ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1340 HHESS HB 210 (#1-#2)

(2) Prior to charging the service fee the agency will determine the obligee's ability to pay and the related percentage of the service fee to be paid. To make this determination the agency will require a notarized statement of the obligee's gross annual income and the size of the family unit.

(3) The percentage of the total service fee to be paid is 0% when the obligee's gross annual income is 125% of the poverty level or lower. The percentage of the total service fee to be paid is 50% when the obligee's gross annual income is above 125% of the poverty level and up to 200% of the poverty level. The percentage of the total service fee to be paid is 100% when the obligee's gross annual income is more than 200% of the poverty level. For computation purposes the obligee's gross annual income may be reduced by any extra ordinary mandatory expenses which will be continuous and are not payment for consumer goods or services.

A PROJECTED COST SCHEDULE BASED UPON AN OBLIGEE'S ABILITY TO PAY USING THE 1980 POVERTY LEVEL IS ATTACHED AS EXAMPLE No. 2.

(d) If an obligee presents a check to the agency in payment of the application or service fee which is backed by insufficient funds, the agency will:

(1) Notify the obligee of the bad check and,
(2) Administratively suspend all work on the case and hold all monies received pending resolution of the bad check.
(3) If no resolution occurs within 60 days the case will be closed. Any monies collected will be returned to the obligor.

(e) An ongoing processing fee shall be computed and if applicable be collected as a percentage of each payment. The fee shall be deducted from each incoming payment and the remainder forwarded to the obligee with an accounting. The processing percentage shall be computed as follows:

(1) Prior to collecting and retaining the processing fee the agency will determine the obligee's ability to pay by requesting a notarized statement of the obligee's gross annual income and the size of the family unit.

(2) The percentage of the collections to be retained is 0% when the obligee's gross annual income is 125% of the poverty level or lower. The percentage of the collections to be retained is 5% when the obligee's gross annual income is above 125% of the poverty level and up to 200% of the poverty level. The percentage of collections to be retained is 10% when the obligee's gross annual income is above 200% of the poverty level. For computation purposes the coligee's annual income may be reduced by any extra ordinary mandatory expenses which will be continuous and are not payment for consumer goods or services.

(3) The processing fee percentage may be redetermined based upon a change in circumstances of the obligee. This redetermination will be done upon submission of a new notarized statement of the obligee's gross annual income and the size of the family unit.

Authority: AS 47.23.100

A PROCESSING FEE SCHEDULE BASED UPON AN OBLIGEE'S ABILITY TO PAY USING THE 1980 POVERTY LEVEL IS ATTACHED AS EXAMPLE NO. 3.

15 AAC 147.160(3) is amended to read:

(3) "application" means a signed request for child support enforcement and when applicable includes a complete notarized statement of the obligee's gross annual income and the size of the family unit.

15 AAC 147.160 is amended by adding new sub-sections (6), (7), (8), (9), and (10)

(6) "consumer price index" means the All Urban Consumer Price Index (CPIU) as compiled by the United States Department of Labor, Bureau of Labor Statistics, for Anchorage, Alaska.

(7) "gross annual income" means gross income from all sources of an individual as defined in Section 61 of the 1954 Internal Revenue Code as amended.

(8) "obligee" means the custodial parent or person who has physical custody and responsibility for the dependent or minor child to whom a duty of support is owed.

(9) "poverty level" means the poverty level guideline as annually established by the United States Office of Management and Budget for the State of Alaska.

(10) "size of the family unit" means the obligee and all dependents living with the obligee for which the obligee is legally responsible.

Example No. 1

Application Fee
Based on 1980
Poverty Level

Application Fee	None	$10.00		$20.00
Size of the family unit*	Annual Income Not more than	Annual Income More Than	But Not More Than	Annual Income More Than
2	7,850	7,850	12,560	12,560
3	9,750	9,750	15,600	15,600
4	11,650	11,650	18,640	18,640
5	13,550	13,550	21,680	21,680
6**	15,450	15,450	24,720	24,720

* includes the obligee
** for larger families add $1,520 to the annual income for each additional dependent.

Example No. 2

Projected Cost Fee
Based on 1980
Poverty Level

% of Fee to be Paid	0%	50%		100%
Size of the family unit*	Annual Income Not more than	Annual Income More Than	But Not More Than	Annual Income More Than
2	7,850	7,850	12,560	12,560
3	9,750	9,750	15,600	15,600
4	11,650	11,650	18,640	18,640
5	13,550	13,550	21,680	21,680
6**	15,450	15,450	24,720	24,720

* includes the obligee
** for larger families add $1,520 to the annual income for each additional dependent.

Example No. 3

Processing Fee
Based on 1980
Poverty Level

% of Collection to be Retained	0%	5%		10%
Size of the family unit*	Annual Income Not More Than	Annual Income More Than	But Not More Than	Annual Income More Than
2	7,850	7,850	12,560	12,560
3	9,750	9,750	15,600	15,600
4	11,650	11,650	18,640	18,640
5	13,550	13,550	21,680	21,680
6**	15,450	15,450	24,720	24,720

* includes the obligee
** for larger families add $1,520 to the annual income for each additional dependent.

APPENDIX E
Child Support Enforcement Agency
Regulations Enabling Administrative Establishment of
Child Support Orders

(5) Transportation deduction in the amount of $170 per month, which represents an average of 1000 miles per month times $.17 per mile.

(6) Housing deduction computed by multiplying the monthly gross income times .25.

(7) Mandatory expenses not included in any of the specific deductions provided for. This deduction may not include payment for consumer goods or services.

(b) The monthly child support obligation will be computed by multiplying the amount per child from the table provided in (c) of this section times the number of children for whom support is requested. The amount per child is determined from the table by locating the line in the net income column which includes the amount computed in (a) of this section and reading across to the vertical column representing the number of children under age 18 which the obligor has a legal obligation to support. This amount shall be paid by the obligor in accordance with a payment schedule acceptable to the agency.

(c) The TABLE OF MONTHLY OBLIGATION PER CHILD is based on the assumption that there is a family unit consisting of two parents and children whom the obligor has a legal obligation to support and that each child is entitled to a pro-rata share of the obligor's net income. Thus, in a family with two children, each child is entitled to 1/4 of the net income; if there were three children each child would be entitled to 1/5 of the obligor's net income.

TABLE OF MONTHLY OBLIGATION PER CHILD

Obligor Net Income	Number of Dependent Children							
	1	2	3	4	5	6	7	8 or more
0 - 50	25	25	25	25	25	25	25	25
51 - 100	25	25	25	25	25	25	25	25
101 - 150	40	30	25	25	25	25	25	25
151 - 200	60	45	35	30	25	25	25	25
201 - 250	75	55	45	40	30	30	25	25
251 - 300	90	70	55	45	40	35	30	30
301 - 350	110	80	65	55	45	40	35	30
351 - 400	125	95	75	60	55	45	40	40
401 - 450	140	105	85	70	60	55	45	40
451 - 500	160	120	95	80	70	60	55	50
501 - 550	175	130	105	90	75	65	60	50
551 - 00	190	145	115	95	80	70	65	60

Obligor Net Income	Number of Dependent Children							
	1	2	3	4	5	6	7	8 or more
601 - 650	210	155	125	105	90	80	70	60
651 - 700	225	170	135	110	95	85	75	70
701 - 750	240	180	145	120	105	90	80	70
751 - 800	260	195	155	130	110	95	85	80
801 - 850	275	205	165	140	120	105	90	80
851 - 900	290	220	175	145	125	110	95	90
901 - 950	310	230	185	155	130	115	105	90
951 -1,000	325	245	195	160	140	120	110	100
1,001 -1,050	340	255	205	170	145	130	115	100
1,051 -1,100	360	270	215	180	155	135	120	110
1,101 -1,150	375	280	225	190	160	140	125	110
1,151 -1,200	390	295	235	195	170	145	130	120
1,201 -1,250	410	305	245	205	175	155	135	120
1,251 -1,300	425	320	255	210	180	160	140	130
1,301 -1,350	440	330	265	220	190	165	145	130
1,351 -1,400	460	345	275	230	195	170	155	140
1,401 -1,450	475	355	285	240	205	180	160	140
1,451 -1,500	490	370	295	245	210	185	165	150
1,501 -1,550	510	380	305	255	220	190	170	150
1,551 -1,600	525	395	315	260	225	195	175	160
1,601 -1,650	540	405	325	270	230	205	180	160
1,651 -1,700	560	420	335	280	240	210	185	170
1,701 -1,750	575	430	345	290	245	215	190	170
1,751 -1,800	590	445	355	295	255	220	195	180
1,801 -1,850	610	455	365	305	260	230	205	180
1,851 -1,900	625	470	375	310	270	235	210	190
1,901 -1,950	640	480	385	320	275	240	215	190
1,951 -2,000 AND OVER	660	495	395	330	280	245	220	200

(d) When an obligor is in arrears, an additional amount may be collected as part of the scheduled payment and will be applied against outstanding arrearages due from the obligor. The amount will be established at 25% of the monthly obligation as determined in (c) of this section; however, the agency and obligor may agree in writing to a greater or lesser amount depending on the obligor's financial situation.

(e) When the agency has made a reasonable effort to obtain the financial information necessary to compute the monthly obligation and has been unsuccessful or the obligor has provided false information to the agency, the monthly support obligation shall be the greater of the following:

(1) The AFDC monthly grant

(2) An amount computed using the process set out in (a) and (b) of this section and based on a gross income estimated by the agency from the best available information.

(f) The method of calculation set out in (a), (b) and (c) of this section is based on the obligor's ability to pay; however, the agency and obligor may enter into a written agreement for payment of monthly support obligations of an amount greater or lesser than the amount calculated, when the needs of the family or other circumstances justify such a change. (Eff. / / , Reg.)

Authority: AS.47.23.140

15 AAC 40.020 HEARING - SCHEDULE OF DATE, TIME AND PLACE. (a) Administrative hearings requested by a person receiving a notice and finding of financial responsibility or by a person petitioning for modification of a finding or determination of support obligation previously entered will be conducted in accordance with the provisions of AS 47.23.170 and AS 47.23.190 and will be held at the agency offices or other location determined by the agency, giving due consideration to any reasonable request of the person requesting the hearing.

(b) A notice of hearing will be mailed to the person requesting the hearing no less than 20 days prior to the hearing date. (Eff. / / , Reg.)

Authority: AS 47.23.020
AS 47.23.170
AS 47.23.190

15 AAC 40.030. HEARING - RESCHEDULING (a) The hearing officer shall grant any reasonable request by the person requesting the hearing for a change in the time, date or place of the hearing;

(1) where the request for change is delivered to the agency at least five working days prior to the scheduled hearing date; and

(2) where the person making the request has not previously requested a change in the time, date or place of hearing.

(b) Requests which fail to meet the criteria of (a) (1. and (2) of this section will be granted by the hearing officer only if in his judgement the person making the request has demonstrated clearly that it is due to circumstances beyond his control. (Eff. / / ,Reg.)

Authority: AS 47.23.020
AS 47.23.170
AS 47.23.190

15 AAC 40.040 CONDUCT OF HEARING. (a) The hearing officer shall exercise control over the proceedings.

(b) During the hearing, strict rules of evidence shall not apply. The hearing officer may accept any relevant evidence which he has reason to believe may be accurate.

(c) The hearing officer may accept a certified copy of the official agency record in the case, excluding all documents not relevant to the question of support.

(d) At least five days before the hearing, the agency will make available to the person requesting the hearing, copies of all records the agency intends to produce at the hearing. (Eff. / / , Reg.)

Authority: AS 47.23.020
AS 47.23.170
AS 47.23.190

15 AAC 40.050 HEARING - BURDEN OF PROOF. At a hearing on the agency's determination of a support obligation, the person requesting the hearing shall have the burden of proving;

(1) that a valid Alaska court order is in existence which covers the support obligation in question; or

(2) that no duty of support is owed; or

(3) that the amount of support obligation determined by the agency is incorrect because the financial circumstances of the obligor are not as the agency has determined. (Eff. / / , Reg.)

Authority: AS 47.23.020
AS 47.23.170
AS 47.23.190

15 AAC 40.060 RESERVED
15 AAC 40.070 RESERVED
15 AAC 40.080 RESERVED
15 AAC 40.090 RESERVED
15 AAC 40.100 RESERVED

ARTICLE 2.

GENERAL PROVISIONS

Section
110. Agency Services
120. Reserved
130. Bad Check Fee
140. Overdue Payment Fee
150. Service of Administrative Process
160. Definitions

15 AAC 40.110 AGENCY SERVICES (a) Child support services will be provided to minor children or their custodian

(1) for whom a written application for agency services has been executed and accepted, or

(2) upon notification by the Deparment of Health and Social Services that the children are recipiants of public assistance under Title IV-A of the Social Security Act (42 USC § 601) or that the state is incurring costs for foster or institutional care; or

(3) upon receipt of a petition or complaint initiated under the Uniform Reciprocal Enforcement of Support Act of this or another state in accordance with Title IV-D of the Social Security Act (42 USC § 651).

(b) An obligor may obtain agency services upon completion and acceptance of a written application for agency services. (Eff. / / , Reg.)

Authority: AS 47.23.020
AS 47.23.040
AS 47.23.045
AS 47.23.080
AS 47.23.100
AS 47.23.140

15 AAC 40.120 RESERVED

15 AAC 40.130 BAD CHECK FEE. If any check is presented to the agency in payment of any amount due for a child support obligation and is dishonored by the drawee upon presentment for the reason that the maker's account has insufficient funds, the obligor shall be liable to the agency upon notice in the amount of $10. All future payments of the obligor may be required in cash funds or certified negotiable instruments. (Eff. / / , Reg.)

Authority: AS 47.23.020

15 AAC 40.140 OVERDUE PAYMENT FEE. (a) Whenever the amount due for a child support obligation has not been received by the agency within 10 days after the due date specified in the superior court order, notice and finding of financial responsibility, or hearing officer's decision, a late payment fee may be assessed against the obligor upon notice by the agency. The fee shall be added to and collected using the same means as for the obligated amount.

(b) The overdue fee, which may be assessed for any single payment past due, shall be $10 or 5% of the obligated amount, whichever is greater.

(c) The date of receipt of a payment by the agency will be the date on the agency's official receipt if paid in person or the postmark on payments received through the U. S. mail. (Eff. / / , Reg.)

Authority: AS 47.23.020

15 AAC 40.150. SERVICE OF ADMINISTRATIVE PROCESS. Service of a notice of hearing, notice of liability, notice and finding of financial responsibility, assertion of lien, order to withhold and deliver, demand for delivery, or other administrative notice or process of the agency may be made in the following ways:

(1) In person by a peace officer, law enforcement officer or any person authorized to serve civil process in the state of Alaska personally, as follows:

(A) Individuals. Upon an individual other than an infant or an incompetent person, by delivering a copy to him personally, or by leaving a copy at his dwelling house or usual place of abode with some person of suitable age and discretion residing there.

(B) Corporations. Upon a domestic or foreign corporation, by delivering a copy to an officer or a managing or general agent at the principal place of business within the state of Alaska, or to any other agent authorized by appointment or by law to receive service of process.

(C) Infants. Upon an infant by delivering a copy to the infant personally and also to his father, mother, or to any person of suitable age and discretion having the care or control of the infant, or with whom he resides.

(D) Partnerships. Upon a partnership, by delivering a copy personally to a member of such a partnership, or to a managing or general agent of the partnership, or to any other agent authorized by appointment or by law to receive service of process, or to a person having control of the business of the partnership.

(E) Unincorporated Associations. Upon an unincorporated association, by delivering a copy personally to an officer, a managing or general agent, or to any other person authorized by appointment or by law to receive service of process.

(F) Officer or Agency of the State or Federal Government. Upon an officer or agency of the state or federal government by delivering a copy to such officer or head of the agency, or to the person designated by the head or chief executive officer thereof to accept service of process.

(2) By registered, certified, or insured mail, return receipt requested, for restricted delivery only to the person to whom the notice is directed or to the person authorized to receive that person's restricted delivery mail. (Eff. / / , Reg.)

Authority: AS 47.23.150
AS 47.23.160

15 AAC 40.160. DEFINITIONS. Unless the context indicates otherwise, when used in this chapter

(1) "agency" means the Alaska Child Support Enforcement Agency;

(2) "AFDC" means public assistance granted under the program of Aid to Families With Dependent Children;

(3) "application" means a signed request for child support enforcement services;

(4) "child support enforcement services" include, but are not limited to

(A) location of absent parents;
(B) establishment of support obligations;
(C) enforcement of support obligations;
(D) collection and distribution of child support payments;
(E) establishing paternity;
(F) responding to and initiating actions under the Uniform Reciprocal Enforcement of Support Act (AS 25.25.010-AS 25.25.270).

(5) "periodic payments" means the amount to be paid in regularly scheduled installments in satisfaction of the support obligation. When applicable it also refers to regularly scheduled payments to satisfy past due obligations. (Eff. / / , Reg.)

Authority: AS 47.23.010
AS 47.23.020
AS 47.23.110
AS 25.25.010

HOUSE RESEARCH AGENCY REPORTS

80-1 Inventory of Communications Facilities Serving Alaska Communities
February 1980

80-2 Preliminary Economic Evaluation of NGL-Based Petrochemical Production in Alaska
October 1980

80-3 Markets for Alaskan Coal
January 1981

80-4 Coal Leasing and Taxation
January 1981

80-5 Coastal Protection Funds
January 1981

80-6 The University of Alaska: An Overview of Programs and Expenditures
January 1981

80-7 Child Support Enforcement: Alaska's Program in Perspective
January 1981

80-8 Alaska Surface Coal Mining Program
February 1981

80-9 Potential for Coal Use in Rural Alaska
February 1981

80-10 Chugiak Senior Citizens: Housing and Health Care Study
February 1981

80-11 Synopsis of Telecommunications Reports Prepared under Contract to the House Research Agency
February 1981

80-12 Airships
February 1981

80-13 Research Monographs on Indochinese Refugee Resettlement
February 1981

Bill would make joint child custody the rule

y Carol Murkowski
Times Writer

Shared parenting could be the ule, rather than the exception, if a roposed bill on joint child custody asses the 1982 state Legislature.

Some 37 states already have or re considering joint custody, in hich both parents share in making ecisions about their children, rather han just the parent who has physi- al custody. House Bill 210 is now be- ore the Health, Education and So- ial Services Committee, and hear- ngs will be held Friday at the Leg- ilative Affairs office in Anchorage nd via teleconference in Fairbanks.

The bill will require judges to first consider a joint custody agreement in awarding child custody. If parents object to joint custody, they may contest it.

"Joint custody does not necessarily mean equal time; it means equal responsibility and equal rights legally," said Rudy Johnson, president of Equal Rights for Fathers of Alaska, which is backing the bill.

Today, Johnson said, a parent who does not have custody of his children cannot authorize emergency medical treatment, take part in a parent-teacher conference, obtain school records, or visit a hospitalized child without the consent of the custodial parent.

Johnson told of a father whose six children are in Minnesota, who has been denied his visitation rights for three years. "There's no allegation of child abuse or unfitness," Johnson said. "It's just an angry custodial parent."

While he and his wife's attorneys wrangled in court, the father's letters and presents to the children were returned. Recently, when he learned that one daughter was to undergo open-heart surgery, the father went to Minnesota to be with her; the doctor told him his ex-wife refused to let him see the girl.

Shortly after the daughter's surgery, a son was killed in a car accident. The father was denied a visit to the funeral home. "The funeral director was shocked, but his hands were tied," Johnson said.

Two weeks ago, the father received the bill for the funeral he was not allowed to attend.

Such animosity between parents is one argument often quoted by opponents of the bill. If parents cannot get along while they're married, how are they to agree on the issues of child-rearing when they're divorced?

