March 23 - April 5, 1981. For further information write the Swedish Information Service, New York.

SOCIAL CHANGE IN SWEDEN

No. 13
September, 1979

TO COMBAT VIOLENCE IN THE CHILD'S WORLD
SWEDISH EFFORTS TO STRENGTHEN THE CHILD'S RIGHTS

by E. Michael Salzer

E. Michael Salzer has been Scandinavian correspondent with leading European and American newspapers since 1947. He specializes in questions of education.

Violence breeds violence. If a parent beats his child, there is a risk that the child will use violence in his future life to achieve his aims. Corporal punishment shapes the child to an authoritative pattern and seems unfitting in a society which aims to develop the child into a peace-loving independent individual.

With these thoughts in mind, an overwhelming majority of the Riksdag (259 to 6) recently outlawed corporal punishment in Sweden by adding a new clause to the Parenthood and Guardianship Code (Föräldrabalken):

"The parent or guardian should exercise the necessary supervision in accordance with the child's age and other circumstances. The child should not be subjected to corporal punishment or other humiliating treatment."

The Commission on Children's Rights proposed this clause to clarify that society can no longer accept the use of violence as a method of upbringing.

In 1920 -- when "husaga," the master's right to flog his servant, was abolished in Sweden, the law still stipulated that parents had the right to punish their children. In 1949 the word "punish" was replaced by "reprimand." Not until 1966 was the right of the parent to resort to violence deleted from the Code of Parenthood, and the punishment of children of more than "insigni-

ficant corporal correction" considered maltreatment, to be judged by the same rules which apply when "adults commit acts of physical violence towards adults."

The new law does not imply that any parent who gives his offspring a box on the ears or smacks his bottom will be immediately drawn into court. The educators, psychologists, sociologists, doctors, social workers and lawyers who supported the legislation, intended to establish a norm for parents and guardians and to initiate a wider disussion of the dangers of violence in all its different forms to which children are constantly exposed in everyday life.

"Even in our well-advanced welfare system, despite our high standard of living, our far-reaching school reforms, the low infant mortality rate and the considerate care of immigrants," Rigmor von Euler explains,"the conditions of the child are far from ideal." Rigmor von Euler is Sweden's (and probably the world's) first Ombudsman for Children and is employed by the Swedish Save the Children Federation. People must be informed again and again about the dangerous consequences of the physical and mental punishment of children. A recurrent general program to educate parents and guardians about their rights and their responsibilities seems essential and should be initiated as soon as possible, especially in view of the large number of immigrants, who come from countries with other basic values of family unity, and where the spanking of children still is part of the cultural pattern. Surveys have clearly shown that the "battered child syndrome" also exists in many modern Swedish suburbs, where youngsters are predestined to become hard, unfeeling adults, putting their own interests first, often neglecting those of their own children.

Some Members of Parliament opposed the new law arguing that it was "unnecessary and even dangerous," because by removing the biblical right of the father to chastise his child, "many well-meaning parents would be stamped as criminals and many children would never learn how to behave." Sixten Pettersson (Cons.) put them right. "In a free democracy like our own we use words as arguments,not blows," he said during the debate. "We talk to people,not beat them. If we cannot convince our children with words, we shall never convince them with a beating."

The Swedish Children's Ombudsman

"Society assumes in the first place that parents care for their children and know how to satisfy their needs, and takes action 'in the child's best interest' only, when the parents fail to do so," says Rigmor von Euler, who is retiring from her job as children's ombudsman after seven years of trail-blazing work. "There is still a lot of cruel repression and maltreatment. Legislation has to create a climate where the family can flourish. But we cannot rely upon legislation to afford adequate protection to the child either. The child needs its own spokesman to safeguard its rights."

"Ombudsman" is a Swedish word for representative or delegate. In English and other languages it is identified with "an official empowered to investigate complaints of bureaucratic injustice." The role of the ombudsman of the Swedish Save the Children Federation, however, is merely that of a spokesman or advocate without legal or political power, charged with protecting children's rights through investigation, recommendation and information.

"One of my tasks is to help the individual child in immediate need of assistance," declares Bo Carlsson, a former teacher, sociologist and local politician, who succeeded Rigmor von Euler as the Swedish children's ombudsman on May 1, 1979. "My overall aim is to make the public aware of children's precarious situation and to be a thorn in the flesh of reluctant bureaucrats and authorities."

He intends to exert pressure on local authorities to improve the children's environment, he wants the expression "what is best for the child" to be more clearly defined and he insists that the child's own wishes should always be considered before a final decision about custody or public care is taken.

Continuing the efforts of his predecessor to create a more effective organization to assist children in need of moral and legal aid, he would like to introduce the institution of the children's ombudsman on a municipal level throughout the country: "There should be someone paid by the local government, with sufficient authority to intervene, and to act as the child's spokesman in court, on social committees, in the town planning office, everywhere where the fate of children is at stake or when parents dispute the custody of their children, when the child is sent to a public institution or a foster home, and to assure adequate play and leisure facilities in new residential areas. Children should always know that there is someone outside the family on call to help them if need arises."

Rigmor von Euler dealt with several hundred cases a year involving the maltreatment of children. A neighbour would ring and report that a certain child was often heard crying, when left alone in the apartment next door. "It sounds heartbreaking, can't you do something about it?" The ombudsman would immediately contact the local Social Welfare Committee (Socialnämnd) and ask them to investigate discreetly. A social worker collects more information and finds a young, distressed mother, unable to cope with her situation, who could not get anyone to look after her 3-year-old girl. A place in a day-care center finally solves the problem. Or a relative of an 8-year-old boy telephones: "The poor kid is being beaten for the slightest offence. His stepmother is terribly rough with him." Once again the subtle contact machinery is set to work. A social worker talks to the boy, later to the stepmother, who readily admits that she cannot cope with the child. All involved, including the boy, agree to a foster home.

All information is treated as strictly confidential, all investigations are made very discreetly. "Our aim is to help the child, not to penalize anybody," says Rigmor von Euler.

Quite independent of this kind of work for individual children, the Swedish Save the Children Federation is constantly mobilizing public opinion and providing information on bringing up children, fighting drug abuse by supporting research and treatment, striving for better contacts between immigrants and Swedes and for an increased understanding of the plight of immigrants, whose children so often fall between two different cultural patterns.

"The South-European pattern of upbringing may sometimes look like 'maltreatment' from the Swedish point of view," explains Mrs. von Euler, "but as far as the gross ill-treatment of children is concerned, it has been established that immigrant children not generally are exposed to greater risks than some Swedish children."

BRIS, Children's Rights in Society

In fighting violence in Swedish society the children's ombudsman has been greatly assisted by one of the most active voluntary organizations, BRIS (Barnens Rätt i Samhället), Children's Rights in Society. It was formed in 1971 as a kind of "Children's Defense League" and as a pressure group to combat child cruelty, when death of a young child after prolonged maltreatment by the person responsible for her care had aroused nationwide indignation.

Volunteers of BRIS maintain regular telephone service twice a week, advise harassed parents, follow up cases of maltreated children before passing them on to the authorities and then check the final outcome. They are assisted by a panel of child psychologists, doctors and lawyers and handle some 150 cases a year. With a grant from Stockholm municipality they produce and distribute information and educational material on child cruelty, parent training, divorce and custody proceedings, mainly for all the professional groups whose work involves children -- social workers, teachers, police, hospital staff, lawyers, public prosecutors, City Councillors and Members of Parliament.

BRIS was also instrumental in arranging a much discussed exhibition "Violence creates Violence," together with the Save the Children Federation and the Swedish Peace and Arbitration Association (Freds- och skiljedomsföreningen).

Prohibition of War Toys

This exhibition sparked off a nationwide debate on the effects of violence as reflected in the mass media, newspapers, films and comic strips and eventually led to the withdrawal of war toys from the warehouse shelves as from January 1, 1979, and also to the promotion of the recent legislation to ban corporal punishment. The exhibits informed the public that 1.7 million of the 8 million Swedes are children under 15 years of age, that 239,000 of them live with single parents, 119,000 are of non-Swedish origin, almost 40,000 are annually taken into care in accordance with the Child Welfare Act (barnavårdslagen), over 7,000 are killed or injured in traffic accidents, 15,000 are placed in foster homes, and that majority of drug-abusers are around 19 years old.

Research showed that the sale of comics, where most conflicts are solved by violence and where uninhibited contempt is shown for the weaker members of society, amounts annually to Skr* 110 million. Adults were made aware of the fact that violence towards their children is an abuse of power, and often too, a sign of impotence, of an inability to deal with a situation. They were told that a child needs love, security and the opportunity of self-realization in order to grow into a harmonious human being and that to chastise is no way to teach.

In study circles parents were informed about the pattern-forming and blunting effects of violence shown in news reports and especially in entertainment programs, and advised to help their children by talking to them about it, so that the child is not left alone with his fears of something which he does not understand. Both BRIS and the children's ombudsman continue to keep the debate alive and try to promote alternative television programs, films, plays and literature without violence for children.

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* 1 Skr = 23 cents

Joint efforts have also been made to improve conditions for children in hospitals. Doctors and hospital staff were helped to understand better the children's need for special care, play facilities and frequent visits by their parents. Most hospitals now provide accommodation for the parents of sick children, and parents' travel expenses are reimbursed from public funds in cases of need.

Special emphasis is placed on a continuous exchange of experience and information with other countries. An international research symposium on "Violence towards Children" (based on a book of the same title by Professor Åke W. Edfeldt) was sponsored by the Save the Children Federation (May 14 - 16, 1979) in Stockholm, to elucidate the international aspects of the problem in the International Year of the Child.

"We must do everything we can to protect our children from violence, mainly by our own example," said Astrid Lindgren, the celebrated children's author. In her address on being awarded the Peace Prize of the German Book Trade (Deutschen Buchhandels) last autumn, for her efforts to promote tolerance and responsibility, she told a little story, which brings the whole problem of violence towards children into sharp relief. "A young mother, firmly believing in the biblical wisdom of 'he who loves his son, punishes him,' and who considered that her little boy had deserved a good spanking, sent him in to the garden to collect a rod. He came back after a long while, crying: 'I could not find a stick, but here is a stone, you can hit me with that.' The mother looked at her boy and started crying herself. Suddenly she saw it all with the eyes of the child, who must have thought: 'My mother wants to hurt me, so she may as well use a stone.' For a long time they hugged each other, then she put the stone on a kitchen-shelf and vowed: 'No violence!' Perhaps we should all put a stone on our kitchen-shelf to remind ourselves and our children: 'No violence!' It might be a tiny contribution towards peace in the world."

The author alone is responsible for the opinions expressed in this article.

LITERATURE
available free of charge from the Swedish Information Service, New York.
Please include a self-addressed mailing label with your order.

- ☐ THE CHILD-PARENT RELATIONSHIP by Ulla Jacobson
  (CS 224, June, 1979)

- ☐ THE CHILD'S RIGHT TO PLAY: THE SWEDISH CONCEPT FOR BETTER PLAY FACILITIES by Michael Salzer.
  (CS 220, May, 1979)

- ☐ CHILDREN, RADIO AND TELEVISION -- NOW AND IN THE FUTURE by Cecilia von Fellitzen.
  (CS 222, June, 1979)

- ☐ SWEDISH THEATER FOR CHILDREN AND YOUNG PEOPLE by Per Lysander.
  (CS 219, May, 1979)

1850 Roberts Road
Fairbanks, Alaska 99701
May 10, 1981

House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

SANDRA STRINGER

FOR YOUR INFORMATION

Dear Representative Brown and Members of the Committee:

The purpose of this letter is to urge that you act on House Bill 210 this year which will provide joint custody for children. California has had a similar law in existence since January 1, 1980, and they have in their legislature at the present time a bill to add presumptive joint custody to their current law.

Nevada signed into law a joint custody bill last month; the states of New York, Florida, and Georgia are actively working on joint custody bills.

Presumptive joint custody is analogous to no fault divorce in that it takes the positive approach. Today it is no longer necessary to prove that one individual in a marriage is bad or wrong. Similarly it should not be necessary to prove that one parent or the other is unfit. But that is what we have today. In recent tradition mothers have always received custody. How can a father have a chance to get one half time with his children? By proving that the child's mother is an unfit person? In what percentage of situations is this actually the case? A Fairbanks judge recently told me that in his experience only 1 or 2% of cases he has seen is one parent unfit. This makes sense to me. Why must we then prove unfitness?

Presumptive joint custody takes the positive approach and can act to defuse manipulation, maneuvering, coercision or threat. It can remove the children from being used as tools for psychological or material gain. It can curtail child stealing.

I can speak from my own experience in obtaining joint custody in Fairbanks two years ago which left four individuals with shattered, bitter and acrimonious feelings. The text books say that joint custody can not exist without cooperation; that is not correct and I can speak for that.

I have found out in recent months that the Third Judicial District handles divorce entirely differently than the Fourth Judicial District. I am convinced that if HB 210 had existed as law at the time of my divorce then it would have been handled with some degree of ration, reason, and planning and four people would be in a better place then they are today.

For the legal professionals who are opposed to certain wording in this bill I urge them to suggest alternative wording rather than just being against it, and I further urge them to talk to the counselors, psychologists, and child psychiatrists about what is in the best interests of children. My own discussions with both groups shocks me to see how far apart some of their thinking is with respect to the impact on children.

Please pass some version of HB 210 this year.

Sincerely,

Larry R. Sweet

Larry R. Sweet

cc: B Rogers, C. Parr

SECOND THOUGHTS ON JOINT CHILD CUSTODY

There is currently a disturbing and growing national trend toward awarding custody of children to both parents jointly, i.e. giving both parents the right to share equally in the decision making process regarding the child. (See Joint Custody chart available from NCOWFL.) While intended to equalize the responsibility of childrearing between the parents, joint custody, when parents are not able to agree or do not communicate well, only serves to interfere with the ability of the primary caretaker to make the decisions needed to carry out responsibilities to the child.[1]

Almost all experts concur that joint custody is only "appropriate" where both parents are basically in agreement and able to participate in joint decision-making. Such cases are in the minority, and those parents will have an informal joint custody arrangement regardless of court order. Thus the current new legislation would largely affect those parents who are not in agreement--the very cases which the experts agree are not suitable for joint custody and where, in fact, it would be detrimental to the child's best interests.

Legislators are seeking to make joint custody a statutory preference/presumption which would apply even when one parent opposes the arrangement. Courts, under this type of legislation, would be mandated to state their reasons in writing when they do not order joint custody. Additionally, this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of children," in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.

Joint custody presumption/preference legislation is, instead, a refusal to place any value on or give any credit to the past assumption of the daily care and responsibility for the children. Thus, a joint custody presumption in effect gives the non-caretaking parent equal power when he or she has not contributed equally to the day-to-day care and support of the children, either pre-divorce or post-divorce.

(Con't. on p. 4)

NEEDED: 5 NEW BOARD MEMBERS

NCOWFL is seeking 5 new members to serve on its Board of Directors, each for a 3 year term. NCOWFL is funded by the Legal Services Corporation to provide support on women's issues in family law. The Board of Directors sets policy for NCOWFL. Three of these vacancies must be filled by attorneys and two by clients. The term of these new board members will begin on October 1, 1981. The 13-member Board is of widely diverse experience and backgrounds and it is important to us to maintain this diversity in our selection of new members.

Those interested in serving should send a letter describing their background and interest, together with the names and addresses of two references to:

Jane Shaw-Jackson, Chair
National Center on Women and Family Law, Inc.
799 Broadway, Room 402
New York, New York 10003

These letters of interest must be received by April 15, 1980.

SECOND THOUGHTS ON JOINT CUSTODY

(Con't. from p. 3)

The following is a digest of an in-depth article on this subject by Valerie Pitt, a law student at NCOWFL, which will be available for distribution in March, 1981.

JOINT CUSTODY AND WELFARE:

There are many unresolved issues when joint custody is ordered and one of the parents is receiving AFDC. For example: Which parent is entitled to the grant? Will it be split? Can both receive a grant? Will eligibility depend on which parent arrives first at the welfare office?

JOINT CUSTODY AND CHILD SUPPORT:

Joint custody may become a means of alleviating a non-custodial parent's support obligation. If, as some legislation has provided, support responsibility is to be shared equally between parents, courts could refuse to make any support order when joint custody is awarded on the grounds that both parents are equally responsible in the child's support. Consequently, women will be seriously disadvantaged by having to maintain a full time home/household while at the same time working at an outside job. Further inequity arises from the fact that while being expected to contribute equally to the support of the child, women do not command wages equal to men's on the job market.

JOINT CUSTODY AND UCCJA/CHILD-SNATCHING:

Joint custody may undermine the UCCJA (Uniform Child Custody Jurisdiction Act) since both parents would have the legal right to determine the residence of the children, absent a non-removal provision in the court order.

JOINT CUSTODY PROVIDES NON-CARETAKING PARENTS WITH AN UNFAIR BARGAINING TOOL:

Almost all joint custody legislation includes a provision that, if the court decides not to award joint custody, priority for sole custody shall be given to the parent who is most willing to provide continuing access to the other parent. Thus, a woman opposing joint custody will either agree to joint custody by settlement agreement (feeling that this is the best she could get in court), or will "bargain away" her alimony, child support and/or property rights in order to obtain sole custody.

JOINT CUSTODY AND BATTERED WOMEN:

In cases involving wife battering, joint custody guarantees continued access by the batterer to his victim, and gives him continued control over the battered woman's life through their children. In order to avoid such an order, the battered woman will have to testify to the abuse of which she has been a victim, which for many is very difficult. Furthermore courts rarely consider wife-beating an indication of poor parenting ability, especially when the father has never physically abused the child. In cases where wife beating is raised as an argument against joint custody, courts traditionally do not believe the accusations of the battered woman, refuse to take her plight seriously, and fail to consider psychological abuse and terrorization as battering.

CONCLUSION

While joint custody should be an option in appropriate cases where parents are in agreement and

(Con't. on p. 6)

NEW HANDBOOK FOR HOUSING FOR BATTERED WOMEN

We wish to call our readers' attention to a valuable new handbook on emergency and long-term housing for battered women prepared by the National Coalition Against Domestic Violence with the cooperation of HUD.

The book is a practical and detailed How-To manual which will equip persons working in this field to understand the workings of the Community Development Block Grant Program and how to use it to get dollars for shelters and service programs.

The title of the book is THE NCADV Handbook on Emergency and Long Term Housing and can be secured free from HUD, Housing Office of Public Policy Development and Research, 451 7th Street, S.W., Room 4212, Washington, D.C. 20410.

SECOND THOUGHTS ON JOINT CUSTODY

(Con't. from p. 4)

desire this arrangement, legislation is not necessary for these cases. Rather, the current joint custody trend serves only to reduce the custody rights of those women who have been and are the primary caretakers of their children and who do not feel that joint custody is in their children's best interests.

FOOTNOTE:

1. Joint custody gives both parents equal legal rights with regard to decision making and control of their children, regardless of where or with whom the children reside. While joint custody should imply equal responsibility for the day-to-day care of children, this is not required under most joint custody orders and all joint custody legislation. Thus, joint custody orders are, in effect, the same as traditional sole custody/visitation orders.

NEW PARENTAL KIDNAPPING ACT

(con't. from p. 1)

-ental kidnappings and interstate or international flight to avoid prosecution or giving testimony under state felony statutes. Section 1073 has been consistently interpreted by the Justice Department not to apply to domestic disputes, even when state felony statutes were involved. Adding parental kidnapping to the statute means that the Federal Bureau of Investigation can now be called into these cases pursuant to the provisions of 18 U.S.C. 3052.

For a discussion of the Parental Kidnapping Act see NCOWFL's March 1981 Clearinghouse Review column.

SHELTER BILL DIES

S. 1843, the bill to provide federal funding for shelters, died in the recent Congressional lame-duck session when opponents pledged to filibuster the Conference Report. Senator Alan Cranston (D-CA), the bill's sponsor, withdrew the legislation from the floor when it became clear that the Conference Report could not be approved. Thus any further domestic violence legislation will have to be brought anew in another session of Congress.

Resource packet on Joint Custody Legislation:

A Summary of Joint Custody Statutes and pending Legislation.

"Joint Custody and Battered Women" by Joanne Schulman.

Testimony by battered women's advocates before the New Jersey Committee on Judiciary Law, July 24, 1980, regarding pending legislation (AB 1471).

National Center on Women & Family Law

799 Broadway, Room 402 • New York, New York 10003 • (212) 674-8200

A SUMMARY OF JOINT CUSTODY STATUTES AND PENDING LEGISLATION

As of July 1980, eleven (11) states have joint child custody provisions:

California	Civ. Code §§4600, 4600.5 (effective 1/1/80) [includes joint custody "presumption"]
Connecticut	Gen. Stats. §46b-56(a) (Public Act No. 80-29, effective 10/1/80)
Hawaii	Rev. Stat. §§571.46, 571-46.1 (effective 4/25/80)
Iowa	Codes Ann. §598.21 (joint custody provisions added in 1977)
Kansas	Stat. Ann. §60-1610(b) (Supp. 1979)
Kentucky	Rev. Stat. §403.270(3) (effective 7/15/80)
Nevada	Rev. Stat. §125.140 (1979)
North Carolina	Gen. Stat. §50-13.2(b)
Oregon	Rev. Stat. §107.105 (1977)
Texas	V.T.C.A., Family Code §14.06(a) (effective 8/27/79) [parties may enter into written agreement providing for joint custody]
Wisconsin	Stat. Ann. §247.24(1)(b) (effective 5/19/78)

Since November, 1979, joint custody legislation has been introduced in the following states:

Florida	HB 1440 (Gordon, Dunbar); failed
Kansas	SB 295 (Parrish) HB 2790 (Brewster)

State	Bill	Status
*Illinois	HB 3405 (Younge)	
Louisiana	HB 1691 (Byrnes), bill deferred	
Massachusetts	HB 2631 (DeNucci) HB 1877 (Vigneau) HB 4201 (McNeil) SB 1962 (Sisitsky)	(All Failed)
*Michigan	HB 5218 (Brown *SB 1976 (Zeigler)	
*New Jersey	*AB 1471 *AB 407	
*New York	*S7964 (Barclay) *A9369 (Lasher)	(Companion bills; passed Assembly;died in Senate)
Ohio	HB 1076	
*Oregon	*HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody (tabled in committee)	
*Pennsylvania	HB 2394 (McKelvey) *SB 1411 (Fumo) *SB 1282 (Gekas)	
*S. Carolina	*HB 3248 (died in House Judiciary Committee)	

*Bills include a joint custody "presumption" or "preference" provision.

JOINT CUSTODY and BATTERED WOMEN*

Excerpted From

POOR WOMEN AND FAMILY LAW**

(June 1980)

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** This article was written by Joanne Schulman, Staff Attorney with the National Center on Women and Family Law. This article is one section of an article entitled Women and Poverty: Women's Issues in a Legal Services Practice, to be published in Clearinghouse Review, a publication of the National Clearinghouse for Legal Services, 500 North Michigan Avenue, Chicago, Illinois.

JOINT CUSTODY & BATTERED WOMEN

Finally, legislation which is being enacted in other substantive areas needs to be examined from the perspective of the battered woman. For example, United State Senate Bill 105[65] seeks to prevent child-snatching by parents. While the intent of this bill may be laudable, at least one of its provisions would prove dangerous for battered women.[66] Specifically, the bill would allow an abusive parent access to the Parent Locator System, thereby enabling an abusive husband (or father) to track down a fleeing battered woman under the pretext of locating their children.[67]

Legislation regarding joint child custody[68] presents another potential danger to battered women. Joint custody guarantees continued access by the abuser to his victim. It also gives him continued control[69] over the battered woman's life through their children.

Joint custody legislation has been viewed as necessary because courts have traditionally disfavored such arrangements, seeing only disruption and instability to children.[70] Thus, many courts have refused to order joint custody when it is the

arrangement desired and requested by both parents.[71]

Some legislators, prompted by fathers' rights groups[72] among others, are now swinging to the other extreme by seeking to make joint custody a statutory preference, which would apply even when one parent opposes the arrangement.[73] Courts, under this type of legislation, would be mandated to state their reasons in writing when they do not order joint custody.[74] Additionally this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of the children,"[75] in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.[76] The intent behind joint custody "preference" legislation is directed at increasing fathers' custody rights.[77]

Many battered women will now find themselves facing a joint custody order under this "preference" legislation. In order to avoid an order of joint custody, the battered woman will have to testify to the abuse of which she has been a victim, which for many women is very difficult (as it is for rape victims). Further, as with a rape victim, courts traditionally do not believe the battered woman ("she's hysterical"), refuse to take battering seriously ("a few slaps never hurt anyone"), fail to consider psychological abuse and terrorization as battering, and, finally, believe that divorce will end the battering.[78] Nor do courts view wife-beating as detrimental to children. Custody attorneys are all too familiar with the "but did he ever hit

the children?" judicial response to wife-beating.[79]

Joint custody should be a choice open to parents when that is what they desire and believe to be in their children's best interests. However, making joint custody a statutory preference serves only to further harass and victimize battered women -- and indeed all women who do not feel that such an arrangement is in their children's interests.[80]

73. As of June 1, 1980 five states have enacted joint custody provisions: Connecticut, Public Act 80-29, (effective October 1, 1980); Iowa, I.C.A. §598.21 (Supp. 1978); Oregon Rev. Stat. Ch. 107 §105 (Supp. 1977)*; Wisc. Stat. Ann. §247.24 (West Supp. 1978); California Civ. Code §§46000, 4500.5 (West Supp. 1980). Only California's statute includes a joint custody "preference" or "presumption". Since November, 1979, joint custody legislation has been introduced in the following states: Hawaii - SB 2419, passed; Kansas - SB 295 (Parrish), HB 2790 (Brewster); Kentucky - HB 356 (DeFalaise); Illinois - HB 3405 (Younge); Maryland - HB 352 (Shapiro), Massachusetts - HB 2531 (DeNucci), HB 1877 (Vigneau), HB 4201 (McNeil), SB 1962 (Sisitsky); Michigan - HB 5218 (Brown), SB 1975 (Zeigler); New Jersey - AB 1471, AB 407; New York - S7964 (Barclay), A9369 (Lasher); Ohio - HB 5066; Oregon - HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody; Pennsylvania - HB 10776 (Boyle), HB 2394 (McKelvey), SB 1411 (Fumo), SB 1282 (Gekas). Bills introduced in Illinois, Michigan, New Jersey, New York, Oregon and Pennsylvania include a joint custody "presumption or "preference".

[68]Definitions of joint custody vary. Most definitions include some form of shared physical custody (e.g., 6 months - 6 months; 9 months - 3 months; 3 days - 4 days per week). However, all definitions include joint parental "control of its [child's] care, upbringing, and education, and equal voice in decisions pertaining to its [child's] health, religious training, vacationing, schooling, and the like" regardless of the amount of time the child spends with each parent. Fain, Custody of Children, 1 California Family Lawyer 539, 564 (1962); see, M. Ramey, F. Stender, D. Smaller, Joint Custody: Are Two Homes Better Than One?, Women's Law Forum, 8 Gol. Gate Univ. L.R. 559, 559-561 (1971) [hereinafter RAMEY].

[69]Joint Custody msut be distinguished from visitation rights. The parent with visitation rights generally does not have the right to make decisions affecting the child.

[70]Id. at 559, 561-567.

[71]Id.

[72]Foster, H. and Freed, D., "Joint Custody: A Viable Alternative," 15 Trial Magazine 26, 31 (May, 1979); Foster, H. and Freed, D., "Joint Custody: Legislative Reform," 16 Trial Magazine, 22, 23 (June 1980).

New York's pending joint custody bill, S-7964/A-9369 [hereinafter N.Y. JOINT CUSTODY BILL], introduced on February 27, 1980, by New York's Senator H. Douglas Barclay and Assemblymember Howard L. Lasher, was proposed (and is strongly being lobbied for) by Equal Rights for Fathers of New York State, Inc.; see their April, 1980 Newsletter, p.7. Among the reasons given by this group for a change from "'the historical experiment of sole maternal custody that isn't working'" are:

> ...Evidence of disturbance in cognitive performance. 'Paternal availability seems especially important in I.Q. performance of boys of all ages'...Sex-role identification problems. 'The preponderance of data to date indicates boys in single parent (mother-headed) families are especially vulnerable to problems of sex role identity and pre-school boys and boys in early school years from mother-headed families have been described as more dependent and less masculine. ... Problems of social and emotional development with girls. 'Over-all the findings suggest that father-absent girls have not had the opportunity to acquire the social skills necessary for appropriate heterosexual interactions...' and 'findings of delinquent girls also suggest that paternal absence has its greatest impact on disruption of heterosexual behavior....' April, 1980 Newsletter, Equal Rights for Fathers of New York State, pp. 8-9.

[74]See, e.g., Cal. Civ. Code §4600.5(a) and (b); N.Y. JOINT CUSTODY BILL §3 (amending DRL §240). Additionally, New York courts could only make a sole custody award "if clear and convincing evidence establishes that it is in the best interests of the child that custody be awarded to one parent." (emphasis added) N.Y. JOINT CUSTODY BILL, §3 (proposed DRL §240(2)).

[75]Note 73, supra.

[76]See, RAMEY, supra, at 569-581. Additionally, there is considerable controversy and a wide range of opinions among mental health professionals regarding the effect of joint custody on children. J. Goldstein, A. Freud and A. Solnit, authors of Beyond the Best Interests of the Child, rejected joint custody, asserting that a child can freely relate to more than one adult only if the adults are not in conflict with each other. Beyond the Best Interests of the Child (1973) at 38.

In contrast, Melvin Roman, Ph.D., and William Haddad, authors of The Disposable Parent, advocate a joint custody "preference" as a result of their studies of divorced fathers as well as their own bias. "The authors forthrightly admit in the preface that they are two disgruntled fathers who had originally intended to write a father-advocacy book." Foster and Freed, "Joint Custody: A Viable Alternative", 15 Trial 26 (1979).

[77]For example:

> JUSTIFICATION: ...traditional custody arrangements in cases of marital divorce and separation often results in the non-custodial parent being denied a meaningful parental relationship with the child....[D]espite the fact that neither parent was given a prima facie right to custody of the child, such biases as the 'tender years doctrine' create a situation where in nine out of ten cases courts award custody of the child to its mother..." Memorandum in Support of Bill, N.Y. JOINT CUSTODY BILL, note 72, supra.

This "justification" fails to acknowledge that in those "nine out of ten cases" the mother is "awarded" custody solely because the father is absent or is not seeking custody, as in default decrees.

A further rationale for joint custody is that it will encourage non-supporting fathers to meet their court-ordered obligations, e.g.,:

> The new law [Cal. Civ. Code §§4600(b)(1) and 4600.5] should help avoid two problems... In the past, excluded parents have sometimes resorted to "child stealing" or to abandoning

> child support for lack of frequent and extensive contact with their children...
> James A. Cook, "California Retires A Formula For Injustice in Child Custody Rights", Los Angeles Times, Jan. 6, 1980.

In fact, joint custody will lower, if not eliminate, a father's support obligation since he will become a custodial parent. There is no mechanism to force a father exercise his joint custody responsibilities, just as there has been no means of forcing a non-custodial parent to exercise his visitation "rights" under a sole custody order. It is important to note that Equal Rights for Fathers, note 72, supra, defines joint custody "as a term that assumes continuing meaningful contact that should attempt to equalize time spent with both parents but not make it a prerequisite." March 1980 Newsletter, p. 6. (emphasis added). Thus, mothers will still, under joint custody orders, end up in "nine out of ten cases" with the full responsibilities of custody although only half the "rights" and half (or less) the support.

