Author, appearances & citations

Cook is the author of "Joint Custody, Sole Custody: A New Statute Reflects a New Perspective" (Conciliation Courts Review, Volume 18, No. 1, June 1980.)

He is also cited in:

Sharing Parenthood After Div orce, Ciji Ware, Viking Press
Joint Custody & Shared Parenting, Jay Folberg, BNA Books
How to Forgive Your Ex-husband & Get on With Your Life, Marcia Wootman, Warner Books
Fathers' Rights, Jon Conine, Walker & Company
Weekend Fathers, Gerald Silver, Stratford
Divorce Book for Parents, Vicki Lansky, New American Library
Help for Children from Infancy to Adulthood, Miriam J. Williams Wilson, Rocky River Publishers
The Divorce Lawyers, Emily Couric, St Martin's Press, and others.

Congressional testimony, Committee on Finance, U.S. Senate, Jan 24-26, 1984. pgs 295-310, regarding child support enforcement, and other testimony.

Attendee and frequent program participant, association-wide meetings of:

American Bar Association's Family Law Council
American Orthopsychiatric Association
Association of Family and Conciliation Courts
American Psychological Association

Previously, Cook was:

Executive Director, California Space Shuttle Task Force, a successful bi-partisan effort to bring the Space Shuttle into being as a nationwide project, to obtain a base-site at Vandenburg, California, and prime contracts for California companies. Appointed by Sen. Alan Cranston and (then) Lt. Gov. Ed Reinecke. (1970-1973)

Producer, public affairs telecasts, KCBS (then KNXT) "Insider/Outsider", a five-year weekly series examining the problems of minorities within the city following the "Watts riots". And, producer of Communism: Myth vs Reality", 38, 1'2 hr programs broadcast by 80 stations analyzing Soviet Union, China, and Communism, subsequently acquired by U.S. government and service academies.

Staff, The RAND Corporation, Santa Monica, Calif.-based government policy analysis organization.

For nine years, member of **U.S. Department of State** and **U.S. Information Agency** in the Middle East and in Washington, D.C. (1951-1959)

Foreign Affairs Guidance Officer, USIA News Policy Staff
Ass't Attache, USIS, American Embassy, Tehran, Iran.

Executive Vice President, California Business Properties Association. Cook organized and managed this nonprofit liaison with government for the developers, financiers and constructors of major commercial, business and industrial properties. (1973-1983)

Military

U.S. Air Corps, 3 years. Cryptographer. (3rd Air Commando Group)
Seven battle stars, Distinguished Unit Citation. Top Secret clearance.

Education

Graduate school American University, Beirut, Lebanon
Undergraduate, B.S., University of California at Los Angeles
Courses at Geo. Washington Univ Law School, Washington, D.C.

James A. Cook (Photo: 1989)

PUBLIC POLICY-MAKING IN FAMILY-LAW

GUIDANCE FOR LEGISLATORS

How to rectify need and effect,
with goals and rationality,
in setting public policy through legislation.

THE JOINT CUSTODY ASSOCIATION

CONSIDER

During marriage, issues eventually resulting in divorce often include:

* Dominance (and/or personal autonomy)
* Financial
* Sex

CAUTION:

Following divorce, be sure the legislative proposal (or current law) is not merely a continuation of the above arguments under the guise of using the legislature to circumvent the judiciary by one person against another.

? Does the proposed legislation (or present law) create:

* Dominance by one sex over the other?
* Financial extortion of one sex by the other?
* Child-rearing by one parent, or one sex, at the expense of the other?

Protect the three family law goals of the last half of the 20th Century:

1. No fault. (Eliminate fault-finding to justify, or punish, in divorce.)
2. Equality.
   Equality is the single most dominant political and social imperative of the past forty years for today's adults.

   The American system is extending equality for the races, for the sexes, for the faiths, for parents and for children.

3. "Best interests" as the criteria for deciding child custody.

Evaluate family law legislative proposals to assure that they:

- do not engender fault-finding,

CONSEQUENCES OF SOLE CUSTODY

Possible legacy in view of:

1. Availability of joint custody.
2. Alternate but excluded parent proposing joint custody.
3. Awareness by children of joint custody.