In a letter to the House HESS committee, Superior Court Judge Victor Carlson argued that HB 210 "would result in many opportunites for confrontation in which the child would be caught in the middle, e.g. the choice of a school, public or private, alternative or basic, etc. Neither parent would have the authority to make the decision and the child would be torn in having to make a choice and then the matter, ultimately, would have to be decided by the court."

However, Johnson argued that if joint custody were a priority, families contemplating divorce "would have to start thinking right away about working together for the benefit of the children."

From a thick stack of papers I pulled out a 1980 California stu which shows that 16 percent of joi custody divorce cases returned court to settle differences, as o posed to 31 percent of sole custo cases.

Johnson also believes that joi custody will reduce the amount time spent in domestic court b cause "parents will have to work t gether," he said. "They'll learn th even if they don't love each oth any more, the only way to wo things out is to work together f their kids' sake."

Divorced father seeks clues to son's wherabouts

y Carol Murkowski
Times Writer

The only clue Ray Hitchcock has o his three-year-old son's whereabouts is a faded newspaper clipping escribing the boy as the youngest anglider in Oregon.

Hitchcock's ex-wife, her new husband, and young Ryan quietly left nchorage two days after Hitchcock ot a court order enforcing his right o visit Ryan. Although he has visitation rights, he has not seen or heard rom his son since July.

He knows that Ryan has been in regon, and is probably living in outhern California now; he knows hat the boy is hangliding with his tepfather; he knows that Ryan is eing taught that his last name is not litchcock.

And, although the courts tell him hat his ex-wife is in the wrong, he nows there's not much he can do bout it.

One of the group's efforts comes up for a hearing Nov. 20 in Anchorage and Fairbanks. House Bill 210 would encourage joint custody arrangements, in which one parent would have physical custody of children, but both would share in the legal, financial and moral obligations to the children.

The bill would help parents like Hitchcock, says Rudy Johnson, president of Equal Rights for Fathers.

"Ray is a perfect example of what happens without joint custody, when parents are forced into litigation to have access to their children," says Johnson.

With joint custody, "at least I'd have a say in what they were teaching my son," Hitchcock adds.

Hitchcock, 28, and his wife Vicki, 28, were married in 1975 and divorced four years later. Vicki was awarded custody of their son Ryan, and a visitation schedule — alternate weekends and one month in summer — was set up.

However, Hitchcock says, Vicki and her new husband often refused to comply with the visitation order, hiding, refusing to let Hitchcock take Ryan for the weekend, and twice beating Hitchcock.

"When I went over, I'd follow the law to the letter," recalls Hitchcock, a stocky young man whose arms are covered with tattoos. "I'd keep my hands in my pockets, and always take somebody with me." Once, when he was refused Ryan, he filed for a writ of assistance, and a state trooper accompanied him to pick up Ryan; even with the trooper's presence, Ryan was not released until Vicki and her husband were threatened with arrest.

In February, Hitchcock filed a suit to enforce his visitation rights. Two days after the court agreed to enforce the order, Vicki left the state.

Her last address was Rockaway, Ore., but Hitchcock hears she has since moved to California. He has been told by Vicki's friends and relatives that she will get in touch with him in the spring, when his summer visitation rolls around.

Hitchcock is worried that Ryan's stepfather takes the boy hangliding with him. The newspaper article he received from Oregon says that Ryan "understands there is a very high element of risk and danger," and Hitchcock is unhappy about it. "I don't have any say in something that I think is dangerous for my son," he says.

The article also uses Ryan's stepfather's name — Griffeth — instead of Hitchcock.

"If Ryan decides one day that his stepfather has been more of a father to him, and he wants to change his name legally, that should be his choice. I'd be hurt, but I wouldn't interfere," Hitchcock says. "But that decision should not be made for him while he's still too young to decide."

Hitchcock admits he has had some bad times in his past which might prevent asking for full custody of his son. He admits to a bout with alcoholism and suicidal tendencies after his divorce, but a psychologist has "assured me that those are normal post-divorce reactions."

He says he is fine now, and "the court has been on my side all the way."

The court ordered Vicki's attorney to find her and tell her to notify Hitchcock and the court where she was living, or a warrant would be issued for her arrest. She complied this summer, and Hitchcock took Ryan for his summer visit in July.

"But since my son left July 30, I have not seen him or heard of him at all," he says. "Apparently she feels I don't have the right to know whe Ryan is 11 out of 12 months. But still have to pay child support, and feel I have the right to write my s once in awhile."

In the meantime, he's tryi other avenues. He wanted to put a ad in the Los Angeles Times placi a reward for information on Ryan whereabouts, bu' he can't afford t $1,400 it would cost. Neither can I afford a privat detective.

And he's researching cases which "alienation of affection" h been proven, hoping to use it again Vicki. If he can, he'll ask for temp rary custody of Ryan until Vicki ca come to court and explain her a tions. If he doesn't hear from her t spring, when Ryan's annual vis should be arranged, he plans to a for a hearing to show cause why sh is not following the court's orders.

"Until then, my hands are tied."

Hitchcock is a member of Equal ights for Fathers of Alaska, a roup that has been getting its name the news with increasing fre- uency by lobbying for changes in omestic relations law.

HB210

LAW

Visitation Rights For Grandparents

By Roslyn Kramer and Dolores Walker

Disruption of the family unit — whether through divorce, legal separation or the death of a parent — can be as devastating for grandparents as it is for parents and children. After years of frequently seeing their grandchildren, often they must adjust to limited visits or be cut off completely.

Until recently, grandparents were found to have no legal standing in such cases. But now at least 33 states have some form of grandparents' visitation law. These statutes have altered the traditional legal view that only the custodial parents have the right to determine whom their children see.

Thirty-three states now have grandparents' visitation laws.

Partly because this is such a new field, grandparents' visitation law is a mercurial area which varies from state to state and court to court — and difficulties remain. The following examples give an overview of areas to explore with a lawyer in the event of visitation problems.

A typical problem arises in the case of divorce, when one parent loses custody and visitation and the custodial parent won't let his or her former in-laws see their grandchildren. Some courts have recognized grandparents' right to visitation even though their child does not have it. For example, in a 1981 Indiana Court of Appeals case, the grandparents put up a fight for visitation when their daughter was accused of abandonment. Although Indiana does not have a written law giving grandparents the right to go into court to ask for visitation, the court ruled that under certain circumstances grandparents have visitation rights separate from those of their children.

In certain cases in which divorce has meant an increase in physical distance between grandparents and grandchildren, some grandparents have intervened and successfully won visitation rights. In a Tennessee divorce case, a father who had visitation rights was ordered by the court to take his children to his parents' home in a distant community for visits. This 1969 case went a long way in assuring grandparents that a move to another community will not necessarily mean the end of all contact.

Courts have also considered cases in which a parent dies and the grandparents want to be sure of contact with the grandchildren. Two 1977 cases, involving the death of the mother and an attempt on the part of her parents to gain visitation, contributed to the passage of a 1980 Georgia amended visitation statute which provides that grandparents may sue for visitation in the event of their child's death. More than 20 states have similar laws.

Visitation laws frequently conflict with adoption laws, however. Most courts deny visitation to natural grandparents if the child is adopted by total strangers. But courts disagree about whether or not to grant visitation if the natural parent dies and the stepparent adopts the child.

Grandparents won in a 1975 New Jersey suit when the father remarried after the mother's death, and the child was adopted by the second wife.

But courts tend to look with less favor on those situations in which, clearing the way for the stepparent to adopt, the natural parent signs away all rights to the child. Frequently, grandparents lose their visitation rights as a result.

It can't be emphasized enough that with any legal change in family relationships, grandparents should attempt to get their rights specifically defined in the agreement or by court decree. If neither the child nor the child's lawyer will help, the grandparents should get their own lawyer, preferably one who is experienced in family law in the state where the legal change is taking place.

For further information on lobbying for laws to protect rights of children and grandparents contact: Lee and Lucile Sumpter, Dept. FW, Grandparent-Children's Rights, Inc., 5728 Bayonne Avenue, Haslett, Michigan 48840, or Grandparents Anonymous, Dept. FW, 536 West Huron, Pontiac, Michigan 48053.

Dolores Walker is an attorney practicing in New York City and Roslyn Kramer is a free-lance writer.

Joint Custody Title

Child custody legislation awaits final passage

ociated Press

Juneau — Legislation to re-mp Alaska's child custody law d encourage judges to award di-orced parents joint custody of their children won near-final passage Sunday.

The Senate voted unanimously to approve the bill, which already passed the House. The Senate made some changes to the measure, but chief sponsor Rep. Brian Rogers, D-Fairbanks, said he will recommend the House accept the amendments.

The Senate's action came during a rare Sunday floor session called by Senate leaders. The House met briefly, but did not act on any legislation.

Under the bill, a judge would be encouraged to order shared custody if the judge determines it in the best interests of the child.

The bill calls for a judge to consider several factors in determining custody: the child's preference, stability of the home environment, educational opportunities, advantages of keeping the child in the community where he or she resides, the optimal time for the child to spend with each parent, special needs of the child that may be better met by one parent, and which parent is more likely to encourage frequent contact with the other parent.

One of the changes made by the Senate was to delete a provision in the House bill mandating that parents go through a mediation effort to try to agree on custody without going into court.

The Senate bill allows a judge to order mediation, but does not mandate it.

As passed by the House, the bill required that a couple, within 30 days after filing a petition for child custody, enter into mediation to try to work out a custody agreement. Each parent could challenge one mediator appointed by a judge.

After the initial mediation conference, either parent could withdraw. The custody dispute then would be decided in court. The Senate bill calls for the same process, but does not mandate it.

Sen. Pat Rodey, D-Anchorage, said he favors mandatory mediation. However, he said it would cost the state an estimated $450,000 a year to pay mediation costs for low-income people, and to see that children are represented.

When the legislation originally was introduced it sought to mandate joint custody awards, but it subsequently was revised to simply encourage shared custody awards.

According to a study done by court officials for the first part of 1981, custody was granted to fathers in 22.5 percent of the cases, to mothers in 42 percent, children were split in 13.8 percent and joint custody was awarded in 21.2 percent of the cases.

However, representatives of Alaskans for Childrens' Rights, a group fighting for more custody awards for fathers, claims that since 1977 only about 5 percent of the custody awards have gone to fathers.

3 capital nove public hearings set

The New Capital Site Planning mmission moves to Nome Wed-esday for a public hearing on

Bill would make joint child custody the rule

by Carol Mikowski
Times Writer

Shared parenting could be the rule, rather than the exception, if a proposed bill on joint child custody passes the 1982 state Legislature.

Some 37 states already have or are considering joint custody, in which both parents share in making decisions about their children, rather than just the parent who has physical custody. House Bill 210 is now before the Health, Education and Social Services Committee, and hearings will be held Friday at the Legislative Affairs office in Anchorage and teleconference in Fairbanks.

The bill will require judges to first consider a joint custody agreement in awarding child custody. If parents object to joint custody, they may contest it.

"Joint custody does not necessarily mean equal time; it means equal responsibility and equal rights legally," said Rudy Johnson, president of Equal Rights for Fathers of Alaska, which is backing the bill.

Today, Johnson said, a parent who does not have custody of his children cannot authorize emergency medical treatment, take part in a parent-teacher conference, obtain school records, or visit a hospitalized child without the consent of the custodial parent.

Johnson told of a father whose six children are in Minnesota, who has been denied his visitation rights for three years. "There's no allegation of child abuse or unfitness," Johnson said. "It's just an angry custodial parent."

While he and his wife's attorneys wrangled in court, the father's letters and presents to the children were returned. Recently, when he learned that one daughter was to undergo open-heart surgery, the father went to Minnesota to be with her; the doctor told him his ex-wife refused to let him see the girl.

Shortly after the daughter's surgery, a son was killed in a car accident. The father was denied a visit to the funeral home. "The funeral director was shocked, but his hands were tied," Johnson said.

Two weeks ago, the father received the bill for the funeral he was not allowed to attend.

Such animosity between parents is one argument often quoted by opponents of the bill. If parents cannot get along while they're married, how are they to agree on the issues of child-rearing when they're divorced?

In a letter to the House HESS committee, Superior Court Judge Victor Carlson argued that HB 210 "would result in many opportunites for confrontation in which the child would be caught in the middle, e.g. the choice of a school, public or private, alternative or basic, etc. Neither parent would have the authority to make the decision and the child would be torn in having to make a choice and then the matter, ultimately, would have to be decided by the court."

However, Johnson argued that if joint custody were a priority, families contemplating divorce "would have to start thinking right away about working together for the benefit of the children."

From a thick stack of papers pulled out a 1980 California st which shows that 16 percent of j custody divorce cases returned court to settle differences, as posed to 31 percent of sole cust cases.

Johnson also believes that j custody will reduce the amount time spent in domestic court cause "parents will have to work gether," he said. "They'll learn even if they don't love each o any more, the only way to w things out is to work together their kids' sake."

Thurs, Jan. 14

Judge defends record on child custody

by Maureen Blewett
Times Writer

The presiding judge of the Anchorage Superior Court said Tuesday a divorced fathers group misread the statistics when it accused nine local judges of discriminating against fathers in child custody cases.

Equal Rights for Fathers of Alaska filed a lawsuit in federal court here Monday saying Anchorage judges discriminate against divorced fathers by awarding children to the mother. The lawsuit was filed in U.S. District Court by Miami lawyer Edward J. Winter Jr.

"Whether articulated or not," the lawsuit said, "the Maternal Preference Doctrine is the . . . illegal basis for . . . child custody litigation awards."

But presiding Judge Mark Rowland said Tuesday the Alaska Supreme Court rejected the maternal preference theory in 1977. The opinion, which said the court "expressly rejects" the doctrine, was written in Johnson vs. Johnson, a case involving Equal Rights for Fathers president Rudy Johnson.

In addition, Rowland said, the fathers group misread the statistics when it said Alaska judges favored the mother in 275 out of 343 custody cases over the past two years.

In fact, those were not court awards in most cases, Rowland said. The court was simply approving a settlement reached by both parties.

A study of all but eight of the custody cases in the past two years shows that only 13 parents contested custody of the children, Rowland pointed out. Of these, nine awards were made to the mother and four to the father.

"There is no pattern of discrimination," Rowland said.

Child custody investigator Francis Stevens said today he felt it would be inappropriate to comment on a pending lawsuit. The judges and investigators will be represented by Assistant Attorney General Pat Kennedy.

Stevens had earlier said he disagreed with the fathers over what the data means.

Named in the lawsuit are Judges Victor Carlson, Karl Johnstone, Eben Lewis, Ralph Moody, Justin Ripley, Mark Rowland, Brian Shortell, James Singleton and Milton Souter. Two of the named judges have custody of their children.

Also named are custody investigator Stevens and assistant investigator Artis Cry.

Court eases child custody requirement

Associated Press

The Alaska Supreme Court ruled Friday that the lifestyle of a parent is relevant in child custody disputes only to the extent that it may be shown to affect the person's relationship to the child.

In a case involving a custody fight between Casey McBride of Skagway and Mary Craig Bird of Juneau, the court said Superior Court Judge Thomas Stewart improperly made reference to the mother's sexual conduct in reaching a decision.

Stewart awarded the father custody of a child born to the couple out of wedlock on grounds he offered the child a more stable environment.

He said, however, that in reaching his decision he was concerned that the mother had borne children out of wedlock and had demonstrated instability in terms of place or relationship.

In a majority opinion written by Justice Allen Compton, the Supreme Court said that was improper.

"At best, such comments tainted the court's decision; at worst, they suggest that the court interjected impermissible factors in the course of its deliberations," the Supreme Court said.

It said the record of the case offers little evidence of any adverse effect resulting from the the conduct of the mother, and that "a court's reference to such factors as a parent's sexual conduct often times intimates the court's denigration of a parent's chosen lifestyle."

"To avoid even the suggestion that a custody award stems from a lifestyle conflict between a trial judge and a parent, we reiterate that trial courts must scrupulously avoid reference to such factors absent evidence of an adverse effect to the parent-child relationship," the court said.

Compton and Justice Warren Matthews joined in the majority opinion, with Chief Justice Jay Rabinowitz concurring.

Justices Edmond Burke and Roger Connor dissented. They said the majority conceded Stewart was concerned with the respective stability of the father and mother and not their sexual conduct.

They said they agreed with that conclusion and, therefore, could see no reason to reverse Stewart's decision "simply because of Judge Stewart's reference to what the majority deems an "impermissible factor.'"

Bias Against Fathers In Child Custody Cases?

The other day we ran across some shocking statistics that should concern us all:

—40 per cent of all homicides are directly related to divorce.

—90 per cent of all women murdered between the ages of 20 and 30 are killed by their husbands.

—4 out of 5 women receiving welfare are products of divorce.

—90 per cent of the American prison population is from broken homes.

—Juvenile delinquency has increased proportionately with the skyrocketing divorce rate.

Considering the gigantic social problems and costs related to divorce should cause us to examine all aspects, at the least of which is the domestic relations courts that handle divorce cases. Are they really doing a fair and equitable job? Are the best interests of children of broken homes really being considered by the courts? Is there bias in the courts in favor of awarding children in contested divorce cases to mothers? Are studies of parental rights by social scientists biased?

In a recent study, the Family Law Reform and Action Council of Alaska answered the last mentioned question in this way:

"In 1958 a major sociological study of the American parent entitled 'The Changing American Parent' appeared, based on interviews with 582 mothers. It was not unique. Other studies of American parents by well respected psychologists and sociologists reveal the same phenomenon time and again; to write 'Patterns of Child Rearing,' psychologist Robert Sears and his colleagues at Stanford University interviewed 379 'parents' — all of them mothers; Robert Blood and Donald Wolfe based their 1960 study, 'Husbands and Wives the Dynamics of Married Living,' on interviews with 909 mothers and no fathers, and in a major study of divorced parents, Sociologist William Goode talked with 425 mothers and not one father.

"Even when a study entitled 'Father Participation in Infancy,' appeared in 1969 — one of the very first to acknowledge the possibility of interactions between fathers and their very young children — the authors admitted, to commendable honesty and obvious embarrassment that the study might have been better if they had actually observed the fathers, or even talked to them. 'It causes us great embarrassment,' said Frank A. Pedersen, Ph.D. and Kenneth S. Robson, J.D., 'to report that the actual data on father participation was secured by interviewing mothers. Perhaps we did not have the courage of our own convictions to do a proper observational study or to orient our work schedules to coincide with the availability of fathers.'"

And comes now another Anchorage group, Equal Rights for Fathers of Alaska, which answers with a definite yes the question of whether Anchorage superior court judges are biased in favor of mothers and against fathers in child custody cases. In fact, armed with an extensive month study of child custody cases decided by Anchorage judges in 1979 and 80, they have decided to file a class action suit against 13 Superior Court judges there and will seek an affirmative action plan to correct gross inequity in custody awards.

The study analyses 343 divorce cases in 1979 and 80 in which custody went to mothers, 80.2 per cent of the time, to fathers, 11.4 per cent and to joint custody, 7.3 per cent. Rudy Johnson, president of Equal Rights for Fathers of Alaska, says these statistics are bad enough, nearly twice the national average. But the study says that in cases of contested custody, fathers were awarded custody in only 2.6 per cent of the time.

Surely this matter deserves some attention by legislators and other state officials. In hearings this year on House Bill 210 — a measure which would require judges to state their reasons in detail if joint custody is not awarded in divorce cases, some Anchorage superior court judges in opposing the proposed legislation testified that custody of children was being awarded to fathers about 25 per cent of the time. Now, this recent study appears to contradict and refute that testimony.

One things is clear. All is not well in Alaska domestic relations courts. And there may indeed be a bias against fathers in child custody cases.