Finally, and perhaps most telling, is the fact that joint custody "preference" statutes place parental custody rights over the best interests of children. As Foster and Freed point out:

> ...some of the agitation for joint custody really involves status-seeking as legal custody (or co-custodian); or 'one-upmanship', since meaningful association with both parents is common under the traditional sole custody, subject to visitation formula.
> Foster and Freed, 15 Trial 26, 31 (1979).

[78] See generally MARTIN and FIELDS, note 16, supra.

[79] Interviews with Marjory Fields, Managing Attorney, Matrimonial Unit, Brooklyn Legal Services, and Adele Hendrickson, Directing Attorney, Domestic Relations Unit, Legal Aid Society of Alameda County.

[80] Just as women are blamed for fathers' failure to support or establish a meaningful relationship with their children, any woman who opposes joint custody is said to be using her children as a bargaining tool "'to exact money, retribution of vengeance.'" E. Retzlaff, "'Equal Rights for Fathers'Unit Stresses Joint Custody Need", Schenectady Gazette, 2/1/80.

Overlooked is the fact that women are still the primary caretakers of their children, and, as such, might know and have their children's best interests at heart when opposing joint custody. One wonders if the same can be said for fathers who, rationalizing their failure to support, their child-stealing, or their lack of meaningful relationships with their children on their "feelings of frustration" or the other parent, have the best interests of their children at heart. See, e.g., note 77, *supra*.

SHARED CUSTODY BILL

I have underlined possible amendments.

dear Rep. Rodgers,

I recieved the working draft of the shared custody bill today. It is quite good and covers everything just about. There are a few notable things that are missing though that I would like to tackle immediately before discussing the bill section by section.

1. It should be specified that shared custody includes shared legal AND phisical custody. Sec. 4. Sec. 25.20.070 should perhaps include a definition of "shared custody". In the words of the Clif. statuate " providing that phisical custody shall be shared by the parents in such a way so to assure the children of frequent and continuing contact with both parents."

Page 2 Line 29

2. There is no provision that an old sole custody decree may be modified to a shared custody decree. Sec. 4 Sec. 25.20.080 might be amended in subsec (c) so the first sentance reads; "" An award of shared or sole custody may be modified or terminated if the court determines.........."

PAGE 3 LINE 9

3. FACTORS FOR CONSIDERATION BY COURT:(Sec. 4.Sec. 25.20.100) lends itself to serious problems in that it creates a long list of excuses for a judge to deny shared custody or create a shared custody on paper but not in reality. I would delete this whole section since I believe it leaves a wide open field for judicial and parental abuse. I would at the least read the first paragraph like this:
" Sec. 25.20.100. FACTORS FOR CONSIDERATION BY COURT. In an award of shared custody under AS 25.20.060-25.20.150 the court shall consider in implementing a child care agreement "

Page 3 14-29
Page 4 1-11
delete?

Also I think the judge should consider "the recommendations and or findings of a neutral mediator where such is available."

Further discussion of this section will follow in the Section by Section discussion which follows.

COPY

Section 1. LEGISLATIVE INTENT

PAGE 1
LINE 12

EXCELLENT. It also might be added that "it is in the best interests of the child to encourage parents to implement their own child care agreements outside of the court setting."

It is hoped that one of the main effects of this bill would be to diffuse parental wars which are detrimental to their children. This amendment would lend wieght to taking this sort of direction and quite clearly state that the State of Alaska desires parents to solve their own problems....

The term "child care agreement" is a very good one and avoids the negative connotations of custody" Wherever possible this term ought to be **used instead of "custody".**

Section II. JUDGEMENTS FOR CUSTODY

a) Fine

PAGE 1
LINE 26

b) The term "shall be appointed" might be better if it read "may be appointed"

It is not necessary or desitable to have a gaurdian ad litem in all cases and it ends up costing the state money to pay these people.

PAGE 1
LINE 27

This is just an idea but one could add here that " The gaurdian ad litem may be involved in any mediation process." This idea needs further research but it does seem that the childs representative could make a valuable contribution here. I hate to complicate things though.

c) This whole list really lends itself to abuse. Especially as noted belowe.

PAGE 2
LINE 12

1). "the phisical, emotional, mental, religious and social needs of the child." in Alaska this should be amended to read, " the phisical, emotional, mental, religious and social needs of the child. (Values inherent in lifestyles shall not be considered unless clearly detrimental to the child.")

There is in Alaska a very strong bias against native and rural parents when confronted by an urban parent. The Supreme Court has ruled againgst using lifestyle differances in deciding custody but the practise goes on. 1/a rural or native parent who lives in a smaller , less "clean" house loses to an urban parent who lives in an apartment with a hot shower 2/ a parent living in the bush may work only seasonally and is therefore considered "unstable" The court does not consider subsistance pursuits to be employement 3/ a native parent who leaves their children with other extended family members in a bush village or allows their child to play unattended or attended by other children (very comman in the safe environment of a village) is likely to lose to a parent who uses an established day care center in an urban area. 4/ Judges consider, from lack of experiance, many everyday pursuits and ways of filling needs in the bush to be dangerous " to children.

5/Lack of a telephone and a car are considered negative factors by judges who completely forget that the on'y phone available might be the vi'lage center phone and that the use of a car is not really very sensible in roadless areas.

It is possible that a seperate subsection (7) which takes care of these inequities might be the best way to amend this.

2) "the capability" lends itself to the same abuse as above

PAGE 2
LINE 7

3) OK. Except this lends wieght to brainwashing young children, which is one of the most abusive practises towards children which some sick parents use. It should perhaps read, " preferance of the child if he or she is of sufficient age and capacity to form an intelligent preferance." Thus we might remove small children from the horrid brainwashing process.

4) Very important

PAGE 2
LINE 11

5) "the lentgh of time the child has lived in a stable, satisfactory environment and the desiribility of maintaining continuity." This is biased against 1/ the parent who agrees to move out of the family home, 2/ parents who have suffered under previously made sole custody decrees 3/ military personnel and loving parents who move for employment purposes. It could be amended to read: " The lengthOf TIME the child has lived in a stable, satisfactory environment and the desiribility of maintaing continuity and/or the desiribility of maintaining a varied life experiance for the child." This amendment would essentially force the judge to point out why a varied life experiance might be detremental. It might also make parents think twice about returning to court every time there is a change of residanc[illegible] emplo[illegible]ent or marital status

6) very important

Sec. 3 CUSTODY OF THE CHILD[illegible]

This keeps the best interests criteria

Sec. 4 SHARED CUSTODY

Sec. 25.20.070
The real meat of the matter. REMEMBER THE WIEGHT OF EVIDANCE SUPPORTS THIS.

Sec. 25.20.080 AWARD OF CUSTODY
Absolutely essential.

c)see comments on cover page

Sec. 25.20.090 PREFERANCE OF THE CHILD
Fine

Sec. 25.20.100 FACTORS FOR CONSIDERATION BY COURT

PAGE 3 LINE 19-29
PAGE 4 LINE 1-11

In my opinion this almost defeats the purpose of the bill. It will be difficult for a judge to consider all this at all fairly and it lends itself to denying joint custody unless all these factors

a

are perfect. It gives a broad battlefield for warring exspouses to fight on and lots of ammunition. The whole emphasis should be on getting parents to agree on these things not to try and convince a judge that this or that is more stable. that the child needs what one parent has to offer than the other. that staying in a community is more benefical than moving to another community etc etc. The predjudice is for a judge to decide that for one factor or anotherthe child should have shared custody only if all these things are in perfect synch, the bias is going to be towards a paper shared custody with the same old short term visitations. We must leave this field as open as possible for creative solutions to unique situations. A COUNSELOR OR MEDIATOR IS IN A MUCH BETTER TO HELP PARENTS REACH A CHILDCARE AGREEMENT BOTH BEFORE AND AFTER A SHARED CUSTODY AWARD.

In addition there is a strong bias here against one year/one year arrangements or other such long time span arrangements which can be creative solutions to living far apart. We must protect each parent's right to maintain a relationship with his or her child, and the childs right to a relationship with both parents first and foremost. The fact that I travel a lot in the summer for example doesn't make me less stable , less loving or less anything as a parent.

I predict if this subsection is allowed to stand that there will continue to be violent battles in court and lopsided decrees.

(SEE COVER PAGE)

Sec. 25.20.110 PREFERANCESON AWARD
This is a better provision than the California law.

Sec. 25.20.120 AWARD OF CUSTODY TO NON PARENT
No comment

Sec. 25.20.130 PLEADINGS
I don't understand this one. It sounds like this is a way to keep all sorts of garbage off of court papers. When the court awards temporary custody they often do so on the strentgh of unproven, fictional allegations. This sort of thing shouldn't be on any record.

Sec. 25.20.150 MEDIATION
This should be beefed up somehow. Somehow there ought to be even more negative reinforcement of adults acting like spoiled children and not being able to come to terms to the benefit of their children. Every enforcement of the idea of out of court shared phisical and legal child care custody agreements should be used

FORGOTTEN SECTION

TEMPORARY CUSTODY

" Unless it is shown to be detrimental to the welfare of the child, the child may have equal access to both parents/ during litigation."

PAGE 5
LINE 18-22

Something along these lines is sorely needed. Temporary custody almost alaways leads to the temporary custodian being awarded sole custody. During this traumatic time especially a child needs the love, care and phisical presence of both parents. If it is almost automatically assumed that equal time is the norm during litigation

it will right awa defuse the fight, seinforce the idea that both parents are considered equal and greatly encourage an agreement. It will negatvely effect selfishness, power games, and refusal to be agreeable to the detriment of the children. It will at the very outset say in effect: the State of Alaska thinks you both have a responsibilty to care for your kids and consider both of you equals.

JOINT CUSTODY

Charlie,

I have been thinking long and hard on this subject, talked to lots of people and reviewed testimony at last year's hearings on HB 210. What I keep coming back to is that the first consideration in custody is the best interests of the child which has always been foremost in the court's mind, and I think that any blanket statement of what is good for anyone is bad, and cases should be considered on their individual merit. Giving joint custody to everyone could create lots of problems for the parent the child lives with(which will probably remain the same, the child spending most of the time in one home), and what happens in the area of child support? Will this presume that both parents will contribute equally which has not happened in the past. Are considerations of the parents rights more important than what is best for the child? These are all difficult problems, but the way HB 210 is worded makes it seem that the court will have to justify why custody is given to one parent rather than jointly, and this would cast dispersions on the parent not getting custody.

What I have considered as important are:

1. The first preference should be an agreement worked out by the parents, with the court's approval. Since joint custody can obviously work best with people who can maintain a cooperative relationship in the interest of the child, this will leave that option open.
2. Anyone who files for a custody hearing be required to have counseling, if available in the community, to work out the problems and perhaps find some area of agreement. This is done in California and has eliminated over 90% of the court cases for custody.
3. More emphasis in the statute on exposure of the children to both parents unless there are other circumstances that would make this unacceptable.

As you know, Charlie, I have had joint custody with Vanessa for 2 and a half

years and the only good thing I can say about it is that her father has spent time with her for the first time in her life and they have developed some kind of a relationship. Other than that, I think it has been difficult for her, because we parent in two different ways and I question the motives of my ex-spouse. I offered to sign a permanent joint custody agreement rather than go to court. The pain of that event and all the things surrounding the situation were harmful to me, to Bob and though Vanessa did not understand, she is a perceptive child and was affected by the energy of all involved. I am happy that she will remain with me, having her go back and forth between houses is unsettling without a relationship between mom and dad. Some people can remain friends following divorce, but I cannot agree that this is the best interest of the child in presuming that joint custody is the best for all - but this option SHOULD be available. I guess what I'm trying to illustrate is that a child can be used as a hammer for a destructive parent to get at another, that each case is different, that each child's personality is different and therefore each case should be decided on its own merits and circumstances.

Of course, you know that I will write any bill that you want, regardless of my personal feelings.

NOTE: Other questions that I have come across in this situation are:
What will the effect be on child snatching? If both parents have co-custody what prevents parents from stealing their child back and forth, and who suffers from this?
In the case of impoverished people, who claims AFDC, will it depend on who gets to the welfare office first?

1850 Roberts Road
Fairbanks, Alaska 99701
May 21, 1981

Representative Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Ref: House Bill 210, Joint Custody for Children

Dear Representative Rogers:

The enclosed sheets are an analysis of letters and memorandums from the legal arena which are presently on file in your office. Some of these letters are lengthy and present insightful information.

One interesting pattern emerges however. If a marriage has to be dissolved, and if there are children involved the judicial districts that the parties would want to live in, from most beneficial to least beneficial with respect to obtaining a mutually agreeable solution to a difficult problem are as follows:

First, the first judicial district. Three judges (Schulz, Stewart, Taylor) are, at least, not opposed to joint custody for children;

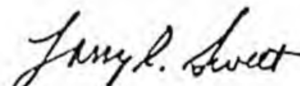
Second, the third judicial district. While all testimony from the legal arena is in opposition to HB 210, Anchorage has had for some dozen years or so a domestic relations system that at least attempts to reach an agreeable solution. Private communication from Mr. Francis Stevens, Custody Investigator in Anchorage, states that this has resulted in 96% settlement of contested cases, i.e. only 4% of contested situations went on into litigation;

Third, the fourth judicial district. While only one judge has gone on record (opposed to HB 210) there does not exist any mechanism in Fairbanks for mediation within the legal system. There are a dozen or so joint custody parents in Fairbanks who can state that their own experiences in attempting to obtain a joint custody resolution from the court system was difficult, trying, or, in some cases, unsuccessful, even though both parents were in agreement.

There is insufficient information, and, perhaps, population density, from the second judicial district to make a statement.

It may be coincidental, but the attitudes, practices, and services regarding joint custody for children follow a direct line from south to north.

Sincerely,



Larry R. Sweet

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION IN FAVOR	POSITION OPPOSE	POSITION NO POSITION	COMMENTS
THOMAS E. SCHULZ	SUPERIOR COURT JUDGE	1	X			REF: MAY 4, 1981 LETTER TO CLOCKSIN, ROGERS, GARDINER
THOMAS B STEWART	SUPERIOR C[illegible]T JUDGE	1	X ?			REF: MAY 4, 1981 LETTER FROM JUDGE SCHULZ, TO CLOCKSIN, ROGERS, GARDINER; PG 3
ROBIN L. TAYLOR	JUDGE	1	X ?			REF: APRIL 7, 1981 LETTER FROM JUDGE JUSTIN RIPLEY TO WILLIAM GRANT CALLOW, II, ESQ, GENERAL COUNSEL TO ADMINISTRATIVE DIRECTOR

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
CHARLES TUNLEY	SUPERIOR COURT JUDGE	2		X		REF: APRIL 28, 1991, LETTER FROM FRANCIS STEVENS TO CLOCKSIN

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
RALPH E. MOODY	PRESIDING JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN. APRIL 9, 1981 LETTER TO WILLIAM CALLOW
VICTOR D. CARLSON	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 TO CLOCKSIN
BUCKELEW	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN
J. JUSTIN RIPLEY	SUPERIOR COURT JUDGE	3		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS STEVENS TO CLOCKSIN; MARCH 19, 1981 LETTER TO JUDGE RALPH E. MOODY
WILLIAM D. HITCHCOCK	MASTER, TRIAL COURTS	3		X		REF: MARCH 9, 1981, LETTER TO GRANT CALLOW, STAFF COUNSEL. MARCH 25, 1981 LETTER TO CLOCKSIN

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION			COMMENTS
			IN FAVOR	OPPOSE	NO POSITION	
JAMES R BLAIR	SUPERIOR COURT JUDGE	4		X		REF: APRIL 28, 1981 LETTER FROM FRANCIS M. STEVENS TO REPRESENTATIVE CLUCKSIN

JOINT CUSTODY FOR CHILDREN

LEGAL ARENA POSITION

NAME	TITLE	JUDICIAL DISTRICT	POSITION: IN FAVOR	POSITION: OPPOSE	POSITION: NO POSITION	COMMENTS
WILSON L. CONDON by LINDA SCOCCIA ASST. ATTORNEY GENERAL	ATTORNEY GENERAL	—		X		REF: MARCH 26, 1981 LETTER TO CLOCKSIN
FRANCIS M. STEVENS	CUSTODY INVESTIGATOR	3		X		REF: APRIL 28, 1981 LETTER TO REPRESENTATIVE CLOCKSIN MARCH 10, 1981 LETTER TO WILLIAM HITCHCOCK, STANDING MASTER

1850 Roberts Road
Fairbanks, Alaska 99701
September 30, 1981

Mr. Mac Gibson
Court Administrator
Fourth Judicial District
State Office Building
Fairbanks, Alaska 99701

Dear Mr. Gibson:

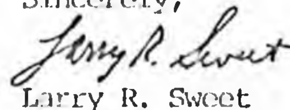
I am impressed to learn that as a result of my visit with you September 7, and your subsequent discussions with your counterpart Mr. Szal and Judge Moody, both of the Third Judicial District, that you have entered into your FY83 budget request the position of Custody Investigator for the Fourth Judicial District. By copy of this letter to local legislators I am registering my support for your actions.

The office of Custody Investigator in Anchorage, which has existed for some years, currently indicates a 96% success rate for mediating contested cases so they reach some form of resolution and go into court uncontested. This is a dramatic statistic in favor of mediation and counseling and the positive approach toward the rights of children. Even if the success rate were only a mediocre 50% at least half the children involved in a difficult situation would stand a better chance at some form of open and loving relationship with both parents after a marriage is terminated.

As we discussed earlier, no such services exist in this Judicial District. Since we talked September 7, I have met with officials of the Alaska Child Support Enforcement Agency, with people in the counseling fields in Fairbanks, and the the Judicial system in Anchorage and it is fairly well acknowledged among them that there is a wide dichotomy of practice on how divorce cases are handled with Fairbanks having the least support services for the number of cases involved. Some even indicate that divorce in Fairbanks is often handled in an "archaic" fashion. This is discriminatory toward the children involved and parents, one or more of whom may be desperately trying to work out an equitable and positive solution.

I appreciate your concern in attempting to seek positive solutions to the problems that some people feel exist in Fairbanks today. I wish you luck in your budget request.

Sincerely,



Larry R. Sweet

cc: Senator Charlie Parr
Representative Brian Rogers
Representative Fred Brown
Representative Sally Smith
Representative Don Bennett

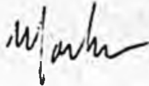
Marko Lewis
Botany Dept.
Field Museum of Natural History
Chicago, Ill. 60605

Hon. Senator Charles Parr

dear Senator Parr:

Here is my latest review, this time concerning the relationship between sole custody and non payment of child support. I haven't yet recieved a reply from your office and hope that my mail is getting through to you. If not, I will send copies of that which I have already sent. I do hope you can decide to sponser a bill similar to Brian Rodger's. It is very definately a logical extension of no fault divorce and I believe a much better way to deal with this problem.

Sincerely,



PS- I received Rocky's letter of February 9th. Frankly my main worry in sending so much material at the same time was that it wouldn't get read. Hopefully this information will eventually find its way into a committee hearing.... if it ever gets to a committee.

SOME REASONS FOR NON PAYMENT OF CHILD SUPPORT

In the United States 4-6,000,000 fathers are under court orders to pay child support. The majority don't pay. In some Counties in the lower 48, there are more men in jail for non-support than any other "crime".

David. L. Chambers completed a three year study of non-support in Michigan which was held under the auspices of the National Science Foundation Law and Soc. Serv. Division, the Univ. of Michigan Law School, Center for Study of Criminal Justice and other foundations and universities. The study was conducted during the years 1972-1975 before shared custody was considered an option. The research was published by the Univ. of Chicago Press 1979 as MAKING FATHERS PAY- THE ENFORCEMENT OF CHILD SUPPORT. by David Chambers. The study is weakened by not considering shared custody as an option altough, as we will see, he suggests this solution in his summary.

The reasons for non payment of support are interesting and lend weight to the arguement that a legal system which encourages equality and shared parenting after divorce will go a long way towards correcting many of the deep seated causes of non payment of support. These causes are summarized by Chambers:

1. cruel treatment given to fathers in divorce court.
2. being deprived of their children and homes and being shoved out into the street without any recourse, and in most cases, without any justification.
3. anger, remorse, depression
4. "she is not taking good care of the children."
5. "she is sleeping with him, let him support her."
6. weak attachments to the children
7. unemployment
8. If the mother, for good or bad reasons, makes visitation difficult or refuses to permit visits at all, the father may well respond by reducing payments to a trickle or cutting them off all togethor. The reneging behavior of one parent will reinforce the reneging behavior of the other.

While shared custody will certainly not increase child support payments by parents who just don't care, the opportunity to share parenting after divorce and to continue a meaningful relationship as an equal, should produce a better supprt situation by parents who have in the past been effectively cut out of their children's lives. Though apparently unaware of shared custody as an option David Chambers is on the right track when he states, " In many cases visitation may help induce continued payments by keeping the child's needs vivid in the father's mind. Policies encouraging visitation may help produce higher collections."

In his summary he states (and the solution is obvious): " .....at some indeterminate point in the period after divorce, many noncustodial parents probably lose a psychological sense that they have a moral obligation to contribute to the support of their children. This loss of feeling does not come from a crass or all-to-convenient disregard of obvious duties but is rather the inevitable product of the altered position of their lives and the lives of their children and their former wives. At some unconscious level they come to feel that child support is a form of taxation without representation. They would say that they "love" their children, but the quality of the feeling would not be the same as it had been before seperation. '

NON CUSTODIAL PARENTS ARE PRACTICALLY FORCED INTO A SITUATION WHERE THEY LOSE THE ATTACHMENT TO THEIR CHILD.

SHARED CUSTODY PARENTS REPORT A GREATER SENSE OF ATTACHMENT.

IT IS THE RESPONSIBILITY OF THE STATE TO ENCOURAGE ,NOT DISCOURAGE FAMILY TIES.

JOINT CUSTODY and BATTERED WOMEN*

Excerpted From

POOR WOMEN AND FAMILY LAW**

(June 1980)

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** This article was written by Joanne Schulman, Staff Attorney with the National Center on Women and Family Law. This article is one section of an article entitled Women and Poverty: Women's Issues in a Legal Services Practice, to be published in Clearinghouse Review, a publication of the National Clearinghouse for Legal Services, 500 North Michigan Avenue, Chicago, Illinois.

JOINT CUSTODY & BATTERED WOMEN

Finally, legislation which is being enacted in other substantive areas needs to be examined from the perspective of the battered woman. For example, United State Senate Bill 105[65] seeks to prevent child-snatching by parents. While the intent of this bill may be laudable, at least one of its provisions would prove dangerous for battered women.[66] Specifically, the bill would allow an abusive parent access to the Parent Locator System, thereby enabling an abusive husband (or father) to track down a fleeing battered woman under the pretext of locating their children.[67]

Legislation regarding joint child custody[68] presents another potential danger to battered women. Joint custody guarantees continued access by the abuser to his victim. It also gives him continued control[69] over the battered woman's life through their children.

Joint custody legislation has been viewed as necessary because courts have traditionally disfavored such arrangements, seeing only disruption and instability to children.[70] Thus, many courts have refused to order joint custody when it is the

arrangement desired and requested by both parents.[71]

Some legislators, prompted by fathers' rights groups[72] among others, are now swinging to the other extreme by seeking to make joint custody a statutory preference, which would apply even when one parent opposes the arrangement.[73] Courts, under this type of legislation, would be mandated to state their reasons in writing when they do <u>not</u> order joint custody.[74] Additionally this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of the children,"[75] in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.[76] The intent behind joint custody "preference" legislation is directed at increasing fathers' custody rights.[77]

Many battered women will now find themselves facing a joint custody order under this "preference" legislation. In order to avoid an order of joint custody, the battered woman will have to testify to the abuse of which she has been a victim, which for many women is very difficult (as it is for rape victims). Further, as with a rape victim, courts traditionally do not believe the battered woman ("she's hysterical"), refuse to take battering seriously ("a few slaps never hurt anyone"), fail to consider psychological abuse and terrorization as battering, and, finally, believe that divorce will end the battering.[78] Nor do courts view wife-beating as detrimental to children. Custody attorneys are all too familiar with the "but did he ever hit

the children?" judicial response to wife-beating.[79]

Joint custody should be a choice open to parents when that is what they desire and believe to be in their children's best interests. However, making joint custody a statutory preference serves only to further harass and victimize battered women -- and indeed all women who do not feel that such an arrangement is in their children's interests.[80]

Overlooked is the fact that women are still the primary caretakers of their children, and, as such, might know and have their children's best interests at heart when opposing joint custody. One wonders if the same can be said for fathers who, rationalizing their failure to support, their child-stealing, or their lack of meaningful relationships with their children on their "feelings of frustration" or the other parent, have the best interests of their children at heart. See, e.g., note 77, _supra_.

[68]Definitions of joint custody vary. Most definitions include some form of shared physical custody (e.g., 6 months - 6 months; 9 months - 3 months; 3 days - 4 days per week). However, all definitions include joint parental "control of its [child's] care, upbringing, and education, and equal voice in decisions pertaining to its [child's] health, religious training, vacationing, schooling, and the like" regardless of the amount of time the child spends with each parent. Fain, Custody of Children, 1 California Family Lawyer 539, 564 (1962); see, M. Ramey, F. Stender, D. Smaller, Joint Custody: Are Two Homes Better Than One?, Women's Law Forum, 8 Gol. Gate Univ. L.R. 559, 559-561 (1971) [hereinafter RAMEY].

[69]Joint Custody msut be distinguished from visitation rights. The parent with visitation rights generally does not have the right to make decisions affecting the child.

[70]Id. at 559, 561-567.

[71]Id.

[72]Foster, H. and Freed, D., "Joint Custody: A Viable Alternative," 15 Trial Magazine 26, 31 (May, 1979); Foster, H. and Freed, D., "Joint Custody: Legislative Reform," 16 Trial Magazine, 22, 23 (June 1980).

New York's pending joint custody bill, S-7964/A-9369 [hereinafter N.Y. JOINT CUSTODY BILL], introduced on February 27, 1980, by New York's Senator H. Douglas Barclay and Assemblymember Howard L. Lasher, was proposed (and is strongly being lobbied for) by Equal Rights for Fathers of New York State, Inc.; see their April, 1980 Newsletter, p.7. Among the reasons given by this group for a change from "'the historical experiment of sole maternal custody that isn't working'" are:

> ...Evidence of disturbance in cognitive performance. 'Paternal availability seems especially important in I.Q. performance of boys of all ages'...Sex-role identification problems. 'The preponderance of data to date indicates boys in single parent (mother-headed) families are especially vulnerable to problems of sex role identity and pre-school boys and boys in early school years from mother-headed families have been described as more dependent and less masculine.'... Problems of social and emotional development with girls. 'Over-all the findings suggest that father-absent girls have not had the opportunity to acquire the social skills necessary for appropriate heterosexual interactions...' and 'findings of delinquent girls also suggest that paternal absence has its greatest impact on disruption of heterosexual behavior....' April, 1980 Newsletter, Equal Rights for Fathers of New York State, pp. 8-9.

73. As of June 1, 1980 five states have enacted joint custody provisions: Connecticut, Public Act 80-29, (effective October 1, 1980); Iowa, I.C.A. §598.21 (Supp. 1978); Oregon Rev. Stat. Ch. 107 §105 (Supp. 1977)*; Wisc. Stat. Ann. §247.24 (West Supp. 1978); California Civ. Code §§46000, 4500.5 (West Supp. 1980). Only California's statute includes a joint custody "preference" or "presumption". Since November, 1979, joint custody legislation has been introduced in the following states: Hawaii - SB 2419, passed; Kansas - SB 295 (Parrish), HB 2790 (Brewster); Kentucky - HB 356 (DeFalaise); Illinois - HB 3405 (Younge); Maryland - HB 352 (Shapiro), Massachusetts - HB 2531 (DeNucci), HB 1877 (Vigneau), HB 4201 (McNeil), SB 1962 (Lisitsky); Michigan - HB 5218 (Brown), SB 1975 (Zeigler); New Jersey - AB 1471, AB 407; New York - S7964 (Barclay), A9369 (Lasher); Ohio - HB 5066; Oregon - HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody; Pennsylvania - HB 10776 (Boyle), HB 2394 (McKelvey), SB 1411 (Fumo), SB 1282 (Gekas). Bills introduced in Illinois, Michigan, New Jersey, New York, Oregon and Pennsylvania include a joint custody "presumption or "preference".

[74] See, e.g., Cal. Civ. Code §4600.5(a) and (b); N.Y. JOINT CUSTODY BILL §3 (amending DRL §240). Additionally, New York courts could only make a sole custody award "if clear and convincing evidence establishes that it is in the best interests of the child that custody be awarded to one parent." (emphasis added) N.Y. JOINT CUSTODY BILL, §3 (proposed DRL §240(2)).

[75] Note 73, supra.

[76] See, RAMEY, supra, at 569-581. Additionally, there is considerable controversy and a wide range of opinions among mental health professionals regarding the effect of joint custody on children. J. Goldstein, A. Freud and A. Solnit, authors of Beyond the Best Interests of the Child, rejected joint custody, asserting that a child can freely relate to more than one adult only if the adults are not in conflict with each other. Beyond the Best Interests of the Child (1973) at 38.

In contrast, Melvin Roman, Ph.D., and William Haddad, authors of The Disposable Parent, advocate a joint custody "preference" as a result of their studies of divorced fathers as well as their own bias. "The authors forthrightly admit in the preface that they are two disgruntled fathers who had originally intended to write a father-advocacy book." Foster and Freed, "Joint Custody: A Viable Alternative", 15 Trial 26 (1979).

[77] For example:

> JUSTIFICATION: ...traditional custody arrangements in cases of marital divorce and separation often results in the non-custodial parent being denied a meaningful parental relationship with the child....[D]espite the fact that neither parent was given a prima facie right to custody of the child, such biases as the 'tender years doctrine' create a situation where in nine out of ten cases courts award custody of the child to its mother..." Memorandum in Support of Bill, N.Y. JOINT CUSTODY BILL, note 72, supra.

This "justification" fails to acknowledge that in those "nine out of ten cases" the mother is "awarded" custody solely because the father is absent or is not seeking custody, as in default decrees.

A further rationale for joint custody is that it will encourage non-supporting fathers to meet their court-ordered obligations, e.g.,:

> The new law [Cal. Civ. Code §§4600(b)(1) and 4600.5] should help avoid two problems... In the past, excluded parents have sometimes resorted to "child stealing" or to abandoning

> child support for lack of frequent and extensive contact with their children...
> James A. Cook, "California Retires A Formula For Injustice in Child Custody Rights", Los Angeles Times, Jan. 6, 1980.

In fact, joint custody will lower, if not eliminate, a father's support obligation since he will become a custodial parent. There is no mechanism to force a father exercise his joint custody responsibilities, just as there has been no means of forcing a non-custodial parent to exercise his visitation "rights" under a sole custody order. It is important to note that Equal Rights for Fathers, note 72, *supra*, defines joint custody "as a term that assumes continuing meaningful contact that should attempt to equalize time spent with both parents but not make it a prerequisite." March 1980 Newsletter, p. 6. (emphasis added). Thus, mothers will still, under joint custody orders, end up in "nine out of ten cases" with the full responsibilities of custody although only half the "rights" and half (or less) the support.