Sole custody contributes to:

Uneasiness among young children,
Skepticism among older children,
Reanalysis as adults about a sole custody childhood.

For the parent imposing a decision for sole custody, the following is worth considering:

- Recognition and reactions by the child.

ARTIFICIAL RESTRAINTS Artificially kept away from the non-custodial parent's residence for any meaningful residence or period of time.

COMPARISONS Comparative situation, in relation to that of families or lifestyle of peers.

IDEALIZED Tends to make an ideal, or saint, of the ostracized parent and stimulates sympathetic consideration for the noncustodial parent.

'CRAZY-MAKING' 'Crazy-making' insofar as 'words of sweetness' not being compatible with an ostricization and isolation of the non-custodial parent. Words and actions don't correlate; leads to skepticism about such a parent.

RESENTMENT Arbitrariness or rigidity tend to characterize the covetous custodial parent. Adolescent revolt is heightened. Natural inclinations of independence and teen-age revolt are stimulated by the existence of an obvious reason to resent the covetous sole custodian.

IDENTITY-SEARCH Lifelong search for identity, speculation about the missing portion of ones parental self.

PROMISCUITY & LONGING Promiscuity and sexual activity is comparatively higher and earlier among children of non-nuclear families than among those with a close, consistent, and unobstructed contact with the alternate parent.

VISITATION RESENTMENT Scheduled visitation leads to resentment. Disdain for a control agreement conceived by one parent for imposition upon the other without consideration of the child's independent preferences.

BLAME Feelings of loss and abandonment shifted to blame of the custodial parent for having induced or contributed to the problem.

THE JOINT CUSTODY ASSOCIATION

a non-profit association concerned with the joint custody of children and related issues of divorce, including research, information dissemination and legal and counseling practices

DISTURBANCE Disturbed relations with others, partricularly in close relations with the opposite sex, which may lead to a need for professional analysis later-on that justifies a resentment of the sole custodian.

LAW & JUSTICE DISDAIN Forces or induces the sole custodian parent to place the responsibility, or blame, or wisdom of the decision on the judge or court...thereby inducing skepticism in the child about the equitability of the court system.

MANIPULATION OF POWER Among self-willed children growing to adulthood, serves as a demonstration that manipulation of the court system can be used to enhance or impose power, to the disadvantage of otherwise blameless or naive people.

REJUSTIFICATION Requires a continual rejustification, by the sole custodian, to the child about the unworthiness of the excluded parent to parrticipate in joint custody. If the justifications being given are not borne-out by the conduct of the excluded parent, increased skepticism of the custodial parent may result.

DEPENDENCY Induces a fawning, catering , 'feeding' and 'spoiling' by the sole custodian of the child in order to cultivate the child's dependency on that custodian.

UNWARRANTED EXPECTATIONS Could lead to such a unilateral or selfish adulthood that reminders will be forthcoming about the failings of the sole custodian parent and the influences that spawned unwarranted expectation in adulthood.

RAGE Cultivates rage which, because of the powerlessness of childhood, is constrained until adulthood triggers or unleashes a hidden recognition of the rage. Resentment of a controlling sole custodian is expressed against someone else who 'reminds' the former child of childhood rage-resentments.

POLICY IMPLICATIONS of JOINT CUSTODY

for Federal & State implementation

JOINT CUSTODIAN
October 7, 1993

Observations by Sources *

James A. Cook
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Nationwide availability

38 states (or more) have legislatively adopted joint custody.
Remainder are case precedent or attorney general rulings.
13 endorse "preference" and/or "rebuttable presumption."
Mobility of population advises unformity nationwide.
Curtails jursidiction shopping to seek or avoid joint custody.

Child-snatching

Child-snatching highly prevalent in sole-custody situations.
Perceived as 'only' & last resort by deprived non-custodian.
But, virtually eliminated in joint custody situations.
Because risks loss of half-time joint custody altogether.
Furthermore, joint custody statutes propose sole custody to parent most tolerant ofaccess to noncustodial parent.