Letters to the Editor

Honorable Russ Meekins, Representative
Alaska State House
Chairman, House Task Force on Violent Crime

Dear Representative Meekins:

The members of the Parole Board applaud the work being done by the Legislature to identify and attempt to solve the problems we are having with violence throughout the State of Alaska. We are willing to assist the task force in any way we can, including providing you information about steps the board has taken to help curb violent crime in the community.

I just received a copy of the "House Task Force on Violent Crime Report to the First Session, Twelfth Alaska Legislature." June 1981. Overall the report is well written and documents the magnitude of violence in Alaska. However, there is a gross error in the prologue of the report that really detracts from the credibility of a valuable document. Unfortunately some staff person did not check out their facts and apparently took information from a newspaper article traditionally one of the most unreliable sources around if a person is interested in accurate information. The erroneous reporting is so inaccurate and damaging that we would request your task force print a retraction and correction to other members of the Legislature and the public are not misled about the case.

Let me list some of the facts of the case of Lee man written about on page 2 of the prologue. His name is Clifford Nukapigak, Sr. His name and his crimes are a matter of public record and were noted in a number of newspaper articles and at least one Alaska Supreme Court decision. However, Mr. Nukapigak was not *paroled* by the Alaska Parole Board. Parole is defined by the Alaska Statute 33.16.260(3) as "the release of a prisoner to the community by the Parole Board before the expiration of [illegible] term [illegible] imposed. He remained before the court pursuant to AS 33.30.040. This statute is commonly referred to as the "mandatory release" statute, the name used by the federal system from which our state statute was taken. Under this statute, offenders *not paroled* are released on supervision "as if on parole" for the number of days of good time they have earned, minus 180 days. *This* is the section under which Mr. Nukapigak was released. He was *not paroled* by the Parole Board.

Even though he was not paroled, the board members strongly encouraged Mr. Nukapigak to continue with the counseling he started in the jail. Since he was not paroled, the board had no authority to require he complete an alcohol program. He was certainly aware of the availability of such programming since the staff of the Fairbanks Comprehensive Alcohol Programs were running a program in the jail where he served his sentence. He was encouraged to take advantage of the alcohol program and apparently he was involved in mental health counseling to help him deal with his anger. If Clifford did not get involved in the C.A.P. program, it was because he did not go when he was released from jail, certainly an option that was available to him.

I cannot comment on the frequency of or the kind of supervision Mr. Nukapigak did or did not receive as this is the responsibility of the Division of Corrections probation officers. However, it appears even weekly contact would have made no difference in this case as Clifford was doing fairly well and abstained from the use of alcohol until the day before the homicides. Nothing short of continuous supervision or lack of access to alcohol would, have prevented these crimes.

In summary, Nukapigak was not paroled. The Parole Board kept him in jail as long as legally possible and strongly urged his continued involvement in counseling. He was released by operation of law on [illegible]

The Pioneer
ALL-ALASKA WEEKLY
[illegible] Phone [illegible] PO Box [illegible]
TOM STAFF
Publisher Editor

File Chris

Mediation cuts custody misery

A Times 3/11

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," says 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 of strife 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 Conciliation Court, which provides up to three sessions with one of its mediators. If longer mediation is 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 80 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 whole psychic atmosphere is in an adversary setting like court. That only shows 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 battles. "For me, the last and worst alternative is going to court," says Harden Blacher, 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 course, 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 nonprofit 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 sincerely 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. "That 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 negotiations. The law now rewards cooperation and that is something it didn't used to do."

A Santa Clara man whose 15-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 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."

Divorced father seeks clues to son's whereabouts

by Carol Murkowski
Times Writer

The only clue Ray Hitchcock has to his three-year-old son's whereabouts is a faded newspaper clipping describing the boy as the youngest hanglider in Oregon.

Hitchcock's ex-wife, her new husband, and young Ryan quietly left Anchorage two days after Hitchcock got a court order enforcing his right to visit Ryan. Although he has visitation rights, he has not seen or heard from his son since July.

He knows that Ryan has been in Oregon, and is probably living in southern California now; he knows that the boy is hangliding with his stepfather; he knows that Ryan is being taught that his last name is not Hitchcock.

And, although the courts tell him that his ex-wife is in the wrong, he knows there's not much he can do about it.

Hitchcock is a member of Equal Rights for Fathers of Alaska, a group that has been getting its name in the news with increasing frequency by lobbying for changes in domestic relations law.

One of the group's efforts comes up for a hearing Nov. 20 in Anchorage and Fairbanks. House Bill 210 would encourage joint custody arrangements, in which one parent would have physical custody of children, but both would share in the legal, financial and moral obligations to the children.

The bill would help parents like Hitchcock, says Rudy Johnson, president of Equal Rights for Fathers.

"Ray is a perfect example of what happens without joint custody, when parents are forced into litigation to have access to their children," says Johnson.

With joint custody, "at least I'd have a say in what they were teaching my son," Hitchcock adds.

Hitchcock, 28, and his wife Vicki, 26, were married in 1975 and divorced four years later. Vicki was awarded custody of their son Ryan, and a visitation schedule — alternate weekends and one month in summer — was set up.

However, Hitchcock says, Vicki and her new husband often refused to comply with the visitation order, hiding, refusing to let Hitchcock take Ryan for the weekend, and twice beating Hitchcock.

"When I went over, I'd follow the law to the letter," recalls Hitchcock, a stocky young man whose arms are covered with tattoos. "I'd keep my hands in my pockets, and always take somebody with me." Once, when he was refused Ryan, he filed for a writ of assistance, and a state trooper accompanied him to pick up Ryan; even with the trooper's presence, Ryan was not released until Vicki and her husband were threatened with arrest.

In February, Hitchcock filed a suit to enforce his visitation rights. Two days after the court agreed to enforce the order, Vicki left the state.

Her last address was Rockaway, Ore., but Hitchcock hears she has since moved to California. He has been told by Vicki's friends and relatives that she will get in touch with him in the spring, when his summer visitation rolls around.

Hitchcock is worried that Ryan's stepfather takes the boy hangliding with him. The newspaper article he received from Oregon says that Ryan "understands there is a very high element of risk and danger," and Hitchcock is unhappy about it. "I don't have any say in something that I think is dangerous for my son," he says.

The article also uses Ryan's stepfather's name — Griffeth — instead of Hitchcock.

"If Ryan decides one day that his stepfather has been more of a father to him, and he wants to change his name legally, that should be his choice. I'd be hurt, but I wouldn't interfere," Hitchcock says. "But that decision should not be made for him while he's still too young to decide."

Hitchcock admits he has had some bad times in his past which might prevent asking for full custody of his son. He admits to a bout with alcoholism and suicidal tendencies after his divorce, but a psychologist has "assured me that those are normal post-divorce reactions."

He says he is fine now, and "the court has been on my side all the way."

The court ordered Vicki's attorney to find her and tell her to notify Hitchcock and the court where she was living, or a warrant would be issued for her arrest. She complied this summer, and Hitchcock took Ryan for his summer visit in July.

"But since my son left July 30, I have not seen him or heard of him at all," he says. "Apparently she feels I don't have the right to know where Ryan is 11 out of 12 months. But I still have to pay child support, and I feel I have the right to write my son once in a while."

In the meantime, he's trying other avenues. He wanted to put an ad in the Los Angeles Times placing a reward for information on Ryan's whereabouts, but he can't afford the $1,400 it would cost. Neither can he afford a private detective.

And he's researching cases in which "alienation of affection" has been proven, hoping to use it against Vicki. If he can, he'll ask for temporary custody of Ryan until Vicki can come to court and explain her actions. If he doesn't hear from her by spring, when Ryan's annual visit should be arranged, he plans to ask for a hearing to show cause why she is not following the court's orders.

"Until then, my hands are tied."

Your Child

BY BENJAMIN SPOCK, M.D.

JOINT CUSTODY AND THE FATHER'S ROLE

In the United States, one third of all marriages now end in divorce. This concerns me. What concerns me even more is that with this rise in the divorce rate, 1 million more children each year are confronted with the breakup of their families and there are already 6 million single-parent families with minor children.

Though in the long run divorce may be the best solution for an unhappy marriage, close observers agree that with single-parent custody awarded to the mother in 90 per cent of the cases, there is misery for all concerned—children, fathers *and* mothers—at least for a couple of years.

This article, then, is about the relatively new and still-rare practice of awarding custody of children jointly to both parents. It is also a review of a book, *The Disposable Parent*, by Mel Roman and William Haddad, that advocates joint custody.

Roman is a family therapist and professor at Albert Einstein College of Medicine in New York. Haddad, a divorced father of three, is a journalist and business executive.

It was surprising to me to learn from the book that prior to the 20th century, custody customarily was awarded to fathers. Yet the laws of nearly all states, then and now, declare that there shall be no prejudice in favor of mother or father in granting custody, that the determining factor should be the "best interests of the child." In other words, the strong bias of judges, first toward fathers and later toward mothers, has been based on psychological and sociological influences, not on the law.

The description by the authors (and by other observers they cite) of the strains imposed on children and their parents by single-custody rulings corresponds with the picture presented by psychiatric social workers Ruth Atkin and Estelle Rubin in their book *Part-Time Father*, which I reviewed a couple of years ago. It also corresponds with my observations in the course of my professional life. So what follows is a composite description.

Children, at least prior to adolescence, almost universally implore their parents not to divorce, and afterward keep pleading with them to get together again. They show, in a wide variety of symptoms as well as in words, that they badly miss the parent who has moved out.

In their book, Roman and Haddad refer to the "California Study," headed by social worker Judith Wallerstein and psychologist Joan Kelly. (Redbook reported on this study in September, 1976, and published a Young Father's Story dealing with joint custody in June, 1978.) The California Study involved 60 families with 131 children among them, all of whom were studied immediately after and a year after divorce. (The findings shouldn't be considered necessarily true of all children of divorce, since the numbers in each age group were small.) Children two to four years old showed considerable regression right after the divorce in toilet training, whining, crying, irritability, tantrums, sleep problems and aggression. In their fantasies they expressed fear of abandonment. The distress of half of these children was worse after a year, particularly if the parents were still locked in conflict.

The five- and six-year-olds showed anxiety and aggressiveness. A year later a third of them were showing even greater strain. Relations with their fathers usually were improved, but relations with mothers often were worse.

The seven- and eight-year-olds showed the most sorrow and seemed to have the fewest ways of dealing with it; they did not reject one parent but wanted to hold on to both. They expressed longing for more time with their fathers. After a year, half had improved.

The nine- and ten-year-olds seemed to understand the realities and had fewer irrational fears, but they had physical aches and pains. Under the surface they showed feelings of loss and rejection. They tended to feel anger at one parent, and to end up siding with their mothers against their fathers, who had left. After a year half of these children felt better, though their hostility toward their fathers lingered. The other half were more troubled and depressed than they had been before.

Divorce was very painful to adolescent children too, but after a year they no longer felt they had to take sides and could proceed with their own affairs.

At all ages, "the frequency of father contact with the child was associated with more-positive mother-child interactions, and with, in general, a more positive adjustment of the child." The effectiveness of the mother with the child depended on various supportive relationships, but "none was as salient as a positive, mutually supportive relationship of the divorced couple and continued involvement of the father with the child."

Roman and Haddad also discuss what they call the "Virginia Study." This study was directed by psychologists C. Mavis Hetherington, Martha Cox and Roger Cox; it involved 48 divorced families, with 48 intact families for comparison. It focused on parents, children and on parent-child relations. Among its conclusions: Young children of divorce tended to be more aggressive, to whine, weep and have tantrums. Parents had more trouble controlling them. The tension was greatest between mothers and sons. The fathers' departure was more traumatic for children of preschool age. Girls took it easier at this age than boys. But for adolescent girls the fathers' departure seemed more harmful in the sense that they had difficulty establishing good relationships with boys.

The Virginia Study, too, showed that the problems between parents and children were still tough a year after divorce, but that they had improved after two years. As in the California Study, "the children who fared best were those who were free to maintain full and loving relationships with father as well as mother."

A recent Research Conference on Consequences of Divorce on Children, at the National Institute of Mental Health in Bethesda, Maryland, came to the same conclusion: Continuous meaningful contact with the noncustodial parent was a crucial factor in the child's post-divorce adjustment.

The noncustodial father is, to a large extent, divorced from his children as well as from his wife. In many cases he is permitted to see his children only one or two days a week or, in many cases, every other weekend. He may not be allowed to keep them overnight. Some-

Continued on page 79

DR. SPOCK

Continued from page 77

times he may merely visit them in the mother's home, not take them out.

The interviews with fathers in the Virginia Study made vivid how miserable they themselves were; they felt rejected, depressed and homeless. Some reported that they'd even lost some of their sense of identity. They emphasized how painful it was to visit with their children because of the infrequency of those visits, and the resulting sense of a growing distance between themselves and their children.

Divorced fathers are depressed, I know, because their children tend no longer to turn to them with questions, requests and confidences. They feel keenly the deprivation of their former right and obligation to share in the usual parental decisions affecting their children—allowances, duties, privileges.

Some fathers complain that they are being deliberately humiliated by their ex-wives, who, they feel, take a mean satisfaction in being arbitrary and overbearing in respect to the conditions they lay down for visiting. Often they forbid visits unless alimony is paid up.

As for the mothers, the Virginia Study shows that most are unhappy for at least the first two years after divorce. They feel anxious and angry and helpless. Some complain of feeling unattractive. Two thirds of them have to go out to work (compared to half of nondivorced mothers); and still they have to deal with a reduction in their standard of living. (It is calculated that it costs 25 per cent more for the same number of people to maintain two residences.)

On coming home from the job they have the housework to do, without the help or companionship of another adult. The children's needs, demands, disputes and difficult behavior have to be coped with. And in most cases the children are distinctly less co-operative and more antagonistic than previously.

Most divorced mothers find their social life painfully restricted—by their jobs, by the need to be with their children, by the fact that their old friends are couples who think of entertaining in terms of inviting other couples, not single people, and by the meager opportunities, usually, to make new social contacts.

As Roman and Haddad say, divorced mothers are overburdened and fathers are underburdened.

To summarize at this point: The father's continued closeness to his children is of primary importance to the youngsters and to their adjustment. His co-operativeness with his ex-wife has been shown to be important to her sense of efficacy in dealing with the children and to her good relationship with them. Nevertheless most divorce judgments cut sharply the father's contact with his ex-wife and children. This makes him feel unneeded, unwanted and uncomfortable, and may cause him to decrease his visiting as the months and years go by. It's a tragic vicious circle.

The situation is similarly bad for the mothers in the 10 per cent of cases when custody is awarded to the father.

In regard to the capability of fathers as parents, Roman and Haddad review the psychological and sociological literature and conclude, as I do, that fathers can be just as involved and nurturing as mothers. Today, 1.5 million single-parent families are headed by fathers because of the death or desertion of mothers as well as because of divorce. Fathers who have had custody of their children testify that this experience has decreased their previous preoccupation with discipline and has increased their sensitivity to their children's feelings and to the importance—and joy—of intimacy with them.

The authors plead for joint custody when divorcing parents both are interested—joint custody in the sense of their sharing equally in all important decisions affecting the children and in the sense of sharing the children's time as equally as possible, with the "absent" parent having the children at least a third of the time.

There is a significant chapter in the Roman-Haddad book describing families actually involved in joint custody, three interviewed by the authors, the rest by other researchers. This chapter gives an idea of the wide range of attitudes and occupational situations of such parents and of the schedules worked out to meet individual needs. In most cases it is assumed that both parents must live close to the children's schools. Some of the couples get together comfortably and even enjoy their meetings. Others communicate only about decisions concerning the children. None have found joint custody to be trouble-free.

But all these parents and other observers—including teachers—agree that the children adapt readily to their split homes, and are doing well compared to their pre-divorce situation.

Roman and Haddad are pessimistic about how soon joint custody will be widely accepted. Most judges are strongly biased in favor of mother custody. Lawyers habitually encourage divorcing couples to take adversary positions. And the whole of society, despite the progress made by the Women's Movement, is still saturated with sexist prejudices, so that even independent-minded mothers are apt to feel slightly guilty to ask for less than full custody and fathers are inhibited about admitting that child care should be as important as their jobs.

The authors emphasize the great importance of expert counseling and mediation services to parents before, during and after divorce, and state that such help should be free or with fees based on a sliding scale, depending on the family's income.

As for my own opinion, I've always felt and written that it's vitally important for the divorced father to see his children often and without missing appointments, this for the benefit of the children and to maintain his sense of closeness and responsibility. He ought to see them in his home, where they should have beds and some of their toys, books and clothes so that time can be spent in a "home" atmosphere and the father doesn't have to be always taking them on excursions and giving them treats.

I've stressed that it is crucial for the mother to treat and speak of her ex-husband with respect for the benefit of the children, even if she despises him in some ways, since the children consider themselves half made of him and will think less well of themselves if they are persuaded that he's a scoundrel.

I had always assumed the law specified that children were to be awarded to their mother unless she was patently unfit. Now that I know better, I'm strongly in favor of joint custody for all parents who think they can summon the co-operation required. It will allow children to feel that they still have their father, because they will continue to live with him much of the time and because they know that he is still helping to make the decisions. The father will continue to feel close to his children, that he is participating in their lives and is still partly responsible for their welfare. And though joint custody may confront the mother with frustrating compromises about the children's lives, it should compensate her in most cases by giving her free time and relief from the uneasiness of feeling responsible for all problems and all decisions.

I can see in theory the objections some professionals raise to children living split lives in two homes. But certainly by now we have evidence, not only from cases of joint custody, but also from all the families in which both parents work and preschool children spend all day in a day-care center or in the home of a care-giver, that children can make a good adjustment to two homes when the plans are made with care and with sensitivity to their needs.

I agree about the value of having the children live with the father half or at least a third of the time. But when this is not possible—for example, when the father feels he must live in another city—it would still be an advantage to the children and the father, and often to the mother, to have joint custody anyway, with the children spending some vacations with him, if possible. In this way the children will not feel they are cut off from their father, and the father will retain his sense of relationship to his children as well as his sense of responsibility for them.

THE END

The need for Alaska to switch to 'joint custody' of children

by John Havelock

A BILL NOW pending in the Legislature would make "joint custody" the presumptive form of custody of children in divorce proceedings. This bill should pass.

Up to the late 19th century, children, along with wives, were treated in the law as a special form of property of men. In the rare event of a divorce, the man, of course, kept his property in any children of the union.

Women in the 20th century have shucked off the remnants of their role as property, but the powerful analogy of property rights applied to children has persisted in a number of legal arrangements. Now, the man no longer keeps his title to children. As a new, early 20th century image of woman as omniscient nurturant emerged, the title in children has been customarily passed by the courts to the divorced woman.

THE CHILD'S INTEREST. But children should not be treated on an analogy to property. If a child of divorcing parents, thinking of her own best interests, could speak for herself she would say, "I am not interested in being under the exclusive control of one of you. I want to maximize my relationship with each of you, despite the circumstance that you will live apart."

Joint custody, adopted by California as the presumptive first choice among custody arrangements in 1979, recognizes that the child's logical preference should be honored to the extent possible. Joint custody arrangements can be worked out to fit the personal circumstances of each parent and child.

The current preference in fact for single parent custody has burdened the rest of society with a heavy burden of direct and indirect costs. Unfortunately, but understandably, the parent who "loses" custody will tend to divorce the child along with the parent.

SOLE CUSTODY COST. Directly, this translates into a massive national legal system for the pursuit, frequently unsuccessful, of child support payments and public welfare costs for aid to dependent children. The non-custodial parent, psychologically severed from the child, is permitted to consider the support obligation on the same level as the overdrawn revolving credit account at Sears. In fact, it may be much worse as the non-custodial parent is allowed to indulge in the fantasy that the support payment is actually being used to support the custodial parent in a life of idle debauchery.

Joint custody will not, of course, result in the dismantling of the child support and welfare systems. We will continue to have parents who will prefer to be shed of the child along with the parent. There are lots of people who do not have the psychic capacity to be parents while (regrettably) maintaining the biological capacity. But as joint custody becomes the most common form of custodial relationship, it will help reduce these system costs.