Finally, and perhaps most telling, is the fact that joint custody "preference" statutes place parental custody rights over the best interests of children. As Foster and Freed point out:

> ...some of the agitation for joint custody really involves status-seeking as legal custody (or co-custodian); or 'one-upmanship', since meaningful association with both parents is common under the traditional sole custody, subject to visitation formula.
> Foster and Freed, 15 Trial 26, 31 (1979).

[78] See generally MARTIN and FIELDS, note 16, *supra*.

[79] Interviews with Marjory Fields, Managing Attorney, Matrimonial Unit, Brooklyn Legal Services, and Adele Hendrickson, Directing Attorney, Domestic Relations Unit, Legal Aid Society of Alameda County.

[80] Just as women are blamed for fathers' failure to support or establish a meaningful relationship with their children, any woman who opposes joint custody is said to be using her children as a bargaining tool "'to exact money, retribution of vengeance.'" E. Retzlaff, "'Equal Rights for Fathers'Unit Stresses Joint Custody Need", Schenectady Gazette, 2/1/80.

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A SUMMARY OF JOINT CUSTODY STATUTES AND PENDING LEGISLATION

As of July 1980, eleven (11) states have joint child custody provisions:

California	Civ. Code §§4600, 4600.5 (effective 1/1/80) [includes joint custody "presumption"]
Connecticut	Gen. Stats. §46b-56(a) (Public Act No. 80-29, effective 10/1/80)
Hawaii	Rev. Stat. §§571.46, 571-46.1 (effective 4/25/80)
Iowa	Codes Ann. §598.21 (joint custody provisions added in 1977)
Kansas	Stat. Ann. §60-1610(b) (Supp. 1979)
Kentucky	Rev. Stat. §403.270(3) (effective 7/15/80)
Nevada	Rev. Stat. §125.140 (1979)
North Carolina	Gen. Stat. §50-13.2(b)
Oregon	Rev. Stat. §[illegible]7.105 (1977)
Texas	V.T.C.A., Family Code §14.06(a) (effective 8/27/79) [parties may enter into written agreement providing for joint custody]
Wisconsin	Stat. Ann. §247.24(1)(b) (effective 5/10/78)

Since November, 1979, joint custody legislation has been introduced in the following states:

Florida	HB 1440 (Gordon, Dunbar); failed
Kansas	SB 295 (Parrish) HB 2790 (Brewster)

State	Bill	Notes
*Illinois	HB 3405 (Younge)	
Louisiana	HB 1691 (Byrnes), bill deferred	
Massachusetts	HB 2631 (DeNucci) HB 1877 (Vigneau) HB 4201 (McNeil) SB 1962 (Sisitsky)	(All Failed)
*Michigan	HB 5218 (Brown *SB 1976 (Zeigler)	
*New Jersey	*AB 1471 *AB 407	
*New York	*S7964 (Barclay) *A9369 (Lasher)	(Companion bills; passed Assembly; died in Senate)
Ohio	HB 1076	
*Oregon	*HB 2538 (Richards) to amend O.R.S. §107.137 to create a presumption of joint custody (tabled in committee)	
*Pennsylvania	HB 2394 (McKelvey) *SB 1411 (Fumo) *SB 1282 (Gekas)	
*S. Carolina	*HB 3248 (died in House Judiciary Committee)	

*Bills include a joint custody "presumption" or "preference" provision.

SECOND THOUGHTS ON JOINT CHILD CUSTODY

There is currently a disturbing and growing national trend toward awarding custody of children to both parents jointly, i.e. giving both parents the right to share equally in the decision making process regarding the child. (See Joint Custody chart available from NCOWFL.) While intended to equalize the responsibility of childrearing between the parents, joint custody, when parents are not able to agree or do not communicate well, only serves to interfere with the ability of the primary caretaker to make the decisions needed to carry out responsibilities to the child.[1]

Almost all experts concur that joint custody is only "appropriate" where both parents are basically in agreement and able to participate in joint decision-making. Such cases are in the minority, and those parents will have an informal joint custody arrangement regardless of court order. Thus the current new legislation would largely affect those parents who are not in agreement--the very cases which the experts agree are not suitable for joint custody and where, in fact, it would be detrimental to the child's best interests.

Legislators are seeking to make joint custody a statutory preference/presumption which would apply even when one parent opposes the arrangement. Courts, under this type of legislation, would be mandated to state their reasons in writing when they do not order joint custody. Additionally, this type of legislation typically includes a declaration that joint custody is presumptively "in the best interests of children," in spite of the fact that there have been very few studies of joint custody arrangements, and almost all of these studies involved cases where both parents desired the arrangement.

Joint custody presumption/preference legislation is, instead, a refusal to place any value on or give any credit to the past assumption of the daily care and responsibility for the children. Thus, a joint custody presumption in effect gives the non-caretaking parent equal power when he or she has not contributed equally to the day-to-day care and support of the children, either pre-divorce or post-divorce.

(Con't. on p. 4)

NEEDED: 5 NEW BOARD MEMBERS

NCOWFL is seeking 5 new members to serve on its Board of Directors, each for a 3 year term. NCOWFL is funded by the Legal Services Corporation to provide support on women's issues in family law. The Board of Directors sets policy for NCOWFL. Three of these vacancies must be filled by attorneys and two by clients. The term of these new board members will begin on October 1, 1981. The 13-member Board is of widely diverse experience and backgrounds and it is important to us to maintain this diversity in our selection of new members.

Those interested in serving should send a letter describing their background and interest, together with the names and addresses of two references to:

Jane Shaw-Jackson, Chair
National Center on Women
and Family Law, Inc.
799 Broadway, Room 402
New York, New York 10003

These letters of interest must be received by April 15, 1980.

SECOND THOUGHTS ON JOINT CUSTODY

(Con't. from p. 3)

The following is a digest of an in-depth article on this subject by Valerie Pitt, a law student at NCOWFL, which will be available for distribution in March, 1981.

JOINT CUSTODY AND WELFARE:

There are many unresolved issues when joint custody is ordered and one of the parents is receiving AFDC. For example: Which parent is entitled to the grant? Will it be split? Can both receive a grant? Will eligibility depend on which parent arrives first at the welfare office?

JOINT CUSTODY AND CHILD SUPPORT:

Joint custody may become a means of alleviating a non-custodial parent's support obligation. If, as some legislation has provided, support responsibility is to be shared equally between parents, courts could refuse to make any support order when joint custody is awarded on the grounds that both parents are equally responsible in the child's support. Consequently, women will be seriously disadvantaged by having to maintain a full time home/household while at the same time working at an outside job. Further inequity arises from the fact that while being expected to contribute equally to the support of the child, women do not command wages equal to men's on the job market.

JOINT CUSTODY AND UCCJA/CHILD-SNATCHING:

Joint custody may undermine the UCCJA (Uniform Child Custody Jurisdiction Act) since both parents would have the legal right to determine the residence of the children, absent a non-removal provision in the court order.

JOINT CUSTODY PROVIDES NON-CARETAKING PARENTS WITH AN UNFAIR BARGAINING TOOL:

Almost all joint custody legislation includes a provision that, if the court decides not to award joint custody, priority for sole custody shall be given to the parent who is most willing to provide continuing access to the other parent. Thus, a woman opposing joint custody will either agree to joint custody by settlement agreement (feeling that this is the best she could get in court), or will "bargain away" her alimony, child support and/or property rights in order to obtain sole custody.

JOINT CUSTODY AND BATTERED WOMEN:

In cases involving wife battering, joint custody guarantees continued access by the batterer to his victim, and gives him continued control over the battered woman's life through their children. In order to avoid such an order, the battered woman will have to testify to the abuse of which she has been a victim, which for many is very difficult. Furthermore courts rarely consider wife-beating an indication of poor parenting ability, especially when the father has never physically abused the child. In cases where wife beating is raised as an argument against joint custody, courts traditionally do not believe the accusations of the battered woman, refuse to take her plight seriously, and fail to consider psychological abuse and terrorization as battering.

CONCLUSION

While joint custody should be an option in appropriate cases where parents are in agreement and

(Con't. on p. 6)

We wish to call our readers' attention to a valuable new handbook on emergency and long-term housing for battered women prepared by the National Coalition Against Domestic Violence with the cooperation of HUD.

The book is a practical and detailed How-To manual which will equip persons working in this field to understand the workings of the Community Development Block Grant Program and how to use it to get dollars for shelters and service programs.

The title of the book is THE NCADV Handbook on Emergency and Long Term Housing and can be secured free from HUD, Housing Office of Public Policy Development and Research, 451 7th Street, S.W., Room 4212, Washington, D.C. 20410.

SECOND THOUGHTS ON JOINT CUSTODY
(Con't. from p. 4)

desire this arrangement, legislation is not necessary for these cases. Rather, the current joint custody trend serves only to reduce the custody rights of those women who have been and are the primary caretakers of their children and who do not feel that joint custody is in their children's best interests.

FOOTNOTE:

1. Joint custody gives both parents equal legal rights with regard to decision making and control of their children, regardless of where or with whom the children reside. While joint custody should imply equal responsibility for the day-to-day care of children, this is not required under most joint custody orders and all joint custody legislation. Thus, joint custody orders are, in effect, the same as traditional sole custody/visitation orders.

-ental kidnappings and interstate or international flight to avoid prosecution or giving testimony under state felony statutes. Section 1073 has been consistently interpreted by the Justice Department not to apply to domestic disputes, even when state felony statutes were involved. Adding parental kidnapping to the statute means that the Federal Bureau of Investigation can now be called into these cases pursuant to the provisions of 18 U.S.C. 3052.

For a discussion of the Parental Kidnapping Act see NCOWFL's March 1981 Clearinghouse Review column.

SHELTER BILL DIES

S. 1843, the bill to provide federal funding for shelters, died in the recent Congressional lame-duck session when opponents pledged to filibuster the Conference Report. Senator Alan Cranston (D-CA), the bill's sponsor, withdrew the legislation from the floor when it became clear that the Conference Report could not be approved. Thus any further domestic violence legislation will have to be brought anew in another session of Congress.

Resource packet on Joint Custody Legislation:

A Summary of Joint Custody Statutes and pending Legislation.

"Joint Custody and Battered Women" by Joanne Schulman.

Testimony by battered women's advocates before the New Jersey Committee on Judiciary Law, July 24, 1980, regarding pending legislation (AB 1471).

SENATOR PARR

RE: HOUSE BILL 210 — JOINT CUSTODY FOR CHILDREN

I DID NOT GET A CHANCE TO TALK TO REP CLOCKSIN BUT DID TALK TO HOLLI PLOOF. SHE SAID THEY WANTED TO STUDY THE BILL OVER THE SUMMER BEFORE ATTACHING A FISCAL NOTE.

IT WOULD BE NICE IF SOMETHING COULD BE PASSED THIS YEAR SO THAT IT WOULD ESTABLISH LEGISLATIVE INTENT.

LARRY SWEET

I WILL BE IN JUNEAU UNTIL NOON TOMORROW AND CAN BE CONTACTED AT BRIAN ROGERS OFFICE

And investigator [illegible]
only 4% not
settles out of
court

Marko Lewis
c/o Botany Dept.
Field Museum of Nat. History
Chicago, Ill. 60605

dear Senator Parr,

I hope you have a copy of the working draft to Brian Rodger's shared custody bill. I have enclosed a copy of the comments and suggested amendments which I sent him yesterday. Except for Sec. 25.20.100 its very good. The whole idea can be summed up as encouraging parents to agree in out of court negotiations where they meet on equal terms, to sharing the care of their children after divorce. If our ideal is parents sharing and reaching agreements on caring for their kids after divorce then Rep. Rodger's Bill should be a major positive step towards changing attitudes and diffusing the custody war.

Sincerely,

Marky

PS - Also enclosed a copy of INITIATING JOINT CUSTODY - the first page is a good descrip. of how an Alaskan law should operate - the other pages at a glance you can see how parents can work out agreements

PPS - Still stuck in Chicago doing research. I should be back up north in April. 6" of snow here and the whole city closes down - what a life, heh?

QUOTATIONS F OM PROFESSIONAL ARTICLES SUPPORTING JOINT CUSTODY

* Richard A, Gardner of the Columbia Univ. Colege of Physicians and Surgeons wrote in the Journel of the American Academy of Psychoanaylasis April 1978:

"Divorce proceedings and child custody cases should no longer follow an an adversary model, but one of arbitration and mediation. Joint custody provides a reasonable approximation to the natural marital situation. "

* Alice Arbanel who studied Shared Parenting after seperation and divorce and published her findings in the American Journel of Orthopsychiatry 1979:

"Our other major finding about how important it is for a child to keep a relationship with both original parents points to the need for a concept of greater shared parental responsibility after divorce. In this condition each parent continues to be responsible for, and genuinely concerned about the well being of his or her children and allows the other parent the option as well. "

* Mel Roman of the Albert Einstein Colege of Medicine has studied 40 families who are presently practising joint custody and concludes in " The Case for Joimt Custody " ·

" While none of the families has found Joint Custody to be trouble free and most are involved in continuosly questioning its effects , there is no doubt that joint custody is working for them all. In most incidences the hildren are thriving, not merely adjusting and the parents themselves are working out new and they believe. productive lifestyles."

* Judith Brown Greif , Div. of Child-Adolescent Psychiatry, Albert Einstein College of Medicine studied 40 middle class divorced fathers. She concludes in the American Journel of Orthopsychiatry 1979·

"Another belief about joint custody is that children end up being pawns in parental battles, and that this produces a situation of divided loyalties. Quite the contrary, children often seem used" in sole custody arrangements because of the inherently unequal distribution of power between parents. In joint custody arrangements, however, parental power and decision making are equally divided, so there is less need to use children to barter for more."

" We tend to approach families of divorce as though they truly consist of only "one parent" - as though the non custodial parent has ceased to exsist. Yet research is abundantly clear that, with few exceptions, the trauma of divorce can be minimised by the child's continuos open and easy access to both parents. We therefore have a responsibility to do what we can to support the involvement of the non custodial parent, both for the sake of that parent and for the benefits that accrue to the child......Rather than support the imposition of legal visitation restrictions, we should do everything in our poer to maximize contact between the child and both parents. One clear way of doing that is through joint custody arrangements. "

From Mom's House - Dad's House

*An article in the April 2, 1979 edition of BUSINESS WEEK States·

" The professionals agree and point to these trends in therapy--
Joint custody is in line with the trend in courts to award custody to the best prepared parent. It involves continued co parenting and extremely relaxed visitation rules and demands a strong committment in time and energy by both parents. The known results, thus far, are sucessful. "

*Dr. Lee Salk who we all know states ·

"Parents do not divorce their children, they divorce each other. "

*Judith Wallerstein and Joan Kelly who studied 60 families in the "Ch ldren of Divorce Project" and published their findings in Psychology Today January 1980 states :

" Many people object that parents who cannot agree during marriage ' certainly cannot be expected to reach agreement on child related matters after divorce. Indeed , some infuriated or disturbed parents will never chart a rational course with regard to their children. Yet it seems clear that our society must encourage fathers and mothers to aceept the importance of continuity in parent- child relationships after divorce."

*In a litigation known as People ex. rel Watt v. Watt, 77 Misc. 2d 178 (1976); Annot. 70 ALR 3rd 269 which was quoted in a recent Alaskan custody litigation, (4FA-80-506) it is stated:

"Hence, joint custody, under proper circumstances, may be the closest remedy to the shattered ideal and offers viable options in normally dichotimized custody dispositions. Morever, parents relegated to seeeing their children only intermitefently experiance feelings of deep loss and often react by limiting involvement with their children. Decidedly, conventional single parent custody arrangements not only debilitate sustained involvemant with both parents but tend to create de facto ex-parents and emotionally deprived chi'dren. " (quote from the Gaurdian ad litem report)

*Beatrice Thompson Ph. D. studied 105 3rd-5th grade children in western South Carolina, divided into two equal groups- father absent and father present to see if there was any differance in arithmatic achievement. A summary in Dissertations Abstract International June 1979 sums up:

" From the results of the survey it is concluded that father absense negatively affected the arithmatic achievment of elementry school children."

* Judith Wallerstein and Joan Kelley, mentioned before, also studied "The effects of Parental Divorce: Experiances of the Child in Early Latency " which was published in the American Journel of Orthopsychiatry January 1976. They find that:

"It was little comfort to these children that they saw their father on occassional visits. The typical visiting pattern of two weekends a month, established by custom and the court, was clearly not sufficient to fulfill the expectations of the seven and eight year-old boys. Such a pattern was experienced by most as depriving and as inadequete to nourish and make gratifying the relationships."

* Dr. Diane Trombetta and Betsy Lebbos Ll. D. in an artcle for the Los Angeles Daily Journel Report state:

" Exclusive custody either intensifies the conflict and ill will so comman between divorced or divorcing parents. or leads to one parent effectively "dropping out."

" Dropping out may help clear the court calendar but it also clears one parent out of a child s life. Rather than forcing or encouraging one parent to give up responsibility and care of the child, current research indicates that if our primary concern truly is the best interests of children, we should be doing quite the opposite. "

The above represent conclusions from only a very few studies and articles supporting joint custody which have appeared in the past five years. A bibliography of 130 recent professional articles and books supporting joint custody will be made available upon your request. As Mom's House-Dad s House is able to dig out more referances they will be made available to you.

THE EVIDANCE IS CLEAR ! WE MUST REMOVE CHILD CUSTODY FROM A WIN/LOSE ALL/ NOTHING PRESUMPTION TO A PRESUMPTION OF CONSENSUS, EQUALITY AND THE PROTECTION OF PARENT-CHILD BONDS.

EFFECTS OF WIN/LOSE CUSTODY ON CHILDREN AND PARENTS

The Alaska State Legislature is to be applauded for considering legislation introduced by Representative Brian Rodgers of Fairbanks encouraging divorcing parents to make Joint Custody agreements. In joint custody both parents retain and share the responsibility and authority for care and controlof their children after divorce. The sharing of that responsibility can traverse a whole spectrum from casual cooperation to specifically delineated times and functions. The sharing of the child or children's time can be scrupuosly equal, or it may take an approach based on the time each parent has to assume custodianship. It is most important that the law encourage divorcing parents to form their own agreements on the basis of both parents maintaining a frequent and meaningful relationship with their children. Each joint custody agreement can be tailor made and each set of parents should be able to draw up a plan most practical and suitable to their situation.

The effect of sole custody on children has been studied extensively over the past ten years. Child psychologists have found long lasting negative affects on children stemming from divorce and the negation of the role of one parent by sole custody decrees. The effects include: deep seated feelings of loss and abandonment; loyalty conflicts; sorrow and depression; strained interaction with BOTH parents; promiscuity in girls; confusion of sex identification in boys; and disturbances in children's play, social relations and cognitiveperformance in school. On the other hand, a long term in depth study of 60 divorced families by Judith Wallerstein and Joan Kelley which appeared in the January 1980 edition of PSYCHOLOGY TODAY found that: " Thirty four per cent of the children and adolescents appeared to be doing especially well at the five year (after divorce) mark. Their self-esteem was high and they were coping competently with the tasks of school, playground and home........Characteristic of these children was their sense of sufficiency: the divorce had not depleted their lives by removing a loving parent, or by pairing them with an angry, disturbed one." The same study found that the children who had only erratic or no contact at all with the absent parent continued to have serious problems after five years.

From Mom's House - Dad's House

The "S·nday father" is a sad sight to see trying to hold on to the threads of love. "Visitation" is discouraging and demeaning to a parent who enjoys and wants the role of being a full parent. It is a brief and superficial encounter either resented or looked upon as a burden by a growing child. Visitation is used as bribery by the custodial parent or as a lever to hurt the excluded parent. A great many visitation fathers feel so emotionally drained by having to deal with hostile custodial parents that they eventually stop visiting their children . The loser is thrown into the trash heap, effectively excluded from any meaningful relationship with his or her children while the winner gets the joy of raising the children, child support payments and the use of the children to hurt their absent parent. No wonder court battles are viscious and ugly.The carefree divorced father is a myth. Judith Brown Greif, a child psychiatrist at Albert Einstein College of Medicine studied fathers and children after divorce. Her findings par allel those of Kelley and Wallersteir. In addition she found that most fathers suffered feelings of loss and serious depressionafter separation from their children. The symptoms were often physical: wieght loss, eye and dental problems, arth ritis, difficulties in breathing, eating, sleeping, working and socializing were all frequently reported. "The parent, usually the father, who is sep rated from his children often feels rootless, alone and chronically depressed. Many deal with the pain by distancing themselves from their children and abondoning child support payments. " Ms. Greif concludes, " Denied contact with their children, being forced into the situatic of getting permission from the custodial parent for extra time, often being denied access to their child's teacher who won't discuss school performance with non custodial parents, these fathers see themselves less and less as parents and eventually act in accordance with the role that has been assigned to them; the absent parent." While a few parents abandon their children because they are disinterested, the great majority wish to maintain contact. A law encouraging joint custody would go a long way towards keeping both parents involved. Aside from the burdens on the individual family members sole custody extracts a burden from society which must support abandoned children with welfare payments.

In the meantime, the custodial mother is kept in her place, often over burdened, unstable eco-omically or on welfare, often feeling tied down, physically unattractive and unable to cope. Sole custody historically proceeds from the now invalid social concept that a woman's only worth is as a child

rearor and domestic drudge and a man's only worth is as a breadwinner. Even (Moral Majority take note), if one believes a woman's place is raising children (alone after divorce?) we must remember that the Bible repeatedly commands children to respect and obey their mother AND their father. Moses brought this commandment down carved in stone. How can a child, who isn't allowed by decree of civil law to respect one of his or her earthly parents, truly learn to respect Our Father in Heaven? Sole custody laws enforce disobediance and disrepect .

An increasing frustration and outrage amongst non-custodial parents has reached an epidemic proportion. The most visible and horrifying result of this frustration is seen in the great increase of parents who resort to child snatching. An estimated 150,000 parents will feel forced to kidnap their own children in 1981. Faced with the possibility of being essentially excluded from their children's lives, having relationships confined to unnatural, minimal visitation schedules, frustrated by not having even these minimal orders complied with by a vindicitive custodial parent, and hurt by having primary love bonds torn away by artific ial and unwanted court decrees, it is not surprising that many parents fearful of losing in court run away with their children. Child snatching adds up to a tremendous amount of trauma for the snatching parent who must change his or her identity and live in continuos fear like a criminal, for the parent who is unable to find his or her child, and for the child whose life is often ruined by fear, the alaways present possibility of being snatched back and forth, and the denial of access to a loved parent. The children are a helpless pawn i a game for the most part caused by the legal insistance on viscous court battles followed by sole custody decrees. If both parents are assured of maintaining an important role in the upbringing of their children through legal encouragement of joint custody, there will be little reason for child snatching

The legislature does well to consider solutions to the multitude of problems inherent in the present sole custody legal code. A law encouraging divorcing parents to meet on an equal footing and work out a practical and suitable arrangement for their children is much needed. It is needed to discourage a vindictive , disagreeable parent from thinking they can speed into court and assuredly achieve sole custody as a means of harassment or destruction of the other, excluded parent without regards to the children's welfare. It needs to recognize that joint custody is the preferred solution after divorce and that to assure children of frequent, meaningful and continuing contact with both parent is in their best interests.

Reactions by children to sole parent custody

1. Feelings of loss and abandonment.

2. Attachment and separation anxiety.

3. Loyalty conflicts, particularly among latency-age children (from 5 to puberty).

4. Strained interactions with custodial and non-custodial parents.

5. Disturbance in children's play and social relations.

6. Disturbance in cognitive performance and changes in IQ.

7. COnfusion in sex role identification. (especially sons with sole custodial mothers).

Problems for the individual parent in sole custody situations

1. Loss of familiar activities and habit systems.

2. Loss and separation anxiety.

3. Role loss, particularly among non-custodial parents.

4. Decline in ability to parent.

5. Physical symptoms related to separation and loss of parental role.

6. Practical problems, such as economic instability.

7. Lowered self-concept.
   Fathers: Greater initial changes, rootlessness.
   Mothers: Feeling physically unattractive.

8. Declining feelings of competence.

9. Loneliness.

10. Non custodial parents are frequently so frustrated by vindictive, uncooperative custodial parent that they frequently abandon visitation + child support. This is a widespread reaction especially in Alaska.

11. Child snatching is another unfortunate and increasingly common reaction to sole custody.

Creating a joint custody legislative statute?

"Joint Custody - Sole Custody" paper and -

Uniformity among the states is advantageous, given the mobility of America's population and convenience of implementation under the Uniform Child Custody Jurisdiction Act. Otherwise, peevish and vindictive parents may move to states with the least comprehensive joint custody statute.

From:
James A. Cook
10606 Wilkins Ave.
Los Angeles, Calif.
90024

November 13, 1980

Be sure it contains these eleven elements:

1. Establish joint custody as in the 'best interests' of the child(ren).

   (The overwhelmingly negative evidence of damage for children and parents that arises from sole parent custody continues to make joint custody a much more preferred solution.
   - Do not be diverted into the relatively minor inconveniences of joint custody without firmly establishing the much more significant psychological, emotional and social problems of the alternative of sole parent custody.)

2. Establish as a policy of the state that joint custody is a mechanism to assure children of frequent and continuing care and contact with both parents.

   (The establishment of a state-endorsed policy facilitates the follow-on development of counseling, conciliation, legal and welfare services that aid parents and children in achieving and maintaining joint custody

3. Establish joint custody as first in the order of preference among a descending order of alternatives in the decree of custody for children of divorce.

   (First preference joint custody dissolves the expectation by a vindictive or peevish parent that they can speed into court and assuredly achieve sole parent custody as a means of harassment or destruction of the other, excluded, parent without regard to the children's welfare.)

4. Establish joint custody as a presumtpion when both parents agree in advance, or during court appearance.

   (A presumption during the emotional pinnacle of court appearance enables a judge to encourage both parents to acquiesce to the humane option of joint custody, now that the parents have completed the cathartic of humiliation and confrontation in court.)

5. Assure joint custody as a preferential consideration of the court when one parent requests joint custody, placing the burden of proof upon that parent who opposes joint custody.

   (A joint custody preference, in response to one parent's request, removes the burden upon a cooperative parent to attack and disparage the alternate parent which thereby diminishes the possibilities for joint custody. The burden of proof upon the opponent protects the interests of a well-meaning and cooperative parent and child desirous of joint custody.)

6. When the court's recourse is to sole parent custody, require the court's preferential consideration of the parent most likely to cooperatively allow the child(ren)'s frequent and continuing contact with the noncustodial parent.

   (Unless this condition is specifically stated, there is little or no encouragement for a parent to demonstrate and take the initiative in the socially-desirable goal of cooperation.)

7. Assure that previous custody decrees may be modified to a decree of joint custody.

   (This requirement assures that grievously unfair and punitive former decrees may be altered to the advantage of children heretofore deprived of equitable access to both parents.)

8. If the court declines to award joint custody (in cases where (1) both parent have agreed to joint custody, and/or (2) an individual parent has requested joint custody) require that the court state its reasons for declining joint custody.

   (Less expensive and more specific access to appellate court review of questionable trial court decrees is enhanced if the review can be tailored specifically to the adequacy of the stated reasons for denial.)

9. Enable a court to modify a joint custody decree into a sole custody decree, but also require the court to state its reasons for doing so if one or both parents object to a modification from joint to sole custody.

   (Protect a cooperative joint custody parent from capricious attack and permit more efficient appellate review if necessary.)

10. Assure that joint custody is a single unified concept embodying both joint physical and joint legal custody within a decree and without differeniation.
    - If there is insistence that joint legal custody be available separately, assure within the statute that joint legal custody is available solely for a parent requesting joint legal custody and who has established a reason for not being available, also, for joint physical custody.

      If this precaution is not taken, a parent seeking a combination of both joint physical and legal custody is in jeopardy of being awarded merely joint legal custody.

   (Cautions about [illegible]y joint legal custody:
   1. The concept [illegible]s a parent, who has only joint legal custody, with all the obli[illegible]ns of delinquency, truancy, and financial and responsibility matte[illegible] [illegible]thout any opportunity to participate jointly in the physical custody aspects which might ameliorate or alleviate those problems.

   2. A child...who experiences a relationship with a parent primarily from the standpoint of physical contact, personal concern, and joint participation in events...receives almost no solace or emotional assurance from the remoteness of knowing vaguely that the absent parent is participating in such joint legal decisions as religion, or medical, or education.)

Important: Overwhelmingly, the anxiety previously experienced by a parent and a child isolated through sole parent custody is largely diminished by shared physical contact in joint physical custody....thereupon the joint legal decisions are easier to achieve and become of less consequence because the joint physical presence is the prime interest.

However, when joint legal custody is the only sharing which occurs, and joint physical custody does not occur concomitantly, the difficulties of achieving agreement on esoteric legal issues increase because they are the only arena of contention and power-play remaining.

Almost the only proponents of merely joint legal custody are:

1. A few of the more highly litigious attorneys who foresee a continued opportunity for costly adversary competition if parents, who might not otherwise be overwhelmingly concerned with some of the esoteric or combative possibilities in remote joint legal matters, can be diverted into the joint legal concept without participation in joint physical contact.

2. A few of the older judges who are still constrained to justify their philosophy of decrees made in the era before joint custody, or who, for resentful, power-control, or possibly sadistic reasons are inclined to make one or both parents squirm in a subservient role before the court.

11. Advocate open access to all records pertainting to the child(ren) by both parents.

(This diminishes the controlled coveting of information by a sole parent for intimidation purposes.)

Here is a copy of the California Bill. Be sure to read the note on "joint legal custody" on the next page.

Mahr

CHAPTER 915

An act to amend Section 4600 of, and to add Section 4600.5 to, the Civil Code, relating to child custody.

[Approved by Governor September 21, 1979. Filed with Secretary of State September 22, 1979.]

Digest

AB 1480. Imbrecht. Child Custody.

Former law specified certain preferences in making an award of child custody. In making such an award the overriding concern, however, was the best interests of the child. There was no specific authorization for an award of joint custody and there was no presumption that joint custody was in the best interests of the child.

AB 1480 specified circumstances in which a presumption favoring an award of joint custody shall operate, as well as specifically authorizing such an award in other cases, as designated. AB 1480 also specified that access to records and information pertaining to a minor child shall not be denied to a parent because such person is not a child's custodial parent.

AB 1480 also incorporated further changes in Sec. 4600. Civ.C. by AB 167, contingent upon enactment and prior chaptering of AB 167.

The people of the State of California do enact as follows:

SECTION 1. Section 4600 of the Civil Code is amended to read.

4600. (a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. In determining the person or persons to whom custody should be awarded under paragraph (2) or (3) of subdivision (b), the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

(b) Custody should be awarded in the following order of preference according to the best interests of the child:

(1) To both parents jointly pursuant to Section 4600.5 or to either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

SEC. 2. Section 4600.5 is added to the Civil Code, to read:

4600.5. (a) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

(b) Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to the provisions of Section 4602. If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

(c) For the purposes of this section, "joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents; provided, however, that such order may award joint legal custody without awarding joint physical custody.

← This should read: "only if both parents request this arrangement." Joint legal without joint physical defeats the purpose of the bill.