Homicide dissolving

Murder of judges, attorneys, opposite spouse most often occur when divorcing parent threatens opposite parent to divorce, take child away, and never to see child again.
Righteous indignation inspires justified homicide, not perceived as criminal act.
However, established joint custody & record of courts' decreeing joint custody, reassures threatened parent that unilateral deprivation is unlikely; forewarns threatening parent that court is unlikely to permit sole-custody sequestering.

Support-assuring

Child support delinquency in sole custody: 45% to 75%.
However, only 6% to 7% delinquency in joint custody.
About same as unemployment rate.
90.2% paid in joint custody (Bureau of Census)
79.1% pay when visitation available and recipient parent has not moved out-of-state
Joint custody decree: least expensive public policy for state/federal to induce support payment voluntarily.
75% paid-in-full thru-out year (50% on-time) in joint custody.
(In sole custody: only 47% receive 12-month's support, only 27% 'on time'.)

Emotionally supportive for children

Joint custody children (generally) rank highest in emotional & psychological health, acknowledging that divorce is less-than optimal solution for children.
Worst said of joint custody children: "no worse than sole custody."
Test of 80 5-to-13 yr olds subjected to three standardized tests demonstrates better mental health for joint custody children.

Cooperative support

Child support commitments often mediated and agreed in joint custody (as compared with sole custody which are litigated and arbitrarily decreed..)
Consequence: 78% of amount paid when mediated in joint custody, (compared with 50% payment in sole custody.
28% higher amount paid when agreements are voluntary (as compared with litigated & decreed.)

Court return costs

Relitigation (costs on taxpayers for court services) one-half as frequent in joint custody.
(16% of joint custody cases return; 31% of sole custody cases return.)
Decree of joint custody over objection of one parent return less than sole custody cases (29% of joint custody; 31% of sole custody cases return.)

Fewer contempts

Sole maternal custody produces twice as much punitive legal activity:
20% of sole custody mothers file contempt citations; only 10% jt legal, maternal physical custody mothers file; joint physical custody mothers rarely file.

Increased implementation

Nearly 80% (79. & fraction) of all divorce/custody cases result in decree of joint custody (recent California anlaysis).

Reduced litigation

Less litigation and more before-trial dispositions and stipulations in the current joint custody era than during the prior sole custody era.
19% less litigation of custody cases, now, under joint custody than in sole custody era (1977-1978).

JOINT CUSTODIAN. News and commentary from the JOINT CUSTODY ASSOCIATION, a non-profit association concerned with the joint custody of children and related issues of divorce, including research, information dissemination and legal and counseling practices.
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Frequent & continuing contact

Joint custody respects the need for children of frequent contact (particularly by very young children who have an imperfect concept of time) and continuing contact (for all children who need an assurance that a parent will not leave or disappear through some influence of the law.)

Virtuaally every state law contains the policy directive that frequent and continuing contact by children of divorce or separation with their parents is in the child's best interest.

Both parents' expenses

38 states (or more) acknolwedge by statute that both parents incur expenses in shared parenting and thereby allocate percentages or portions of child support to both parents rather than mandate child support only for a single recipient parent.

Support regardless of joint custody

Support is usually a separate decision, by the court, based on an ability to pay weighed against a demonstrated need. Support is not necessarily avoided by joint custody, although joint custody parents could agree to share expenditures equally if a court determines that this agreement satisfies a particular child's best interest.

Factors determine support

86% of mothers with some form of joint custody awarded support.

Support awarded where recipient parent earning $12,000 annually, or less, and paying parent earning $38,000 annually, or more.

Support less likely where potential recipient earning $17,000 annually, or more; and where potential paying parent earning $24,000 annually, or less.

Above survey conducted just prior to widespread legislation of support guidelines. Support guidelines, generally, narrow the difference between those who pay and those who don't, except for voluntary agreements approved by courts.

Least drastic for children

Parents divorce. Least drastic recourse for child is joint custody.

Least restrictive alternative doctrine: "....purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be...the least drastic means for achieving the same basic purpose." Shelton v Tucker, 364 U.S. 479, 488 (1960).

Cooperative parent factor

At close of sole custody era (winter of '78-'79) a custody determination factor arose that has survived into joint custody era: "If sole custody must be the decree, consider, among other factors, placing custody with the parent most likely to facilitate access by the child to the opposite parent." This factor encourages cooperation, regardless of joint or sole custody decree.