The child is the book. To the extent that the law supports the customary and natural obligation of a parent to care in an immediate sense for the welfare of a child it will strengthen the parent's psychological stake in the child. That link of direct responsibility and caring, in turn, supports the child's claim on the parent for economic support.

RELATION TO DELINquency. The indirect social costs of forced single parent custody are, of course, greater than the direct. When we speak of a child who is the "product" of a "broken" home, we are referring to a child who has been victimized by his divorcing parents. Both parents have put their preference for combat before the interest of the child. Regrettably, the law encourages the adversarial disposition of the child's interests in the context of parental warfare over property and emotional injury.

There is no necessity in this. A divorce need not be a calamity for the child. The divorce becomes the child's disaster to the extent that the relationship with one of the parents is seriously diminished and the role model and learning bond severed. The society bears this cost in delinquent acting out by the hurt and angry child.

CHANGING MARRIAGE CUSTOMS. A generation ago, custom dictated that unhappy parents stick together "for the sake of the children." The current conventional wisdom is that the state of unhappiness in such cases was such that the interests of the child were not in fact served by the cohabitation. However, it is likely that in many cases the parental sacrifice worked, when one or the other spouse adjusted to lower expectation from the marriage relationship.

Contemporary adult Americans are less likely to sacrifice their own interests on this justification. For better or worse the trend to multiple marriages continues. Its increasing ordinariness has made divorce less explosive and less painful for parents and child alike.

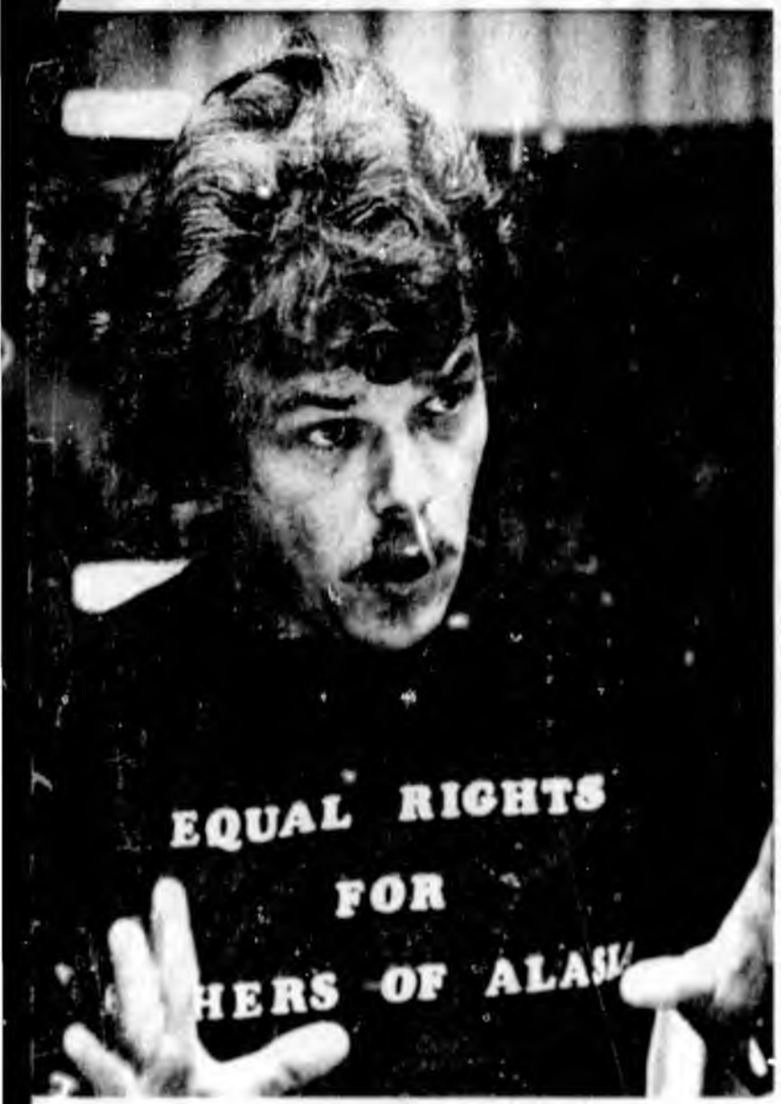
The last remnants of "fault" divorce are now eliminated from the statutes. But our treatment of custody as an adversarial contest of title in the child remains.

While recognizing the best interests of the child in a number of other legal arrangements, the law of child custody has not kept up with the changing social order. We incorrectly assume that the child's interest consists of putting all the chips in one basket. On the contrary, in a divorce, the presumptive best interest of the child is to maximize her relationship with each parent. Alaska should follow California in encouraging joint custodial arrangements.

John Havelock is director of legal studies at the University of Alaska, Anchorage. He served as attorney general to Gov. William A. Egan, was a White House Fellow in the Johnson administration and has won several Alaska Press Club awards for writing.

Berry's World

"I submit that we should all go down to the Caribbean Basin and check things out while the weather is still crummy around here."



RUDY JOHNSON
". . . children's rights not protected . . ."

Divorce settlements

Group fights for fathers' rights

By DEBBIE CARTER
Staff Writer

Only eight fathers fighting for custody of their children in Anchorage courts won over a two-year period, the head of a fathers' rights group says.

And 11 judges out of 12 studied never awarded custody to a father, according to Rudy Johnson of the Equal Rights For Fathers of Alaska.

"We've really got a problem," he said in an interview with the Daily News-Miner this morning.

Although the Anchorage-based group didn't study cases involving Fairbanks or other courts around the state, Johnson says he suspects the same results judging from phone calls he gets from distraught fathers.

To correct what he calls a gross imbalance in custody awards, Johnson says, the group plans to file a class-action lawsuit next week naming those Anchorage judges. It will seek a federal-ordered "affirmative action plan" among state judges, he said.

"We want the courts to clean up their acts," he said.

The basis of the lawsuit is claimed civil rights violation of fathers and children.

Johnson said a 1978 decision in a federal court said that statistical imbalance alone provides a case for discrimination.

The study done by his organization over the past seven months reviewed 4,291 divorce cases resolved in Anchorage courts in 1979 and 1980, he said.

The study showed that judges awarded custody to fathers in 11.4 per cent of the cases and joint custody was awarded in 7.3 per cent of the cases.

"There obviously aren't too many judges sympathetic to the rights of children and fathers. The best interests of the children are not being protected. They're being flaunted."

But in the 318 cases where custody was contested, judges almost uniformly gave it to mothers, he said. Fathers were awarded custody of the children only 2.6 per cent of the time.

That is almost half the national average, Johnson said.

Judges who must make custody decisions based on the best interest of the child regularly decide it is not in the child's best interest to be with the father, he said.

"There obviously aren't too many judges sympathetic to the rights of children and fathers," Johnson said. "The best interests of the children are not being protected. They're being flaunted."

Johnson said the judges in Anchorage aren't following the intent of the Legislature in considering custody awards.

Judges are supposed to consider many factors, he said, including the preference of the child, and the desire and ability of the parents to allow an open relationship between the child and the other parent.

This is being ignored blatantly, Johnson said.

In many cases judges do not enforce visitation violations, he charged.

Johnson, who often takes calls from upset fathers, mothers and even grandparents who are denied visits with their children, said he heard the worst story last week.

At a fund-raiser to raise money for their federal lawsuit, he said, a father told him of his ex-wife refusing illegally to allow him to see or talk to his children for three years.

This was in spite of court-ordered visitation, Johnson said.

A son died, the man said, and his ex-wife refused to allow him to see the youth at a funeral home and to talk to the remaining three children at the funeral.

Johnson estimates his organization, which boasts 50 members in Anchorage, gets about 30 calls a week, he said.

The seven-year-old organization refers people embroiled in custody disputes to lawyers and gives clients legal direction and advice.

Johnson himself led his own custody dispute, seeking to regain custody of his two children through state courts for five years. Ultimately his case overturned the "tender years" doctrine in 1977.

The doctrine said that other things being equal, a mother should be given preference for custody of children in their early years.

But Johnson maintains that the results of his study show that things really never changed with that decision, and with other guidelines set by the Legislature.

He said he will ask legislators next year to fund a study of custody patterns of all the judges in the state. And he is lobbying for a law requiring judges to state their reasons in detail if joint custody is not awarded in divorce cases.

House Bill 210 is in the House Health, Education and Social Services Committee and has to go through another committee before a vote is taken by the House.

Although some things may be legislated, Johnson said he believes there needs to be a change in attitude among judges and child psychologists who make recommendations to the court on who should be awarded custody.

He cites an Anchorage custody case which was resolved last week involving a woman who consistently denied her husband visitation rights to their child.

After a lengthy legal dispute and numerous court orders, contempt citations to the mother, a judge gave custody of the child to the father.

"That is the kind of attitude we need," he said.

Bill would make joint child custody the rule

y Carol Murkowski
imes Writer

Shared parenting could be the ule, rather than the exception, if a roposed bill on joint child custody asses the 1982 state Legislature.

Some 37 states already have ei considering joint custody, bi th parents share in making ecisions about their children, rather an just the parent who has physi- al custody. House Bill 210 is now be- re the Health, Education and So- al Services Committee, and hear- gs will be held Friday at the Leg- lative Affairs office in Anchorage d via teleconference in Fairbanks.

The bill will require judges to first consider a joint custody agreement in warding child custody. If parents object to joint custody, they may contest it.

"Joint custody does not necessarily mean equal time; it means equal responsibility and equal rights legally," said Rudy Johnson, president of Equal Rights for Fathers of Alaska, which is backing the bill.

Today, Johnson said, a parent who does not have custody of his children cannot authorize emergency medical treatment, take part in a parent-teacher conference, obtain school records, or visit a hospitalized child without the consent of the custodial parent.

Johnson told of a father whose six children are in Minnesota, who has been denied his visitation rights for three years. "There's no allegation of child abuse or unfitness," Johnson said. "It's just an angry custodial parent."

While he and his wife's attorneys wrangled in court, the father's letters and presents to the children were returned. Recently, when he learned that one daughter was to undergo open-heart surgery, the father went to Minnesota to be with her; the doctor told him his ex-wife refused to let him see the girl.

Shortly after the daughter's surgery, a son was killed in a car accident. The father was denied a visit to the funeral home. "The funeral director was shocked, but his hands were tied," Johnson said.

Two weeks ago, the father received the bill for the funeral he was not allowed to attend.

Such animosity between parents is one argument often quoted by opponents of the bill. If parents cannot get along while they're married, how are they to agree on the issues of child-rearing when they're divorced?

In a letter to the House HESS committee, Superior Court Judge Victor Carlson argued that HB 210 "would result in many opportunities for confrontation in which the child would be caught in the middle, e.g. the choice of a school, public or private, alternative or basic, etc. Neither parent would have the authority to make the decision and the child would be torn in having to make a choice and then the matter, ultimately, would have to be decided by the court."

However, Johnson argued that if joint custody were a priority, families contemplating divorce "would have to start thinking right away about working together for the benefit of the children."

From a thick stack of papers he pull out a 1980 California study which shows that 16 percent of joint custody divorce cases returned to court to settle differences, as opposed to 31 percent of sole custody cases.

Johnson also believes that joint custody will reduce the amount of time spent in domestic court because "parents will have to work together," he said. "They'll learn that even if they don't love each othe any more, the only way to work things out is to work togeth for their kids' sake."

HES
March 26
HB 210
Judge Carlson - this is impractical for day to day decisions.
This there may be continuous conflicts

Grant Calo - Ab Ct. Systems

If we should go forward with shared custody what impact would result in seperated parents demanding re-evaluating their past agreements or arbitrated decisions

Mrs Stevens?
Manipulators - to what degree is the mom in unfund homes or seperated.
Ab. Ct. Systems. custody investigator Kids manipulate at all time - hackers - send notes, cookies ???
P3 L 7 to - there is - Ct. should determined.

P5 - L 3-5 - Prof. on Board.

Nina Kenny - H.S.S. - supports 210

Cruit Hoaf - as private citizen supports 210
His wife agrees also - both present partners and children and want shared relationship.

Sandra Burstrom - shared is beneficial to parents but not to the child.
P.1 l. 12-15 - confusing 50%-50% does not work.

Judge Moody - US House # 210 C

rebuttable presumption —

previous Bill 3 Sec. 4

Don Homes ←
Access to records —

Pros

Shirley R Dean - feels this bill is unnecessary —
No fault Socity - now available

N.O.W. is opposed to HB 210

John Wood - Atty
rebuttable pre-sumption.

prime purpose should be what is in the best interest of child.

Terry Caucus at 4:30

~~Linda~~

Rudy Johnson *

Judith Bank - AB Legal Service

Willie Hilloya - child preferred "maturity" should be used
p 3 sec (D) need more words

Ketchikan - concerned about pressures on childs
Believes overall shs bill is beneficial

Carla Slaughter - Fmly. - is now involved in child custody - It is good for her and her children and ex-husband

---

Larry Sweet - Father - 2 sons from Fmly.
The process need to be in law - and agreed upon in the divorce - joint custody system

---

Francis Stevens - Male - Custody Investigator in Anch.
Cts. have had joint custody since 1979 - 20% + take advantage of.
Judge Moody I Cts. System does not advocate.
* We do need to develop a system to help people to be evaluated and programed.

Bill Woods? - OK on the Bill.

Bob Keller - 1966 Divorced - Wife got custody - 1973 he did get child short period, later wife took child back - Judge Moody could not help him.

Carla Hal___ - Parents were seperated - she was 15 and sister was 7. Worked out well.
She feels she getting acf limited would not be good.
Joint custody is most less painful and makes divorce easier.

John Reese - Atty - Family Law Comm. Chairman of BAR
Is there a presumption that joint custody will be?
Sometimes parents talk about joint cus as a prevention from losing children all together.
add provision for judge to acknowledge joint custody and not a promise on denial

Willie Willoya -
Continuity is important - especially in school etc etc !

Changes advantage - one comm. 1/3 another

Special needs - ????

Sheila O'Rourke - Women in crises - Fairbs.

Dean Peterson - Ind. Atty -
Favors
C.S. does not go far enough as original bill
but prefers "pro - -

read Judy Schultz's letter
greater emphasis on mediation.

Mrs. John Peuf -
C.S. has all

Paula Haley - Domestic Violence & presumption is needed.

Lewis _ _ - Felt bill should be passed -
Children need both.
" need to identify w/ both parents.

Jan Flow — Ketchikan - is involved in divorce -
Husb. was alcoholic - small cleaning - Husb. wants shared custody.

Lois Nelsen - M.F.W. Ketchikan - feels there is resentment by single parents that there is not the other to help -
There is need for a system to help people.

Soldotna - Mary Lamichael Dr. NNN

Karla Huntington - Juneau

Timothy [redacted] Atty - Burned out after 8 yrs of divorces -

Classic case that works.

Bruce Bergst - Joint custody in his life is working.
He is now a voluntary instructor that helps to solve the trauma of divorce and sharing their children.

Don't divorce the child -

Page Welch -

Gene Johnson - ACC - Mediator
One ~~response~~ phrase often - "What's going on here".
Ct. procedure - Discourag joint custody -
Soc. Services " " " etc.
xx+ partners are often not encouraged
self-serving / are agencies self serving - legal system see more demands for their services etc

The system feeds off the trauma of divorcing ~~among the~~ parents are going through.

Positive approach 1st

~~to~~ Bill pat on back

Mr. William Hitchcock - Yes, but not too new

Don't make the Bill "presumtive" or "mandatory". Potecting the system - maybe so the phrase "rebattable presumtion."

From Ct. System.

Statistics

Prof. v/s amatures.

25:20:130 eliminate

25:20:070 -

↓

Leg. are average citizen. —

The citizens are getting desperate for fairness and it seems the courts are not cognossive of this.

Ct. have been empowered by the Leg. to make the presumtions - but

Joyce Rivers - Atty. - N.O.W.
Concerns - ~~Implementation~~ -
Legal presumption - ???

Defind - Joint custody - shard custody -

??? 25:20:130 - Preferences or awards.

Brad ____ of
1979
1980 } 2,254 case

1271 non cont.

30 43 - = fild for custo
275 for women 80.2
79 " mail 11.4 % -
Joint 7.4 %
Split custody 3.

Karla Huntington - Atty - Crises Network

Larry Carter - The Bill would ~~eliminate~~ the
courts concepts that male are not ~~pre~~ presumb
" " are batterers
" " " ____
" ____

~~Lt~~ William Holst - Atty - Does handle custody cases
Judges are not bias -
Is in favor of the bill.

% of cases you settled
joint
Mole
female

New image of ↓ !!! Is there problem of people caught in trans

Francis Stevens - Crt. System

Custody Investigator - 1,700 cases

Favors Joint custody - not mandatory.

We are talking about 10% of total divorces but some mediation helps decrease crt. cases

Need marital mediation -

John Reese - Atty - Family and Law Comm. of ABA.

We need a "Family Court" ~~not~~ to allow people direct assets for settlement and not need to go through lawyers -,

Conciliation Courts in Calif. are a joke - they are not used -

Family Councils should be used to solve problems

Lynda Williamson - Generally agrees with Joint Custody - but.

Joan Bennett Shoeder

p 6 - lns 3-6 -

Ruth Lester - Director of Women in Crisis" -

Against "presumption of joint custody" -

Willie - Barrow - strong support

Jay B Mathew - Fabs - strong support

Jerry Hoke - Very supportive - of HB 210

Rudy _____ Leader of Equal rights for father

Jim Borden - excellent HB710 - but voted "violence" in family.
There is certainly the element of punishment as he being deprived by his ex-wife of visitation.

Bob Hammer - Also member of Equal Rights for Father

New man - System is so bad now that the father and his ex-wife are going to do their own thing outside of the court or paying lawyers.

Pat Hammer - Officer and member Equal Rights for Father

HB 210

2/3

RESOLVING CONFLICT

One of the primary purposes of shared custody legislation is to lessen the conflict between divorcing parents in the best interests of the children involved. I don't think that there will be any disagreement that the less the conflict between parents during and after divorce, the better the children will adjust to it.

In a recent seminar at DePaul University, Chicago, Illinois. Dr. Sheila Ribordy, a clinical family psychologist, discussed the reactions of children to our present mode of divorce. For pre-adolescent children these reactions are:

1. denial, shock, refusal to believe it is true.
2. sadness and depression- mourning the loss of a parent.
3. Anger, blaming one parent or the other. Children pick up the winner/loser atmosphere.
4. blaming self.. 'if I hadn't..... daddy wouldn't have gone away.'
5. regressive behavior as a reaction to stress.
6. reunion fantasies.
7. feelings of insecurity, afreaid to sleep alone or stay with a baby-sitter, a reaction to feeling deserted by one parent and fear of being deserted by the other.
8. idolization or victimization of the absent parent as a way of dealing with feelings of rejection.
9. Divided loyalties. Dr. Ribordy emphasised that this is exagerated by custody battles and that children under 12 should not be forced to state a preferance.
10. school performance suffers-acting out feelings of rejection andloss.

I am immediately struck by two thoughts when reading over this list. First)That shared custody diffuses many of these problems by not forcing the child to effectively lose one parent (sadness and depression as mourning of loss of one parent; Anger and blaming a parent for the loss of the other one; idolozation or victimization of the absent parent; loyalty conflicts caused by having to choose one over the other; feelings of rejection and loss and all the resultant problems such as poor adjustment to school). Second) That the foundation of most of the suffering felt by children is in the conflict.

The present winner take all custody law in all aspects encourages maximum conflict. It is a "fight to the death" with the stakes no less than being forced to become a non-person as far as the raising of your child is concerned. The conflict can, and very often is, carried on for years beyond the divorce with endless battles over the children, visitation, support, change of circumstance and resulting repeated court appearances. The most serious tips of this same iceberg are child stealing on one hand, and desertion on the other. Both of these are most often the reult of the same very real fears: the child is being taken away, 'I am losing my child".