(d) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

(e) Any order for the custody of the minor child or children of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody in accordance with the provisions of this section.

(f) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

(g) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because such parent is not the child's custodial parent.

Marko Lewis
SR Box 10065
Fairbanks, Alaska 99701

In way of introduction :

I have lived in Alaska for twelve years. I built a cabin and lived in the Mentasta Mts. near Tok for five years, acquired a homesite and lived on the Mauneluk River near Kobuk for three years and have resided the past three years in Hyder, Alaska near Ketchikan. I am formally trained as a botanist and do research and field work under the auspices of the Field Museum of Natural History I worked four summers at Eneput Children s Center in College, Alaska and have done volunteer work for the Child Abuse Task Force and as the present Hyder Children's Librarian. I maintain contact with many single parents both male and female and with many children from broken homes as well as joint custody homes.

I have enclosed some extra information. I hope I havent overloaded you all at once. Brian Rodgers has sent a Pennsylvania bill for drafting. I havent read that bill. This Calif law has been in effect over a year and is operating sucessfully. Recidivism - parents returning to court to try + change custodial court order has been halved! Without a joint custody law to supplement the no fault divorce law the incidence of bitter battles over custody of children INCREASES SUBSTANTIALLY. Instead of fighting over the car etc. the children have to suffer as the focale of a battle. I do hope you will sponser a bill similar to the California bill. Thanks,

Marko

Hope you dont mind my use of xeroxgraphy. All funds used are personal.

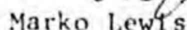
dear Senator Parr:

The enclosed information I hope will serve as an aid in deciding wheter to introduce presumptive joint custody legislation in the current legislative session. I have enclosed a discus·ion of the law recently passed in California and will send other information every few days as well as answer any questions you may have.

The lack of a joint custody option is the single greatest inequity remaining when no-fault divorce is imposed. The California law encourages divorcing parents to sit down and agree to an equitable custody arrangement. It discourages long drawn out and viscous court battles. It insures that a parent who is fit and wishes to retain a close and loving relationship with their children can do so. Research shows that joint custody lessens loyality conflict in children in most cases and that the children of joint custody homes do better in school and in adjustment to the post divorce situation. . The emotional stability for a child of knowing that he or she will be able to maintain a close and loving relationship with both parents after divorce has been found to be the uppermost factor in the adjustment of children to divorce (see Wallerstein and Kelly,"California's Children of Divorce," PSYCHOLOGY TODAY Jan. 1980). Other research over the past five years points to sole custody as the cause of a multitude of long and short term problems in both children and their parents. I have enclosed a short summary of some of these problems.

I hope you will read the enclosed material and consider sponsering and supporting a presumptive joint custody bill. I will gladly answer any questions you may have and continue to send information.

With best wishes,



Marko Lewis

Charlie,

Marko Lewis called and wants me to relay this message to you.

1. He would like you to introduce a bill on presumptive joint custody.

2. He is sending our office a copy of the bill that passed in California last year, plus additional information.

3. He says Brian Rogers is having a similar bill drafted, based on Pennsylvania law.

Rocky
4:25 p.m. Jan. 15

This is a good discussion of what joint custody is. It also discusses the problem of "joint legal custody" without joint physical custody. Marko

DEFINITIONS OF CHILD CUSTODY

Marko

Sole Custody	Divided or Alternating Custody
Split Custody	Joint Custody
Joint Legal Custody	Joint Physical Custody

Joint Physical & Legal Custody

As an aid to parents and clients, as well as professional practitioners, the following is intended as a layman's guide to child custody terminology. Counselors may find this compilation useful for distribution to clients so that all parties have a similar comprehension of terms. The ease with which many of these terms have been incorporated into casual conversation, but without definition, has led to misinterpretation. Furthermore, the lay public has been exposed to a wide range of interpretations of custody. Some of the definitions have been erroneous or contradictory, often because the omission or addition of descriptive adjectives alters or restricts the scope of custody.

Confusion also arises because courts, as well as the media, frequently use certain terms interchangeably.

Definition of terms is, primarily, the product of statute and case law precedent. The following definitions have been derived from such sources, but this compilation is intended as a convenience rather than a legal reference. However, a mutual understanding by parents of these terms is less likely to stimulate a legal quest on an erroneous assumption about a form of custody or to necessitate subsequent litigation because of a reinterpretation.

Since our primary intent is to aid the divorced family toward an operable plan of custody rather than a diversion into debating the intent of terms, we hope this information will be useful in establishing a terminology with which the parties agree.

The parent or parents particularly interested in joint custody are advised to consider the term in its larger context, that of joint physical and legal custody. This is the final form of custody described at the conclusion of this compilation. The scope and intent of each previously described custody form aids in clarifying the intent and significance of joint physical and legal custody.

Acknowledgment is extended to the following authorities, from whom definition information has been derived, although we are refraining from indicating specific reference to each authority because of our edited abbreviations or elaborations of their original comments. Therefore, readers will also benefit from the more extensive descriptions of:

H. Jay Fōlberg & Marva Graham, 'Joint Custody of Children Following Divorce,' Univ of Calif, Davis, Law Review, Summer 1979.

Robert Mnookin, 'Child Custody Adjudication: Judicial Functions in the Face of Interminancy,' Law & Contemporary Problems, Summer 1975.

A Lindey, ' Separation Agreements and Ante-Nuptial Contracts,' 1977

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Sole Custody

Sole custody describes an award of custody to one parent with visitation rights to the non-custodial parent.

An early impetus for this form of custody was, and still is, an intention by the court to know whom to hold legally responsible as being in control of the activities and conduct of a child. However, much of the dissension of recent years about sole custody has arisen because participants have frequently assumed that sole custody is less of a responsibility for the conduct of a child in society as a whole and more of a responsibility in control of a child's access to the alternate parent.

Divided or Alternating Custody

Divided or alternating custody permits each parent to have a child for a part of a year or alternating portions of a year, or upon subsequent or alternating years. Reciprocal visitation rights are afforded ... the non-custodial parent. Each parent alternates and assumes the responsibility and control accorded a sole custodian during the time period when a child is awarded to the respective parent.

Divided or alternating custody is not joint custody.

Split Custody

Split custody awards one or more children to one parent and the other child or remaining children to the alternate parent. Parents and courts considering the split custody alternative will wish to weigh carefully the wisdom and necessity of assuring that the children do or do not have significant time together with their siblings.

Joint Custody

California's Civil Code Section 4600, Section I, taking effect January 1, 1980 opens with a public policy statement of intent "...to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy." In addition, Section 2, Section 4600.5 (c) defines joint custody: "...an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents;" Consequently, joint custody, as intended by the California statute is initially and primarily concerned with the joint <u>physical</u> aspect of custody described below under joint physical and legal custody.

In joint custody, both parents retain and share the responsibility and authority for the care and control of the child or children.

The sharing of that responsibility can traverse an entire spectrum from casual cooperation to specifically delineated times and functions. The sharing can be of all parenting functions or the parties can adopt or allocate functions to each other depending on capabilities, interests, and practical solutions for assuming responsibility.

The sharing of the child or children's time between joint custodians can also extend across a spectrum, whether the decision is for a scrupulously equitable division of time or a rational and reasonable allocation of time predicated on the time each parent has available to assume custodianship or to grant time to the alternate parent.

Joint custody can also accommodate a wide range of alternatives for the allocation and assumption of the financial obligations of child support. Thus far, no known statute permitting an award of joint custody has specified a concurrent formula concerning child support. The resolution of child support within joint custody remains a matter for the parents to resolve among the alternatives available to them or for the court to determine after an assessment of resources, assets, income and ability of each parent to pay.

Joint custody has also been referred to as joint parenting, co-parenting, shared custody or co-custody. Forms of joint custody have also been characterized as dual parenting, no-fault custody, and concurrent custody. The variations incorporating 'parenting' are applicable definitions sociologically, but they have not yet been given lega recognition that converts parenting from a description into a keyword. While the various alternative words may stimulate a way of comprehending custody participation for both parents, it appears likely that 'joint custody' will prevail as the terminology in most jurisdictions for the forseeable future.

While some observors object to use of the term 'custody' because of the connotations of criminal law, the similarity may merely be coincident and is a probable outgrowth of the intent to establish adult responsibility for control of the actions of minors.

A significant alteration occurs when joint custody is amplified or constrained by the addition of specific adjectives as in joint legal custody, joint physical custody, or joint physical and legal custody.

During legislative debate, various qualifications upon the scope of joint custody were proposed, debated, and thereupon eliminated. The limiting qualifications were removed so as not to restrict the scope of options and arrangements available to parents through joint custody. Geographic proximity, for instance, was removed as a qualification that might limit availability of joint custody for a parent or parents desirous of sharing custody.

Joint Legal Custody

Joint legal custody is available, as an alternative, for a parent or parents desirous of solely the legal relationship. California's Civil Code Section 2, Section 4600.5 (c) offers: "...such order may award joint legal custody without awarding joint physical custody."

A primary intent is to offer an opportunity of joint legal sharing to those parents who by reason of distance or isolation (such as military or overseas service) or certain limitations of remarriage are unable to participate in joint physical custody.

The scope and authority and participation by a joint legal custodian has been increasingly limited by decisions and opinions. In its most restrictive interpretation it has been characterized as the 'right of survivorship' with an opportunity to be a successor custodian. In its broadest interpretation, joint legal custody has encompassed nearly all the major responsibilities and opportunities that California relegated to custodians except physical, day to day residence. Those responsibilities and opportunities included decision participation in matters of education, medical care, religion, discipline and financial support.

Apprehension about decreeing merely joint legal custody without concurrent joint physical custody arises because it imposes upon a joint legal custodian all the legal responsibilities and obligations of a child's conduct, delinquency, encounters with the law, vandalism, and creditors with none of the physical relationship that would help a joint custodian to ameliorate or forestall the causes and consequences of a minor's legal problems.

Emphasis upon the necessity of joint physical custody rather than solely joint legal custody was most recently generated by a decision of California's First Appellate District on May 9, 1979, prior to the legislative debate and enactment of California's new joint custody statute in In Re Marriage of Neal. That decree, among other pronouncements, indicated that joint legal custody was, in effect, meaningless in comparison with sole parent physical custody. Consequently, the subsequent emphasis in California's new custody statute for a reiteration in several locations of 'frequent and continuing contact' was also bolstered with a definition of joint custody as meaning "...that physical custody shall be shared by the parents..." (Section 2. Section 4600.5 (c).) At three different paragraphs within the statute a requirement was imposed that the court specify its reasons if joint custody is not awarded.

Other limitations on joint legal custody, as compared with physical custody, are contained in 'Burge v. San Francisco,' 41 Cal. 2d 608 (1953) and 'Adoption of Van Anda,' 62 Cal. App. 3d 189 (1976). In California, these cases are regarded as obstacles to smooth functioning of joint custody.

Consequently, parents establishing joint custody will wish to assure themselves of the full scope of joint physical and legal custody lest subsequent litigation occur that is more the consequence of interpretation than any inherent flaw in the concept of joint parenting.

Joint Physical Custody

The sharing of residence, participation in care, and establishment and recognition of the validity of a dual home are integral to the concept of joint physical custody.

The allocation of significant periods of time for the child or children to be resident exclusively with each parent is usually a major consideration of a parent or parents enjoying joint physical custody.

Precise equality of time allocation may become an initial preoccupation of those parents desiring joint physical custody. However, once the principal of sharing jointly has been established and the fear of irreparable loss of the child or children by one of the parents has been dispelled, the practical availability of time by each parent of child-rearing time can become the guideline for allocating residence time.

Hesitancy to accept participation in joint custody by one parent who may have assumed the likelihood of acquiring sole parent custody is frequently traceable to (a) an expectation of child support financial income by reason of retaining sole possession of a child, (b) fear and guilt that by more frequent and extensive contact with the alternate parent a child may develop a distaste for the sole custodian, particularly if the parent prone to sole custodianship was clearly the initiator of the divorce, and (c) opportunities for extortion or psychological harassment that are inherent in retaining sole custody if the excluded parent is known to place a high value on a parental relationship with an isolated child or children and longs for their companionship. Hence, counselors and parents will need to encourage a realistic exorcism of financial greed, fear and guilt, and extortion and harassment in order to achieve a more relaxed allocation of time.

Ten basic variations for allocation of time exist from which joint custodians can integrate or elaborate on their preferences and their availability.

Variations for sharing joint physical custody include:

(1) Freedom of movement between two homes.
(2) School year versus summer vacation, with exchange weekends & nights.
(3) Divide Fall & Spring semesters and divide summer vacation.
(4) 2-3 months versus 2-3 months, with exchange nights and weekends.
(5) 1 month versus 1 month, with exchange weekends & nights.
(6) 2 weeks versus 2 weeks, with nights & special vacation periods.
(7) 1 week versus 1 week, with special vacation period.
(8) 3½ days versus 3½ days, with special weekend & vacation periods.
(9) Workday week versus weekends, with special vacation periods.
(10) Child remains in original home, parents alternate.

The meaningful sharing of significant periods of time for a relaxed relationship by child and parent, free from superficiality and impermanence of "visitation" is paramount to the intent of joint physical custody.

Financial child support for joint physical custody situations is also subject to a range of choices.

Among the choices from which parents can select for resolution of child support:

(1) One parent assumes all child support costs.
(2) Each parent alternates and assumes child support costs in response to fluctuations and seasonal variations in each parent's income.
(3) Each parent assumes child support costs while child is resident with the respective parent.
(4) Equal split between parents of child support costs
  (a) based on predetermined dollar figure, or
  (b) based on actual and verifiable expenditures.
(5) Percentage sharing of costs predicated on respective but different incomes of each parent.
(6) Sharing of costs based on need and ability of each parent to pay.

Joint Physical & Legal Custody

The intent of California's custody statute of 1980 is to establish a condition and expectation that joint physical and legal custody will prevail unless a parent can establish with sufficient reason that a less equitable custody award should be decreed. The court is required to itemize the reasons for a less than equitable decree of joint custody.

Joint physical and legal custody can encompass the provisions itemized above for joint legal and for joint physical custody, respectively. However, by agreement, parents can also alter, trade or allocate from among the provisions with those custody forms to suit their needs and preferences and those of their children.

A statute, such as California's, that signifies a preferred solution of joint custody and more stringent requirements for the justification of less than joint custody, provides an important incentive for parents to anticipate constructively the merits of joint custody, both legal and physical.

COPY

March 4, 1881

Mr. Larry Sweet
1850 Roberts Road
Fairbanks, Alaska 99701

Dear Mr. Sweet:

I have not had a chance to study HB 210, but do have a lot of material in my file on this subject.

I expect to introduce a bill in the Senate which will probably be very similar, but not identical, to HB 210.

Sincerely,

Charles H. Parr

CHP:vc

April 28, 1981

Ms. Patty Meritt
Play 'N Learn, Inc.
547 7th Avenue
Fairbanks, Alaska 99701

Dear Ms. Meritt:

This is in response to your message of April 23 about HB 210.

If this bill does pass the House and come to the Senate, I will certainly be happy to give it consideration.

Sincerely,

Charles H. Parr

CHP:vc

1850 Roberts Road
Fairbanks, Alaska 99701
May 10, 1981

House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Brown and Members of the Committee:

The purpose of this letter is to urge that you act on House Bill 210 this year which will provide joint custody for children. California has had a similar law in existence since January 1, 1980, and they have in their legislature at the present time a bill to add presumptive joint custody to their current law.

Nevada signed into law a joint custody bill last month; the states of New York, Florida, and Georgia are actively working on joint custody bills.

Presumptive joint custody is analogous to no fault divorce in that it takes the positive approach. Today it is no longer necessary to prove that one individual in a marriage is bad or wrong. Similarly it should not be necessary to prove that one parent or the other is unfit. But that is what we have today. In recent tradition mothers have always received custody. How can a father have a chance to get one half time with his children? By proving that the child's mother is an unfit person? In what percentage of situations is this actually the case? A Fairbanks judge recently told me that in his experience only 1 or 2% of cases he has seen is one parent unfit. This makes sense to me. Why must we then prove unfitness?

Presumptive joint custody takes the positive approach and can act to defuse manipulation, maneuvering, coercision or threat. It can remove the children from being used as tools for psychological or material gain. It can curtail child stealing.

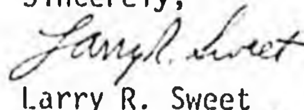
I can speak from my own experience in obtaining joint custody in Fairbanks two years ago which left four individuals with shattered, bitter and acrimonious feelings. The text books say that joint custody can not exist without cooperation; that is not correct and I can speak for that.

I have found out in recent months that the Third Judicial District handles divorce entirely differently than the Fourth Judicial District. I am convinced that if HB 210 had existed as law at the time of my divorce then it would have been handled with some degree of ration, reason, and planning and four people would be in a better place then they are today.

For the legal professionals who are opposed to certain wording in this bill I urge them to suggest alternative wording rather than just being against it, and I further urge them to talk to the counselors, psychologists, and child psychiatrists about what is in the best interests of children. My own discussions with both groups shocks me to see how far apart some of their thinking is with respect to the impact on children.

Please pass some version of HB 210 this year.

Sincerely,



Larry R. Sweet

cc: B Rogers, C. Parr

SURVIVING THE BREAKUP

How Children and Parents Cope with Divorce

Judith S. Wallerstein

and

Joan Berlin Kelly

Basic Books, Inc., Publishers *New York*

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The convergence of many factors led us to undertake a systematic investigation of the divorce-related experience of children and adolescents and their parents. Our study, which began in 1971 and ended in 1977, was designed to follow sixty divorcing families and their 131 children who were between three and eighteen years old at the time of the marital separation—following them from this beginning through their first five years within the divorced family.*

Initially, the plan had been to close the inquiry at the end of the first year. In accord with both conventional wisdom on these matters and crisis theory, we fully expected the transition period for most families

* For further particulars about both the design of the study and its population, see appendix A.

to have ended by that time, and we were eager to observe the process of the disruptions of divorce being resolved. We discovered that we were mistaken. Eighteen months after the separation many issues still remained unresolved in the lives of both parents and children. Feelings of anger, humiliation, and rejection were still running high; most adults had not yet reestablished stability and continuity in their lives, or order in their households. Moreover, an unexpected number of the children were on a downward course, compared with their overall functioning before the separation, and had not yet recovered their earlier developmental stride. For these reasons, our project was adjusted to conform to a more extended and realistic view of the postdivorce transition period, and redesigned to encompass the transition and the early years within the new family structure.

This book chronicles the experiences of sixty California divorcing families and their children. They granted us the singular privilege of significant access to their private lives, first during the difficult period of marital rupture, and then at specified intervals during the five years that followed. The project has no counterpart in the United States or in Europe because of the many years over which the cooperation of the divorcing families was sustained, the participation of so many children of different ages, and the kinds of questions which were posed. The findings provide the basis for this book: a detailed report of the continuity and discontinuity that occurred over the turbulent postdivorce years and insights into the consequences of these changes for children and adults, from which we derive certain conclusions and make certain proposals.

The study of divorce and children has been and remains a lonely field. As we end this decade the number of investigations, given the magnitude of the problem, is perilously low. Divorcing parents and their children have for some time been a population that is expanding explosively; yet its special needs are insufficiently recognized, little studied, and poorly served. Moreover, of those divorce-centered investigations that have been undertaken, only a fraction have examined the impact of divorce on children. One of the unhappy consequences is that the findings of this study in California, drawn primarily, but not entirely, from a white and middle-class population, must await comparison with those of families from other significant segments of the population whose experience may resemble or may diverge from these in important regards. For the present, we cannot know.

Chapter 17

The Implications of the Findings

In his first year at high school, five years after his parents separated, Jeremy chose to write a term paper entitled, *What Is Divorce Like In California Today?* In his preface, he explained, "I was interested in divorce because my mother and father had a divorce and I had a vague idea of what was going on, but I did not fully understand and now I do." "In this research paper," he continued, "I shall examine such aspects of the problem as statistics, causes of divorce, and psychological inferences." He concluded his introduction with, "Some joker has said the major cause of divorce is marriage. However, we all know this joke is no joke, especially when children are involved."

After a scholarly review of divorce statistics, the provisions of family law in California, and various theories of marital disruption carefully footnoted and referenced, Jeremy concluded, "My personal experience has been a sad one. My father picked up his suitcases one day and walked out, because, as he said, he wanted his 'freedom.' We thought we were a close-knit family and it was an unexpected shock. I was only nine and my brother was six and a half. It was the death of our family. Today we see him on visitation day, but it is an artificial situation. He doesn't really know what I'm all about. I have actually lived without a real father for five years; perhaps the most important years of my male life. My luck has been that I have a mother who picked up the pieces. She acted as both parents and made her goal to bring me up as a man with true values. Divorce can destroy. It has not destroyed me. I

was lucky. In my case, I think it added to my awareness and comprehension of what people and life are all about. Mainly trying to be less selfish, try to understand, rather than condemn. This is very difficult, sometimes impossible, but all I can do, right now, is to try a little harder everyday."

Divorce as an Extended Process

Although five years, or one-third of his life, have elapsed since the marital rupture, Jeremy's attitudes and feelings are not significantly changed. His anger at his father, his sense of rejection and betrayal by his father, and his strong attachment to his mother remain relatively undiminished by the passage of time or his developmental progress into adolescence. The carefully researched school paper also represents his active and resourceful efforts at mastery of the divorce experience; efforts which must continue over many years. These youngsters taught us a lot about the extended aftermath to the marital disruption: the staying power of feelings and the repeated and enduring efforts at mastery, which are brought into play at each successive developmental stage throughout the child's growing up years and perhaps into adulthood as well.

It is just this kind of experience, multiplied many times, that has not only affirmed our view of divorce as a process that takes place over time, but has also demonstrated that the timetable of the divorcing process is considerably longer than we initially supposed. The multiple changes in the individual lives of the adults and the children and in their relationships with each other, which were set into motion by the decision to divorce, exceeded our expectations in their drama, their complexity, and their widening effects. As we bring our study to a close, it is obvious that, for many children such as Jeremy, as for many of the adults, the divorce-related issues remain open and still infused with strong feelings. Perhaps this extended timetable is realistic and expectable, and we and others have been naive in expecting quicker integrations of these major changes precipitated by the divorce.

Divorce as a Several-Stage Process

The five-year perspective of our study enabled us to distinguish several stages in the trajectory of the divorcing process and to report separately on the experiences of the children and the adults during each of these separate, although overlapping, periods. We could follow the participants as they progressed from the initial stage of high stress to the transition period that followed and finally to living within the postdivorce or remarried family.

The initial period, following the decision to divorce and the parental separation, was profoundly stressful for almost all of the children and adolescents and for many of the adults. Feelings ran high in most families, and sexual and aggressive behaviors were no longer constrained by the marital structure. As a result, conflict often escalated and unhappiness was widespread. The children's acute responses to this stress were magnified by the parents' diminished capacity to parent at this time of crisis in their own lives.

By the end of the first year following the separation, the acute responses among the children had subsided or disappeared altogether. Many children recovered their usual functioning faster than their parents. Another unexpected finding was that girls recovered faster than boys. Those symptomatic behaviors of the children that remained after the initial phase were likely to have become chronic. The persistence of the acute early distress responses could no longer be attributed entirely to the stress of the family dissolution, but was now rather to be attributed to long standing stresses prior to the divorce or new ones in the postdivorce family.

The transition period which, in over half the families, lasted two to three years, was marked by many external changes in the social, economic, and family circumstances, as well as by changed relations within the family. Because the adults face a great many decisions which will affect the lives of the family members for many years to come and because of the relative fluidity of the family relationships at this time, we have come to consider not just the early crises but the transition period as well as the optimum time for interventions. We have attempted to capture the ambiance of this transition time in our separate reporting of the families' experiences at eighteen months after the separation, and particularly the shifting patterns in parent-child relationships which were characteristic of this period.

The third stage of the divorcing process that we observed at the five-year-mark and reported is that of the early years within the re-

stabilized postdivorce family or the new marriage. These families were a diverse group. Some of them had succeeded in creating a stable and loving home and in improving the quality of life for all of the family members. At the other end of the wide spectrum, the adults or the children, or both together, were unhappy or were no happier than they had been during the failing marriage.

There are significant differences in the experiences of adults and children during each of these three phases of a divorcing process, which is sometimes overlooked by researchers and obscured by the general question regarding the effects of divorce. Although the initial breakup of the family is profoundly stressful, the eventual outcome depends, in large measure, not only on what has been lost, but on what has been created to take the place of the failed marriage. In full and proper perspective, the effect of the divorce is an index of the success or failure of the participants, parents and children, to master the disruption, to negotiate the transition successfully, and to create a more gratifying family to replace the family that failed.

Perhaps we should add that there might, indeed, be an additional stage. We are aware, and Jeremy's paper reminds us, that the five years of the study represent our own stopping place and not the end of the divorcing process. It may well be that some important, undetected effects, whether beneficial or detrimental, will emerge at some future time, perhaps only when these youngsters marry and become, in turn, parents in their own right.

Differing Responses of Parents and Children

The troubling divergence between the wishes and attitudes of the children and their parents in regard to the divorce, which we noted at the time of the divorce decision, diminished somewhat by the end of five years, but had far from disappeared. We were surprised at first to find that many marriages that had been unhappy for the adults had been reasonably comfortable, even gratifying for the children, and that very few of the children concurred with their parents' decision or experienced relief at the time of the separation. Five years after the separation, most of the adults approved the divorce decision and only one fifth of them felt strongly that the divorce had been ill-advised. Among the children, however, over one-half did not regard the divorced family as an improvement over their predivorce family. Many of these young-

sters, some of whom were doing well, would have preferred to turn back the clock and return to the predivorce family, despite its remembered failings.

Furthermore, most of the adults, especially the women, were feeling better, despite the greater economic pressures and the many stresses of their lives in the postdivorce family. Their self-esteem was higher and their overall psychological adjustment was considerably improved. And, as we have described, many of their somatic symptoms and their psychological dysfunctions disappeared during the postdivorce years.

Unlike the adults who felt considerably improved after the divorce, the children and adolescents did not, as a group, show an improvement in their psychological health during the years following the separation. Only those children who were physically separated by the divorce from a rejecting, or a demeaning, or a psychiatrically disturbed father showed improvement comparable to that of the adults.

At the five-year-mark, one-third of the youngsters were lively, well adjusted, and content with the general tenor of their lives. Matching these in number were youngsters who were unhappy, still angry at one or both parents, still yearning for the presence in the family of the departed parent, still lonely, needy, and feeling deprived and rejected. We have attempted at some length to demonstrate the particular combination of factors during the divorce crisis and the postdivorce evolution that led to these different outcomes.

Perhaps it should be emphasized here, however, that over and beyond the psychological functioning and developmental progress of the children even among those who had made splendid progress and certainly among those youngsters whose adjustment was only adequate or barely holding, that all had the sense of having sustained a difficult and unhappy time in their lives which had cast a shadow over their childhood or their adolescence. For some, this divorce stress eventuated in greater sensitivity and compassion. For others, the continued stress was too great to master and proved overwhelming. But for all, a significant part of their childhood or their adolescence had been a sad and frightening time.

There is considerable evidence in this study that divorce was highly beneficial for many of the adults. There is, however, no comparable evidence regarding the experience of the children. There is, in fact, no supporting evidence in this five-year study for the commonly made argument that divorce is overall better for children than an unhappy marriage or, for its opposite argument, that living within an unhappy marriage is by and large more beneficial or less detrimental than living in the divorced family. Taking the population of the children as a whole, while noting considerable individual change, the distribution of healthy and impaired functioning among children and adolescents within the conflicted marriage when compared to that five years following the marital separation strongly suggests that the divorced family was

neither more nor less beneficial or stressful for the children than the unhappy marriage. Unfortunately, as we have noted throughout this book, neither unhappy marriage nor divorce are especially congenial for children; each imposes its own set of stresses.

Perhaps we should add as a cautionary note that the children within our study probably emerged at least somewhat or perhaps considerably better than a comparable group of children from nonstudied divorcing families by virtue of our limited intervention; the fact that we attracted parents with some continuing commitment to their children to participate in the study in the first place; and that the children were a relatively sturdy group of youngsters in that they had not been referred for psychological treatment at any time in their lives and had achieved age-appropriate learning and behavior within the school, despite their experiences and unhappiness within the failing and conflicted marriages. They were, moreover, drawn from a predominantly white, middle-class population and had been relatively protected from economic and social privation. It may well be that there would be considerably greater emotional decline among children in a general population.

The Continuing Psychological Importance of Two Parents

Within the postdivorce family, the relationship between the child and both original parents did not diminish in emotional importance to the child over the five years. Although the mother's caretaking and psychological role became increasingly central in these families, the father's psychological significance *did not* correspondingly decline. Even within remarriages, at least during the earlier years of these remarriages, though the stepfather often became very quickly a prominent figure to the children, the biological father's emotional significance did not greatly diminish, although his influence on the daily life of the child lessened. It has been, in fact, strikingly apparent through the years that whether or not the children maintained frequent or infrequent contact with the noncustodial parent the children would have considered the term "one parent family" a misnomer. Their self-images were firmly tied to their relationship with both parents and they thought of themselves as children with two parents who had elected to go their separate ways. It should be noted that all of these children, except for brief separations, had lived continuously with both parents prior to the divorce.

Perhaps, given the vicissitudes of divorce and the postseparation years,

each parent-child relationship is thrown in bolder relief. Lacking the intact family structure and physical presence of both parents, each parent-child relationship which is taken for granted in the intact family may become suddenly highly visible and may, in fact, be accentuated following divorce and even grow in importance, or at least be maintained in importance, by the child.

Certainly one characteristic of so many of these children was their acute, conscious, sometimes hyperalert monitoring of their parents and their parents' attitudes over the years. The cruel, erratic, openly rejecting behavior—or even abandonment—by a parent did not seem to dim the child's awareness of that parent and often did not diminish the child's compassion or longing. And as we have reported, only a few children when they reached adolescence were able to counterreject a rejecting parent with a conscious resolve to follow another road in their life by choosing to emulate another adult whom they had come both to love and respect.

Regardless of the legal allocation of responsibility and custody, the emotional significance of the relationship with each of two parents did not diminish during the five-year period that we have studied.

The Special Vulnerability of the Divorced Family

A further consideration is the fact that the developmental needs of children do not change in accord with changes in the family structure. Unfortunately, it appears clear that the divorced family is, in many ways, less adaptive economically, socially, and psychologically to the raising of children than the two-parent family. This does not mean that it cannot be done. The children in our study who made excellent progress attest to its feasibility and to the combination of heroic efforts of parents with the resiliency of children. And, as we have seen, where one or more children were of the age, the capacity, and the inclination to take responsibility for themselves and others and to contribute to the work and emotional support of the household, the divorced family provided not only a "good enough" milieu, but one that fostered maturity and mutual devotion between parent and child. But, the fact remains that the divorced family in which the burden falls entirely, or mostly, on one parent is more vulnerable to stress, has limited economic and psychological reserves, and lacks the supporting or buffering presence of the other adult to help meet the crises of life—especially, as we have shown, the crises of physical or psychiatric illness. Even when two parents share custody and

maintain their love and commitment to the children, the responsibility for raising the children usually devolves more on one parent than on the other and rarely, if ever, approaches the mutual support that parents provide for each other within the stable marriage. And, as we have reported, the chronic emotional and economic overload was frequently intolerable for the custodial parent, and the cumulative effect on the children was all too visible in their unhappiness and depression.