Professionals support

77% of professionals support joint physical & legal custody.
81% support joint legal custody
74% of professionals support joint physical and legal custody even when parents are antagjonistic to each other.

Majority of studies

21 studies or reports, and 86 journal articles qualifying for professional and academic journals, between 1978 and 1989, discussed joint custody. 9 of the 21 compared, to a limited extent, the results and consequences of joint and sole custody. Overwhelmingly, majority have endorsed joint custody. Most derogatory comment: "joint custody was no worse than sole custody."

Warring least beneficial

Continued warring by parents least beneficial for children.
Proponents of joint, and sole, custody agree on this.
Sole custody does not cease warring, however.
Joint custody removes some of the warring.

Shortcoming of warring thesis

Studies of "warring" fail to analyze important ingredient: That is, an examination or itemization of exactly what the parents are warring about. Failure by one parent to allow access emerges as most frequent reason for warring. Could be diminished by firm decree of access.

As bad as "warring" is, a study of children in such families finds those children who survive best, nevertheless, are those who have continued freedom of access to both parents. (This is not an endorsement of warring, but warring is insufficient reason to foreclose access.)

Non-cooperation does not negate joint custody

Cooperation is preferred, but not categorically essential. When "failure to cooperate" is touted as reason not to decree joint custody, this inspires recalcitrant parent to generate non-cooperation in hopes of achieving sole custody.

In cooperative cases, judge need not decree so many specifics; in uncooperative cases more specific details are generally decreed. Usual practice: at outset specify fewest details, if couple returns to litigate, decree more details.

JOINT CUSTODY
ASSOCIATION

Protecting the Cooperative Parent from the Burden of Litigation

The Legal and Psychological Reasons Supporting Presumption and Preference

"Order of preference" has been a feature of child custody law for decades. An order of preference was specified in the years prior to the legislating of California's no-fault divorce statute in 1969. Prior to joint custody, decisions of custody were (1st) to the parents, (2nd) to the person of persons in whose home the child has been living, (3rd) to another person or persons deemed suitable by the court.

Consequently, when joint custody came into being (Calif: 1979) the logical first-step, before the alternative of an individual parent, became joint custody. Joint custody was purposely identified first by the legislature in a compound sentence identifying joint and sole.

The statute lacks the punctuation and/or stepped enumeration. However, that ambiguity has been both intentional, and unintentional, depending upon your goal. Elsewhere in the statute, a 1988 amendment did indicate there was no preference for joint or sole custody.

Declining steps in the "order of preference" insure the least divisive results for the child. An order of preference seeks to preserve in a step-by-step fashion the child's right of access to both parents.

1. Divorce separates parents.
2. Divorce should not necessarily separate children from a parent
3. Divorce should not be construed into a termination of parental rights.

Least restrictive alternative

The doctrine of least restrictive alternative stems from such cases as: Shelton v Tucker, 364 U.S. 479, 488 (1960)"...purpose can not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be...the least drastic means for achieving the same basic purpose."

Hence, joint custody becomes the least drastic means for assuring the child of equitable access to both parents when the basic purpose is the divorce of the parents.

Legislators are encouraged to assure, in an order of preference, that the custody decision should least effect the child's relationship with both parents. An equitable application of joint custody more satisfactorily meets this requirement than sole custody.

Psychological response, emotional reaction

Reordering the priority of joint custody into merely an option converts an altruistic stimulus to seek joint custody into preparations for an acrimonious and litigiously expensive battle for sole custody.

A cooperative parent desirous of sharing joint custody must assume an attack-litigation stance if there is no rebuttable presumption for joint custody. Ranking joint custody as merely co-equal with sole custody converts an admirable goal into anguish, apprehension and a defensive resort to self-protection.

(Continues on back)

JOINT CUSTODY ASSOCIATION

Presumption as Perceived by the Public

A Rebuttable Presumption for Joint Custody

Equal
Parents are presumed to be equal before the law.

Divorce is not a criminal matter.

Property
Community property, or equitable distribution,presumes an equal division.

No-fault
No-fault divorce presumes either party can ask for, and must be granted, divorce on the demand of one party.

Sex
Equality is presumed since sex of parent is not a criterion of custody.