The legislature, I am sure, wants to help children pass through a divorce, and through life with the minimum of suffering. If this is our goal the legislature will do everything in its power to ENCOURAGE AGREEMENT AND DISCOURAGE CONFLICT.. HB 210 is a vehicle, perhaps as yet imperfect, designed to reach these goals. It is a law designed to try and lessen conflict over child care arrangements during and after divorce.

At the time of seperation, HB 210 makes it clear to each parent that the state considers each parent so important to the child that during negotiations both parents will in effect share custody. It further makes it clear that the state will see to it that both parents will be allowed to maintain a continuing, meaningful relationship with their children in spite of the divorce between the parents. This being the expectation of the state, the court may then order the parents to negotiate with the help of a professional mediator, the child care agreement which best serves the interests of their children. Dr. Ribordy, when specifically asked what was the best way to resolve conflicts between divorcing parents over their children, answered uncategorically that "parents need to resolve their conflicts through use of mediation ". HB 210 greatly encourages parents to make agreements during the mediation process by presuming that a continuing, meaningful relationship with both parents is in the children's best interests, and by making it clear to both parents that the court will look more favorably on a cooperative parent than on a parent who stonewalls and refuses to be fair and cooperative. With this simple backbone, parents will have to consider what is actually the best way to share caring for their children after divorce, and be discouraged from using them as pawns in a state encouraged war to destroy the other by tearing away the most important bond of human exsistance- that of parent and child,

Marko Lewis- Mom's House- Dad's House
March 22, 1981

REP. TERRY MARTIN
STATE CAPITOL
POUCH V
JUNEAU, AK 99811

HOW ALASKAN SCHOOLS TREAT NON-CUSTODIAL PARENTS: SUMMARY & SOLUTIONS

ABSTRACT : The court found the father a loving, fit and proper parent and as he had been previously involved in his daughter's education in a positive way also decreed that he had a specified right to remain assessed of her progress in school. The father has made every attempt to be communicative over a 7 month period. He is being denied by an Alaskan school any access to observe his daughter's educational progress, or any attempt to communicate through conferance with his daughter's teacher. He is in effect being denied visitation by refusal of mother or school to state vacation dates. His daughter is being denied her right to keep her legal patronym (emotionally this transalates to denial of father love).

The father has been advised by his attorney that he would be wasting his money going to court and that there is "nothing you can do." When this father is faced with having a beloved daughter grow up without any thing he can do to observe her progress in school, or be the interested and positive father that he feels he is, he becomes frustrated, hostile and angry at the mother, the school and the court. He is often depressed and talks of possible solutions of which there are none.

HB 210 specifically gives the non-custodial parent the access to medical and educational records. It is implied that this right should include conferances with teachers. This aids the schools and phisicians who would be better equipped to understand the child's needs and strengths by communication with both parents. This helps the child who is thus given better medical and educational attention by a more knowledgeable teacher or phisician, and it helps the parent who is not forced to live in total isolation from a beloved child.

HB 210 gives the courts the power to balance parental responsibilities specifically based on the real needs of the child instead of the Simplistic idea that only one parent is 100% fit to have 100% responsibility over every facet of a childs life. With the passage of HB 210 the court, by considering information supplied in implementation questionaires, by testimony in court and from information supplied by mediators or counselors, could weigh and balance the strengths of each parent and assign a shared balance of responsibilities based upon the actual best interests of the child.

See page 2 for case history, and insert for implementation planning.

HOW ALASKAN SCHOOLS TREAT NON-CUSTODIAL PARENTS: CASE HISTORY 1981

Father is 33 years old, mother is 26. Their daughter is 6 yrs. old and in the first grade, The father took responsibility for infant care when they seperated and after their daughter was two the parents shared custody on an equal time basis by personal agreement. Daughter started school at her father's house in a village in SE Alaska. Shared custody broke down when mother had a religious conversion, at which time she also became convinced that the father's village life style was unsuitable for children.

In court father asked to share custody on a school year/summer vacation basis with alternate holidays and five days a month visitation during the school year for the summer parent. Mother requested sole custody with one month summer visitation for the father. Their daughter preferred a one year/ one year arrangement and so stated her desire.

The court found that both parents were loving, fit and proper parents, and largely on the basis of urban vs. bush lifestyle decreed custody be with the mother who resided in Anchorage. The decree allowed visitation for the father for two months during the summer, alternate Xmases, all Easter Vacations and one weekend a month. The court also decreed that each parent was to keep the other fully assessed upon their daughter's education, medical care and other important facets of her life.

In view of this the father wrote the mother on Sept. 1o, Sept. 26, Oct. 12, Oct. 29, Nov. 5, Nov. 17, Dec. 9, and Jan. 4 (eight times) and called thrice during that period requesting the name and address of their daughter's school and teacher, the dates of her vacations, her progress and emotional well being. The letters went unanswered and during the three phone calls the mother stated that she didn't know the school's adress, the dates of vacation, the teacher's name and that their daughter was doing "fine."

On Jan. 17, as a result of negotiations through attorneys, the mother sent the schools phone # with no further comment. As the end result of $20 worth of long distance calls the father was finally put in contact with his daughter's teacher on Jan. 18.

The teacher answered each of his questions with, " That is the responsibility of the 'gaurdian' to give that information." He was told to make a formal request to the administration in writing for a copy of the report card. He also found out at this time that his child was enrolled under her mothers maiden name, not her legal name and altough he objected strenuously that this was in effect making his child a bastard in the eyes of her peers, and serves as an alienation of affection, he was told that it was up to the "gaurdian" (read: custodial mother).

One month after a formal request for a report card the report card was sent with no additional comment to queries concerning his child's progress, interests in school, peer adjustment, dates of vacations or a request for a parent-teacher conferance to discuss what the father felt would be additional information as to Yarrow's needs and strengths. A formal request to use his daughter's legal name on her school records was also ignored.

A note thanking the school for sending the report card was sent Feb. 20, at which time the above queries were renewed and information about his daughter's previous education in S.E. Alaska was volunteered. This letter was completely ignored.

On March 10 the father again called the school but the principal was not available. He was finally reached on March 15. he principal refused to give him any information, refused to supply the dates of his daughter's vacations, refused to allow any communication with the child's teacher, or to use her legal name in her records. He was unaware that a report card had been sent and refused to send further report cards. He held that it WAS ILLEGAL TO SUPPLY ANY INFORMATION OF ANY KIND TO A NON CUSTODIAL PARENT. Mother refuses also to answer any query by phone or letter.

QUOTATIONS FROM 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 Joint 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 children 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 maximise contact between the child and both parents. One clear way of doing that is through joint custody arrangements. "

REP. TERRY MARTIN
STATE CAPITOL
POUCH V
JUNEAU, AK 99811

* 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 "Children 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 accept 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 children. " (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 Kelly, 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 of the 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.

REP. TERRY MARTIN
STATE CAPITOL
POUCH V
JUNEAU, AK 99811

Jan. 10, '80

Parents select their preferences

Convenient format for submission to parents:

1. Before court appearance so that decrees reflect preferences of parents,

or

2. Following decree that joint custody will prevail and parents must thereupon submit a joint custody plan.

Joint physical custody time allocation

Nine variations available

(See "Initiating Joint Custody Planning" questionnaire for related issues)

Each parent: Select & rank three choices

___ 1. Freedom of movement between two homes. Timing decided by child, as long as net residence effect allocates an approximately equivalent period of time to each parent. (Appeals to older children as a solution.)

___ 2. 3½ days -- 3½ days
   (a) Split weekend
   (or,b) Complete weekend, but alternating between parents.
   (c) Special vacation period accorded each parent, in addition.
   (Appeals to "fairness" appreciated by early grade school children.)

___ 3. 1 week -- 1 week
   (a) Special vacation period accorded each parent, in addition.
   (Applicable to infants and junior & senior high years.)

___ 4. 2 weeks -- 2 weeks
   (a) With 'overnights' at the alternate parents.
   (b) Special vacation period accorded each parent, in addition.
   (Applicable to infants and junior & senior high years.)

___ 5. 1 month -- 1 month
   (a) With at least one exchange weekend plus 'overnights.'
   (Applicable to junior & senior high years.)

___ 6. 2 or 3 months -- 2 or 3 months
   (a) With exchange weekends plus 'overnights.'
   (Applicable to situations of moderate geographic distance.)

REP. TERRY MARTIN
STATE CAPITOL
POUCH V
JUNEAU, AK 99811

7. School year -- Entire summer vacation
   (a) School year 'parent' offers every other weekend, plus exchange & alternating holidays, & 'overnights' during school year.
   (b) Summer vacation 'parent' offers exchange of one weekend a month during summer.

(Fewer weekend exchanges accorded during summer because parent having child during school year including alternating weekends accumulates more days/time with child.)
(Applicable to college age, senior high school and geographically distant parents.)

8. Child remains in original home.
   (a) Parents move in and out alternatively on schedule arranged by parents.

9. Workday week -- Weekends
   (a) Modified to accommodate substantial vacation periods.

(If one parent is employed during the week and the other is not, a practical division of available time may encourage the #9 option although #9 tends to be the farthest removed from the spirit of joint custody and barely approximates the former custody/visitation arrangements decreed prior to the joint custody statute.)

Note: Residence within the same school district is not necessary to make joint custody operable. Availability of transportation is a consideration.

Furthermore, as an example, a California family having joint custody, wherein the parents live 180 miles apart, are implementing a joint custody arrangement whereby the child in upper grade school years alternates two weeks with one parent in one school and two weeks with the other parent in another school. The child has improved and accommodated academically and the statewide school curriculum is compatible. Originally one parent opposed joint custody, there was protracted conflict before joint custody was achieved, and the case has demonstrated that there need not necessarily be wholehearted and enthusiatic agreement to joint custody to make joint custody work.

Regardless of whether a child is from a conventional or a separated family, school children are already exposed to alternating teachers, alternating classrooms, yearly transfer to new grades, movement back and forth between home and school, and encounters with different friends in different classrooms. Therefore, the addition of a second home or school is not unlike that already experienced by children from nuclear families with access to grandparents, etc.

ADVANTAGES OF SHARED CUSTODY FOR CHILDREN

1. Allows children to maintain a meaningful relationship with both parents after divorce. Allows children to maintain important primary love bonds with both parents.

2. Lessens loyalty conflict (the commonly held view that loyalty conflict would increase with shared custody has been shown by research to be untrue. Loyalty conflict most often springs from absenting one parent).

3. Increases feelings of security , of being important and loved.

4. Feelings of scurity in knowing he/she has two homes, two responsible parents.

5. Gives child a more varied life experiance as he/she is able to experiance both parents in full (Documented studies show that the commonly held view that switching homes confuses a child is untrue. Studies show it is precieved by children as no more confusing than switching classrooms. Children precieve the switching as a positive factor and commonly feel sorry for single parent friends).

6. Increases feelings of independance, the obverse of the symbiotic relationship which often occurs in single parent families.

7. Better assures child of adequate sex role identification.

8. Lessens increased conflict due to recidivism in court appearances .

9. Increases liklihood that financial support will continue. Economic security.

10. Cognitive performance in school has been shown to be better in shared custody families than in absent parent families.

11. diffuses child stealing.

12. Greatly lessens children's painful feelings of grief and mourning (reponse analgous in children to the death of one parent) which is almost a standard reaction to today's custody procedure. Assures a child that a loved parent won't be forced to go away.

13. Increases respect of children for judicial system which no longer imposes a decree precieved by child as unfair.

14. Teaches children that sharing, and cooperation are more suitable emotions and actions than hostility and uncooperativeness.

15. Gives children the closest possible living experiance to the nuclear family in spite of the parents divorce.

PRESENT CUSTODY PRACTISES OFTEN CAUSE ONE PARENT TO BE PRECIEVED AS HAVING "DIED" IN THE EMOTIONS OF A CHILD. IT IS THE RESPONSIBILITY OF THE STATE TO CREATE LAWS WHICH DO THEIR BEST TO ASSURE CHILDREN THAT THEY WILL HAVE TWO "LIVING" PARENTS AFTER A DIVORCE. LAWS SHOULD ENCOURAGE BOTH PARENTS TO TAKE RESPONSIBILITY FOR THE LOVE, [illegible] AND ECONOMIC SUPPORT OF THEIR CHILDREN AFTER DIVORCE BY ESTABLISHING SHARED CUSTODY AS THE NORM.

Marko Lewis- Mom's House & Dad's House

The following publications were used in order to compile this list. You are encouraged to read these studies in full:

BOOKS

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

Roman, Mel, and William Haddad. The Disposable Parent. New York: Hold, Reinhardt and Winston, 1979.

Ricci, Isolina. Mom's House, Dad's House. 1980

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

ARTICLES

Abarbanel, Alice Ruth. Joint custody Families: A Case Study Approach Ph.D. Dissertation, The California School of Professional Psychology, 1977

Abarbanel, Alice Ruth. Joint Custody, What Are We Afraid Of? (Paper presented at annual meeting of American Orthopsychiatric Association, 1978)

Grief, Judith. Fathers, Children and Joint Custody. Amer. J. Orthopsychiat. 49(2), April, 1979

Hetherington, E. Mavis, Martha Cox and Roger Cox. THE Aftermath of Divorce, in Stevens, J.H. Jr. and Marilyn Matthews (eds.), Mother-child and Father-child Relations. Washington, DC 1977.

Shinn, M. Father Abscense and Children's Cognitive Development, Psychology Bull., 85· 295-324, 1978.

Wallerstein, J. and J. Kelley: Children and Parents Eighteen Months after Parental Separation: Factors Related to Differntial Outcome. NIMH Divorce Conference, 1978.

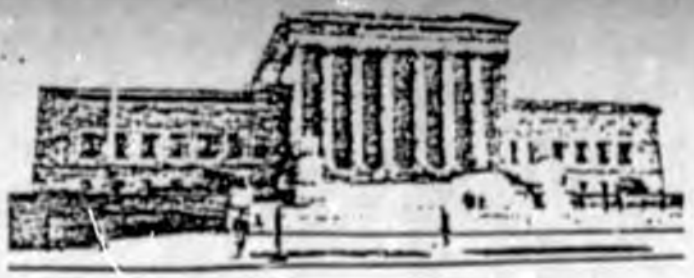
Wallerstein, J. Children Who Cope in Spite of Divorce. I Family Advocate 2, Summer 1978.

Wallerstein,Judith and Joan Kelley. The Effects of Parental Divorce: Experiences of the Child in Early Latency. Am. J. Orthopsychiat. 46: 20-32, January 1976

Wallerstein, Judith and Joan Kelley. The Effects of Parental Divorce: Experiances of the Preschool Child. Journ. Amer. Acad. Child. Psychiat. 14: 600 , 1975

Wallerstein, Judith and Joan Kelley. California's Children of Divorce- Five Years After the Break-up. Psychology Today January, 1980 67-76

Trombetta, Diane and Betsy Lebbos, Co-Parenting: The Best Custody Solution. June 22, 1979 11-23 The Los Angeles Daily Journal Report



FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
ANCHORAGE, ALASKA 99509

JUDY JOHNSON, PRESIDENT
(907) 333-6693
"ALASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX

March 21, 1981

Representative Don Clocksin
Chairman HESS Committee
Pouch U
Juneau, Alaska

Dear Mr. Chairman and Members of the Committee:

I am writing this letter to recommend a DO PASS recommendation from this committee concerning HB 210 a joint custody bill before you.

I had planned on testifing in person before you but we only learned of the hearings last Friday. With more time I would share the technical research I have from professionals involved in this area that includes numberous reports and studies, all in favor of the concepts reflected in the bill you are considering. Assuming you will have a sample of technical data from Representative Rogers, I will offer this more personal input based upon my own experience as an addvocate of divorce reform organizations and from the perspective of someone who have been there.

I litigated my own children's custody for almost six years in the existing advesary atmosphere of the Alaska Superior Court. That battle has taken me to the Alaska Supreme Court 5 times and to the United States Supreme Court once. In the process of all this my ex-wife and I each spent in excess of 50,000 dollars. What was the end result?

In the interim my family was destroyed as every sacred detail of the eight and one half years my wife and I spent together was slowly and cruely presented to the court in the form of pleadings, reports and testimony. Before the dispute began, the one thing we agreed on was that we were both very good parents and loved our children. By the time we were done, one reading the pleadings would have thought the court was dealing with a couple psycopathic, child abusing parents that should have been locked away from society and their children years before. Of course that is all part of the game necessary when playing child custody dispute in the advesary system. Regardless of the fact Alaska is a no-fault state, the decision in the courtroom will get down to who does the judge think is the better person based upon his own morality. All attorneys know this and proceed accordingly.

The attorneys involved were nice people with children of their own and were simply doing their job.

But the sad part is the parents involved take the allegations and pleadings seriously and very personally. By the time it is all over they will be alienated from each other to the point it will be impossible to discuss any issue about their children constructively or objectively for years.

At the end of the initial round of legal games, the hearing that occupied about three weeks in total, the findings of fact of both the Superior Court and the Supreme Court were as they should be and are in most cases; we were both very fit parents and in fact, exceptional parents, and either of us would be a good choice to raise the children. The children were shuffled back and forth to my custody and then hers serveral times by court order, through our legal manuvers. Each time one of us won or lost custody the other was forced to lauch a new legal campaign with new strategy.

Everything we did or said had to be evaluated in terms of how it would affect our case. Every achievement or failure of our children was a weapon to use in the next hearing, one way or another.

How did all this affect our children? As the years went by they learned more about the supreme courts of this country than most adults ever know. They played Supreme Court like most children play dolls and trucks. They became intensley aware of the loyalty battle that was going on and the legal need both of their parents had for them to tell all the strangers who had become involved in their childhood that they wanted to live with Mom or Dad. Although the preference of the child is not determative in itself, all attorneys know it is a big, big, plus that he and his client need.

So as the battle went on both my ex wife and I tormented our children and robbed them of most of their childhood. They are now 11 and 13. We did this out of love and a sincere belief held by both of us that the children would be better off with us.

After each legal victory or loss, the attorneys, social workers and the judge went home to their routine life and for most of them to their families. They had dinner just as the night before and they all had a good nights sleep to begin another normal day. What about us? I still have few days go by that I do not reflect on one of the many hearings there were or the emotions that were involved. Six years later, here I am talking you about it rather than having forgotten it. My children are still affected by it as my ex wife and I continue to pay for it financially.

How would it have been different if HB 210 was law then and during the following years?

1. We would have been encouraged to communicate and solve our own differences istead of being instructed by our attorneys and the court not to discuss our case with each other.

2. We would have been told it was our responsibility to make sure our children had frequent access to the other parent instead

of being told how legally advantageous it would be to have enough time go by between hearings without the children seeing the other parent. (My own attorney definitely did not encourage me to withhold visitation but the other side did and it is common legal practice to do this as shown by the enclosed letter from Judge Robbin Taylor).

The games with withholding visitation would not have been tolerated by the court and if they were we would have had recourse for immediate orders from the Supreme Court using the legislative intent of HB 210.

4. Playing games with visitation would have been a legally destructive thing to do and we both would have been informed of this.

5. We would have been advised to seek mediation as an alternative to the court and would have been encouraged to make every effort possible to resolve our own differences.

6. Neither of us would have had to go through the indignity of being refused into a parent teachers conference because we never had the written permission of the parent with custody.

7. Neither of us would have had to suffer the indignity of having to say: I lost custody of my children. (When my ex wife lost custody at the initial hearing, her remark to me was; "you have made me the laughing talk of town.")