Our considerable concern increased over the years as we became familiar with the extraordinary absence of supports in the social surround, which appeared to be characteristic of so many middle-class families within our population. Perhaps the absence of supports places children in white, middle-class families in some ways more at risk during periods of stress than children in other socioeconomic and ethnic groups who have a sense of extended family and community.

Furthermore, our findings reflect the significance of the parenting that is going on within the present. Those children who did well were well-parented by at least one parent at that time. It appears that the nurturance provided during earlier years will hold the child for a while, but that good, or at least "good enough," parenting continuing over time is needed to safeguard and to maintain good developmental progress in children.

More than any other constellation of factors the disrupted or diminished parenting by one or both parents was associated with the dismayingly high incidence of depression which we found at each of the checkpoints of the study and most especially at five years. In fact, the five-year postseparation incidence of depression which was higher than that observed at eighteen months postseparation reflects the stresses and emotional deficits of the postdivorce family well after the acute responses to the breakup have subsided or disappeared altogether.

This ongoing need by the child for competent, nurturant parenting places a continuing demand on the parent who assumes full or major responsibility for the child's upbringing. In order to fulfill the responsibility of childrearing and provide even minimally for the needs of the adult, many divorced families are in urgent need of a formal and informal network of services not now available to them in the community. The first steps toward easing the burdens of the parent and enhancing the quality of life within the family should include, our findings indicate, setting child support payments at a level that reflects realistically the cost of raising children; providing educational, vocational and financial counseling combined with training and employment programs for adults returning to the economic or professional marketplace after a several-year absence; enriched child-care and after-school programs and facilities for children of various ages as well as divorce specific counseling programs (which we will describe later in this chapter). Although it is still not clear whether and to what extent supportive services are able

to substitute for lacunae within the family structure, nevertheless, even if we regard such services as supplementary or secondary, the divorced family is at high risk when it stands alone.

Issues of Custody

Taken as a whole our findings point to the desirability of the child's continuing relationship with both parents during the postdivorce years in an arrangement which enables each parent to be responsible for and genuinely concerned with the well-being of the children. For those parents who are able to reach an agreement on child related matters after divorce and are willing to give the needs of the children priority or a significant role in their decision-making regarding how and where the children reside, joint legal custody may provide the legal structure of choice. (The parents of one-quarter of the children in our study who had been able to maintain a shared commitment and devoted parenting within the conflicted marriage would provide an appropriate pool of candidates for joint custody.) Although the influence of the legal structure on the fabric of family life may be considerably less than many persons believe it to be, nevertheless, there is some evidence that legal accountability may influence and shore up psychological and financial responsibility. Furthermore, there is evidence in our findings, that lacking legal rights to share in decisions about major aspects of their children's lives, that many noncustodial parents withdrew from their children in grief and frustration. Their withdrawal was experienced by the children as a rejection and was detrimental in its impact.

In viewing joint legal custody as a reasonable step, we differentiate shared legal responsibility and shared physical custody. Both concepts require clarification in law and research. Some mistakenly view joint physical custody as requiring a strict sharing of the child's time on an equal or fifty–fifty basis. Actually, joint physical custody can take many forms, and parents can negotiate or modify a division of time in consideration of the needs of the children and of the adults. Central to the notion of shared physical custody is an understanding that it does not mean a precise apportioning of the child's life, but a concept of two committed parents, in two separate homes, caring for their youngsters in a postdivorce atmosphere of civilized, respectful exchange.

There appears to be no compelling legal reason to pattern the divorced family after the married family and to establish one presumptive pattern for all couples. Parents may have little interest in their children; they

may demean or exploit their children; they may use the children to establish a permanent foothold in the divorced partner's life. Moreover, joint custody poses many logistical problems because of the mobility of adults in American life and the high incidence of remarriage.

Our findings point, however, to the undesirability of routinely designating one parent as "the psychological parent" and of lodging sole legal and physical custody in that one parent. Such an arrangement has been interpreted by the courts to presume that the child does not have two psychological parents. This finding can be devastating to child and parent when both parents are indeed committed to a continuing relationship with their children.

In taking a position in favor of flexibility and encouragement of joint legal custody where feasible, as a symbol of society's recognition of the child's continuing need for both parents, we offer a view diametrically opposed to that of our esteemed colleagues Goldstein, Freud, and Solnit in their book *Beyond the Best Interests of the Child*.* Although we share a common psychodynamic framework with these colleagues, we have in the course our research, arrived at findings and recommendations which are greatly at variance with their views. Our findings regarding the centrality of both parents to the psychological health of children and adolescents alike leads us to hold that, where possible, divorcing parents should be encouraged and helped to shape postdivorce arrangements which permit and foster continuity in the children's relations with both parents.

Building Blocks for Constructing Preventive Intervention

We began this work with the conviction that divorce is and should remain a readily available option to adults who are unhappily married. Our findings, although somewhat graver than expected, have not changed our conviction. They have given greater impetus to our interest in easing the family rupture for children and adults alike and in providing a knowledge base in the real experiences of divorcing families for informed parenting as well as for improved legal, educational, and psychological interventions which can prevent, or at least mitigate, unhappy and psychopathological outcomes for the children.

* Joseph Goldstein, Anna Freud, and Albert J. Solnit, *Beyond the Best Interests of the Child* (New York: Free Press, 1973).

Therefore, a major goal of our work, which we described at the outset, was to formulate beginning models of expectable response or norms for divorce-related reactions of children and adolescents and their expectable duration following the marital rupture. The unavailability of such formulations or norms has severely handicapped parents and those who undertake to help parents in their efforts to fashion appropriate measures which will provide comfort and relief to the children. Additionally, in the absence of knowledge regarding normative responses and the expectable duration of these responses, it has been difficult to identify those children whose behavior reflected the need for special interventions.

Our study has indicated that divorce is predictably extremely stressful to most children and adolescents and that the physical separation of the parents, which was regarded by most youngsters as the central divorce event, precipitated a wide range of feelings and behavioral changes at home, at school, and on the playground. Despite significant individual differences, the children's age and developmental stage appeared to be the most important factors in governing their initial responses. The stage of development profoundly influenced the child's need of the parents and perception of the stress, as well as the child's understanding, coping, and defensive strategies.

The patterning of response into these four age-related groupings—preschool (two and a half to five), early school age (six to eight), later school age (nine to twelve), and adolescence—may provide the basis for the beginning norms which we have sought. Precisely because we did not start out with these a priori groups and because the patterns which we have conceptualized did not primarily reflect the individual's family experience or the child's predivorce experience, and did reflect the age and developmental achievement of the child, we propose that these groupings are likely to have wide applicability to children in many divorcing families. They may reflect children's responses to acute stress within a more general framework—and not only to marital rupture. Perhaps their usefulness will extend only to predominantly white, middle-class children in communities where the nuclear family is the predominant family structure. Or it may be that we will find that some major experiences, such as loss, death, and divorce, and the feelings that they evoke in children span broad social, economic, racial, and ethnic differences.

As an example of one such formulation, we have suggested that the preschool child, following the marital rupture, is likely to regress behaviorally; is likely to be preoccupied with anxiety about who will provide the continued care which the child feels that he or she requires; is likely to worry about being abandoned by both parents; is more likely than his or her older siblings to feel responsible for causing the divorce and driving one parent away; is likely to be troubled at the many

separations of day and bedtime and to find these threatening and distressing; is likely to be tearful, irritable, and more aggressive; and is likely to suffer an inhibition in play. Although the preschool children often suffer more intense fears than their older siblings, and have fewer inner resources to help them, their fears are more easily allayed by concerned parents and their symptoms yield more quickly to appropriate reassurance and continued contact with both parents.

The findings among children within the other age groups can be similarly extrapolated to suggest a particular range of expectable behaviors. There is not enough evidence at this time to suggest that behavior that does not fall within these ranges is deviant. Nor is there evidence to suggest that children who show little or no overt change in feelings are either more or less troubled than their peers who appear more openly distressed. The considerable usefulness of these norms that we have suggested is that they may serve to alert adults toward future behavior of the children and to facilitate sensitive and informed parenting as well as professional advice.

When to Divorce

Within this frame of reference of beginning knowledge of responses and expectable outcomes, and drawing on our findings at the five-year mark, we can approach the question parents frequently ask, namely, "Should the children's ages govern the timing of our divorce decision?" or, as more frequently put, "Should we wait for the children to reach a particular age before divorcing and what would that age be?"

Our findings suggest that in the long run neither age nor sex are central factors in determining outcome. At the onset young children tend to show more acute and more global responses to the divorce than their older brothers and sisters. And girls, as we have described, tended to recover significantly faster than boys from the initial unhappy reaction to the parental separation. But, by five years, the factors that contributed to good outcome and to poor outcome were related to the configurations of factors which we have elaborated and which reflect primarily the quality of the relationship with both parents, the quality of life within the divorced family, and the extent to which the divorce itself provided the remedy which the adults sought. Neither the age nor the sex of the child were as relevant at this time.

Thus, the age of the child should be carefully considered in anticipating expectable early responses to the parental separation and the average

duration of these responses. Further, the age of the child should be considered carefully in providing the appropriate explanation of the parental decision, in supporting the child, and in establishing appropriate postdivorce family arrangements. The readiness of the parents to provide the appropriate supports to the children and to make and implement careful planning on behalf of the children should enter prominently into the timing of the divorce decision.

Perhaps we should add that little is known of the psychological effects of burdening children with the knowledge that their parents remained together within an unhappy marriage on their behalf. Our sense is that this would tax the child heavily.

At What Age Should Children's Preferences Be Followed

Although the wishes of children always merit careful consideration, our work suggests that children below adolescence are not reliable judges of their own best interests and that their attitudes at the time of the divorce crisis may be very much at odds with their usual feelings and inclinations.

One unexpected finding which emerged serendipitously in our search for norms was the dividing line between those children in the first three grades and those in the fourth to sixth grades in their responses to the family rupture and in their relationships with both parents. Psychological theory, while recognizing the continued developmental progress of the child, does not shed light on some of the significant attributes of children at the threshold of adolescence. The long-lasting anger of children in the nine-to-twelve-year-old group at the parent whom they held responsible for the divorce; the eagerness of these youngsters to be co-opted into the parental battling; their willingness to take sides, often against a parent to whom they had been tenderly attached during the intact marriage; and the intense, compassionate, caretaking relations which led these youngsters to attempt to rescue a distressed parent often to their own detriment have led us to rethink our expectations of these children. Furthermore, their particular age-related propensity to split the parents into the "good parent" and the "bad parent" (which was often at odds with the role of the respective parents over the years and which seemed to be rooted primarily in the children's own acute fears) led us further to doubt their capacity to make informed judgment about plans which would be in their own best interests. These observations, and the fact

that several of the youngsters with the most passionate convictions at the time of the breakup later came shamefacedly to regret their vehement statements at that time, have increased our misgivings about relying on the expressed opinions and preferences of youngsters below adolescence in deciding the issues which arise in divorce-related litigation.

Some Expectable Changes in the Parent-Child Relationships

The many observations about parent–child relationships which we have attempted to report in detail offer another set of building blocks for preventive or clinical intervention and enlightened parenting.

We have reported as widespread a diminished capacity to parent at the time of the family breakup which, while often temporary, may have long-lasting implications and may significantly affect the coping capacities of both children and adolescents and the perseverance of symptomatic behaviors and distressed feelings.

Additionally, a range of expectable patterns of behavior parallel to those which we have proposed for the children's reactions emerges regarding the child's relationships with each parent at nodal points during the divorcing process. We have at some length considered the visiting relationship, spurred on by our surprising discovery that by eighteen months after the separation there was no correlation between the regularity or frequency of the visits by the parent and the predivorce relationship. Recognizing that the part-time parent/part-time child visiting relationship has no real counterpart within the intact family, we have attempted to elicit those factors which promote and foster the continued relationship of the visiting parent and the visited child and those factors which are likely to contribute to its diminution. These and related findings regarding the difficulties inherent in the visiting relationship, its early fragility, combined with its long-term importance for the child and perhaps the father and mother as well, all have many implications for parents, for those who aid parents, and for the courts. Our findings argue against burdening the visiting relationship with severe restrictions of legal constraints which make it more difficult for parents and children to seek out each other's company in response to their own wishes or needs.

Similarly, we have been impressed with the vicissitudes of the relationship between the custodial parent and the child. Such relationships may cause distress and confusion for many parents which decrease their

capacity to distinguish the children's needs from their own and which are detrimental to discipline and orderly household routines. However as the changed perceptions that occurred in the wake of the parental separation were accepted, there gradually (sometimes very gradually) emerged improved relationships and a real sense of a "new chance."

The psychological consequences of these changes for the children and for the adolescents have held our attention as we have come to regard these changes as centrally significant—and as expectable components of the divorcing process. Although these changes and their respective outcome reflected age and developmental differences among the children, they also reflected sex differences and sibling order and sibling relations as well as considerably individual variation.

The Postdivorce Family

A major conclusion regarding the effects of divorce is that the relationships within the postdivorce family are likely to govern long-range outcomes for children and adolescents. Put simply, the central hazard which divorce poses to the psychological health and development of children and adolescents is in the diminished or disrupted parenting which so often follows in the wake of the rupture and which can become consolidated within the postdivorce family. Thus when the divorce is undertaken thoughtfully by parents who have carefully considered alternatives; when the parents have recognized the expectable psychological, social, and economic consequences for themselves and the children; when they have taken reasonable measures to provide comfort and appropriate understanding to the children; where they have made arrangements to maintain good parent-child relationships with both parents—then those children are not likely to suffer developmental interference or enduring psychological distress as a consequence of the divorce. Even though the children may still regret the divorce and continue to wish that their parents had been able to love each other, some of these children may nevertheless grow in their capacity for compassion and psychological understanding.

Alternatively, if the divorce is undertaken primarily as a unilateral decision which humiliates, angers, or grieves the other partner and these feelings continue to dominate the postdivorce relationship of the divorced partners; if the divorce fails to bring relief from marital stress or to improve the quality of life for the divorcing adults; if the children are poorly supported and poorly informed or co-opted as allies or fought over

in the continuing battle and viewed as extensions of the adults; if the relationship with one or both parents is impoverished or disrupted, and the child feels rejected; if the stresses and deprivation of the postdivorce family are no less than those of the failed marriage—then the most likely outcome for the children is developmental interference and depression.

The end result of a successfully established postdivorce family can be an improved quality of life for adults and for children. The results of the failed divorce are likely to be low self-esteem and depression, accompanied by a continued feeling of deprivation or continued anger for children and adolescents which can endure for many years.

Help for Divorcing Parents and Their Children

During the next decade the expectable life cycle of a significant proportion of American families is likely to include divorce and remarriage. Perhaps it is time to take their needs seriously--to provide help which will safeguard the children and provide guidance to their concerned parents. Our findings amply document the freestanding character of the nuclear family at these critical junctures; the striking unavailability of supports for the children, and the absence of resources for information and guidance. Parents who are uncertain about what to do have no reliable place to turn. Most cannot draw on their own personal histories for models in their new situation; there is little accumulated wisdom and the many new roles of the visiting parent, joint custody, father custody, and stepparent are in the process of evolving—and the rules are not clearly defined. As a result, people are thrown back even more on the passions or anxieties of the moment in making decisions with long-range consequences for themselves and their children.

It is a curious phenomenon that family policy in this country has recognized the state's responsibility to offer services in family planning, for prospective children still unborn, but has left parents alone to deal with most of the issues that arise after the children are born. Perhaps the time has come for a more realistic family policy, one that addresses the expectable metamorphoses of the American family and the stress points of change.

Divorcing parents, as we have seen, face a bewildering array of tasks in putting their own lives in new and better order and in shaping the relationships of the postdivorce family. Many will need help in setting up postdivorce arrangements for the children and especially in arriving

at the mutual understanding on which such arrangements must be based in order to endure. For people who have decided to separate from each other in sorrow and anger, joint planning is very difficult to achieve.

Many adults will need the skilled help of a neutral counselor or clinician who is well versed in the psychology of children and in the knowledge of the expectable effects of divorce on the child's development and the parent-child relationship. Such help, we propose, should be made available to divorcing families. We have come to regard the ready availability of such services as a necessary adjunct in a responsible society to the accessibility of divorce. As our experience has convinced us, guidance for parents is needed, welcomed, and well used if offered appropriately at the right time and within the right context. The timing of the help early in the divorcing process is crucial to its success.

Even within our own very limited intervention, two-fifths of the men and a somewhat greater number of the women characterized the counseling which was offered as useful and supportive and were still following suggestions which had been made at the first meetings five years earlier. Long before we knew what we have since learned, one of our first surprises was the avidity with which parents, especially fathers, whipped out pad and pencil and wrote down our suggestions. We wondered then what we had said that they considered worth noting. Gradually, we realized the extent of their perplexity and their great need for guidance which led them to grasp at our sometimes very obvious advice.

People need help as the marriage declines and at the point that they decide to divorce. They don't know how to tell their children and, as we have seen, they often neglect to do so. They need help in providing proper support to the children during the transitional time. They need help for themselves and their children, in preparing for the many changes (economic, social, and psychological) which are expectable in the postdivorce family and in setting up appropriate joint plans for continued care of the children when at all possible. Parents may also need help later on as they contemplate remarriage and wish to prepare themselves and their children for the gratifications and tasks which they are likely to encounter within the remarried family. They will also need help for themselves at each of these junctures. We are hopeful that the findings of this study can provide beginning guideposts at the critical turns along this road.

Finally, it should be noted that divorcing with children requires of the adults who had once been together the capacity to maintain entirely separate social and sexual roles while continuing their cooperation as parents on behalf of their children. This is difficult and requires the kind of commitment that parents have often, but not always, made to their children. Perhaps only a society which values continuity in relationships and steadfast commitment to its children is likely to reward such complex behavior with approval sufficient to enable it to happen.

ughout the centuries of recorded history, law has been tra-
ly interested, as a matter of public policy, in the strengthening of
fe, an attitude that has always regarded the family as a source of
h and stability in our society. Today, family law continues to be a
ensitive area of public and personal law, where we deal with the
notional and personal aspects of our lives. If our legal system is to
l constructively and flexibly to Americans' evolving life-style, we
ovide leadership to strengthen the family with psychological and
ical support and meaning to meet our challenges of today and
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Joint Custody:

A Viable and Ideal Alternative

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ABSTRACT. This article will attempt to define and restructure the custodial rights and remedies of parents involved in a divorce proceeding. The purpose of the article is to convey an alternative to custodial awards as they exist today, and to point toward joint custody as an ideal solution and viable alternative that cries out for acceptance. Joint custody, as shown hereinbelow, is viable and practical because it maintains the much-needed familial structure in our society.

The issue of custody in matrimonial proceedings demands more than our present judicial systems offers. Custody hearings have been under close scrutiny from concerned laymen and professionals. A most poignant criticism of the hearings is that they tend to perpetuate prolonged hostilities and unnecessary trauma. The divorce rate continues to climb, and the nuclear family system continues to falter. Moreover, new concepts of manhood and womanhood are challenging and changing traditional expectations of parenthood. Though our judicial system is trying to adapt, the system needs a new conceptual outlook toward custody awards in divorce if it hopes to help recently divorced parents find stability for their future relationship with their children. At present, however, a basic inequity thwarts stability of postdivorce family relationships: custody awards are made to one parent only, and thus the relationship between the noncustodial parent and his child becomes one whose existence is dependent upon the benevolence of the custodial parent. Our present judicial system thereby dictates that postdivorce families are unbalanced families.

Custody means having possession, power, authority, and responsibility for the children. The noncustodial parent's relationship with his children is usually, though not entirely, repres ed, caref lly delineated, and

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narrowed by the power and extent of the custodial parent's desires. The custodial parent unilaterally possesses the power to determine the child's life, for better or worse. This article will analyze the present structure and system in an attempt to point toward joint custody as an ideal solution to the present inequities.

Changes in the competition for parents' custody rights have been an evolutionary development. In the nineteenth century and the beginning of the twentieth, the prevailing cultural attitude was profoundly different from today's. Custody then was arbitrarily awarded to the father as a matter of course. (For a fuller discussion of the historical perspective, see Derdeyn 1976.) Children were considered to be the father's property, and mothers were considered incapable of supporting the children. These dogmas were challenged and eventually destroyed by the movement toward equal rights for women and by the impact upon the judicial system of the study of psychology. Consequently, society's views were reflected in the "tender years" doctrine, wherein it was suggested that a mother should presumptively be given custody when children were in their tender years, usually up to the age of six or seven. Thus, mothers were then able to wrest the power of being the primary parent away from the father.

Partially because of the ongoing equal rights movement for women, the evolutionary change continuing today is that fathers are competing for the same custodial power they once had almost by divine right. This power struggle leaves the judicial system in a quandary. No matter which parental mode is considered superior, the effect is that the excluded parent and his relationship with his child is arbitrarily denied natural rights and needs. The problem is exaggerated, moreover, by the collateral beliefs that one parent must be awarded custody and the other excluded; and in order to make this one-sided award, one parent must be declared superior to the other. These beliefs are antiquated and wrong. The ideal solution to the problem is joint custody; that is to say, if an award must be made, the award must be made to both the mother and the father for custody of the children for their postdivorce family relationships. This solution is an obvious answer to present challenges and past disastrous experiences. The concept and ideal of joint custody more nearly reflects the psychological and legal realities of the family-oriented society wherein we live.

Joint custody is a new way of defining and structuring a postdivorce family's relationships. The concept of joint custody has received some publicity and support from practitioners (see Baum 1976; Dwyer 1974; Holly 1976), and it is being met so far with both welcome and skepticism. Essentially, joint custody means that divorced parents agree to continue to act as parents and share as equally as possible the responsibility for the

decisions concerning their children's health, education, and welfare. Both theoretically and in practice the parents must agree to act in concert, between themselves and among their children, on decisions affecting the children's place of residence, the amount of time spent with each parent, the quality of life of the children, and the financial responsibility that each owes to their children. Joint custody simply does not mean that one person is to have a child for six months and the other for another six months, though it can mean a sharing of the living arrangements. Joint custody is more than an arrangement wherein one child resides with two parents—it is a flexible and open arrangement for living, sharing, and loving. No one model is adequate to describe the possibilities opened by joint custody arrangements to postdivorce families, because the ultimate decision of the practical aspects concerning joint custody must rest with the individual family, and its actuality is hence dependent upon the family's own talents, values, needs, and resources. In principle, therefore, both the mother and the father must have equal power, liability, and responsibility. The divorced parents must choose to exercise this power and responsibility according to their individual preferences, needs, and desires.

Joint custody is not a solution for all people but rather must be the product of an "agreement" entered into by the divorced parents. The skepticism toward joint custody rests upon the expectation that divorced couples would be least able to enter into a joint custodial agreement. This argument is specious. To divorce is not necessarily an immature decision. A divorced couple must be able to negotiate and compromise. In all matrimonial proceedings where children are involved, aside from the cause of action, the parties must concern themselves with financial as well as custodial issues. If the parties can reach accord on financial decisions, the far greater issue of custody, though more complex, may be negotiated. That is to say, if the best interest of the child is the primary motivating factor, that interest must be decided by the persons most familiar with the issue, the parents. The parents, in negotiating an agreement, can and should call upon the use of experts such as attorneys, counselors, psychiatrists, psychologists, clergymen, and social workers. Parents are capable and must make those decisions.

The soaring rate of divorce, the rapidly changing definition in the roles of womanhood and manhood, and the subsequent effect of these changes upon the traditional models of motherhood and fatherhood are bringing our culture to the point where we must sooner or later realize that instead of trying to force new wine into old wineskins we must point to new methods of aiding postdivorce families to restructure their primary relationships in life. To do otherwise is to perpetuate needless repression, as exemplified by the contest of superiority between

motherhood and fatherhood, and unnecessary trauma, as exemplified by the resulting disruption to a family's homeostasis when one parent is considered superior to the other.

Since our culture is changing its basic family relationships faster than the legal system can and should perceive the emergent patterns of these changes, not only are new definitions of family structures necessary, but the ideal of joint custody is a potentially major new aspect of these needed definitions and structures that our present culture is demanding. Joint custody may not be the answer for all people, but one must realize that society will respond maturely when a viable and wholesome alternative is offered to the present inequities and seemingly chaotic changes.

Divorce has been recognized as a major life trauma, psychologically comparable to the death of a loved one. As a trauma, it is an experience imbued with the emotional reactions of loss, shock, and grief associated with death, as well as with the hopes and dreams associated with rebirth. A divorced couple with no children may cope with this emotional process by never seeing one another again, but a postdivorce family with children must live with the loss, and struggle to find new familial stability. Divorce does not end relationships in postdivorce families, it changes them. A postdivorce family is still a family, and a family by anydefinition is a unit of intimate, interdependent relationships. Even though the man and the woman are no longer husband and wife, they are still, and must be, mutually dependent upon one another, in very practical ways, as father and mother to their children. This mutual dependence is shared, in turn, by the children in their relationships with their parents, and the whole unit of interdependent relationships is psychologically irreducible and inseparable. The reality of this interdependence is thus the soil for either continued pain, bitterness, hostility, and resultant courtroom battles, or it is the soil for acceptance and regeneration. Joint custody is a concept that provides a better opportunity for the children to maintain a close relationship with each parent and thus gain the benefit of two separate but interdependent homes. It is thus incumbent upon the judicial system to adapt to the reality of the process of loss and new life, and to the reality of the irreducible nature of the mutual dependencies in the family system, by adjusting the system accordingly.

The point of this article is not to deliver a condemnation of the judicial system. The reality is not that simple, for the legalities of the situation are merely reflections of sociological values. As the custodial trend shifted toward the mother during the turn of the century it was then a reflection of cultural changes. A primary reason for the trend toward awarding custody to the mother was the development of the science of psychology. As the science of psychology developed, old and traditional human values of acceptance, warmth, respect, and love became newly

defined in the langauge of repression and free association, as well as of id, ego, and superego. When these essential and traditional human values were not experienced by an individual, psychology was able to describe and envision the effects of this deprivation upon human personality. At bottom, psychology demonstrated that individuals need to feel wanted and loved, and to have a sense of dignity and self-esteem because of the love they give and receive. This attitude toward life is hopefully learned and basically patterned in the early parent-child relationship, but it is ultimately the individual's own choice and responsibility. Without a "basic trust," in the Erikson sense, without faith, hope, and love the world appears to be threatening and hostile; against such a world one would need to build internal defenses that can distort not only the appearance of the world but also our basic characterological structure. Thus the extent of our isolation from the real world, and the extent of our defensive structures, can lead us to become neurotic, psychotic, or have a personality disorder.

Therefore, psychologically at least, the quality of mothering took on a new dimension and importance. Because a mother was the primary parent to the infant, the mother's emotional responses to the infant were found to have an immense impact not only upon the infant's degree of basic trust in life but also upon his emotional dependence and independence, his amount of curiosity, his basic sexual identification, his strivings for competition and compromise, his relation to authority, his degree of emotional expression and control, his capacity for intimacy, and the amount of satisfaction and security he gleans from life. In effect psychology revalidated the fact that good mothering produces emotionally healthy children.

The focus on mothering, while helpful and needed, has in part produced the present overemphasis upon motherhood. The result of this overemphasis has had dramatic effects in our society and hence in our legal system; consequently, by an overwhelming majority, custody awards have been made in favor of the mother. There is a growing body of psychological literature now concentrating on fatherhood, however and its dominant message is to the effect that fatherhood is as important as motherhood. Psychology is once again reaffirming and redefining common sense.

The roles of parents in many ways should and do overlap. Children need the basics, that is, nurturance, attention, caring, guidance, and warmth, from both parents, but there are stylistic differences. Traditionally, mothers have been the caretakers of the home, and the fathers have been the breadwinners. These roles have their biologic roots in the fact that women have the physical capacity to give birth and nurse, whereas men, because of their usually larger physical size, greater muscle mass, higher energy level, and greater aggressiveness, have been

the main protector of the home and the breadwinner (Lynn 1974, pp. 23-24). Recent studies have enlarged upon this picture of fatherhood by showing that fathers are more likely than mothers to be the parent more concerned with the child's sex role identification (Lynn 1974, p. 154) and with the child's eventual place in society (Lynn 1974, p. 166). Traditionally, as well, the father has been the final authority in the home. Used constructively, this authority is of great benefit to a child's sexual identification, for it may be used to enhance the child's personal sense of femininity or masculinity (Lynn 1974, pp. 154, 159). Moreover, this authority is a necessary enabling factor to a child's future role in society, for it may be used to enhance a child's moral development as well as his ability to express or to inhibit his aggressiveness in appropriate ways (Lynn 1974, p. 213). Good fathering produces children who are secure and have a purpose and direction in life and who are competent in what they do. Bigner (1970) sums it up this way: "Research has shown that the father's greatest impact on his children occurs primarily in those areas involving psychosexual, personality, social and intellectual development. In essence, current research has suggested that there is more to the parent-child relationship than that involving the mother and the child." Succinctly, good fathering produces emotionally healthy children.

It is clear, then, not only from psychological studies but also from common sense, that both mothering and fathering are essential to a child's emotional well-being. Motherhood and fatherhood, though they may overlay one another, are also separate and unique. In practice they tend to complement one another for the child's optimum development. Essentially, though, and beyond stylistic differences between mothering and fathering, parenting is a learned form of behavior. The most important factor involving parenting is "the personality of the person doing the feeding and the environment inwhich the child is fed" (Farrell 1974, p. 113). It follows, then, that the more fathers become experienced parents, on a daily interactional basis with their children, the more they become unwilling to divorce their children when they divorce their wives.

The psychological impact of divorce upon a child is also becoming more researched and well known. The basic loss a child experiences is the stability of the parenting, and this happens most profoundly in the absence of one of the parents from the home. In psychological literature the loss is called "father absence." Lynn (1974, p. 279) describes the state of the literature this way:

> *The research on the relationship between father absence and the general level of the child's development reveals that the loss of a father for any reason is associated with poor adjustment but that absence because of separation, divorce, or desertion may have especially adverse effects. The consequences may be more pronounced in general for boys than girls. However, father loss seems especially detrimental to the adolescent girl's ability to interact appropriately with males. The younger the child when father absence occurs and the longer the extent of his absence, the greater may be the resultant disturbance.*

If the custom of maternal custody awards were reversed, we might have literature on "mother absence," but the loss of either would probably be the same. The Children of Divorce Project, from Marin County, California, reports that its studies show, in part, that the effect of the loss of a parent upon a child is demonstrated by feelings of anxiety, fear of losing love for himself, guilt, shame, and profound sadness (Wallerstein and Kelly, forthcoming). Each child must struggle in one way or another with his new reality and find a manner of coping with this loss. The manner of coping may be either healthy or disturbed, for the manner depends upon the real parental support he receives to help him cope. Other studies show that the predominant patterns of disturbed functioning in boys, especially those whose father left the home before they were six, seem to be found either in a feminization of their maleness (Bigner 1970, p. 359) or in a rebelliousness to society in the form of juvenile delinquency (Farrell 1974, p. 117). In girls, the impact of a father's absence is again felt to be more acute in the early years, and its effects, according to Hetherington (1976), "appear during adolescence and manifest themselves mainly as an inability to interact appropriately with males." More specifically, these effects appear in insecurity with men to the point of immature seductiveness, increased sexual activity with their adolescent male peers, and in adverse feelings toward their fathers (Hetherington 1976, p. 51). Lastly, the real emotional impact of divorce and the loss of a parent upon children is just beginning to be known. Hetherington (1976, p. 52) says: "Although research on boys found that the effects of father absence tend to appear early and decrease with age, the effects on girls remain latent until adolescence. Our study suggests that future work on the effects of father absence on females may find its most important evidence in the liv[illegible] of mature women."