Financial
Both parents are presumed to be financially responsible.

Resolution
In states encouraging mediation arrangements, that system presumes both parents should resolve family disputes.

Policy
The policy statement appearing in nearly every proposed joint custody statute nationwide presumes "the frequent and continuing contact" of joint physical custody.

Reasons
In several states, joint custody is so thoroughly (and otherwise) presumed that the court must state its reasons if joint custody is not decreed.

Why?
1. To help parents understand how they can satisfy shortcomings to qualify for joint custody.
2. To make higher court appeals more specific and efficient.

Agreement
Joint custody is presumed when both parents agree to it, according to most recent statutes.

Child need not choose
In practice, many jurisdictions are abandoning the concept that a child's preference between parents should be sought.

It is presumed that a child need not have to choose.The child can have both parents and the law will not demote one parent in the child's eyes. And, a child need not be burdened with the "power trip" or eventual guilt of choosing.

Child's right
Presumption for joint custody is tied, largely, to a child's right, now and in the future. Encouraging parent-child interaction is based "on the best interests of the child and not on any notion of parental rights." (Beck v Beck, 86N.J. 480, 432 A, 2d 63)

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JOINT CUSTODY; ALIVE, WELL, THRIVING

Nationwide availability — Expanding uniform Joint Custody jurisdictions

33 states have legislatively adopted joint custody, 13 of which endorse "preference" when one parent seeks Joint Custody and/or a "rebuttable presumption" when both parents seek Joint Custody. Most remaining states have Appeals & Supreme Court endorsement.

Thereby: The fastest moving (in brevity of time), most widespread (in numbers of states adopting within that time) of any major family law improvement in entire 20th Century.

Child-Snatching — Yesterday's child (snatching)

Virtually eliminated child-snatching for Joint Custodians: a desperation recourse for non-custodial parents confined in sole custody situations.

Loss of half-time Joint Custody is too big a penalty for Joint Custodians to risk thru snatching.

Furthermore: Ideal Joint Custody statutes propose sole custody to parent most willing to tolerate access to noncustodial parent.

Child Support — Take(s) the money and (without) run(ning)

Only 6% - 7% delinquency in support payment (equal to unemployment rate) for Joint Custody as compared to 50% - 72% defaullt in sole custody situations (2 studies)

75% paid in full throughout year, 50% 'on time' in Joint Custody as compared with only 47% receiving 12-months support & only 27% 'on time' in sole custody. (Study: 350 couples)

Children's emotional health — "I've got two equal homes, not just one!"

Children of Joint Custody rank highest in emotional and psychological health of all children of divorce; Joint Custody children surpass conventionally married families that are unhappily wed. Eighty 5-13 yr olds subjected to 3 standardized professional tests in control groups matching age, numbers in family, length of separation in 4 compared categories: Joint Custody; Sole Custody; Happily married families; Unhappily married families.

Cooperative support agreements — Less gap between "due" and "paid"

78% of amount due is paid when child support agreements are voluntary, mediated & signed as compared with less than 50% when litigated or arbitrarily decreed.

28% higher amount paid when agreements voluntary & signed (as compared with litigated).

Court returns — Stop taxpayer's burden for divorce litigators

Relitigation (with costs on taxpayers for court services) one-half as frequent in Joint Custody as in sole custody. Only 16% of Joint Custody return to court; 31% of sole custody return. (414 consecutive cases studied)

"Order of preference" & "Rebuttable presumption"

The reasons why.

Legal background. **Psychological impact**

Protecting and shifting the litigation burden away from the cooperative parent, to the children's advantage.

"Order of preference" has been a feature of child custody law for decades. An order of preference was specified prior to the legislating California's no fault divorce statute in 1969. Prior to joint custody, decisions of custody were (1st) to the parents, (2nd) to the person or persons in whose home the child has been living, (3rd) to another person or persons deemed suitable by the court.

Consequently, when joint custody came into being (Calif: 1979) the logical first-step, before the alternative of an individual parent, became joint custody. Joint custody was purposely identified first by the legislature in a compound sentence identifying joint and sole.