8. The dispute would not have dragged on for years after the initial decision was made.

It is now six years since the first pleadings were filed and although my ex wife and I are by no means friends, we are working together to raise our children and the children know we will have a united front when considering decisions affecting their lives. They know they can no longer manipulate us, as we taught them to do throughout the litigation by our example and they are feeling much more secure and know they are loved by us both.

We entered into an agreement, through mediation, that neither of us is totally satisfied with but that is dignified and we can both live with.

The brief description of the experience above could have been written about any of the hundreds of divorced families I have dealt with in the past few years in my organizational efforts. (see Judge Taylor's letter). Under the terms of HB 210 all of us would have felt better and because we felt better, we would have helped our children feel better and the State courts would have saved many millions of dollars in court related expenses.

What is more important is all the children involved would have been spared the enormous heartache they all endured because of their parent's divorce.

HB 210 will not guarantee children of divorce equal time with their parents, nor do I believe legislation should attempt to, but it will go a long way in guaranteeing shared time and shared parenting. And those children, there will be over 5000 of them in Alaska this year, will have access to both parents. It will also provide the first link in the chain necessary

to break a trend that has devastated millions of families in America these past 50 years because of current attitudes and procedures used to resolve custody disputes.

SHARED PARENTING IS THE ONLY LOGICAL AND MORALLY ACCEPTABLE ALTERNATIVE TO A HAPPY, INTACT HOME FOR CHILDREN OF DIVORCE.

Respectively Submitted,

Rudy Johnson, President

FAMILY LAW REFORM AND JUSTICE COUNCIL OF ALASKA, INC.

P.O. BOX 4-1646
ANCHORAGE, ALASKA 99509

JDY JC HNSON, PRESIDENT
07) 333-6693
LASKANS FOR CHILDRENS RIGHTS"

FAIRBANKS - BOX 73256
KETCHIKAN - BOX 7176
SITKA - BOX

Representative Don Clocksin

Re: Judge Justin Ripleys' letter of April 7, 1981

Re: H. B. 210 - Joint Custody

Dear Mr. Clocksin,

I want to begin this letter by stating that Judge Robbin Taylor wrote his letter of May 3, 1979, at my request and certainly not for the purpose of being exploited by myself in Alaska. The issues involved at the time he wrote the letter are well qualified in his letter. He did not intend it to be distributed to the Alaska Bar, and he never, ever gave me his permission to do so. I have been very careful not to misuse it or to embarrass him by unauthorized use of his very candid letter. When I served on the Governors Task force of the Revised Childs Law Task force in 1977, the director, Ms. Betsy McQuire, wondered why she could not get an Alaskan Judge to any of the meetings although they had all been invited. When Judge Shultz showed up, she was elated. Do any of you wonder why it is difficult to get a judge to speak out and testify before your committees now?

When I sent Judge Taylors' letter to your committee, I did so with the thought that it was not going to be circulated to the legal community or even available to the public. I am sure that when he wrote it, he did so with the same understanding. His letter is a valuable, candid and ACCURATE review of the American divorce courts. I believe he would be the first to tell you, as I do, that not all courts are as he described in his letter. The letter was not intended to apply to all courts, but he does accurately describe the majority of courts.

The studies we have compiled since 1977, show that out of 350,000 child custody disputes, only 4.5% were decided in favor of the fathers. We also noticed the only thing that brought the figures up to those appaling levels, was because of a few judges who had records of awarding children to the fathers (35% and sometimes 40% of the time). There are many, many more judges who

have never awarded custody to a father or those others whose records show that they have done so 3 or 4 % of the time. As I say that, it is important to remember, we do not advocate Mens Rights, we are concerned about children of divorce and the record I spoke of, in my written testimony of April 26, 1981, shows that these childrens' interests have not and are not being protected as the rule.

Judge Ripley's statements, on page 2, paragraph 2, talk about how the doctrine of a custodial parents' willingness and ability to foster an open and loving relationship between the child and the noncustodial parent are interesting. I wonder if he knows that the statute originated in my living room, back in 1976. I also wonder if he has any idea what it took to overcome the opposition of this simple statements inclusion into the statutes. I know, and it costs us thousands of dollars in printing costs, travel expenses and time to successfully provide the research and information necessary to convince the legislature this was a good idea. The opposition back then, was as fierce as it is today from people who saw their power being threatened. The bill has worked remarkably well as we showed it would with our research from other states. It began a change in attitudes just as House Bill 210 will.

As for Judge Ripleys' remarks on page 2, as to how House Bill 2?? will increase the future litigation of the parties, I refer you to the study we submitted from Judge Alexander of Santa Monica, California. Those are facts that measure the results, not opinions or innuendos. On page 2, he speaks of the justification of meaningless phrases like, "Reasonable Visitation". Each day in the court room amounts to over $1000 in costs to each of the parties involved with the preparation time etc. Most people simply cannot afford to go back to court to establish their, already, court ordered visitation rights. We see the results of these decrees on the long term basis, where Judge Ripley and people like him assume that all worked out because he never heard from the people again. I hear from them on the average of 20 times a week. Denial of visitation rights is so prevalent that one national divorce reform organization has actually sought political asylum for themselves and their children in all countries outside of the United States that are cosigners to the Universal Declaration of Human Rights, signed in Geneva in 1954. Their letter is enclosed and cannot be given too much weight in analyzing just what a tremendous problem we are dealing with. Then in the late 70s' a plot was discussed to have a mass execution of judges, meeting in Los Angeles, to demonstrate the need for reform. And how about the book, "Rape of the Male", by Richard Dole, that advocates mass and extensive physical violence against judges, social workers and custody investigators, complete with addresses for information on how to build your own bombs etc. Although I certainly do not agree with these peoples means to accomplish their goals. they have my empathy in recognizing there is indeed a problem that needs to be dealt with.....they live with the orders of the court that the "Judge Ripleys'" issue.

Are these people crazy? Dr. Carl Abbruzzese, who is the author of the letter to the embassies, is a world famed medical surgeon who is recognized in Who's Who in the West and Who's Who in Europe. I have personally dealt with attorneys, social workers and psychologists who have been so traumatized by their experiences in american divorce courts, that they were crying like children as they explained their ordeal to me and their frustrations with the famous, unenforceable visitation clause that says, "Reasonable rights of visitation".

Oh, and as for guardians (or attorneys) for the children, the Alaska Supreme Court made it very clear in Veasey vs. Veasey, what their role should be. But I personally know of over a dozen cases, where the attorney for the children did not even go to court and in some of those cases, with the approval of the judge. Sometimes the guardians recommendation is coupled with a third party such as the state custody investigator. Many of these people end up in our files and it appears that the custody investigator in Anchorage spends an average of about one hour with each parent to determine the fate of the children involved. He has a staff of two and they have some three hundred cases a year to work on. Although I know he is grossly overworked and could not possibly investigate each case, adequately, I am astonished to hear him tell me that he is always sure when he submits his reports.

As Judge Ripley states, a party or their attorney can always appeal an illegal order. Although this is theoretically correct, the practicalness of this is questionable. An average appeal in Alaska takes about one and a half years. The only real value of an appeal beyond a stay is making some good law that will benefit others until we find a way to get the judges to obey the Supreme Courts decisions. You see the Alaska Supreme Court issued stays 8 times to 1 in favor of mothers when custody of a child is involved. That is significant because in following up the cases I have learned that in virtually all cases where a stay had not been issued and the lower court was reversed, the Supreme Court always remanded the case back to the original trial judge, where he would simply clean up his wording and reaffirm his own decision. In many of the cases where a stay had been issued, the Supreme Court simply reversed and it was out of the trial courts hands. Those appeals costs each party an average of $10,000 and for the most part, were meaningless in terms of relief, except for making law that is apparently unenforceable. Again we must change attitudes and <House Bill 210> will do that!

Judge Ripley is correct in stating we believe in the best interest of the child doctrine but what does that mean? It means something different to every judge. I remember when that particular issue came up on the task force, Judge Shultz said, "I could go over there to the Court House and round up a few judges and get a hell of an argument going over this definition." He then went on to explain how the deciding factor with fit parrents must be their attitudes toward each other, because those attitudes will greatly effect the children.

Any judge can justify their decision, legally, with such an ambiguous phrase. In 1977, a judge from Alaska, decided the best interest of the children involved would be served by their being in the custody of their father, who had already been found unfit by another judge because he had been sexually abusing his sons and daughters regularly. (See Horton vs. Horton 519 P 21131, Ak.,1974). Then take a look at Nichles vs. Nichles, 516 P 2732, Ak. where the judge awarded custody of a child to a mother who had physically abused her child, to the point, the child needed hospital care (the child had been in the care of the father for some time). Both of these cases were overturned by the Alaska Supreme Court and stays had been issued in both. The children never actually were returned to the abusing parent in either case. Do you know where that judge is today? He is the Family Court judge here in Anchorage and he daily decides what "In the best interestof the child" means. Judge Ripleys' record is not impressive either, but I will wait until the total results are in on the study we are presently doing of the Anchorage Court System, before I elaborate on that!

As for Judge Ripleys' remarks about me (page 4 - 2nd paragraph of his letter), I agree whole heartily that the record speaks for itself in my case. In the one and a half year interim, between the original decision of the trial court to take my children away from me because of the "Tender Years" doctrine. (See Johnson vs. Johnson 564 P 271 Ak., 1977) after the first judge had given me custody, he was reversed or remanded by the Supreme Court of Alaska 5 times! This cost over one hundred thousand dollars between my ex-wife and myself. The end results were the same after going through the system and having the trial judge simply clean up his wording and reaffirm his own decision. He went a step further.....he took all my visitation rights away from me except for one day a month, which my ex-wife refused me. Obviously Judge Ripley has not read the record he refers to. I invite him to do so!

In closing, I think it is important to boil down the issues surrounding House Bill 210. They boil down to two points:

1. If we agree with Judge Ripley and people like him, that a decree of divorce is an instrument, giving one parent exclusive right to raise the children of a divorced home and that it is a healthy procedure to exclude one parent, then House Bill 210 is not a good idea.

2. If we agree with Judge Shultz and people like him that it is the responsibility of both parents to minimize the grief of divorce for children and to encourage a frequent and loving relationship with both parents after divorce, then we need House Bill 210 immediately!

The available research unequivocally supports the second proposition and House Bill 210.

The opposition is based totally upon personal opinions, unsupported by facts or even logic in many cases. The attitudes expressed in the opposition are exactly those attitudes that have created the horrendous problems surrounding parents and children after divorce.

I wonder if Judge Ripley opposes House Bill 210 or the fact that Rudy Johnson is associated with it.

This letter is not intended for anyone other than those it is addressed to.

Sincerely

Rudy Johnson

Rudy Johnson

This statement is hereby notified as I now understand the file is public record.

Rudy Johnson
9-24-81

enc/1

ccs/ Judge Ripley
Judge Robbin Taylor
Rep. Terry Gardner
Rep. Brian Rogers
Rep. Cato
Rep. Duncan
Rep. Beirne
Rep. Martin
Equal Rights For Fathers-Alaskans For Childrens Rights

/11

District Court

State of Alaska

FIRST JUDICIAL DISTRICT
P. O. BOX 869
WRANGELL, ALASKA
99929

ROBIN L. TAYLOR, Judge

June 24, 1981

Honorable J. Justin Ripley
Superior Court Judge
303 K Street
Anchorage, Alaska 99501

Dear Justin:

Your letter of April 7th left me hurt and dismayed. I have now written three letters in response, all of which I tore up because I didn't want you to feel as I did. Basically, I'll attempt to explain to you why I wrote the letter for Rudy Johnson and leave it up to you and others to weigh the validity of my previous and current comments.

I practiced law representing individual clients for over eight years. A significant portion of my practice involved domestic relations work. The real world of divorce work is quite different from the actual trial of a contested property or custody matter. The only people who can appreciate the significance of that statement are those members of the bar who have done a significant amount of domestic relations work in the private sector. I don't say this to be pompous; I say it from experience. Until you've had them crying in your office because they can't see their kids it's difficult to understand the torment this system of ours causes the people to whom we grant "reasonable rights of visitation."

Many times I have heard the following or something similar: "I've made all my payments. I sent presents on birthdays and holidays. The kids don't get the presents. I wrote to her a month in advance that I'd fly down to see the kids. When I got to the house her mother told me they had left the day before for a two week vacation."

Reasonable rights of visitation leaves the party who has physical custody with the option of acting totally unreasonable. The option left to the party without custody is to go back into court. Most attornies will charge well over $100.00 per hour and will normally want a retainer to take on such a case. There will likely be costs of travel to Alaska and a portion, if not all, of the other party's legal fees. It will take several months to resolve the matter as the civil docket is plugged. There also must be proof of the unreasonableness of the party with custody.

When it is all over the noncustodial parent has a paper that says the next time this happens he can go through the whole time consuming, expensive process again.

These are not isolated incidents where a kooky father wastes everyone's time to harass his ex-wife by dragging her through court. Far too often they are viewed that way. In fact, this problem of "reasonable visitation" is so prevalent and so poorly addressed by our adversary system that men have organized in almost every state to seek changes in the law so that they won't have to go through our expensive and time consuming process just to see their kids once in a while.

Love of one's children has nothing to do with sex. It is a matter of personality and individuality. There are parents of both sexes, and I'll suggest the percentages are equal, that don't really care about their children. Fortunately there are a greater number of mothers and fathers for whom their children are the most important people in the world.

Our society, which our system of justice reflects, believed that mothers were the sole possessors of parental love and this myth supported such antiquated concepts as the tender years doctrine. Most people today still find it difficult to believe that a father is capable of the loving, caring dedication necessary to raise young children as a single parent.

When each party is represented by counsel and the children have their own attorney, the courts of this state are probably some of the most liberal and forward thinking in the nation. It is the unusual case where visitation would be left to the vague terminology of reasonable rights. However, economic necessity forces the majority of people to utilize the uncontested method of a petition for dissolution. This often involves the appearance in court of only one party, the other having waived his or her right to appear. There is no contest regarding custody or visitation. I'm aware that the court gives "close scrutiny" to custody and visitation agreements as you indicate. But who and what is scrutinized? The one person who shows up in court? And what do they say? I also inquire in depth of these people when sitting as a master for Judge Schulz in Wrangell and Petersburg. The answers I receive are: "We'll work it out", "I guess he'll have to pay costs of transportation", "Yes, my husband agrees I should have custody", etc.

What happens when we have nothing else to go on but the bald assertions of that one person in court? Do we send them away to get counsel to make a custody fight out of it? Do we set specific dates of visitation? No, we allow it to go through and hope they can work it out.

From your letter (page 3, last paragraph) I assume that if only one person shows up for a dissolution hearing you won't proceed. Otherwise how can you be assured that there was no "coercion or other factor" involved and how else do you determine that it is a true agreement that is in the best interest of the children?

The courts of this district allow dissolutions involving children to proceed upon the written waiver of one party. Rather than have me recite the numbers of cases in this district which result in the visitation being left "reasonable rights of visitation", maybe you could have your masters in Anchorage tell you the number of decrees issued monthly where that's all that appears.

If you are requiring specific dates each year and minimum visitation and actual access to the noncustodial parent, then you and I have no disagreement. If, however, you are proceeding with only one parent in your courtroom, and most of those uncontested cases actually result in the reasonalbe right to try to see the kids, then you have overstated your case about "close scrutiny" and "best interest of the child".

The phrase "reasonable rights of visitation" is of course an enforceable right granted to the noncustodial party. But there is also a cost to such enforcement. If you truly believe it is as easy to enforce as your letter implies, call a few of the attorneys presently litigating such matters in Anchorage and ask what the final cost was to the noncustodial pa

Knowing the humanitarian nature of your personality, I'm surprised that you would controvert the need for greater protection of children's rights to parental access. I'm also shocked that you would take phrases totally out of context from my letter and accuse me of approving of Mr. Johnson's illegal act or of disapproval of my fine colleagues who sat and ruled on his case. Though I don't even have a copy of my letter, I know that I strongly indicated my disapproval of his conduct and felt only sympathy and respect for the fine judges who sat on that difficult case. I'm sure I only mentioned his case to emphasize the illegal and rash actions that frustrated noncustodial parents often take. If his case was an isolated incident it would be different. You know it is not. You also know that child stealing became such a national tragedy that legislation was enacted during the last five years in almost every state. Thus people like Mr. Johnson can now be caught and punished by the long arm of the law. But we still haven't adequately addressed the problem that makes such people do these things and that is the issue.

Some people believe that HB 210 will help solve that problem. I'm not sure that it goes far enough. However, it at least raises the issue and requires the close scrutiny that both of us apparently feel is required. It is the children I am concerned about, Justin, and the knowledge that our system is not adequately protecting their rights to parental access in all cases.

I'll believe that we don't need further legislation and I'll join you in saying that the system is working as it should and we don't need any more changes when I see a guardian ad litum appointed for the kids in all divorce cases in this state; when I see a dissolution form which requires that a minimum number of days visitation be provided to noncustodial parents; and when I see the state actively enforcing the rights of noncustodial parents with at least the same degree of enthusiasm with which child support and URESA's are presently enforced. Until then let's work together to improve justice for children in Alaska and the next time you want to take a poke at your old friend, send me a copy. I'd appreciate the opportunity to respond.

I think you and I agree that the rights of children in a divorce case should be protected. Where we part company is that I believe the court has a duty to protect those rights in all cases and apparently you feel we should only be involved in contested cases. You see, I believe that the court, in all divorce actions where there are children involved, should receive a report and home study presented by an objective disinterested third party before we attempt to render a decree which determines custody and visitation that is in the best interest of the unrepresented children.

I see that as an affirmative obligation implied by the statutes and case law of this state. The costs of such proceedings should be borne by the state and the parties where they have the ability to pay.

I received (from an unexpected source) a copy of your letter dated April 7th on June 11th. Since your letter was widely circulated, I have attempted to copy each of the people who it appears received your letter.

Justin, my door is always open and the coffee pot is always on. Furthermore, it has been too long since you've been in Wrangell. Ed and Delores Bradley send their regards and hope that you'll take us up on our invitation for Kaye and I would sure enjoy seeing you for a while this summer. The silvers should be here in early August and the river boat is running. We'd all love to see you.

Fraternally yours,

Robin L. Taylor

cc: Honorable Thomas B. Stewart
Honorable Thomas E. Schulz
Honorable Ralph E. Moody
Honorable Victor D. Carlson
Representative Don Clocksin
Representative Terry Gardiner
Representative Brian Rogers
Representative Bette Cato
Representative Jim Duncan
Representative Mike Beirne
Representative Terry Martin
Arthur H. Snowden, II
William Grant Callow, II
William Hitchcock
Rudy Johnson
James Bradley
Peter Page

HB210

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

CHAMBERS OF
J. JUSTIN RIPLEY, JUDGE

April 7, 1981

Mr. William Grant Callow, II, Esq.
General Counsel to Administrative Director
Alaska Court System
303 "K" Street
Anchorage, Alaska 99501

Re: Judge Robin L. Taylor's letter of May 3, 1979
re: presumptive joint custody

Dear Mr. Callow:

There are two things that can be said with absolute certainty about my great and good friend Judge Robin L. Taylor. First, he invests the philosophical positions that he espouses with his own immense personal sincerity. Second, he tends to express himself upon these issues with more eloquence than objectivity. Although his letter to Mrs. Miller and Mrs. Fisher of May 3, 1979 may represent a position which he would be willing to reevaluate in the light of his now two additional years of judicial service, insofar as it may be taken as representing current doctrine, I feel constrained to reply. This because I disagree with virtually all his assertions except that contained in the last sentence of paragraph number one.