The least we may be able to formulate from these studies is that if children are not able to cope with the loss of a parent, they risk not only [illegible]ating their parents' emotional conflicts in their own lives but also [illegible]ing some degree of impairment in their psychological development because of their traumatic loss. Moreover, the risk is real, and acute. Kalter (1977), for example, reports that children of divorce are referred for outpatient psychiatric evaluation at nearly twice the rate of occurrence in the general population. And Wallerstein (1974) reports that 47 percent of the children in a sample study of preschool children of divorce "appeared in considerably worsened psychological or developmental state at the checkpoint of a year following the initial findings."

Children need a balanced set of parents to interact with them constantly and continually. In divorce a major trauma occurs that upsets this balanced need, and unless major supports are adequately given to a family in the midst of divorce, the strong likelihood is that the trauma will linger on long after the actual divorce and thereby be destructive to both the family and society. This is why we feel that if parents divorce, joint custody helps answer the needs of the child, of the whole family unit, and of society.

If not joint custody, then matrimonial courts must face and make Solomon-like decisions. That is to say, the courts must weigh one spouse's rights against the other, one spouse's abilities against the other, one spouse's assets against the other, and one spouse's liabilities against the other, in order to determine what is in the best interest of the child, so that custody may be awarded to one and not to the other. To some, namely, Goldstein, Freud, and Solnit (1973, p. 53), this burdensome situation is the "least detrimental alternative." They support one-parent custody awards because they fear further immobilizing of children's psychological adaptiveness in divorce by compounding their trauma with loyalty conflicts (Goldstein, Frued, and Solnit 1973, p. 38). Joint custody would ameliorize this potential conflict since equalized parental power over the long run would create détente, not continued hostilities. Moreover, their concept of excluding the noncustodial parent from having legally enforcible visiting rights out of a desire to provide continuity to the child (Goldstein, Freud, and Solnit 1973, p. 38) can only be seen as a highly misplaced and distorted way of loving; to try to erect such broad and permanent obstacles to natural human relationships is simply barbaric. True emotional stability occurs in an atmosphere of respect, trust, and love, not in an atmosphere of outright repression and rejection.

To others, however, the need of "having" parents is absolute. Boszormenyi-Nagy (1977) states: "The child's main interest throughout the pha...s of parental strife and divorce [is] the preservation of his organic community, his family of origin." He goes on to stress the importance of the "availability of relationship with as much of his integer family of origin as possible. It amounts to irrational grandiosity on the part of either a spouse or of a court to believe that the parent-child relationship involving the other spouse should or could ever be really made non-existent." From a family therapist's point of view, then, the continuity a child needs in postdivorce living is in the availability of all relationships, not in repression as we practice today in one-sided custody awards.

How our judicial system might effect this new stability of joint custody may be seen by analyzing the present structure from a psychological point of view. The responsibility upon judges in deciding custody matters is especially quite burdensome. Like children running to their parents to complain about their sibling, parents go to court to settle those disputes they cannot amicably settle themselves. This parent-child relationship between the judge and the litigants is given legal substance by laws imbuing the judge with the power of *in parens patriae*. On the one hand, this is proper since someone must be called upon to decide custodial matters with authority. The parents, by their lack of agreement, do in effect give their authority to the judge. But, on the other hand, the courts cannot hope to settle custody disputes amicably when parents cannot do that themselves.

The adversary system may endeavor to promote equity in custody proceedings, and resolve this circular quandary, if it were to look toward joint custody as a viable alternative. No one, least of all the children, "wins" or "loses" when the general parental relationship is encouraged by the judicial system to be hostile, faultfinding, conceited, and game playing (see, for example, Lindsley 1975; Noble and Noble 1975). Judges themselves are sensitive to this fact, and they know their limits (Lindsley 1975, p. 1). In this regard Goldstein, Freud, and Solnit (1973, pp. 49-50) aptly stated: "While the law may claim to establish relationships, it can in fact do little more than give them recognition and provide an opportunity for them to develop. The law, so far as specific individual relationships are concerned, is a relatively crude instrument." Even with such a "crude instrument" judges must judge, if only for the reason that parents compel society to settle what they themselves cannot settle. The power judges d[illegible] have in this situation is considerable, however, if we place emph[illegible] power to provide an opportunity for relationships to dev[illegible].

To be su[illegible]e, there are many divorced couples who perennially choose to bicker and fight, as if they were still married. However, we cannot expect peace and order when one-sided decisions create imbalance and disharmony in the postdivorce family structure. A normal response to a threat of lo[illegible]s is to fight, and a structured imbalance in the emotional sense thus means sowing the seeds for a disturbance in the finely woven set of interdependent relationships that families have as their basic emotional matrix for their lives. Joint custody does away with the threat of loss of parent or of child by structuring *in* relationships instead of structuring them *out*.

In the light of this psychodynamic between the court and the litigants, we feel that joint custody would provide a better opportunity for relationships to develop. In reality, it means giving the divorcing couple, who are in shock and trauma, no threat of loss, but an opportunity to wield the parental authority only they can best wield. However, joint custody cannot happen easily; it mandates supplements to the adversary system, such as a marriage and divorce counselor to confer with the judge on decisions (Fisher 1968) or a family therapy and family systems

expert to participate in these decisions (Boszormenyi-Nagy 1977). These suggestions, and more, should and must occur amongst concerned parties. With divorce happening at its present increasing speed, our stability as a family-oriented society is weakened. We desperately need new ways of adapting to the changes as well as new ways of defining postdivorce family strucutres.

We feel that a potentially central feature of new structures for post-divorce families is joint custody. We cannot expect every parent to choose to be mature about being a father or a mother, but we can expect them to try to act like mature parents if we give them the legal coequal power that is their physical and emotional right and responsibility. We must be able to teach them that a family is still a family, even though a husband and wife may divorce. Such a family has dramatically changed, so much so that the fundamental basis of the family, the husband-wife relationship, is dissolved legally and, hopefully, emotionally. But it is still a family when seen through the eyes of the next fundamental family relationship, that between the parents and the children. From the point of view of the children's emotional and developmental needs, this family system still needs to function and operate on a freely interacting, evolving basis. Moreover, the children's developmental needs will continue to operate in this manner no matter what artificial means we use to separate them. These needs may function pathologically, but function they must. Therefore, we believe that joint custody more nearly reflects a family's basic needs for openness and change on the one hand, and for the stability of having parents on the other, in the interdependent and growing nature of family systems. Joint custody is thus a viable alternative because, however ideal it may be in the present, it is also a highly pragmatic way of helping and expecting divorcing couples to be responsible, involved, and loving parents.

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Joint Custody and Co-Parenting: Not By Law But By Love

THEODORE ERNST
RUTH ALTIS

In recent years, joint custody and co-parenting of children after divorce or separation has received considerable attention. The authors advocate wider recognition of this option to sole custody and visitation, review pertinent legal and other literature, identify indications and contraindications, and briefly discuss the implications for social workers.

In the late 1970s the practices of joint custody and co-parenting began to attract national attention. This was due in no small part to the nearly simultaneous appearance of two books: *Co-Parenting: Sharing Your Child Equally* by Galper [8] and *The Disposable Parent: The Case for Joint Custody* by Roman and Haddad [14]. Response to the award-winning movie *Kramer vs. Kramer* helped direct attention to the option of joint custody.

Though inextricably related, joint custody and co-parenting differ conceptually and affectively. Joint custody may be legal custody only, without the shared physical custody or commitment to shared parenting that

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is a feature of co-parenting. Many of the proponents of joint custody have been attorney fathers denied custody of their children after divorce, as many of those who promote co-parenting have been social worker parents. Attorney fathers denied sole custody, even after appeal, often seem to have espoused or advocated joint legal and/or physical custody only as a second alternative. Estranged social worker parents seem to have more frequently opted for shared parenting and then established legal bases for their commitment to co-parenting. Joint custody and co-parenting are further complicated by conflicting legal-adversary ("fathers' rights") positions as opposed to cooperative-consensus positions. The so-called fathers' rights movement often proposes that sole custody more often be awarded to fathers in contested custody situations, or that fathers be awarded more generous visitation rights, with joint custody only as a second alternative.

Definitions

Joint custody, both legal and physical (also known as split, divided, or shared custody, and even co-custody), is defined legally by Fineberg:

> In contrast to the split or alternating order, joint custody (or shared custody, as it is often called) *preserves*, at all times, both parents' joint, legal responsibility for the child's upbringing upon their separation. The crux of the order is that the separated parents continue to act as parents, sharing as equally as possible the authority and responsibility for the decisions that significantly affect the life of their child. Physical care and control is not isolated from legal custody nor do the parents divide custody in its broadest sense in such a way that it alternates between them during various times of the year. [6:433]

Many writers would disagree with the last portion of Fineberg's definition and include such alternating arrangements under a broader definition of joint custody.

Elsewhere, we have defined co-parenting as follows:

> Co-parenting is the planned, shared parenting of one or more children by divorced or separated parents. Co-parenting makes it possible for parents who are divorced or separated to continue to experience parenting as a responsibility and as an opportunity for a close, loving, caring relationship with a son or daughter. [5:678]

There are many varieties of joint custody and co-parenting ranging from custody and care splitting on school year vacation periods, to split week, alternating months, alternate six-month periods, alternate school years (depending on the age of the child), and even "bird's nest" arrangements, in which children of divorced parents remain in the same home (sometimes placed in trust for them), and former spouses alternate between the home of the children and a separate apartment or home, sometimes shared.

At the very heart of joint custody and co-parenting are specific ideas about what the notion of "family" includes. Advocates of this take as a given that the intact nuclear family is not the only viable family arrangement. Family forms they recognize are single-parent families; extended families, whether on multi-generational or other extended kinship bases; "blended" families, i.e., stepparent families. Divorced or separated families are seen as "reorganized" families. All such family arrangements (together with other social institutions) may and do successfully carry out family functions for children: physical care and protection, affective nurturance and love, status placement, role modeling, socialization, acculturation, recreation, education, religion, and so on.

Legal and Literature Review

The origins of joint custody and co-parenting in the United States as an alternative to traditional dispositions of children after divorce are somewhat uncertain. Historically, for many centuries in English and American common law, children of divorce almost always "belonged" to fathers; they were considered "property." Later, under the "tender years" doctrine, children were almost always placed in the legal and physical custody of mothers. Foster and Freed cite a 1944 "Symposium on Child Custody" as one of the earliest considerations of joint custody, as well as a 1968 student note in the Journal of Family Law [7]. However, most appellate decisions concerning joint custody are from the 1960s and 1970s; there are only a few earlier decisions. Goldstein, Freud, and Solnit, in *Beyond the Best Interests of the Child*, added complications to the issue

[9]. Stack's article in *Social Problems* in 1976 is seminal [15]. However, most of the literature concerning joint custody and co-parenting has been published since 1978. Freed and Foster in the United States [7] and Fineberg in Canada [6] have best summarized recent legal precedents and opinions in regard to joint custody and co-parenting. In recent years a number of nonlegal writers have also dealt with joint custody and co-parenting, including Abarbanel [1], Ernst [4], Galper [8], Greif [11, 12], and Roman and Haddad [14].

Nonlegal writers generally view joint custody and co-parenting favorably. Many of them view it as the most desirable custody disposition for children of divorced or separated parents. In fact, Grate and Weinstein title their article "Joint Custody: A Viable and Ideal Alternative" [10]. Some advocate that by statute it become the presumptive (but rebuttable) disposition for children of divorce, as it has in a number of states. Writing in 1980, Japenga reports that this has already occurred in four states: California, Iowa, Oregon, and Wisconsin [13]. Earlier, Buser indicates that there are already six states that have such statutes, but he does not name them [2]. In effect, many proponents of this approach take an adversary stance in regard to joint custody—that it may, even should, be imposed even when contested. As we indicate further in this article, we believe that cooperation, communication, and basic trust and agreement are necessary conditions for joint custody and co-parenting to work successfully in "the best interests of the child."

Goldstein et al. v. Roman and Haddad

An important statement about permanency planning for children, *Beyond the Best Interests of the Child* by Goldstein et al. [9], has had a major impact on judicial decisions concerning child custody, especially for dependent or neglected children. In *The Disposable Parent*, Roman and Haddad [14] correctly identify *Beyond the Best Interests of the Child* as one of the most potent arguments against joint custody and co-parenting after divorce or separation.

Goldstein et al. have made an important contribution concerning child custody and the importance of psychological parenthood. Roman and Haddad have made an important contribution concerning possibilities for joint custody and shared parenting, but they are mainly interested in the courts awarding joint custody even when contested. However, unless

Goldstein et al. and Roman and Haddad consider the possibilities of positive shared parenting by permanently separated spouses, they avoid the real issue.

Unfortunately Goldstein et al. have influenced courts not to consider joint custody for children of marital dissolution for whom neglect and/or dependency are usually not the real issues. They cogently argue that in contested custody only the "psychological parent," whether biological, foster, adoptive, or "common law," should have permanent, non-divided custody, with total, unchallengeable "parental power," e.g., total control of visitation with the other (noncustodial biological parent) [9:98]:

> If the choice, as it may often be in separation or divorce proceedings, is between two psychological parents and if each parent is equally suitable in terms of the child's most predictable developmental needs, the least detrimental standard would indicate a quick, final, and unconditional disposition to either of the competing parents. [9:63]

Despite their obvious bias, even Goldstein et al. leave an "out":

> Children have difficulty in relating positively to, profiting from, and maintaining contact with two psychological parents *who are not in positive contact with each other* (italics added). [9:38]

The point that Roman and Haddad and Goldstein et al. miss is that the core of joint custody and co-parenting are positive communication and cooperation between former spouses who are both still psychological parents. Evidence is accruing that many former spouses can cooperate about co-parenting their children even though they may disagree about nearly everything else.

Indications and Contraindications for Joint Custody and Co-parenting

Joint custody and co-parenting may be an alternative for only a relatively small but significant number of divorced or separated parents. Most writers agree that there are indications and contraindications for this arrangement [1, 6, 9, 12].

All authorities agree that there are four essential conditions that must exist if joint custody and co-parenting are to be successful.

1. Former spouses, despite their continuing differences, must agree and be able to communicate about parenting their children. They must be able to support each other and make flexible arrangements. There must be agreement about implicit rules for parenting and co-parenting schedules, details, and life styles. Joint custody and co-parenting, in fact, cannot be court ordered. To be successful it must be initiated by the parents themselves. In her definitive article, Fineberg reiterates this point [6].

But agreement does not mean "live and let live." The concern is love for the child, not parental ways or style. Co-parents may have different life styles, but the children must know that they have two strong advocates who trust each other about their children and their parenting.

2. Necessary logistical supports, including geographic proximity—especially in the ideal types of joint custody and co-parenting—must be present.

3. The children must genuinely agree to such an arrangement. The agreement may not be 100 percent, but it must be basic and with few important reservations.

4. All other contraindications to joint custody and co-parenting must be absent.

Galper, in *Joint Custody and Co-Parenting: Sharing Your Child Equally*, offers practical suggestions for scheduling; financial arrangements; communications between former spouses who are co-parenting; and children's adjustments to the consistency, differences, and enrichment of having two homes. The discussion of the resolution of differences and the possibilities for communication between former spouses is perhaps the most important part of her book. Successful co-parenting involves negotiations about food preferences and differences in two homes; school arrangements; agreement about sexual attitudes and behaviors, as well as religious beliefs and practices; shared clothes and laundry responsibilities; compatible bedtime hours and rituals; relatives (including former in-laws); sharing holidays equitably, and so forth [8].

Legal Bias

There is at least one other major consideration: the attitudes and biases of the courts and attorneys. Foster and Freed find that some courts and attorneys are negatively biased toward joint custody and co-parenting although even where statutory authority for joint custody does not exist as

it now does in more than a dozen states, no states (with the possible exception of Louisiana) prohibit joint custody awards by statute. In a handful of states, common law precedent seems to prohibit such determinations. But Foster and Freed argue that the courts and attorneys are not really biased against such judiciously approved arrangements. Rather, they believe that the courts have wisely been reluctant to award such arrangements when the necessary conditions are not present [7:31]. Many judges and attorneys fear that joint custody awards will return to court for further litigation. The only studies that address this issue have found that the opposite is true: joint custody awards return to court less frequently than contested sole custody and visitation awards [6, 11, 12]. We agree with those who state that the attitudes and opinions of judges and attorneys are still obstacles to joint custody determinations [16].

Benefits of Joint Custody and Co-parenting

Co-parenting permits former spouses to remain equally involved in parenting even though they have different homes and separate lives. As the subtitle to Galper's book, mentioned above, indicates, divorced or separated parents and their children are still "family." Co-parenting can especially reduce sexism in the role models parents provide their children since co-parented children see both parents carrying out many similar, shared responsibilities. Co-parenting also provides respite from parenting pressures, a point widely noted as valuable for parents of retarded children and abusing parents that is no less valid for all parents. As Galper presents it, co-parenting stands in its own right as a parenting style, not as a therapeutic substitute or pick-up-the-pieces alternative to traditional intact nuclear parenting. [5].

Role of Social Workers

The role of social workers in regard to joint custody and co-parenting is three-fold: practice, research, and social action.

Practice. Social workers should consider this alternative with divorcing parents when the conditions for its success are present. They can also help parents create such conditions. In addition, social workers can be in-

volved in planning details and arrangements and, in some situations, can interpret joint custody and co-parenting to attorneys and judges.

Research. Further research concerning joint custody and co-parenting is needed. First, the actual incidence of de facto co-parenting is unknown. Many divorced parents practice some version of co-parenting without a formal joint custody award. Nearly all of the published research consists of successful case studies. Only the legal literature mentions parents who have tried joint custody and failed to carry it out successfully. Cox and Cease especially call for research concerning the impact of various custody arrangements upon children at different ages and stages of development [3].

Social Action. Social workers can more widely interpret joint custody for parents and children of divorce and can assist in developing necessary supports for co-parenting, such as job sharing, more adequate day care facilities, more favorable legislation, helping teachers understand that co-parented children really do have two actively involved parents (not just "mothers"), and abolishing restrictive rental or housing conditions.

Social workers are often in the best position to appreciate that joint custody and co-parenting cannot be forced upon unwilling parents, legally or otherwise. Co-parenting is not by law but by love. ♦

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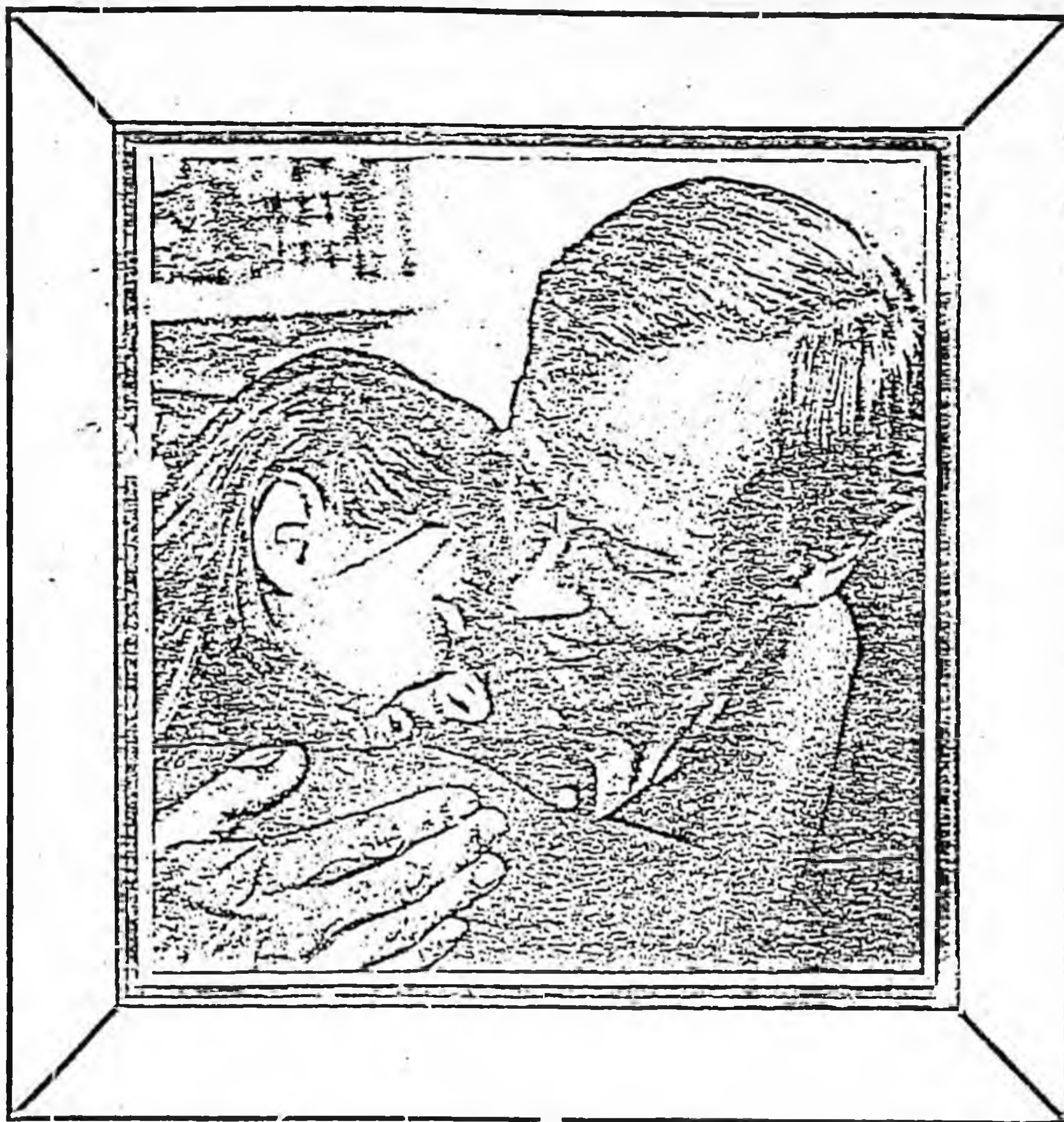
BY BOBETTE ADLER LEVY AND CAROLE R. CHAMBERS

The Folly of Joint Custody

Children Are Not Negotiable; Bartering Them in Divorce Actions Is Bad Law and Even Worse Psychology



Forsyth/Woolley

And when they had brought a sword before the king, he said, "Divide the living child in two, and give half to the one, and half to the other." But the woman whose child was alive, said to the king, "I beseech thee, my lord, give her the child alive and do not kill it." But the other said, "Let it be neither mine nor thine, but divide it."

In this first recorded child custody case, King Solomon points out the futility of attempting to split a child in half. But even today, thousands of years later, the bar, bench, and psychological experts have still not mastered the lesson of this parable.

Joint custody has become one of the most publicized placebos and least understood issues in the field of family law. Some attorneys and judges view joint custody as a way o reducing acrimony at the time of divorce. They harbor the pious hope that the parents will work it all out for themselves. This view may be particularly appealing to some attorneys when the litigants cannot afford high fees for protracted contests.

Sometimes attorneys also urge their clients to accept an agreement for joint custody as a bargaining lever. They may tell a woman, for example, that they will offer joint custody to get a larger settlement in negotiations with opposing counsel. In other situations, they may urge a male client to accept "joint" rather than "sole" custody, in order to bargain for his wife's compliance in a divorce action. But children are not negotia-

A joint custody award may temporarily silence a custody

ble and their custody should not be an issue for blackmail or barter.

When the issue of custody may be contested, the attorney should not even suggest joint custody as an alternative. Instead of acquiescing to the idea of a joint custody agreement, the attorney should urge the client to seek therapeutic help from a local family service, private practitioner, or conciliation service to work out acceptable custody arrangements. Failing agreement of the parties on custody, the attorney should move to get a court order immediately for psychological evaluation for court testimony to assist in determining which parent's custody will be optimal for the child.

RESOLVING OLD CONFLICTS

A joint custody award may temporarily silence a custody dispute today, but what happens tomorrow? The concept simply sweeps the custody issue under the rug while ignoring the fact that the parents may not have resolved the neurotic conflicts of their former relationship. Awarding joint custody judicially condones two parents exercising their old battles for control. The children may be severely victimized in the process.

It is easy to understand why attorneys, judges, and psychotherapists would seek to diminish acrimony in a case. Yet it is fantasy to believe that changing labels changes feelings and behaviors at a profound level. The professionals are often dealing with enraged, affronted, hurting persons who seek vengeance and protracted litigation that they can ill afford. While professionals attempt to reduce the conflict with joint custody awards, in the long run their efforts may produce greater and more long-lasting nightmares for the children and adults involved in the cases.

Legal edicts cannot force parents to agree on child rearing questions. Sometimes therapeutic intervention or mediation may indeed produce great success in helping the parties co-parent, but the fate of children should not rest on that possibility of success.

Legal orders cannot be predicated on good intentions, but must take into account existing facts and behaviors. A joint custody award should not rest on the ultimate hope that successful co-parenting may result. When all available evidence indicates that the parents cannot agree that the sun will come up in the morning, much less on the handling of their children, a joint custody order will not change anything.

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How does joint custody serve the child's best interest or needs? In one of the more grotesque examples of joint custody, we have seen a judge at a hospital at 3:30 A.M. signing consent for an emergency appendectomy. The child's life was threatened, but the hospital did not want to assume liability when one parent said "yes" and the other "no" on a consent form. Fortunately, the judge was reached by the hospital in time, since the child's appendix was about to rupture.

In another instance, two children were enrolled in separate schools by the mother and father who had joint custody. The children were enrolled by one parent in a parochial school and by the other in a public school. Since the custody order stated that the children would live alternating weeks with each parent, the parents felt free to exercise their differences on the youngsters. When the children attended one school, they were truant from the other. They were failing in both schools and deeply traumatized psychologically. Yet each parent was exercising his or her "rights" under a joint custody decree.

IN THE BEST INTEREST?

How does it serve the child's best interest or needs if, as Justice Felice K. Shea points out below, it may well deprive that child of "stability, serenity and continuity"? *Dodd v. Dodd*, 403 N.Y.S.2d 401 (1978), a major holding in New York regarding joint custody, points out its potential horrors. Justice Shea stated that joint custody may be in defiance of the children's best interest, making them prey to division, as the adults' hostility focuses on the manipulation of the children.

> It is well recognized that the children of divorce are subjected to severe strain, and that children often experience loss of security and feelings of rejection as a concomitant of their parents' separation. Experts in the field have expressed opposition to divided custody on the ground that change and discontinuity threaten the child's emotional well-being. It is argued that joint custody between parents usually requires that "shuttling back and forth" of the children which must inevitably lead to the lack of stability in home environment which children require. Moreover, joint or divided custody may exacerbate the adults' use of the children to defeat each other in defiance of the children's interest in stability, serenity and continuity. In attempting to maintain positive emotional ties to two hostile adults, children may become prey to severe and crippling loyalty conflicts.

Court opinions make it clear that interests of the child is a separate issue from parental fitness. An award of custody to one parent does not legally imply that the other is unfit. Both attorneys and psychotherapists need to help parents understand that custodial awards are for

the benefit of the child and not the parents, and that no stigma attaches to being noncustodial. The order is rather a demonstration of concern of the needs of the children.

There are two basic versions of joint custody: joint "legal" custody and joint "physical" custody. Joint "legal" custody is the shared decision making of the parents regarding upbringing, education, religion, and medical, financial and recreational requirements of the children. Joint "physical" custody consists of children living with each parent for equal periods of time.

It is ironic that the terms *co-parenting* and *joint parenting* have been used synonymously with "joint custody" in legal terminology and in many articles in the lay press. Co-parenting or joint parenting is the practice of divorced or separated parents who mutually choose to remain actively involved in the lives of their children. Many share equal rights and responsibilities in decision making and care-taking of their offspring, even though legal custody has been granted to one or the other parent.

In these instances, the parents have made an emotional and moral commitment to their children. They recognize that the children have the right to ongoing parenting from both of them, but that it is the parents' responsibility to work out achieving that together.

This moral agreement cannot be dictated by the courts. It cannot be legislated. It may, and optimally should, be achieved by the parents. But the court cannot make it happen by its own order.

CALIFORNIA'S NEW STATUTE

In January 1980, California enacted joint custody legislation (Assembly Bill No. 1480). As defined by this bill, joint custody means, "An order awarding custody of the minor child or children to both parents, . . . physical custody shared . . . to assure the child . . . frequent and continuing contact with both parents; provided, however, *that such order may award joint legal custody.*"

Obviously, this distinction may create much confusion both in law and for children. Who will oversee the parents' agreeing on schools, religious training, clothing needs, pediatricians, orthodontists, vacations, haircuts, *ad nauseum*? Yet, guidelines for these everyday realities should be determined if there is to be joint legal custody. Dissension in these matters may rip children just as much as bouncing them from house to house.

Unfortunately, judges cannot really predict the capacity of the adult parties to co-parent and should not issue joint custody awards since they cannot be assured that they will operate in the interest of the children. Justice Shea, in *Dodd*, points out that while the concept of joint custody sounds like a good idea, the parents' self-esteem should not take precedence over the interests of the child in judicial deliberations.

Joint custody is an appealing concept. It permits the court to escape an agonizing choice, to keep from wounding the self-esteem of either parent and to avoid the appearance of discrimination between the sexes. Joint custody allows parents to have an equal voice in making decisions and it recognizes the advantages of shared responsibility for raising the young. But serious questions remain to be answered. How does joint custody affect the children? What are the factors to be considered and weighed?

When joint custody is awarded as a means of assuaging the pain of both parents to prevent "wounding the self-esteem" of the litigants, we are not consistent with our primary concern which is the best interests of the children. Too often, acrimony of the marriage is carried into the resultant divorce. Parents all too readily bring the pathology of the marriage into later interactions and the children are torn between the two.

Let's suppose the parents have an "amicable divorce" (at the time), and believe that they can live by a joint custody agreement. They have their attorneys submit that to the judge as an agreed order. Even in this situation the court would be abdicating judicial responsibility if it did not clearly designate a parent with both legal and physical custody of the child.

(Continued on next page)

Law and the Family

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Joint custody orders are not needed to co-parent

The parents who are morally committed to sharing the rearing of their children, and emotionally able to co-parent, will not require a joint custody order to do so. They will interact and agree on child rearing issues without violating an award of custody—both legal and physical—to one parent. If the parents cannot interact productively, then joint *anything* will be damaging to a child.

NOT REALLY JOINT CUSTODY

What presently occurs under the label of joint custody is a smokescreen whereby parents are given the award because of their expressed good intentions or because they cannot resolve between them who the custodial parent should be. Then, by the interjection of a picket fence around the words "joint custody," one parent is granted physical custody by judge's fiat or by attorney's urging. By so doing, the court has allowed the parents to be duped into believing that what exists is joint custody, a term which has really been undermined.

Children suffer either way, as each parent insists on controlling plans or whereabouts of the child. Thus, post-decree litigation proliferates. Awarding joint custody while specifying separate physical custody is an instance of, "What the large type hath given, the small type hath taken away."