Dealing first with our single source of agreement, I agree wholeheartedly with Judge Taylor that disputes over child custody have the potential for producing heart renching and tragic consequences. Where I begin my disagreement with Judge Taylor is that it appears to be his thesis in his letter that presumptions as to joint custody, and indeed joint custody decrees themselves, would reduce or discourage these disputes. I respectfully suggest in the strongest terms that the experience of the Bench generally and a careful analysis of the motivations

of the parties to divorce actions clearly indicate otherwise. As I repeatedly stated in my memorandum to Judge Moody of March 19, 1981, the principle evil of the joint custody presumption proposed in House Bill 210 is that it will encourage and to a certain degree even require continuing legal "disputes" over matters related to child custody, long after the divorce and custodial placement is finalized and the parties and children, in the interest of their emotional health, must be committed to going forward with the rebuilding of thier lives. Our existing statutes and decisional law provide this essential stability through a decree granting custody which would only be changed in the best interest of the child, and upon a showing of changed circumstances.

One of the factors the trial court must assess in the entry of such a decree is the custodial parent's willingness and ability to foster an open and loving relationship between the child and the noncustodial parent. The concept that the child needs and requires continuing contact with the noncustodial parent is as essential and central to present considerations of custody as it can possibly be. No joint custody presumption is required to make that concept more central to the judge's custody decision, and attempting to do so by inserting joint custody provisions which are likely to lead to further litigation is absolutely contrary to the conditions of stability which are at the heart of the "best interest of the child" analysis.

Strong issue must be taken with Judge Taylor's assertion in paragraph two that the Courts "blandly skip over" custody issues by the use of the phrase "reasonable rights of visitation". It might first be observed that "reasonable visitation" is not an unenforceable clause. A great body of decisional law exists to guide a reviewing court in the determination of whether a custodial party has been reasonable in complying with the visitation order. Further, such language has been found to be desirable since it encourages the parties to work toward agreement as to the amount and type of visitation which is desirable for the child and is possible for them. Finally, Judge Taylor's experience in this field does not appear to extend to the fact that the Court has the authority to be as specific in its visitation order as the parties request or as the conduct of the parties requires. I know of no situation in which I have refused nor can I envision a situation in which any judge would refuse to spell out rights of visitation with great specificity where visitation by the noncustodial parent was apparently consistent with the best interest of the child and such specificity appeared to be required. It is palpably false to suggest as Judge Taylor does in paragraph two that visitation is an issue

which is blandly skipped over.

Judge Taylor incorrectly suggests in paragraph three that the Courts have "only recently" and "very slowly" begun to meet their obligation to consider the necessity of appointment of guardians ad litem for children in contested divorces and in applying the best "interest of the child" standard. I don't know what Judge Taylor's experience has been, but since my appointment to the Anchorage Bench in 1975, guardians ad litem have been appointed routinely when requested by either party. Further, although it is not required, these guardians are often lawyers whose investigations and reports are given great weight by the Court deciding custody issues.

I feel compelled to further suggest that if, in his domestic relations practice as an attorney, Judge Taylor found that the Court was failing to adequately consider the concept of "best interest of the child" in awarding custody, he need only have appealed to the Alaska Supreme Court to have that oversight rectified. For the last nearly twenty years, since Rhodes v Rhodes 375 P2d 902 (Ak. 1962), the Alaska Supreme Court has been committed to the proposition that the welfare and the best interest of the children must be given paramount consideration. I suggest there is no basis in fact for Judge Taylor's suggestion that the Trial Courts of Alaska have given only grudging effect to the concept of "best interest of the child", even before that concept was made part of Alaska's statutory law more than thirteen years ago.

Although time does not permit me to continue with my sentence-by-sentence analysis, fairness and accuracy require me to dispute two theses stated by Judge Taylor in paragraphs four and seven. It cannot be said with accuracy that Courts "rubber stamp" the parties ignorance of the law by routinely and unquestioningly approving custody agreements between parties unrepresented by counsel or otherwise. I have spoken to a goodly number of Superior Court Judges who have primary responsibility for domestic relations matters as well as the two standing masters for domestic relations here in Anchorage. The concerns they express to me indicate that their attitude is the same as mine was when for more than a year and a half I was exclusively assigned to family and children's matters in 1976 and 1977. Agreed custody dispositions, particularly those between parties unrepresented by counsel, require close scrutiny by the Court to ensure that the agreement is in fact arrived at with the best interest of the child in view, and not some other motive, and further that the agreement is truly an agreement and not the result of coercion or some other factor. I call upon my friend Judge Taylor to substantiate this "rubber stamp" activity with any cases he wishes to put forward.

Judge Taylor's second thesis in paragraphs four and seven appears to be that in the usual and typical situation, the father, having consulted his trusted friends, advisors and even his attorney, becomes convinced that he has no opportunity to obtain custody, and further that he must be content with such visitation as his "ex-wife lets him" have. As I stated earlier in this letter, it is a false premise to assume that the phrase "reasonable and liberal rights of visitation" places the entire discretionary control with the ex-wife. Moreover, I challenge Judge Taylor or any other person to produce a single decree granted by the Courts of Alaska which vests total discretionary control over visitation in the custodial parent by its specific terms. (May I request, in order to save us all time, that if anyone is prepared to accept my challenge, he or she read the record which underlies that decree. I would venture an opinion that if such a decree is found, the record underlying it will be replete with evidence supporting the trial judge's decision that such control over the visitation was in fact in the best interest of the child based upon the continuing course of conduct of the noncustodial party.)

Judge Taylor's final paragraphs, eight through fourteen, appear to be a comment on the case of Mr. Rudy Jounson. I leave the record of that case in the various Courts of this jurisdiction to speak for itself, except to observe that it is difficult for me to understand how an allegedly loving and concerned noncustodial parent could attempt to justify, and a judicial officer appear to approve child hostage taking as "the only way left to strike back at a system that won't listen . . . ." Page 4, paragraph 13, line 6.

It has not been my intention in this letter to strongly critisize my brother Judge, although I personally believe that his letter of May 3, 1979 requires this type of comment. I would not be adverse however, if, before any of this letter is shared outside the Court System, you took counsel with the Administrator and the Chief Justice to determine the propriety of its release.

Very truly yours,

J. JUSTIN RIPLEY
Superior Court Judge

JJR:ail

CC: Arthur H. Snowden, II
Honorable Judge Ralph E. Moody
Honorable Victor D. Carlson
William Hitchcock
Andrew Brown
Francis Stevens

District Court
State of Alaska
FIRST JUDICIAL DISTRICT
P. O. BOX [illegible]
WRANGELL, ALASKA
99929

ROBIN L. TAYLOR, Judge

May 3, 1979

Ms. Laura Miller and
Ms. Nancy Fischer

c/o:
Family Law Reform and
Justice Council of Alaska
Rudy Johnson, Coordinator
P.O. Box 4-1646
Anchorage, Alaska 99504

Dear Ms. Miller and Ms. Fischer:

I am a District Court Judge located in Wrangell, Alaska and have been on the bench for approximately 2½ years. Prior to my judicial duties I was actively involved in the private practice of law in Ketchikan, Alaska for 8½ years. During my years as a lawyer I dealt almost daily with divorce problems of one kind or another. Of all the problems faced in divorce work, none was so heart wrenching or had such tragic consequences as disputes over child custody.

In America we use 12 man juries and open the doors of our appellate process for a murderer who, if convicted, may receive a life sentence. In most states this means that with good behavior he will be out on the streets in 7½ years. Yet we daily allow judges, without the advice or assistance of juries, sentence innocent children to 18 years custody with one parent and blandly skip over the child's rights of access to the non-custodial parent with such non-enforceable clauses as "reasonable rights of visitation", etc.

Those children are often sentenced to a fate far worse than the murderer will receive and for a much longer term. The convict gets 3 meals a day, clothing and a roof over his head - to say nothing of medical, dental, optical and visitation. Only recently have we begun to appoint attorneys to represent the children in contested domestic matters. Only recently, and very slowly I might add, are the courts paying anything more than lip service to the term "best interest of the child".

The system usually works this way. Parents in mid-20's, and children under 5 years of age. Parents want divorce and each relies upon advice from friends, etc. If both husband and wife agree on the terms they file their own papers and the courts rubber stamp their ignorance of the law by granting the divorce because they have it all worked out. Only when they can't agree does the attorney get involved. Prior to this the husband has been told by his friends that he can't get the kids unless he can prove the wife unfit. The wife has been told that she would be a fool to give up the kids because of child support, tax deduction and society's suspicions of a divorced woman who "lost" her children.

The very phrases I've used above demonstrate the problem. The words always used by people discussing these matters are as follows: Wife-she lost her kids - the court took her children away from her - she had to give up her kids - etc. Husband-they just say "oh, he's divorced" and everyone assumes he didn't receive custody - if he did, the words are always spoken in exclamation or with the inuendo that his wife must have really been bad - why do you say that? "Well, they went to court and he got the kids!"

The typical situation I mentioned above usually results in the husband being told he can't get the kids. If he tries he will lose and it will cost him a fortune. Furthermore, he knows from what he has seen or heard happen to so many other divorced fathers that any semblance of father-child relationship will be shattered by the capricious whim of a vindictive ex-wife who will do anything possible to frustrate his exercise of those reasonable rights of visitation. I have personally seen each of the following occur and they are but a sample of the 8½ years I spent working on domestic matters.

1) Wife leaves town with children or moves in with relatives to prevent father from seeing the kids for the one week per year he was allowed under the old decree. This is after the father has given one month's notice of the visit and flown over 1,000 miles to see them. Husband has paid child support faithfully and is current.

2) Wife destroys all letters to children, gifts, etc. She has an unlisted phone number. She refuses to disclose address of residence.

3) Children are sick so doctor and dental appointments, etc., are scheduled to make visitation impossible or impractical at best.

4) Wife refuses to send children to father even though ordered to by the court and the father has paid their round trip fare. She demands $6,000.00 bond in cash before allowing visitation.

Knowing of these situations the young father who loves his children (and I haven't seen any evidence that indicates that the sex of the parent is in any way an indicator of parental love) bites the bullet and goes along with the advice of his friends and usually the advice and experience of his attorney which results in the same course

of conduct. He watches the ex-wife walk from the court room with a piece of paper that says he may only see his kids if his ex-wife lets him.

Mr. Rudy Johnson is a living example of the result that this system of ours creates. His case is only unique in two respects. First, he had the entire weight of a religious organization hiding his wife and children from him and providing his wife with unlimited financial support for legal assistance. It is also unique in that Mr. Johnson loved his children enough to take on the whole system and fight in the only way left to him.- he broke the law. However, before he resorted to the extreme action of physically taking his children, he had spent years in litigation and a small fortune in attorney fees. The end result is that she has custody and he has specific enforceable visitation with his children. This is after 4 or 5 years of fighting the system, being hunted by the law as a child stealing parent and exceptional personal sacrifices on his part. I personally admire his stamina and dedication to be willing at this point to go on with the fight so that the future will hopefully provide better alternatives for other men and women than he was forced to face.

Don't misinterpret my comments as approval of his rash act of taking the children in violation of a standing court order. Nor should you be led by these remarks to believe that I'm critical of the five judges who had to render the difficult decisions posed by the Johnson case. They were only doing what they believed society and the law said should be done.

How many people like Rudy Johnson will have to throw their bodies into the machinery before the system changes? Though I don't know what the make-up of your conference or panel is, I would hope that there are several Rudy Johnsons sitting on that board. If they are not included and listened to, you will only perpetuate a dogma that daily wreaks havoc all across this nation.

When you listen to Mr. Johnson - and I sincerely hope you will - please remember that he is not just speaking for himself. He is saying things that have and will happen to untold numbers of other people unless change occurs.

I don't see this conference as a mere sounding board for agrieved non-custodial parents and their rights. Though these are important issues, they are not the crux of the problem. The real issue before you is "what are the rights of the child and how will those rights be protected?" In this year of the child I hope that the panel will concentrate on their rights to free access to both parent and to maintaining the parent-child relationship of the non-custodial parent.

Most divorced fathers see less of their children than does the summer camp counselor or their babysitter. The child has a right to better treatment than that and so does the non-custodial parent. Small wonder that the non-custodial parent refuses to pay child support or resorts to "child stealing". It's the only way left to strike back at a system that won't listen to them. Such conduct will continue until we all stop and listen.

I hope you will listen to Rudy Johnson. He's been there.

Sincerely yours,

Robin L. Taylor

Robin L. Taylor

File 2

re. Mediation

CHAPTER 48

(Senate Bill No. 961)

An act to add Section 4607 to the Civil Code, and to amend Section 1731 of, and to repeal and add Article 2 (commencing with Section 1740) and Article 3 (commencing with Section 1760) of Title 11a of Part 3 of, the Code of Civil Procedure, and to amend Section 26840.3 of, and to add Section 26862 to, the Government Code, relating to marriage, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 27, 1980. Filed with Secretary of State March 27, 1980.]

LEGISLATIVE COUNSEL'S DIGEST

SB 961, Sieroty. Marriage: conciliation courts.

Existing law requires each superior court to exercise jurisdiction as a conciliation court, and sets forth various provisions for the appointment of personnel to assist the conciliation court in disposing of its business in carrying out its functions, the number, classification, compensation, and duties of such personnel differing according to the population of the county involved. This bill would repeal the law relative to conciliation courts and reenact such law in revised form, changing the name of such law to the Family Conciliation Court Law, deleting the latter provisions, and establishing uniform provisions for the appointment of personnel to assist the family conciliation court in disposing of its business in carrying out its functions, the classification in salaries of such persons to be determined by the board of supervisors involved.

Existing law specifies the duties of a supervising conciliation counselor.

This bill would delete such provisions and specify the minimum qualifications for a supervising counselor of conciliation or associate counselor of conciliation.

Existing law authorizes the destruction of specified records by a counselor of conciliation upon order of the judge of the conciliation court.

This bill would authorize such destruction only by the supervising counselor of conciliation.

Existing law does not provide for agreements between counties to provide joint conciliation court services.

This bill would so provide.

Existing law does not specify that the jurisdiction of a conciliation court with respect to controversies arising out of an instance of domestic violence are not exclusive.

This bill would so provide.

Existing law does not grant jurisdiction to the conciliation courts of controversies relating to child custody or visitation regardless of the parents' marital status.

This bill would grant such jurisdiction.

Existing law does not require mediation of an application for modification of an order for child custody or visitation rights.

This bill would so require, operative January 1, 1981.

Existing law provides for various filing and other fees for the support of the conciliation court.

This bill would revise such provisions.

Under existing law, Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill provides that no appropriation is made by this act pursuant to Section 2231 or 2234 for a specified reason, but recognizes that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1731 of the Code of Civil Procedure is amended to read:

§ 1731. This chapter may be cited as the Family Conciliation Court Law.

SEC. 1.5. Article 2 (commencing with Section 1740) of Title 11a of Part 3 of the Code of Civil Procedure is repealed.

SEC. 2. Article 2 (commencing with Section 1740) is added to Title 11a of Part 3 of the Code of Civil Procedure, to read:

ARTICLE 2

Family Conciliation Courts

§ 1740. Each superior court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "family conciliation court."

§ 1741. In counties having more than one judge of the superior court, the presiding judge of such court shall annually, in the month of January, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the family conciliation court in each week as are necessary for the prompt disposition of the business before the court.

§ 1742. The judge of the family conciliation court may transfer any case before the family conciliation court pursuant to this chapter to the department of the presiding judge of the superior court for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the family conciliation court such transfer is necessary to expedite the business of the family conciliation court or to insure the prompt consideration of the case. When any case is so transferred, the judge to whom it is transferred shall act as the judge of the family conciliation court in the matter.

§ 1743. The presiding judge of the superior court may appoint a judge of the superior court other than the judge of the family conciliation court to act as judge of the family conciliation court during any period when the judge of the family conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the family conciliation court in cases under this chapter.

§ 1744. In each county in which a family conciliation court is established, or in which counties have by contract established joint family conciliation court services, the superior court, or the superior courts in contracting counties jointly may appoint one supervising counselor of conciliation and one secretary to assist the family conciliation court in disposing of its business and carrying out its functions.

The supervising counselor of conciliation so appointed shall have the power to:

(a) Hold conciliation conferences with parties to, and hearings in proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the family conciliation court.

(b) Provide such supervision in connection with the exercise of his jurisdiction as the judge of the family conciliation court may direct.

(c) Cause such reports to be made, such statistics to be compiled and such records to be kept as the judge of the family conciliation court may direct.

(d) Hold such hearings in all family conciliation court cases as may be required by the judge of the family conciliation court, and make such investigations as may be required by the court to carry out the intent of this chapter.

(e) Make recommendations relating to preage marriages.

(f) Make investigations, reports and recommendations as provided in Section 281 of the Welfare and Institutions Code under the authority provided the probation officer in such code.

(g) Act as domestic relations cases investigator.

(h) Conduct mediation of child custody and visitation disputes.

The superior court, or contracting superior courts, may also appoint, with the the consent of the board of supervisors, such associate counselors of conciliation and other office assistants as may be necessary to assist the family conciliation court in disposing of its business. Such associate counselors shall carry out their duties under the supervision of the supervising counselor of conciliation and shall have the powers of the supervising counselor of conciliation. Office assistants shall work under the supervision and direction of the supervising counselor of conciliation.

The classification and salaries of persons appointed under this section shall be determined by the board of supervisors of the county which by contract has the responsibility to administer funds of the joint family conciliation court service, or by the board of supervisors of the county in which a noncontracting family conciliation court operates.

§ 1745. (a) Any person employed as a supervising counselor of conciliation or as an associate counselor of conciliation shall have the following minimum qualifications:

(1) A masters degree in psychology, social work, marriage, family and child counseling, or other behavioral science substantially related to marriage and family interpersonal relationships.

(2) At least two years' experience in counseling or psychotherapy, or both, preferably in a setting related to the areas of responsibility of the family conciliation court and with the ethnic population to be served.

(3) Knowledge of the court system of California and the procedures used in family law cases.

(4) Knowledge of other resources in the community to which clients can be referred for assistance.

(5) Knowledge of adult psychopathology and the psychology of families.

(6) Knowledge of child development, clinical issues relating to children, the effects of divorce on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.

(b) The family conciliation court may substitute additional experience for a portion of the education, or additional education for a portion of the experience, required under subdivision (a).

(c) The provisions of this section shall be met by all counselors of conciliation not later than January 1, 1984, provided that this section shall not apply to any supervising counselor of conciliation who is in office on the effective date of this section.

§ 1746. The probation officer in every county shall give such assistance to the family conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

§ 1747. Notwithstanding the provisions of Section 124, all superior court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge, commissioner or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is present. All communications, verbal or written, from parties to the judge, commissioner or counselor in a proceeding under this chapter shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

The files of the family conciliation court shall be closed. The petition, supporting affidavit, conciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the family conciliation court.

§ 1748. Upon order of the judge of the family conciliation court, the supervising counselor of conciliation may destroy any record, paper, or document filed or kept in the office of the supervising counselor of conciliation which is more than two years old, except records of child custody or visitation mediation, which may be destroyed when the minor or minors involved are 18 years of age. In his discretion the judge of the family conciliation court may order the microfilming of any such record, paper, or document.

§ 1749. (a) Any county may contract with any other county or counties to provide joint family conciliation court services.

(b) Any agreement between two or more counties for the operation of a joint family conciliation court service may provide that the treasurer of one participating county shall be the custodian of moneys made available for the purposes of such joint services, and that the treasurer may make payments from such moneys upon audit of the appropriate auditing officer or body of the county for which he is treasurer.

(c) Any agreement between two or more counties for the operation of a joint family conciliation court service may also provide:

(1) For the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract for the other participating counties.

(2) For appointments of members of the staff of the family conciliation court including the supervising counselor.

(3) That, for specified purposes, the members of the staff of the family conciliation court including the supervising counselor, but excluding the judges of the family conciliation court and other court personnel, shall be considered to be employees of one participating county.

(4) For such other matters as are necessary or proper to effectuate the purposes of the Family Conciliation Court Law.