Some judges and attorneys are supportive of the concept of joint custody. On closer examination, however, they are still operating under the assumption that there should be a primary home and a primary parent, with liberal visitation rights for the other parent. *This is not joint custody.* As the court noted in *Dodd v. Dodd*, "when physical or actual custody is lodged primarily in one parent, custody may be 'joint' in name only."

It is dishonest to state that parents have joint custody, but separate physical custody. In fact, they then have a custodial parent and a noncustodial parent wrapped together in a joint custody agreement which by legal definition is rendered meaningless. Ultimately, when the first crisis arises, the duplicity of terminology will result in exactly what the courts do not want—a return by the parents for enforcement, interpretation or reversal as a post-decree or appellate matter.

CONCLUSION

One can sympathize with judges, attorneys, and legislators who wish to reduce the acrimony and court contests by considering joint custody. But the courts should not act upon such agreements with favor—particularly when parents are extremely contentious. The battles of the marriage, long after, will take their toll on the children in a joint custody agreement, especially if the parents must return to the courts for the adjudication that did not occur at the time of the dissolution.

There is no question that divorce may be a bitterly painful experience to all involved—children, parents, and grandparents. But adults can change and can become more effective parents when the turmoil of an unhealthy marriage is ended. This is most likely when each goes into therapy or when they jointly seek therapeutic help.

An ailing marriage affects the ability of the parents to relate not only to each other, but to their children as well. People do have the ability to deal with and surmount crises, and to grow as a result of them. Usually they need some supportive therapeutic assistance to achieve growth in the experience.

Children, like their parents, can grow as a result of successfully coping with the divorce crisis. However, they also may need some psychotherapeutic intervention in the process. Optimally, they should have two concerned parents explaining that they both love the children and that their marital problems are with each other. Ideally, the parents' ability to co-parent is an expression of their concern to the youngsters.

But court orders cannot produce the optimal. That is why it behooves the court to provide a firm structure by which the children, as well as their parents, can begin to rebuild their lives. This structure may be shaken by a joint custody decree, when parents are ordered to agree on substantive issues of child rearing. Thus the court should determine which parent ultimately will have the final responsibility for the caring and rearing of the children. Judges may order an evaluation by a psychologist, psychiatric social worker, or psychiatrist to help determine the best psychological parent. The award for custody should be based on the capacity to carry the major load in parenting. Visitation is still crucial so that the child does not feel "dumped" by either parent.

Parents may divorce, but parenting is forever. They do not divorce their children, or should not if they really have any emotional investment in their youngsters.

Professionals should explain that joint decision making can be of more value than joint custody. Two divorced parents who amicably can make joint decisions are better than two contradictory parents.

We, as therapists, attorneys or judges, must try to help parents to achieve the ability to co-parent. As children grow, parents need all the help they can get—particularly when dealing with adolescents.

It is the parents' responsibility to remain actively involved in a constructive manner in the lives of their children. The courts can and must, however, provide a basic framework whereby the children and parents have the greatest opportunity to rebuild and function productively after the termination of the marriage. This is best done by clear and separate orders for custody and visitation, but not by making the children the victims in joint custody awards.

Attorneys should explain that separate custodial and visitation orders do not prevent their co-parenting. They do not need a joint custody award in court in order to co-parent or to be good parents. ■

NOTE REGARDING THE FOLLOWING 2 FRAME ON MICROFILM:

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Benefits of Establishing Paternity

DEPARTMENT OF HEALTH AND HUMAN SERVICES
NATIONAL INSTITUTE FOR CHILD SUPPORT ENFORCEMENT

MONOGRAPH SERIES NO 1

BENEFITS OF ESTABLISHING PATERNITY

by
Laurene T. McKillop, Ph.D.

with preface by
Judith Cassetty, Ph.D.

edited by
Elizabeth Abbene
Athena M. Kaye

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT

Marko Lewis
100 Yarrow Cabin Bridge
Hyder, Alaska 99923

Hon. State Senator Charlie Parr
State Senate
Juneau, Alaska

dear Senator Parr:

Many congratulations on your apparent victory in the Senate race. (I say "apparent" because or news is so spotty here). It was the only real good news in the entire election!

I dont know if you remember talking to me at the State Fair about introducing legislation to change child custody legislation. I have worked at Eneput over many years and know your grandkids + son. My own recent experience with the custody process found it to be biased in favor of women over men and suburban people over bush people. The last bias is built into the notion that obviously city raised judges feel that the way of life in the bush is not

as good for kids as the suburban way. For example: living in the bush very often ones income is about at poverty level and employement is neither steady nor does it last more than a couple months in the season. The court system doesn't consider hunting or building a cache as being employment.

The system is unfair to children and parents. The bulk of clinical research over the past 3 to 5 years and a reinterpretation of data from older studies show that the most important factor to the well-being of children after a divorce is that frequent meaningful contact with both parents is maintained. The most negative factor is giving custody to a hostile parent who tries to negate the role of the other. Our present system encourages a hostile, adversary atmosphere.

I personally feel that the whole custody situation needs a radical change. California, I understand, passed a joint custody bill in 1979. I don't have the bill number or the bill. This is in part probably a reaction to the "California Children of Divorce" study which results were summarized in January 1980 Psychology Today

In Oregon (House Bill 2532, 1977) a bill was proposed and not passed. I will enclose a xerox of the relevant passages.

In Pennsylvania a bill was proposal - sorry no year or number. One section is very good:

Section 17(b) Both parents shall have an equal right to seek and be granted custody, and to be fully considered for custody, and both shall enter the proceedings as fully fit and competant until proven otherwise. Neither parent shall be presumed to have the right to custody, or to serve the best interests or welfare of the child or children better merely because of their sex, or the sex and age of the child or children.

In the best interest and permanent welfare of the children every effort shall be made and taken to continue the relationship of the parent and child, and the possibility of joint, equal, co-custody shall be given first consideration.

My own commentary on the above is that in Alaska the words " ... or children better merely because of their sex .... or the facts pertaining to a rural, bush or city lifestyle." should be specifically included.

Last, and perhaps most important, the whole litigation process should be maximally taken out of the court system. My own case is still not decided NINE MONTHS from the first filing of papers. Altough both myself and my daughters mother recieved counseling no attempt at mediation with professional counselors ~~was~~ took place. when I tried to set up mediation I was told that it was against the right to privacy act and

* Though the present legal opinions state there is to be no bias as to sex of parent or lifestyle in reality there is that bias.

the other party refused. The entire proceeding has cost the state of Alaska probably close to $10,000 in court costs, legal fees and so on.

In Minnesota the state funds a counseling/mediation service attached to the courts: "The focus upon self-determination by parents in the process of mediation is consistent with the intent of no-fault divorce, the emphasis upon best interests of children, and identification of parenting qualities rather than marital discord."

In disputed custody cases, ~~[illegible]~~ attendance at court-connected or private mediation/counseling clinics should be mandatory.

Well, I'm sorry about the length of this. I am interested in getting legislation introduced for this coming session. I have ready a list of all the "Parents For Equal Rights" type organizations in the U.S.A - about 150 of them

and would want to contact them for a special lobbying effort, as well as put ads in Alaskan newspapers for input from parents who feel they were unfairly treated. I also am readying a summary of all recent research in the area, as well as a surge of popular interest as testified to in numerous supportive articles in popular magazines from Redbook and Harper's Bazaar to New West. I have contacted Brian Rodgers + Jerry Gardiner (and will write Dick Randolph, Ken Fanning and Niilo Koponen).

If there is any question, if you'd like xerox copies of research papers, or if you have a serious objection to presumptive joint custody legislation I ~~may~~ will do whatever I can.

Sincerely,

From The Disposable Parent - The Case for Joint Custody by Mel Roman and William Haddad ©1978 Holt, Rinehart + Winston N.Y.

fect a child's future and, at the most discrepant, a two-to-one parental split with regard to child care, joint custody should be made the presumptive choice in our courts. Unless there are compelling reasons to the contrary involving, for instance, the physical or psychological incapacity of one parent, chronic alcoholism, drug addiction, or absolute—and proven—disinterest in caring for the children, courts should proceed with a presumption in favor of joint custody of children after a divorce. And just as all laws pertaining to marriage and divorce ought to be made uniform throughout the land, joint-custody legislation should be nationwide in scope and application.*

Joint-custody bills are slated for consideration in Cali-

* The National Conference of Commissioners on Uniform State Laws, Chicago, Illinois, has proposed the one example of a Uniform Marriage and Divorce Act (1970) that we have. In their version, child custody is handled as follows:

> "Section 402 (Best Interest of the child). The court shall determine custody in accord with the best interest of the child. The court shall consider all relevant factors including:
>
> (1) the wishes of the child's parent or parents as to his custody;
> (2) the wishes of the child as to his custodian;
> (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;
> (4) the child's adjustment to his home, school and community; and
> (5) the mental and physical health of all individuals involved.
>
> The court shall not consider conduct of a proposed custodian that does not affect his relationship with the child."

Other than this last stipulation, which at least safeguards against punitive custodial awards, these guidelines obviously are of little help to judges faced with difficult custody decisions. Although we applaud the move to institute *uniform* custodial legislation, this particular proposal is in essence no different from the amorphous, and abused, state legislation that now exists. It still encourages an either/or view of child custody and offers no way to implement what is, after all, an unsatisfactory arrangement.

Oregon Reform Bill HB 2532, 1977

fornia and Pennsylvania. The following, excerpted from relevant passages in a proposed Oregon reform bill (House Bill 2532, 1977—a compromise bill was adopted by the legislature instead), is quoted here as one model (the italics are ours):

> (1) In determining custody of a minor child, . . . the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court may consider the following relevant factors:
> (a) The emotional ties between the child and other family members;
> (b) The interests of the parties in and attitude toward the child; and
> (c) The desirability of continuing (an) existing (relationship) *relationships*.
>
> (2) The best interests and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other relevant factor, and relying on it to the exclusion of other factors.
>
> (3) No preference shall be given to the mother over the father for the sole reason that she is the mother.
>
> (4) *Joint custody shall be encouraged. In determining the desirability of joint custody, the best interests and welfare of the child as described in subsection (1) of this section shall be of primary consideration. Joint custody may be appropriate under one or more of the following circumstances:*
> (a) *Where there exists an amicable relationship between the parties and they are able to communicate and generally agree with each other concerning joint decisions affecting the welfare of the child.*
> (b) *Where both parties are employed and the child*

would benefit by the assumption by both parties of joint responsibility for care and maintenance of the child.

(c) *Where the child is of such age or emotional development that the child would benefit from experiencing the advantages of joint custody.*

(d) *The health or other conditions of one party are such that custody of the child by that party alone may be undesirable.*

(e) *Where legal conditions exist such that the interests of the child would be best served by joint custody.*

(f) *Where the parties live in sufficiently close proximity to each other that the child's life is not disrupted to any significant degree by joint custody.*

(g) *Any other circumstances that the court may deem appropriate.*

(5) In determining custody of a minor child, . . . the court shall consider the conduct, marital status, income, social environment or life style of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child.*

This last stipulation is meant to further support Oregon's no-fault divorce laws and undermine the customary, though waning, relevance of marital fault as applied to custody decisions. Elsewhere this bill provides "for the care, custody, support and maintenance of the minor children of the marriage *by one party or by the parties jointly.*

* Oregon Legislative Assembly, 1977 Regular Session. House Bill 2532. This bill failed to pass. A compromise, Senate Bill 446, did pass and became effective law on October 4, 1977. It simply provides that the judge may decree joint custody. The language of the bill does not expressly encourage joint custody, nor does it set forth the criteria for when it would be appropriate to decree joint custody.

Nothing in a provision for joint custody precludes the court from specifying which parent is to provide the primary housing or from leaving such decision to the parties [italics ours]."

We are in accord with all the provisions of the Oregon bill but would make them stronger. Rather than "encourage" joint custody we would argue that it should be the legislated presumption. In the words of the proposed Pennsylvania Bill:

> Section 17 (b) Both parents shall have an equal right to seek and be granted custody, and to be fully considered for custody, and both shall enter the proceedings as fully fit and competent until proven otherwise. Neither parent shall be presumed to have the right to custody, or to serve the best interest or welfare of the child or children better than the other parent merely because of their sex, or the sex and age of the child or children. In the best interest and permanent welfare of the children every effort shall be made and taken to continue the relationship of the parent and child, *and the possibility of joint, equal, co-custody shall be given first consideration* [italics ours].*

It has, of course, been argued that to call for a presumption in favor of joint custody is coercive. But those who argue along these lines conveniently forget that the current bias in favor of the mother is itself coercive. They forget, too, that the lives of families are increasingly, even radically, subject to outside influence, whether from rock music, television, peer groups, or any number of social

* We omit the last sentence of this part of the proposed Pennsylvania Bill as we are not in agreement with it. It states: "Under a co-custody arrangement one parent shall have primary custody and the other secon[illegible]tody; child or children shall reside with parent having primary custo[illegible] of proposed bill from personal communication with George Doppler[illegible]

children of divorce, groups are being held on an experimental basis in some of the Minneapolis schools. All these programs are free and all are professionally staffed. Assisting the staff are considerable numbers of volunteers, themselves trained by the Domestic Relations Division of Hennepin County, Minneapolis's Department of Court Services.

While each of these programs is extremely valuable, we will examine a few that are most relevant to our concerns in order to give some idea of what court-connected family services can do successfully. In describing its custody mediation program, the Minneapolis family court states that:

> Mediation counseling is a method used by the Family Court and Domestic Relations Division of the Department of Court Services to assist parents with conflict resolution in contested custody issues. The focus upon self-determination by parents in the process of mediation is consistent with the intent of no-fault divorce, the emphasis upon best interests of children, and identification of parenting qualities rather than marital discord. If parents can be helped to arrive at their own decisions, continued responsibility and accountability for the effectiveness and viability of their decisions remain with them—not the external agencies of Court and Court Services.
>
> Mediation, an alternative to investigation, recommendation and court decision, is based upon the assumption that in the vast majority of cases, both parents are capable custodians. Further, experience confirms that parents are often able to reach decisions in a neutral facilitating setting with skilled counseling toward custody resolution.
>
> Self-determination of the custody issue is a primary goal in mediation counseling, but other benefits are also apparent.

Mediation Service - Minnesota

> - Self-determination is far more effective and lasting in the ongoing relationship of parents with the children and each other.
> - Parents are involving themselves in the process of considering the issues relevant to the best interests of their children.
> - Children are given an opportunity to provide active and direct input into the decision-making process.
> - Parents taking responsibility for the custody decision can be affirmative of their love and concern. It may reduce children's fears of abandonment and guilt about the "losing" parent.
> - Acrimony and stress associated with dissolution proceedings are likely to be reduced substantially.
> - Later visitation problems may be ameliorated.
> - Needless court litigation by reason of stipulation arising from agreement can be avoided.
>
> In some instances, mediation will not result in agreement, and therefore determination of primary custody is still necessary. The counselor is then responsible for proceeding with a more traditional study, evaluation, and recommendation for the Court's consideration.[2]

It should be added that preliminary statistics suggest that mediation has been much more successful than the older investigatory model. Of course, from our point of view, all mediation/counseling services should be voluntary except when custody is disputed. In disputed cases, we believe attendance at court-connected or private mediation/counseling clinics should be mandatory (where clinics exist!).

A second Minneapolis program sponsored by the family courts is called "Divorce Experience," a three-session program focusing primarily on the emotional experience

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Judge Schultz - Ketchikan

Larry Sweet

479-6762

1850 Roberts Rd.
FBKS. 99701

479 2241 (W)

James Cook - Calif.
"Joint Custody Assoc."

10606 Wilkins Ave
Los Angeles, Calif 90024
(213) 475-5352

analysis of HB 210

and may prescribe rules/procedures.

2) award joint custody

OR

3) if the parents do not agree.

get copy of bill

Rick Barrier

fiscal note for bill.

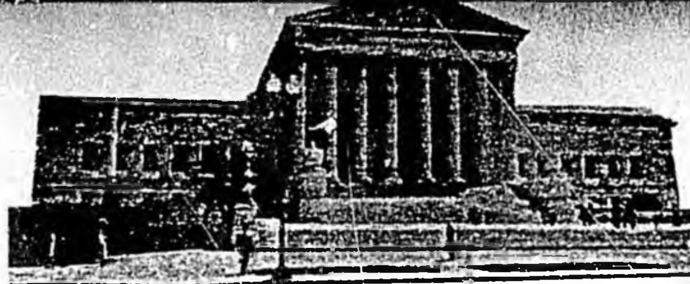
To: Charlie
From: Nancy
Re: Child Custody draft bill

Tam Cook drafted this bill, taking the refernces to mediation from the statute on mediation in divorce proceedings. It has become apparent that requiring mediation will be ineffective if there is no money to pay for the services of mediators. Even though mediators for divorce have been in the statutes for some time, they have never been used as far as I can determine.

Disregarding that issue, I would like to change the draft as follows:

Pg. 3, line 4: "The court may appoint any person the court finds suitable to act as mediator"
Perhaps a section should be added that the judicial system will set up rules of procedures and standards for mediators.

Pg 3, line 8: "Counsel for the parties may attend all conferences"
Attornies present may destroy mediation attempts through limiting what their clients say. They should not be allowed to attend, or it should be stipulated that they may attend only as observers.



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April 26, 1981

WRITTEN TESTIMONY
by
RUDY JOHNSON

IN SUPPORT
of
H. B. 210
JOINT CUSTODY

presented
April 22, 1981

via Teleconference Network
Anchorage

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

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Present and past methods of dealing with disputed child custody issues have been a disasterous failure. Historically we have allowed biases and not the best interest of the children to be the determining factors in the millions of cases that have filtered through our court systems. The results of over a century of abusive dispositions of these cases are measurable as will be mentioned later. To thoroughly appreciate the need for H.B. 210 we must understand the failures of the present system and be realistic enough to accept the fact it is failing!

In a 1860 opinion the New Hamshire Supreme Court ruled in upholding an award of custody to a father;

> "It is a well settled doctine of the common law, that the father is entitled to the custody of his minor children, as against the mother and everybody else: that he is bound for their maintenance and nurture and has the corresponding right to their obedience and their services."

> "It is one of the cardinal principles of nature and of law that, as against strangers, the father, however poor and humble, if able to support the child in his own lifestyle and of good moral character, cannot without the most shocking injustice, be deprived of the privilege by anyone whatever, however brilliant the advantage he may offer. It is not enough to consider the interests of the child alone." (American Journal of Psychistry 133:12107, 1976, page 1370)

From this 18th century mentality we went to the other extreme as espoused in the Minnesota Family Law Practice Manual.

"Except in very rare cases the father should not have custody of the minor children of the parties. He is usually unqualified psychologically and emotionally; nor does he have the time and care to supervise the children. A lawyer not only does an injustice to himself, but he is unfair to his client, to the state, and to society if he gives any encouragement to the father that he should have custody of his children. A lawyer who encourages his client to file for custody, unless it is one of the classic exceptions, has difficulty collecting his fees, has a most unreasonable client, has taken the time of the court and the welfare agencies involved, and has put a burden on his legal brethren." (Volume 50, pg 75)

Has the tender years doctine been eliminated in our system today? In theory yes, we have very good case law and Alaska has some of the most progressive statatory law in the nation. But the facts are the biases still exist and preconcluded decisions are being made before the facts are ever established in awarding custody of children, to the detriment of the children.

Since 1977, we have been associated with over 185 divorce reform organizations around the nation that have collectively gathered the results of over 350,000 disputed child custody cases. The results shockingly demonstrate the above statements. Out of these cases only 4.5% of them were decided in favor of fathers. It is not remotely the intent of this writer to suggest fathers should receive custody most of the time but common sense tells us that it is not in the best interest of children to be placed in a single parent home headed by a mother 95.5% of the time, the long term negative effects on the children would no doubt be just as disturbing with the figures reversed. This organization is currently doing a study of the Anchorage Court System where we are examining the records of each divorce case for the past two years and the initial results show that in this city the statistical conclusions will not even be as impartial as the national study, as appauling as those figures are.

What are the results of the abuses spoken of so far?

1. 90% of all homocides are a direct result of domestic relation problems.

2. 90% of the american prision population is from a broken home.

3. 90% of all women murdered between the ages of 20 and 30 are killed by their husbands or ex-husbands.

4. 9 out of 10 women on welfare are products of divorce.

5. 20% of the civil case load in the Alaska Court system is domestic relations.

The criminal activities related to these problems are the results of people, normal everyday Americans, being pushed too far by an apathetic system. By being denied the access to their children, by being forced to be financially obligated to their ex-spouse to the point of ridiculousness, by having gasoline poured onto the smoldering pile of emotions by attorneys and others involved with the case as these people are going through the most difficult emotional experience they will ever encounter next to losing a loved one in death. H.B. 210 will elliviate a lot of the grief for these people and give them alternatives that are encouraged by the courts and the related legal establishment that are more comfortable and that they can live with.

As the law has developed some courts have recognized the failures of the present system and have provided direction to the lower courts in their written opinions.

> "Parenthood is a continuing bilateral responsibility and opportunity. It cannot be avoided or successfully divided. A decree of divorce offers no excuse or alibi for the abatement of parental interest or obligation. The dissolution of the marriage contract, leaving in its wake children who are the innocent victims of the resultant broken home, should be a challenge to the fathers and mothers of such children to make an even greater effort to minimize, as far as possible, the incidental and unavoidable losses of love, council and guidance."
> (McBetrick vs. McBetrick 284 P2d 352, Oregon)

> "Whoever may have custody, it is the duty of each parent and each family member to the children to set asid personal feelings and act in a manner which is supportive of the relationship of the children to the other parent."
> (Warren vs. Warren 528 P2d 1088, Oregon, 1974)

Attitudes are slowly being changed and direction is being provided by the Alaskan courts on an individual basis. In a 1975 opinion from the Ketchikan Superior Court, Judge Thomas Schultz emphasized the positions taken here in his remarks as he awarded custody of a 4 year old boy and a 7 year old girl to the father.

> "Certainly a factor in determing the fitness of the parent is the kind of learning which might be called fitness that either or both parents are able and willing to provide. In terms of fitness, to provide the care that these children require and in terms of the relationship that the parties bear to the children I find both are fit and both are in fact good parents, have taken good care of the children, love the children and both have a good relationship with them. I am left with the very narrow basis on which to resolve the question and that is the view that I can take from the testimony that I've heard up till now, of which parent is better able to maintain the status quo to facilitate the children and their desire at this point as its reflected in the testimony the relationship they have with the parents, and maintaining a meaningful relation-

ship with both. I am satisfied from what I've heard that the father is better able to do that at this point. And ultimately in this case, it's my considered opinion that the parent most fit will be that parent that demonstrates the best ability to maintain open communications between both. These children were, as all others are, brought into the world without being asked about it and they're being left now in a situation that they didn't particularly ask for and probably don't want but they are entitled to the guidance and assistance from both their parents." (Johnson vs. Johnson, Transcript 186 to 189, Ketchikan Superior Court, April 7, 1975)

In considering child custody matters we must recognize the fact that most parents that come before the court are not only fit, they are very fit parents and the state would never consider interfering in their lives so long as there was not a divorce petition filed. H.B. 210 is a necessary vehicle to help change attitudes. It also recognizes the right of the parents to control their own families and it encourages them to do this. It paves the road to making decisions in disputed custody cases based upon what is right with this family and these parents rather than what is wrong with the parents and the children. It provides a means for settlement that feels better for the parents which in turn helps the children feel better. Recent studies such as the one from California reporting the results of families in transition after divorce over a period of 5 years,(Psychology Today, January 1980, Enclosed) show that when the parents deal with their divorce constructively and creatively then the children are not adversely affected on the long run whereas if the parents have a lot of turmoil and grief for extended periods of time these children will be affected adversely for years to come and even into their adulthood.

Mediation and joint custody works! The Association of Family Conciliation Courts is an organization made up of judges, social scientists, attorneys and a few lay people like myself and they have concluded with their studies that 60 to 80% of all disputed child custody cases are settled out of court with the existing mediation programs by the parents themselves. The Association has officially endorsed joint custody as the best first choice in resolution of disputed cases and has published hundreds of studies showing joint custody, joint parenting, does and is working. The concept has been being used for up to 3 years in various jurisdictions and is working even when mediation is required rather than voluntary. Of course, the success rate is lower under those circumstances but if we can settle on the average, 70% of all cases out of court the dollar value alone is astronomical in terms of judicial costs not to mention the emotional benefits to the parties themselves and the resultant decrease in the criminal activities that are related and the welfare costs. But the most important consideration is how all this benefits the children of divorce. The results of the study from California can not be given too much emphasis.

What I have stated here is based upon fact not my opinion. Some people have opposed H.B. 210 but I say anyone who opposes it simply does not know enough about it and the facts surrounding the concept. One attorney for instance testified that by encouraging mediation a man could and will intimidate a women into agreeing to something she really does not want. I am positive that is not the rule as my experience has shown me and when such a rare thing happens the checks and balances written into the existing law are designed to catch it. For instance in the do it yourself kits available from the efforts of Representative Bradner and Gardiner in 1977 it is a requirement that one of the spouses appear before the court before the divorce is granted. The legislative intent was to allow the judge to ascertain from that party that the agreement was indeed mutual and not coerced.

Other checks and balances exist in H.B. 210. If the court finds that joint custody is not in the best interest of the family he only needs to state his reasons for that conclusion and dismiss the concept. The bill specifically states the presumption for joint cusotdy is rebutable. It is a long way past due that we require the courts to justify their disposition of child custody decisions, that is all this bill requires and it still leaves them a lot of discreation, too much discreation in my opinion but I am willing to compromise on that to get the bill.

Joint custody is not for everyone but it works for most, with direction, and I think it would be inhuman to deny this wonderful alternative to the present system to parents and children because of those few that are too immature to make it work. The courts and the present system will always be available for those people who decide they want to go that way.

It was reported that under present law we do not need H.B. 210. This is theoretically correct but what is so important about the bill is it will help change attitudes and attitudes are the key to helping divorcing people experience a creative divorce that will strengthen the family instead of destroying it.

If I have appeared anxious in my oral testimony as well as this written testimony, it is because I know that in the time it takes you to read this:

> there will be over 1,000 divorces in the United states affecting over 3,000 children;
>
> there will be at least two homocides as a result of the activities surrounding these people;
>
> there will be four more prison inmates;
>
> and we have just gotten 150 more people on our welfare rolls;

40 Alaskans were divorced today!

JOINT CUSTODY IS THE ONLY LOGICAL AND MORALLY ACCEPTABLE ALTERNATIVE TO A HAPPY INTACT HOME FOR CHILDREN OF DIVORCE. PARENTS DIVORCE EACH OTHER, CHILDREN NEVER DIVORCE THEIR PARENTS.

Enclosure: California Report

Carbon Copies sent to the following:

Governor Jay Hammond
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Mr. Vern Lee, Fairbanks, Alaska
Mr. Wayne Ross, Esquire, Anchorage, Alaska
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United Fathers Organization, Santa Ana, California
M.E.N. International, Wilmington, Delaware
Mr. Max Gruenberg, Esquire, Anchorage, Alaska

Respectfully Submitted:

RUDY JOHNSON

custody misery

by David N. Rosenthal
Knight-Ridder Newspapers

San Jose, Calif. — Kramer vs. Kramer might never have made it to court, let alone to the big screen, if a new California law had been in effect when Ted and Joanna Kramer began their brutal fight over custody of little Billy.

Because, as of Jan. 1, all couples getting divorced and fighting over custody of their children in the state must go through mediation counseling.

If, after such counseling, they still want to go through the gut-wrenching process depicted in the Oscar-winning movie, they are welcome to it.

"The new law would have destroyed the movie, but it might have saved the family," quips Hugh McIsaac, the head of the Los Angeles conciliation court and a pioneer in mediation counseling. "It doesn't work for everyone, but those that it does work for are spared a lot of grief."

"In our case, it was definitely beneficial," says a 28-year-old San Jose woman who recently went through mediation with her husband of seven years over who would get custody of their three children. "We are one of those couples who cannot communicate."

She admits she was leery at first but found the counseling surprisingly relaxed. "We met with a mediator twice and agreed to share custody. I don't think we could have reached that agreement otherwise without trial."

The mediation law, the nation's first, is a companion to last year's trend-setter: joint custody. That measure set as public policy the idea that children be assured frequent contact with their parents and that parents be encouraged to share the responsibilities of child rearing.

Under the statute, joint custody is a legal priority instead of an option. When both parents agree, shared custody is decreed. When only one parent applies for joint custody, that option is considered by judges along with the more traditional arrangement of sole custody to one parent and visitation rights to the other.

The new mediation measure, sponsored by state Sen. Alan Sieroty, D-Los Angeles, requires mediation whenever custody or visitation rights are divorce issues. The measure also requires that custody disputes be settled before other matters at stake in the divorce.

Under the law, individual counties set up their own procedures for mediation. In Santa Clara County, contested custody cases go first to the special investigation unit of the Juvenile Probation Department for a temporary custody recommendation.

All contested cases must then be scheduled for mediation through

Blacker, a San Jose attorney who has handled divorce cases in Santa Clara County for 15 years. "I have encouraged my clients for some time to try mediation. It doesn't always work, but when it does, it saves money and a lot of emotional wear and tear."

"I have found that the mediators at the county are very good, but there are a couple of drawbacks to the public system.

"One, the public mediators don't have the time that a private person does; and two, the hours aren't as flexible. The positive part, of cours, is that public mediators are free."

Weiss, whose office has five trained mediators to handle custody cases, says that so far, only a few couples have been referred to private mediators. The law does not specify who is a qualified mediator, but in Santa Clara County at least, those receiving referrals from Weiss' office must have a masters' degree in marriage and family counseling and have at least two years practical experience.

"At first," Weiss says, "I set up the referrals to be a random thing, whoever's name came up. But now, I am re-evaluating it and will probably match people according to geography and perhaps their area of expertise."

Lisa Williams is one of the qualified mediators on Weiss' list. Twice divorced and the survivor of a custody fight of her own, she has handled about 200 cases of custody mediation the last two years. She heads the non-profit Center for New Beginnings in San Jose, with about 90 percent of her practice dealing with custody problems.

"I'm glad that the law is in effect," she says. "I obviously believe in the process or I wouldn't be doing this. I think it gives couples a chance to determine their own lives. Even in instances when mediation doesn't work, I have had cases where couples who have not spoken in eight or nine years at least began to talk to each other. That's progress, even if it doesn't solve all the problems between them."

McIsaac believes the mere fact the law exists may be more constructive in the long run than the measure's practical effect. "This is an instance where the shadow of the law can be more important than what the law actually says," he says. "Lawyers will be advising their clients more about mediation because of it and there will be more negotiation. The law now rewards cooperation and that is something it didn't used to do."

A Santa Clara man whose 25-year marriage is breaking up agrees with McIsaac after having settled a visitation dispute with his wife through mediation.

"I think the only people who benefit from the court deciding are law-

the special investigation unit of the Juvenile Probation Department for a temporary custody recommendation.

All contested cases must then be scheduled for mediation through Conciliation Court, which provides up to three sessions with one of its mediators. If longer mediation seems necessary, referrals are made to private mediators, whose costs vary with the parents' ability to pay.

If no agreement is reached, the case is returned to Juvenile Probation or Family Court Services for evaluation before the trial.

In any case, the mediation process is supposed to remain confidential unless both parties agree otherwise.

The results of mediation are impressive.

"I would guess that about 60 percent of the cases we get are being resolved prior to trial now because of mediation," Hugh McIsaac says of the three years of mediation in Los Angeles. "What we have found is that in most cases the two parents really do care for their children, if not for each other. If given a forum that doesn't inflame the dispute, they can often reach an agreement. The worst possiblatmosphere is in an adversary setting like court. That only skews things and shows people at their worst instead of their best."

In an age of limits and budget cuts, the funding of the mandatory mediation law is another plus. General state revenues are not used for the program; instead it is funded by each county raising fees charged for divorce filings and decree modifications as much as $15 and marriage licenses and burden of payment on those who use the service rather than on the public.

The new law is popular with attorneys who have found themselves embroiled in nasty custody hassles. "To me, the last and worst alternative is going to court," says Norden

marriage is breaking up agrees with McIsaac after having settled a visitation dispute with his wife through mediation.

"I think the only people who benefit from the court deciding are lawyers," he said. "I would be in favor of mediation in other areas such as property settlement. Divorce is traumatic but mediation makes the best of a bad situation."

CALIFORNIA'S CHILDREN OF DIVORCE

BY JUDITH S. WALLERSTEIN
AND JOAN B. KELLY

Five years after the breakup, 34 percent of the kids are happy and thriving, 29 percent are doing reasonably well, but 37 percent are depressed. An in-depth study of 60 families traces patterns in these different outcomes. As in married families, what counts most are the two parents' attitudes.

The conventional wisdom used to be that unhappily married people should remain married "for the good of the children." Today's conventional wisdom holds, with equal vigor, that an unhappy couple might well *divorce* for the good of the children; that an unhappy marriage for the adults is unhappy also for the children; and that divorce that promotes the happiness of the adults will benefit the children as well.

Testing that new dogma was among our goals in 1971 when we started what became known as the Children of Divorce Project. We interviewed all the members of 60 families with children that had recently gone through divorce, and reinterviewed them 18 months later. Recently, we saw them again, after a lapse of five years (see box, page 70). Our study has no counterpart in the United States or in Europe in the span of years it covers, in the participation of so many children of different ages, and in the kinds of questions that were posed.

Our results called into sharp question much more than the idea that what is good for the parents is always good for the kids. For example, we thought that by five years after the initial separation, new family structures would be an accepted part of life, and our observations would be made within a social and psychological landscape that had come to rest. Yet we found more people than we expected to find still in various degrees of turmoil.

Our overall conclusion is that divorce produces not a single pattern in people's lives, as the conventional wisdom of any era tends to claim, but at least three patterns, with many variations. Among both adults and children five years afterward, we found about a quarter to be resilient (those for whom the divorce was successful), half to be muddling through, coping when and as they could, and a final quarter to be bruised: failing to recover from the divorce or looking back to the predivorce family with intense longing. Some in each group had been that way before and continued unchanged; for the rest, we found roughly equal numbers for whom the divorce seemed connected to improvement and decline.

What made the biggest difference for the children was not the divorce itself, but the factors that make for good adjustment and satisfaction in intact families: psychologically healthy parents and children who are involved with one another in appropriate ways. Yet providing these optimal conditions is difficult in the postdivorce family, with its characteristic climate of anger, rejection, and attempts to exclude the absent parent.

Changing Family Circumstances

News of their parents' divorce clearly had been an unhappy shock to most of the children. We found that although many of them had lived for years in an unhappy home, they did not experience the divorce as a solution to their unhappiness, nor did they greet it with relief at the time, or for several years thereafter.

To be sure, as many of the children matured, they often acquired a different perspective. But at the time of the family disruption, many of the children considered their situation neither better nor worse than that of other families around them. They would, in fact, have been content to hobble along. The divorce was a bolt of lightning that struck them when they had not even been aware of a need to come in from the storm.

Five years later, there had been little shifting of the children from the custody of one parent to the other. Seventy-seven percent of the youngsters continued to live in the custody of their

[illegible] Surviving the Breakup: How Children Actually Cope with Divorce, by Judith S. Wallerstein and Joan B. Kelly. [illegible] 1980 Judith S. Wallerstein and Joan B. Kelly. Reprinted by permission of Basic Books.

Five years afterward, 30 percent of the children still strongly disapproved of their parents' divorce.

mothers. Eight percent now lived with the fathers, a slight increase; another 3 percent shuttled back and forth from one home to the other, usually not in a planned joint-custody arrangement, but under duress when their relationship with one or the other parent became overwhelmed with ill will. An additional 11 percent of the children—adolescents—were now living on their own.

Almost two-thirds of the youngsters had changed their place of residence, and a substantial number of these had moved three or more times. The moves were generally within a radius of 30 miles, however; very few families left the region. The fathers tended to stay close by as well. One-half continued to live within the same county as their children, some still within biking distance. An additional 30 percent of the fathers were within a one-hour drive.

Twenty-four (43 percent) of the fathers had remarried in the intervening four years, of whom five were then redivorced and two subsequently remarried. Thus, 44 percent of the youngsters had a new stepmother. Nineteen of the mothers—one-third—had remarried; two of these women were then redivorced, and two widowed. Hence, nearly a quarter of the children lived with a stepparent.

The majority of the fathers (68 percent) had made their child-support payments with considerable regularity, and an additional 19 percent paid some support, but irregularly and in varying amounts. (Nationally, the estimated figures are considerably lower.) Only 13 percent were completely delinquent. Still, far more of the mothers than the fathers had traveled downward from their former economic status.

At the time of divorce, two-fifths of the families had been solidly upper class or upper middle class, whereas two-thirds of the women and their children were now either solidly middle class or lower middle class.

The Children's Differing Reactions

Hardly a child of divorce we came to know did not cling to the fantasy of a magical reconciliation between his parents. Danny, age seven, whose parents had been divorced for several years when we first saw him, softly confided his "best" fantasy. He had, he said, always wanted to fix up Hazel Street and Pine Street. "They're all filled with mud and they don't join, but a long time ago, they did, and I'd like to cut the two streets so they join. But this," he sighed, "will be a long time off."

When we saw Danny again, he was 11. "Divorce is not as bad as you think . . . not near as bad as it looks in movies or on television," he said. He had thought a lot about divorce, he told us; and had just recently figured it all out. "It's something like if you break a glass and pick the pieces up right away, they will fit back together perfectly, but if you take one piece and sand the edge, it will never fit again."

Five years after the separation, 28 percent of the children strongly approved of their parent's divorce, 42 percent were somewhere in the middle, accepting the changed family but not taking a strong position for or against the divorce, and 30 percent strongly disapproved—a major shift from the initial count. Then, three-quarters of the children strongly disapproved. Still, the faithfulness of so many youngsters to their predivorce families was unsettling, and more loyal than many parents welcomed.

Nancy, now in the second grade, said, "when they first divorced, I was kind of sad." Then, she said, she found out life was still fun because "we got to see Daddy in his house . . . . There are lots of good things to do . . . . Things are not so different . . . . You can meet a lot of new dogs and new people."

Thirty-four percent of the children and adolescents appeared to be doing especially well psychologically at the five-year mark. Their self-esteem was high and they were coping competently with the tasks of school, playground, and home. There were no significant age or sex differences among these resilient youngsters. The boys appeared to have caught up with their sisters in the years since the first follow-up, which had found the boys lagging behind. Characteristic of these children was their sense of sufficiency: the divorce had not depleted their lives by removing a loving parent, or by pairing them with an angry, disturbed one. At times, they still felt lonely, unhappy, or sorrowful about the divorce, but these misgivings did not make them aggrieved or angry at either parent.

Roughly 29 percent of the children were in the middle range of psychological health. They were learning at grade level at school and showing reasonably appropriate social behavior and judgment in their relationships with adults and children. They were considered average by their teachers. Nevertheless, islands of unhappiness and diminished self-esteem or anger continued to demand significant portions of their attention and energy, and sometimes hampered the full potential of their development.

Sonja, age 11, was typical of the middle group. "I don't think about the divorce as much as I used to," she said. "Before, I wasn't right. I was all mad and yelling at Mom . . . . Usually, I still yell at her. I tell her I don't mean it, but I can't control myself." Disquietingly, Sonja talked with considerable pleasure about hurting and slapping people. She laughed excitedly as she recounted several stories of people, adults and children, getting into

"When we see Daddy," one child said, "it's not so different, and you can meet lots of new dogs and people."

difficulties. Recently, Sonja was caught stealing some things from a shopping center and also from the school. Yet Sonja's mother indicated that the child is not as demanding as she used to be, and that, overall, her behavior is improving.

We found a final third of the children and adolescents to be consciously and intensely unhappy and dissatisfied with their life in the postdivorce family. Among this group were those with moderate to severe depression, although at least half of the depressed children had islands of relatively unburdened development within them and were able to move ahead in ways appropriate for their age in several important parts of their lives, such as school.

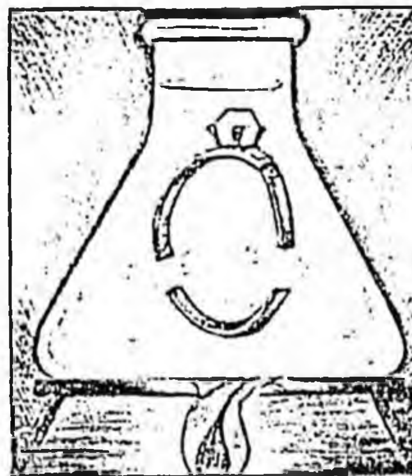
We were struck as well by the high incidence of intense loneliness that we observed in 27 percent of the children, a little higher than at the 18 month mark. These children complained of coming home to empty houses after school to await the return

CONTROLLING THE DIVORCE VARIABLE

The 60 families in our study came initially for a six-week divorce counseling service. We advertised the service as a preventive program, offered free to all families in the midst of divorce. The parents and their 131 children, aged 2 to 18, knew from the start that this brief intervention in their lives was part of a larger research project, and that our roles as clinicians and researchers were intertwined.

How typical was our group? Of the 60 families, 88 percent were white, 3 percent black, and 9 percent interracial with one Asian spouse. They were predominantly middle class and well educated, although 28 percent were in the lowest socioeconomic class, and some were on welfare.

All the families lived in Marin County, California, nationally known for its high divorce rate. Indeed, in 1970, when the study was formally established, the number of people who applied for a divorce in the county exceeded those who applied for a marriage license, a ratio higher than the national average. Now, however, we find that the divorce rate in many parts of the country has caught up. Precisely because most of the children were neither stressed by chronic poverty nor by inner-city problems, we felt our



sample gave us a good chance to study divorce as a relatively uncontaminated vector of change.

Our interdisciplinary team included six psychologists and psychiatric social workers, all trained in clinical work with children. Initially, we saw each family member alone four to six times. With family permission, we talked with the children's teachers.

All family members were interviewed again in two successive follow-ups, almost always by the same member of the team who had seen them initially. The first follow-up came approximately one year after the initial contact, the second nearly five years after separation. At the five-year mark, we were able to locate 58 of the original 60 families and 101 of the original 131 youngsters—an unusually high ratio.

Because we were interested in studying the experience and impact of divorce among psychologically normal children and adolescents, we excluded any families in which a child had a history of psychological difficulties or was currently in psychotherapy. We did not exclude parents with psychological problems, however, and on the basis of our first interviews, we diagnosed one-third of the parents as being in adequate to excellent psychological health. Half the men and slightly fewer women were in considerable psychological difficulty, with problems such as severe depression, alcoholism, or difficulty in relating to other adults and children. Some 20 percent of the parents—usually those who had been left by a healthier spouse—were seriously troubled or disturbed.

The counseling we gave helped parents refocus on the needs of their children and encouraged some parents to seek additional psychotherapy. Hence, the number of unsatisfactory outcomes revealed in our current study might be smaller than in the general population, who do not get such help. —J. S. W. and J. B. K.

The lingering faithfulness of so many youngsters to their predivorce families was unsettling.

of the working parent. On weekends, these youngsters often felt left out of the social life of both divorced parents. Several also complained of loneliness within a remarriage, while recognizing ruefully that the newly married adults wanted privacy and time away from curious children.

Anger played a significant role in the psychological life of 23 percent of the children and adolescents, who were not coping well. Most of the anger was defensive and reflected the underlying fear, sorrow, and sense of powerlessness of these youngsters. Anger at the father was especially likely to be sustained, especially in older boys and adolescents. Three children had rejected their fathers' overtures, including Paul, who returned unopened his father's birthday present to him on his 14th birthday. Other children's anger took other forms, including explosive outbursts of temper and delinquent behavior, such as drug involvement and stealing.

The Importance of Involved Fathers

What accounted for the successful outcomes? Some chi[illegible]ren improved simply by escaping a disturbed and cruel parent to be left in the custo dy of a concerned and loving one. Some of these youngsters developed good relationships with a stepparent. Little boys, especially, appeared to spurt ahead with excitement and new growth with a stepfather whom they grew quickly to love.

A number of other factors seemed common to the children who dealt most resiliently with divorce. One factor, not surprisingly, was having a strong personality to start with. As we followed the course of the children whom we had placed initially within the ranks of the very well adjusted, it appeared that two-thirds of these resilient, successful copers were still functioning very well five years later. Sad to say, some boys and girls in all age groups who had been able to cope during a conflict-ridden marriage deteriorated notably in the post-separation period.

The most unpredictable change occurred among those children whose adjustment initially was a mixed bag of successes and failures. Very few of the boys and girls who were originally at the midpoint of the scale were still there after five years. Those youngsters were the most vulnerable to change, and stood in equal measure to either deteriorate or improve.

Perhaps the most crucial factor influencing a good readjustment was a stable, loving relationship with both parents, between whom friction had largely dissipated, leaving regular, dependable visiting patterns that the parent with custody encouraged. (For a description of the parents' adjustment, see box, page 72.) Forty percent of the mother-child relationships were adequate to very good, with an additional 20 percent at the adequate mark. Occasionally, when the father had been abusive or was psychologically disturbed, a strong mother bore the emotional load by herself and seemed able to give the children all the emotional support they needed. Usually, however, it took two, and a custodial parent's efforts to impr[illegible] child's life were burdened [illegible] seeming disinterest of the other p[illegible]

The contribution that the out-o[illegible] home parent could make emerged with clarity at five years. Frequent, flexible visiting patterns remained important to the majority of the children. Nearly one-quarter of the youngsters continued to see their fathers weekly, if not several times weekly. An additional 20 percent visited two to three times a month. Thus, 45 percent of the children and adolescents continued to enjoy what society deems "reasonable visitation," although many of the children continued to complain of not enough contact.

The 17 percent of youngsters with erratic visits (less than once a month) continued to be anguished by the father's inconstancy; the passage of five years had not lessened their wish to be loved by both parents. The same percentage as before (9 percent) had no contact.

Overall, we found that 30 percent of the children had an emotionally nurturant relationship with their father five years after the marital separation, and that this sense of a continuing, close relationship was critical to the good adjustment of both boys and girls.

These men had worked hard to earn the parenthood that fathers in intact families customarily take for granted. Some had persevered despite such irritations as one former wife who, four years after the separation, was still regularly calling her former husband during their son's visits with him to order the boy to shower. One man described the special personalities of his three children so vividly that hearing him talk, one would have been hard put to know that there had been a divorce in the family five years earlier. The children of these men, in turn, were spared the sense of loss and rejection that many less fortunate children experienced.

In contrast to the youngsters who yearned for more visits, almost one-fifth of the youngsters did not find the visits pleasurable or gratifying. A number of them resented being used to carry hostile messages between parents. Noted Larry, a 13-year-old, "My father has to understand that when he shoots arrows at my mother, they first have to go through our bodies before they reach her."

In the most unsatisfactory visiting arrangements, a range of parental behavior, from outright abandonment to general unreliability, often disap-

One woman still regularly called her former husband during their son's visits to order the boy to shower.

pointed a child repeatedly, usually leading the child to feel rejected, rebuffed, and unloved and unlovable. Anger at the rejecting father usually did not undo the child's unhappy conclusion about his or her essential unlovability to the father. Lea, for example, was an abnormally quiet girl whose teacher said she did not believe she could succeed at anything. We interviewed her at home. When asked about her father, she brought out a box containing all of the letters her father had written to her during the past three years. These letters, possibly 15 in number, were dog-eared, folded and refolded, and the interviewer couldn't help but be reminded of a precious collection of love letters that had been read and reread with tears. The father had actually visited only once in the past two years.

Peter, age nine, had not seen his father, who lives nearby, more than once every two to three months. We expected that he would be troubled, but we were entirely unprepared for the extent of this child's misery. The interviewer observed: "I asked Peter when he had last seen his dad. The child looked at me blankly and his thinking became confused, his speech halting. Just then, a police car went by with its siren screaming. The child stared into space and seemed lost in reverie. As this continued for a few minutes, I gently suggested that the police car had reminded him of his father, a police officer. Peter began to cry and sobbed without stopping for 35 minutes."

Even though the majority of fathers and children continued to see each other fairly often, by the five-year mark three-quarters of these relationships offered the children little in fully addressing the complex tasks of growing up. Yet, paradoxically, by his absence a father continued to influence the thoughts and feelings of his children; most particularly, the disinterested father left behind a legacy of depression and damaged self-esteem.

Except in extreme cases in which a father was clearly abusing children or seriously disturbed, some contact seemed better than none at all. The father's presence kept the child from a worrisome concern with abandonment and total rejection and from the nagging self-doubts that follow such worry. The father's presence, however limited, also diminished the child's vulnerability and aloneness and total dependency on the one parent.

A few other factors that we had expected to be significant in helping children adjust turned out not to be. Children were incapable of using friends to make up for troubled conditions at home; rather, those with comparatively stable homes were the ones most likely to have friends outside. Grandparents provided some solid supports for both divorced mothers and their children—when they supported the idea of the divorce—but were not a strong enough influence to make up for problems elsewhere.

THE PARENTS' ADJUSTMENT

The transition to a stabilized life after divorce can be difficult and prolonged. Most of the men said they had regained a sense of coherence and stability within the second year after divorce, but the average woman was well into her third postseparation year before reaching that point.

While two-thirds of the men and slightly more than half the women now viewed the divorce positively—a significant increase—a more sobering finding was that close to one-fifth of the men and women viewed the divorce as totally negative, which left them without resources for helping their children understand it.

In terms of the men's and women's psychological health, the people who were enjoying adequate to excellent psychological health (a third of the adults when we started the study) had expanded to include half the men and 57 percent of the women. Notable among the women in particular was a greatly enhanced self-esteem and lifting of depression. The group of men and women who previously had been troubled were essentially unchanged. For them, divorce provided no relief and made daily coping harder.

A successful resolution for one parent was not necessarily so for the other. And if the divorce worked for one or both parents, that did not necessarily portend a successful resolution for the children, though the reverse could also be true. As one woman said, "The kids are great, mama's a wreck!" —J. S. W. and J. B. K.

When a parent remarried, most children enlarged their family view, making room for three major figures.

Most children did not seem to be influenced either for good or ill if their mother worked, although some of the youngest boys appeared to do significantly better in school and in their overall adjustment when the mother did not work full time.

One-third of the children once again confronted far-reaching change in their daily lives when one or both of their divorced parents remarried. (Only two of the fathers with custody remarried.) The arrival of a stepfather seemed to create particular friction for a short while. Most of the stepfathers had been married before, expected to assume the role of parent to their wives' children, and, encouraged by the women, moved quickly into the prerequisites, prerogatives, and authority that this position traditionally conveyed. Only a few men appeared sensitive to the need to cultivate a relationship with stepchildren gradually and to make due allowance for suspiciousness and resistance in the initial stages.

Still, after some early tensions, the relationships with the children from two to eight years old took root fairly

THE CHILDREN OF DIVORCE AS ADULTS

At about the same time Wallerstein and Kelly began their West Coast study of children of divorce, the psychologist E. Mavis Hetherington began a similar investigation at the University of Virginia. She focused on preschool children and their parents during the two years following divorce. Both sets of findings suggest a consistent pattern: initial pain—experienced by children of all ages, including those whose parents fought constantly before the divorce—followed by feelings of fear, anger, depression, and guilt that give way, often within 18 months, to an adjustment to the new single-parent family. (Children who must cope with many changes at once, such as moving to a new home, starting in a new school, or becoming a member of a stepfamily, take longer to make the transition.)

Sometimes, says Hetherington, an adjustment strategy that might be beneficial for a newly divorced mother can be harmful to her children. For example, in order to gain a sense of themselves as single people, some mothers in the study immediately plunged into an active social, business, or community life, leaving

the children feeling abandoned.

Since living with the same-sex parent aids a child's adjustment to divorce and because most children of divorce live with their mothers, boys initially often have greater difficulty coping with parental separation than girls do, according to Hetherington. She posits that boys suffer from the lack of a male model and from the absence of a father's discipline.

Unfortunately, these studies do not offer information about the one overriding concern of most parents: what are the lasting consequences, if any, of divorce on children? Regrettably, no one yet knows for sure.

Recently, several different research groups have begun to explore the issue for an even longer period than the five years of the Kelly-Wallerstein study. Social psychologists Richard Kulka and Helen Weingarten of the Survey Research Center at the University of Michigan examined the results of two random national surveys of 2,400 Americans, one conducted in 1957 and the other in 1976. Their study was designed to explore generational differences. Divorce has doubled since 1957; are reactions to it different now?

Although much of society has changed over the last 20 years, Kulka and Weingarten concluded that reactions to parental divorce have not. They found no differences between people from intact and nonintact families in overall adjustment or depression in adulthood. However, young adults (between 21 and 34 years old) from divorced families were less likely to be "very happy" and more likely to report symptoms of poor physical health than those from intact families. Throughout life, people of all ages from divorced families remembered their child-

> Paradoxically, many fathers continued to influence their children's thoughts and feelings by their absence.

quickly and were happy and gratifying to both child and adult. Yet children with a stepfather seemed particularly sensitive to friction between parents.

Many people expect children to experience conflict as they turn from father to stepfather during their growing-up years. This was not borne out by our observations. Nor was the expectation that in the happily remarried family the biological father was likely to fade out of the children's lives. The great majority of fathers in the remarried families continued to visit, much as they had earlier. Mostly, children enlarged their view of the family and made room for three major figures. Jerry, age 10, when asked how often he saw his father, responded, "Which dad do you mean?" When a child did experience painful psychological conflict between the father and the stepfather, the adults were likely to be jealous or competitive, pulling hard in opposite directions.

The most tragic situations for the child were those in which mother and stepfather demanded that the child renounce his or her love for the father as the price for acceptance and aff-ction

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hood as the most unhappy time of life. They were also more likely to say that as adults, they had been "on the verge of a nervous breakdown." Feelings of anxiety were more prevalent among men whose parents were divorced, lending support to Hetherington's notion that the effects of divorce may be more pervasive and long-lasting for men than for women.

According to Kulka and Weingarten, the aftershock of parental divorce seemed, for both generations, to persist in subtle ways throughout adulthood. Adults from divorced families were more likely to report that "bad things" frequently happen to them. The Michigan research team reports that grown children of divorce not only are more likely to experience marital problems but also seem to have an orientation to the marital role different from other people's. Men whose parents were divorced tend to be less involved fathers, while women tend to be strongly involved mothers, perhaps unconsciously anticipating their own possible status as single parents.

In our Loneliness Research Project at New York University, Phillip Shaver and I have found that people whose parents were divorced are lonelier as adults than those from intact families. Our work was based on several thousand responses to surveys carried in several U.S. newspapers. We found that children of divorce had lower self-esteem than those whose parents had remained together. The younger the person was when the parents divorced, the lower the person's self-esteem and the more lonely he was as an adult.

We found striking differences between those whose parents were divorced during childhood, and those whose parents were not, in what people say about their mental health. As adults, those from divorced families were more likely to be bothered by crying spells, insomnia, constant worry, feelings of worthlessness, guilt, and despair. Adults who experienced parental divorce during childhood were more likely to feel afraid, anxious, and angry when they are alone. These are feelings usually associated with separation anxiety: what children feel when separated from their closest attachment figures, usually mothers or fathers.

Because of the limitations of our method, we simply don't know whether adult problems can be directly attributed to parental divorce, or to deficits resulting from parental divorce (which may, for instance, make people more vulnerable to separation anxiety), or merely to a current stressful situation (for example, a recent mov[illegible] a divorce, or unemployment). [illegible]ildren who perceive their parents' divorce as a deliberate rejection or as a personal failure may respond differently, and perhaps develop differently, from those who see the divorce merely as an unlucky family situation. Custody arrangements and the way in which both parents adjust to divorce probably have a strong impact on these perceptions. Only recently have innovative custody arrangements become prevalent—such as joint custody, or active involvement of the noncustodial parent or stepparent. To date, none of these factors has received adequate research attention.

A 20-year longitudinal study of children of divorce would provide more robust information about long-term effects. Meanwhile, the National Institute of Mental Health is offering $1,000,000 for research to study the effects of divorce on children and useful strategies to help children adjust to parental divorce. What is clear now is that for some children, divorce can have a lasting psychological impact, while for others, it comes to exist only as a shadowy memory of an unhappy year of childhood. —Carin Rubenstein

Psychologist Carin Rubenstein is an associate editor of *Psychology Today*.

Despite popular beliefs, a divorce is neither more nor less beneficial to children than an unhappy marriage.

within the remarried family. Such children were severely troubled and depressed, too preoccupied with the chronic unresolvable conflict to learn or to develop at a normal pace.

Eventual Softening of the Strains

Most of the adults in our study, especially the women, were feeling better five years after divorce than they had when we first saw them, despite the greater economic pressure and the many stresses of the postdivorce family. But among the children, although individuals had improved or worsened, the percentages within broad categories of good and poor adjustment had remained relatively stable. Hence, it seems that a divorced family per se is neither more nor less beneficial for children than an unhappy marriage. Unfortunately, neither unhappy marriage nor divorce is especially congenial for children. Each imposes its own set of differing stresses.

Our other major finding about how important it is for a child to keep a relationship with both original parents points to the need for a concept of greater shared parental responsibility after divorce. In this condition, each parent continues to be responsible for, and genuinely concerned about, the wellbeing of his or her children, and allows the other parent this option as well.

The concept of joint legal custody, in which each parent has the right to make important decisions about the life of the child, is a step in the right direction. The newer idea of shared *physical* custody, whether parents share the children 50-50, 80-20, or in other proportions, may also be a positive step, but it needs to be studied to determine its advantages and disadvantages for children at different developmental stages. Many people object that parents who cannot agree during marriage certainly cannot be expected to reach agreement on child-related matters after divorce. Indeed, some infuriated or disturbed parents will never chart a rational course with regard to their children. Yet it seems clear that our society must encourage fathers and mothers to accept the importance of continuity in parent-child relationships after divorce. Perhaps in changing legal expectations, we can take the first steps in a necessary reeducation about meeting the needs of children in the postdivorce family.

Unfortunately, it seems clear that the divorced family is, in many ways, less adaptive economically, socially, and psychologically to the raising of children than the two-parent family, or at least the two-adult family. This does not mean that it cannot be done. But the fact remains that the divorced family in which the burden falls entirely or mostly on one parent is more vulnerable to stress, has more limited economic and psychological reserves, and lacks the supporting or buffering presence of another adult for the expected and unexpected crises of life.

In order to fulfill the responsibility of child-rearing and provide even minimally for the needs of the adult, many divorced families are in urgent need of a network of services that are not now available in most communities, ranging from educational, vocational, and financial counseling to enriched child care and after-school programs. At the five-year point in our own study, two-fifths of the men and a somewhat greater number of the women characterized the brief counseling we offered as useful and supportive and were still following suggestions that we had made at the first meetings five years earlier.

Divorcing with children requires in adults the capacity to maintain entirely separate social and sexual roles while they continue to cooperate as parents. This is very difficult. We began our work with the conviction that divorce should remain a readily available option to adults who are locked into an unhappy marriage. Our findings, although somewhat graver than expected, have not changed our conviction. They have given greater impetus to our interest in easing the family rupture for children and adults alike. ◻

Currently a fellow at the Center for the Advanced Study in the Behavioral Sciences, Judith S. Wallerstein is a lecturer in the School of Social Welfare at the University of California, Berkeley, and has been the principal investigator of the Children of Divorce Project since it began in 1970. As a psychiatric social worker, she received her Ph.D. from the University of Lund in Sweden and trained in child psychoanalysis at the Menninger Foundation. She is a member of the Family Law Advisory Commission to the California Senate, and consults widely with clinics, departments of child psychiatry, social agencies, and courts on the effect of divorce on children and how such institutions can respond most appropriately.

Joan B. Kelly, coprincipal investigator of the divorce project, is a clinical psychologist with a private practice, and teaches continuing-education courses for professionals, including preventive intervention with divorcing families. She received her Ph.D. in child clinical psychology from Yale University and taught in the Department of Psychology and Psychiatry at the University of Michigan. At the time the divorce project began, she was director of child services at the Marin County Community Mental Health Center.

For further information, read:

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MSG 81-00016035 PRTY 1 05/11/81 10:26:12 ORIG: LF01 IN= 0002 OUT= 0012
FROM: ANNIE IN FAIRBANKS TO: JUNEAU INFO.
TARGET. LJH2 SUBJ: POM PAGE 0001

TO: REP. BROWN AND SEN. PARR

FROM: LARRY SWEET, 1850 ROBERTS RD., FAIRBANKS 99701 479-6762/479-2241

RE: HOUSE BILL 210 JOINT CUSTODY FOR CHILDREN

AS YOU REQUESTED LAST SATURDAY IN FAIRBANKS THIS MESSAGE IS A REMINDER TO CHECK WITH DON CLOCKSIN TODAY REGARDING MOVING HB210 THIS YEAR AND HAVING JOINT HEARINGS. I WILL HAVE CALLED HIM THIS MORNING. I PLAN TO COME TO JUNEAU TOMORROW (TUESDAY) AND HOPE TO MEET WITH CLOCKSIN AND/OR HOLLY-BLOCG.

Mediators qualified meet standards of bar or M.H. Association

Divorce — Assoc. of Family Conciliation Courts tried
Mediation — to determine who mediates.
Therapy and Pract.
M.H. prof. - Ct. appt.
Lawyers - Ct. appt.

best - MH profess & lawyers as team

— court will set standards - trained mediators.

Stevens makes rec. to lawyers

no counsel present unless they are present they are an observer.

rules of procedure & standards will be developed by the court system.

Calif. money for training of mediators.

payment for mediation?

1 — compelling evidence to suggest parents agreement is not in best interests of the child.

2 — requirement — joint agreement be worked out w/ Master ?

3 — establish a "marital relations specialist" in each judicial district to work with parents to get agreement.
— mediator —

1. joint custody
2. sole custody — visitation
3. ~~sole custody — no access~~

20% joint custody ——— 264-0428
Carla Forsythe – attorney for the court.
Family Court "Conciliation Court" – Los Angeles.

Mandate – Statewide domestic relations a specialty (Superior Ct.)
conciliation court for counseling.
judicial leadership – judges
in each 2 profess doing only custody evaluations (each over 60 cases) each would need 5 mediators. 2 clerical.

developed

ACSW
Marriage family Counselor – Masters level.
Check A.S. – mediation in divorce proceedings.
Calif – Los Angeles.

16-19 in Ketchikan w/ Judge Schultz.