(d) The provisions of this chapter relating to family conciliation court services provided by a single county shall be equally applicable to counties which contract, pursuant to this section, to provide joint family conciliation court services.

SEC. 3. Article 3 (commencing with Section 1760) of Title 11a of Part 3 of the Code of Civil Procedure is repealed.

SEC. 4. Article 3 (commencing with Section 1760) is added to Title 11a of Part 3 of the Code of Civil Procedure, to read:

ARTICLE 3

Proceedings for Conciliation

§ 1760. Whenever any controversy exists between spouses, or between parents regardless of their marital status when such controversy relates to child custody or visitation, which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or parents or of either of them whose welfare might be affected thereby, the family conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

The family conciliation court shall also have jurisdiction over the controversy, whether or not there is any minor child of the parties or either of them, where such controversy involves domestic violence.

§ 1761. Prior to the filing of any proceeding for determination of custody or visitation rights, dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, either spouse or parent, or both, may file in the family conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses or parents, so as to avoid further litigation over the issue involved.

§ 1762. The petition shall be captioned substantially as follows:

In the Superior Court of the State of California
in and for the County of .....

Upon the petition of ..... (Petitioner) And concerning ..... and ...., Respondents	Petition for Conciliation (Under the Family Conciliation Court Law)

To the Family Conciliation Court:

§ 1763. The petition shall:

(a) Allege that a controversy exists between the spouses or parents and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse or parent only, the name of the other spouse or parent as a respondent, and state the address of that spouse or parent.

(e) Name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) If the petition arises out of an instance of domestic violence, so state generally and without specific allegations as to the incident.

(g) State such other information as the court may by rule require.

§ 1764. The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attachés and employees of the family conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers in each ounty shall refer to the family conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the family conciliation court. The jurisdiction of the family conciliation court in respect to controversies arising out of an instance of domestic violence shall not be exclusive, but shall be coextensive with any other remedies either civil or criminal in nature that may be available.

§ 1765. No fee shall be charged by any officer for filing the petition.

§ 1766. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and of the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may requi . the attendance of witnesses as in other civil cases.

§ 1767. For the purpose of conducting hearings pursuant to this chapter, the family conciliation court may be convened at any time and place within the county, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

§ 1768. The hearing shall be conducted informally as a conference or a series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues in controversy. To facilitate and promote the purposes of this act the court may, with the consent of both parties to the proceeding, recommend or invoke the aid of medical or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county unless the board of supervisors of the county specifically provides and authorizes such aid.

§ 1769. (a) At or after the hearing, the court may make such orders in respect to the conduct of the spouses or parents and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of su h time.

(b) Any reconciliaton agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(c) During the pendency of any proceeding under this chapter, the superior court may order the husband or wife, or father or mother, as the case may be, to pay any amount that is necessary for the support and maintenance of the wife or husband and for the support, maintenance and education of the minor children, as the case may be. In determining the amount, the superior court may take into consideration the recommendations of a financial referee when such referee is available to the court. An order made pursuant to this subdivision shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. Any such order may be modified or revoked at any time except as to any amount that may have accrued prior to the date of filing of the notice of motion or order to show cause to modify or revoke.

§ 1770. During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any petition for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage.

If, however, after the expiration of such period, the controversy between the spouses, or the parents, has not been terminated, either spouse may institute proceedings for dissolution of marriage, legal separation, or a judgment of nullity of a voidable marriage, or a proceeding to determine custody or visitation of the minor child or children. The pendency of a proceeding for dissolution of marriage, legal separation, or declaration of nullity, or a proceeding to determine custody or visitation of the minor child or children, shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

§ 1771. Whenever any petition for dissolution of marriage, legal separation, or declaration of nullity of a voidable marriage is filed in the superior court, and it appears to the court at any time during the pendency of the proceedings that there is any minor child of the spouses, or of either of them, whose welfare may be adversely affected by the dissolution of the marriage or the disruption of the household or a controversy involving child custody, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the family conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy in accordance with the provisions of this chapter.

§ 1772. Whenever application is made to the family conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested proceeding for dissolution of marriage, legal separation, or judgment of nullity of a voidable marriage, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

SEC. 5. Section 4607 is added to the Civil Code, to read:

§ 4607. (a) Where it appears on the face of the petition or other application for an order or modification of an order for the custody or visitation of a child or children that either or both such issues are contested, as provided in Section 4600, 4600.1 or 4601, the matter shall be set for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of such mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child or children's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the custody or visitation dispute.

(b) Each superior court shall make available a mediator. Such mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court shall not be required to institute a family conciliation court. The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1745 of the Code of Civil Procedure.

the petition for conciliation
e petition for conciliation,
arriage, legal separation, or

e controversy between the
either spouse may institute
, or a judgment of nullity of
dy or visitation of the minor
issolution of marriage, legal
g to determine custody or
te as a bar to the instituting

arriage, legal separation, or
the superior court, and it
f the proceedings that there
em, whose welfare may be
or the disruption of the
nd that there appears to be
effected, the case may be
ngs for reconciliation of the
sy in accordance with the

mily conciliation court for
ween spouses, or a contested
or judgment of nullity of a
lfare may be affected by the
t that reconciliation of the
probably be achieved, and
will not be seriously impeded
pose of the case in the same
ren are disposed of. In the
ll have the same jurisdiction
any relation thereto that it
lfare of children.

read:

ion or other application for
or visitation of a child or
as provided in Section 4600,
the contested issues prior to
aring. The purpose of such
hich may exist between the
ild or children's close and
e is dissolved. The mediator
of the custody or visitation

tor. Such mediator may be a
ion court, probation depart-
any other person or agency
services, the court shall not
The mediator shall meet the
conciliation as provided in

(c) Mediation proceedings shall be held in private and shall be confidential, and all communications, verbal or written, from the parties to the mediator made in a proceeding pursuant to this section shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

(d) The mediator shall have the authority to exclude counsel from participation in the mediation proceedings where, in the discretion of the mediator, exclusion of counsel is deemed by the mediator to be appropriate or necessary. The mediator shall have the duty to assess the needs and interests of the child or children involved in the controversy and shall be entitled to interview the child or children when the mediator deems such interview appropriate or necessary.

(e) The mediator may, consistent with local court rules, render a recommendation to the court as to the custody or visitation of the child or children. The mediator may, in cases where the parties have not reached agreement as a result of the mediation proceeding, recommend to the court that an investigation be conducted pursuant to Section 4602, or that other action be taken to assist the parties to effect a resolution of the controversy prior to any hearing on the issues. The mediator may, in appropriate cases, recommend that mutual restraining orders be issued, pending determination of the controversy, to protect the well-being of the children involved in the controversy. Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court.

(f) The provisions of this section shall become operative on January 1, 1981.

SEC. 6. Section 26840.3 of the Government Code is amended to read:

§ 26840.3. (a) The superior court in any county may, for the support of the family conciliation court or for conciliation and mediation services provided pursuant to Section 4607 of the Civil Code, upon action of the board of supervisors to provide all space costs and indirect overhead costs from other sources, increase:

(1) The fee for filing a petition, except a joint petition filed pursuant to Section 4551 of the Civil Code, for dissolution of a marriage, legal separation, or nullity of a marriage, and the fee for a response to such a petition, by an amount not to exceed fifteen dollars ($15).

(2) The fee for issuing a marriage license, by an amount not to exceed five dollars ($5).

(3) The fee for issuing a marriage certificate pursuant to Section 4213 of the Civil Code, by an amount not to exceed five dollars ($5).

(b) The funds shall be paid to the county treasury and an amount equal thereto shall be used exclusively to pay the costs of maintaining the family conciliation court or conciliation and mediation services provided pursuant to Section 4607 of the Civil Code.

SEC. 7. Section 26862 is added to the Government Code, to read:

§ 26862. In any county in which there is a family conciliation court, or in which counties have by contract established joint family conciliation court services, a fee of fifteen dollars ($15) shall be paid to the county clerk at the time of filing a motion, order to show cause, or other proceeding seeking to modify or enforce that portion of any judgment or order entered in this state or any other state which orders or awards the custody of a minor child or children or which specifies the rights of any party to the proceeding to visitation of a minor child or children. The funds shall be paid to the county treasury and shall be used exclusively to pay the costs of maintaining the family conciliation court.

SEC. 8. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation

Code, no appropriation is made by this act pursuant to these sections because self-financing authority is provided in this act to cover costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order to prevent the discontinuation of family conciliation courts, it is necessary that this act take effect immediately.

HISTORY: S.B. 961, approved and filed March 27, 1980, effective March 27, 1980.

EXPLANATORY NOTES:

CCP § 1731. Substituted "Family Conciliation Court Law" for "Conciliation Court Law".

Gov C § 26840.3. Amended the section to read as at present.

File 2.

William F Haddad and Mel Roman

No-Fault Custody

THREE VIEWS OF CHILD CUSTODY

New York State Domestic Relations Law

Following a 1921 court decision,[1] New York's DRL stated:

> In all cases there shall be no prima facie right to custody of the child in either parent, but the court shall determine solely what is for the best interest of the child and what will best promote its welfare and happiness and make the award accordingly.[2]

The Guidelines For Most New York Courts

> There is but a twilight zone between a mother's love and the atmosphere of heaven, and all things being equal, no child should be deprived of that maternal influence unless it be shown there are special or extraordinary reasons for doing so.[3]

A Father Caught Between The Law And The Court

> You've never met my children but as a stranger turned friend, you could walk them down to the corner candy store for a soda, take them out to dinner, have them stay overnight with your children, come over to help them with their homework or have them just drop in.
>
> As their father, I have none of these rights.
>
> Although the letter of the custody law gives each parent equal rights in divorce, the court has done everything to make me an ex-father as well as an ex-husband.

The report that follows attempts to examine the growing discrepancies between the intent of the Legislature and the practice of the courts.

CURRENT PRACTICE

New York Domestic Relations Law Article 70[4] and its companion, DRL Article 240,[5] set forth the Legislature's view of custody which, essentially, is that neither parent has a *prima facie* right to custody of children in divorce.

Yet, in nine out of every ten court cases, custody of children is awarded to the mother.

While each case in an individual decision, the net result is that mothers, in New York, are routinely awarded the children and the fathers are allowed visitation rights which, in the best of circumstances, amount to a few evening hours during the week and alternate weekends. In the summer, the father is entitled to "have" the children from two to four weeks. These "standard" visitation rights appear to be allocated regardless of the age or the number of children involved. The father in the opening statement, with three children, is permitted by the court to see them between four and eight on Thursday nights. He writes:

> I've never lived more than five minutes—a few blocks away since the separation and divorce, but, as far as the court is concerned, it would have made little difference if I had moved to the suburbs or to California . . . The court has put a wall around the children which strangers can penetrate, but which excludes their father.

The attitude of the bench was summed up by Sybil Hart Kooper, Justice Supreme Court 2nd District who said:

> I would like to see judges divorce themselves from their ingrained, preconceived notions that all young children belong with their mothers. It seems to me an act of futility sometimes for a custody case to be heard because it's apparent before the case is ever tried many judges feel that unless this woman is a prostitute and practicing in front of her children or a chronic alcoholic who falls down drunk or a psychotic who is threatening the children's lives, then they will award custody to the mother.[6]

Without exception, all the lawyers contacted in preparation for this report, regardless of their view of no-fault custody concepts, agreed with Judge Kooper's view of the court's historical and traditional bias. Most lawyers counsel their male clients not to seek more than the traditional visitation and custody arrangements.

They also report that alimony considerations are "more often than not" the opposite seat of the custody seesaw. Given the predisposition and predictability of the courts, these attorneys reported that a woman can, and often does, use visitation rights as a counterbalance to alimony demands. A recent Michigan study of fathers who failed to meet their financial obligations to the divorced mother and children by moving out of the reach of the courts, contained footnoted information confirming the view of the New York attorneys

---

William F Haddad, Director New York State Assembly Office of Legislative Oversight and Analysis. Melvin Roman, PhD Professor of Psychiatry, Albert Einstein College of Medicine and Director of Group and Family Studies, Bronx Municipal Hospital are co-authors of a published study of custody. Messrs Roman and Haddad have recently written The Disposable Parent: The Case for Joint Custody (1978, Holt, Rinehart and Winston, New York, NY, $8.95). This is the text of a Special Report submitted in July 1978 to Hon Speaker Stanley Steingut, The Assembly, State of New York, Albany, NY.

that custody and alimony, in the adversary setting of the courtroom, were often used in tandem.

Within the last five years, however, a considerable number of parents have opted to settle custody questions outside the courtroom, bringing to the court a fait accompli for legal ratification. Most overburdened courts welcome these out-of-courtroom agreements and frequently counsel compromise.

A few courts are beginning to incorporate the out-of-court experience in their decisions. Queens Judge Xavier Ribaudo, in a recent decision awarding joint custody wrote:

> An award of custody to both parents in the case at bar would give each of them joint control of the child's education and upbringing with an equal voice in the decision-making in very much the same manner the parents enjoyed during their marriage while they lived together and prior to any judicial determination of custody. Not only would this kind of award be in the best interest of the child who is this court's ward, but it would go a long way to ameliorate some of the acrimony and ill-will that have developed between the parents since their separation regarding their son and his best interests.
>
> Joint custody will also serve to give that measure of psychological support and uplift to each parent which would communicate itself to the child in the measure of mutual love, mutual attention and mutual training.[1]

Both the national and local bar associations are also confronting the trend outside the courtroom in an effort to reconcile the glaring difference between the will of the legislatures, as expressed in the domestic relations laws, and the practice of the courts.

Henry H Foster, Jr (professor of law emeritus of the New York University School of Law and immediate past chairman of the Family Law Section of the American Bar Association) and Doris Jonas Freed (attorney, expert in matrimonial law and Chairman of the Research Committee, ABA Family Law Section) for example, point out that

> historically, custody awards have been dictated by amorphous platitudes or generalizations on the one hand and by rigid absolutes on the other....[2]
>
> One of the difficulties in eliminating the maternal preference is that the older literature on child development supported it, and there have been but few studies on the effect of paternal, as distinguished from maternal deprivation on child development. More recently, a growing number of experts on child development have recognized that a father may be the one for whom the children have the most affectionate relationship and hence he should be awarded custody.[3]

They warn however, that there is a temptation to view child custody decisions in terms of a pendulum's swing, back and forth, between a feudalistic preference for the father and a modern recognition of the importance of the mother.

There is, we contend, a way in which the pendulum can be brought full center through legislation providing for a presumption of joint custody, mediation and support.

First, however, it is necessary to look at custody in its historical and psychological context, for it is from these roots that the current practice, if not the current law, evolved.

Note

A recent decision in the New York State Court of Appeals is important to review. Judge Breitel questions, in limited circumstances, the awarding of joint custody to parents who involve their children in an extreme level of hostility following divorce. He states:

> Entrusting the custody of young children to their parents jointly, especially where the shared responsibility and control includes alternating physical custody is insupportable when the parents are severely antagonistic and embattled....
>
> Joint custody is encouraged primarily as a voluntary alternative for relatively stable, amicable parents behaving in a civilized fashion.[4]

HISTORY OF CUSTODY[5]

Until the turn of the century and well into the twenties, fathers were almost always awarded custody of the children of divorce. The practice began with the Romans and proceeded in an almost unbroken line through the feudal ages and the industrial revolution weaving its way through both English and American law. For many of those centuries, women and children were "the property" of the master of the castle or of the household. While the Romans offered women respect and ...er made it appear, on parchment, that women had acquired certain rights, none of these rights reached to the essentials of livelihood or decision-making, in or out of court. The early Judeo-Christian tradition and the practice of the "first-born rights" perpetuated the master of the household practices, with the father having the absolute right to apprentice his children.

The custody laws laws followed closely the bumps and curves of cultural evolution and women's emancipation. The first crack in the wall occurred in 1817 when Percy Bysshe Shelley lost custody of his children after his wife's suicide. That decision, however, seems to have been premised ...ore on his antagonistic atheism than on any change of heart (or law) about custody itself. Earlier Blackstone had set the tone for English law when he stated the father had a

> natural right to his children and the mother is entitled to no power over the children but only to reverence and respect.

Following the Shelley case, Parliament enacted a series of laws, culminating in the Justice Talfourd Act of 1839 which diluted father's rights so that, in special circumstances, a mother could win custody of children under seven. This appears to be the origin of the so-called "tender years" doctrine which, in many states, serves either as an absolute guideline or a "tie-breaker" in contested custody situations involving minor children. New York lower courts have ruled that this concept may not be used in custody decisions, although, it is clear from a review of decisions that its use is all but universal.

The Talfourd Act also formulized *parens patriae* (the court's assumption of the role of surrogate for children, making them, in effect, perpetual wards of the court).

There is no doubt about the impact of these views on United States law. In 1840, when the court awarded custody to the father, the judge wrote:

> By the laws of the land the claims of the father are superior to those of the mother . . . it is possible that our laws relating to the rights and duties of husband and wife have not kept pace with the progress of civilization . . . I will however venture the remark, even at the hazard of being thought out of fashion, that human laws can't be very far out of the way when they are in accordance with the laws of God. [4]

In 1857 a midwestern court neatly summed up the situation in this decision:

> The general doctrine that the right of the father to the custody of his minor children is paramount to that of the mother is well settled. He may forfeit it by misconduct, or lose it by disqualification, and it may be suspended by reason of the tender age of the child and its welfare requiring it to be with the mother. A strong case must exist, to warrant depriving him of this right, even for a limited period.
>
> The only difficulty, if any, in the present case, in regard to the right of the father to retain the child, arises from the child being of tender age, and deriving its subsistence, in part, from the breasts of the mother. But upon the evidence, I think these circumstances form no obstacle to the father's right. The mother had not sufficient milk for the child; it was, in part, sustained feeding; it was placed by the father with a competent person; and down to the hearing on the habeas corpus, some ten days after separation, had been doing well and growing fleshy; and besides, the husband was willing at any time, on the wife returning to him, to provide for her and allow her the care of the child. [5]

The judicial absurdity reflected the cultural norm and the legal perspective until the turn of the century.

When society became more urbanized and the father moved away from the home and left raising of the family to his wife, the pendulum began to swing in the opposite direction. A trend accented and propelled by literature and psychology, was perhaps best explained in Kate Chopin's The Awakening, written at the turn of the century:

> If it is not a mother's place to look after the children, whose on earth was it? He himself had his hands full with his brokerage business. He could not be at two places at once; making a living for his family on the street, and staying at home to see that no harm befell them. [6]

That classic and romantic division of labor still influences court decisions regarding custody, *although half the married women work and almost seventy percent of divorced women are employed outside the home. Over 1.5 million males managed single parent households.*

Taking note of the cultural change, new psychological theories began to emerge in the twenties emphasizing the importance of the mother in the rearing of children. These theories rapidly became the basis for courtroom decisions which, in turn, led to the awarding of children to the mother.

These earlier psychological theories are now all but replaced with new conceptions, *yet the precedent of law based on the earlier concepts remains like a house without a foundation.*

This trend intensified until the father, after divorce, became the missing parent, relegated to short visits with his children. The pendulum swung and by the thirties it was stuck in place. Few jurists remember "how it was" and too few, we believe question why it happened.

These awards to the mother, in the face of state laws mandating equal treatment, were conceived to be "in the best interests of the children", yet few had been able to define the phrase which had achieved the status of unquestioned law and almost no scientist (or even journalist) took the time to review what happened to the children after the custody decision.

What recent researchers have learned about the children of divorce is beginning to edge the pendulum back towards a moderate view of custody.

THE PSYCHOLOGY OF CUSTODY

Until recently research on the children of divorce was inexcusably primitive and post-divorce research of the father was non-existent, although an observer sitting in a courtroom and listening to the paid testimony of "experts" in custody matters would have been led to believe the court was listening to reports of an exact and an exacting science. Actually, the opposite was often true. For at least four decades, there has been little to separate the problems of children created by