The statute lacks the punctuation and/or stepped enumeration. However, that ambiguity has been both intentional, and unintentional, depending on your goal. Elsewhere in the statute, a 1988 amendment did indicate there is no preference for joint or sole custody.

Declining steps in the "order of preference" are to insure the least divisive results for the child. An order of preference seeks to preserve in a step-by-step fashion the child's right of access to both parents.

Divorce separates parents.
Divorce should not necessarily separate children from a parent.
Divorce should not be construed into a termination of parental rights action.

Least restrictive alternative doctrine

The doctrine of least restrictive alternative stems from such cases as: Shelton v Tucker, 364 U.S. 479, 488 (1960) "..purpose can not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be ....the least drastic means for achieving the same basic purpose."

Hence, least drastic means...

Joint custody becomes the least drastic means for assuring the child of equitable access to both parents when the basic purpose is the divorce of the parents.

Legislators are encouraged to assure, in an order of preference, that the custody decision should least effect the child's relationship with both parents. An equitable application of joint custody more satisfactorily meets this requirement than sole custody.

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Emotional reaction. Psychological response.

Reordering the priority of joint physical custody into merely an option converts an altruistic stimulus to seek joint custody into preparations for an acrimonious and litigiously expensive battle for sole custody.

A cooperative parent desirous of sharing joint custody must assume an attack-litigation stance if there is no rebuttable presumption for joint custody. Ranking joint custody as merely co-equal with sole custody converts an admirable goal into anguish, apprehension and a defensive resort to self-protection.

Thereby, an otherwise cooperative parent may appear as aggressive (in self protection) and jeopardize their willingness to cooperate amicably in joint custody. A knowledge by parents heading into trial that a court can, has, or will, decree sole custody requires both parents to fight each other. It requires they think negatively. It requires they both defend, and attack .

Adversary litigation in family/domestic cases usually elicits shame, anger, damaged pride and permanent memory scars. Adversary litigation may have merit in other civil and criminal cases as a mechansim for eliciting "truth". Family law cases have less bearing on "truth" than with expectations, hopes, moral judgments and personal security in family relations.

If joint physical custody is a firm requirement of the court as a first preference and presumption, then an accepting, forgiving, and cooperative parent proposing joint custody need not be required to assassinate the other parent.

Social policy goals

Acceptance, forgiveness and cooperatioin are better social policy goals for a state to encourage (by favoring such a parent) than inspiring the alternative of spousal character assassination

Provide the divorcing public an example of what is expected of parents rather than presenting a shopping list of notions to stimulate litigation.

Place the burden of proof upon the parent isolating the child from the other parent in sole custody. Require they demonstrate that such action is in the best interests of the child.

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JOINT CUSTODY

COMPARE THE CONSEQUENCES

THE JOINT CUSTODY ASSOCIATION

Enact legislation for the divorcing public-----not for "the trade".

	Preference/Presumption or Option	
	Ist preference for joint custody, presumed unless, etc	Raising sole custody to equality with joint custody.
	Presumption/Preference	**Option**
National trend:	Up, l979 and since.	Down, since l979 a pre-l978 outlook
'Frequent & continuing contact' by child with both parents:	Yes	No, not necessarily
Guidance to parents:	Yes, what law expects.	No, up-for-grabs. Cultivates possessive potential
Traits cultivated:	Cooperativeness	Litigiousness
Psychological reaction:	Equanimity, anticipates favoritism for forgiveness, cooperation.	High anxiety, need to attack/defend to assure access
Child's reaction, pressure on child:	Less	Unstable, possible parentectomy.
Child encouraged choose,	No choosing necessary, Less guilt	Fawned on to choose, lifetime guilt
Promotes joint custody	Yes	No, not necessarily
Mediation stimulus	Yes, Presumption begets mediation	Unlikely. Focus to "winning" litigiously.
Litigation stimulus:	Less likely, unnecessary for for forgiving, cooperative parent	Increases likelihood, uncertainty breeds

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THE JOINT CUSTODY ASSOCIATION

IMPLEMENTATION

Following-up legislative enactment of joint custody.

Twenty actions comprising a program of assistance and monitoring to assure forthright implementation of joint custody statutes.

Distribute (1) Acquire and circulate Joint Custody Association materials endorsing and explaining joint custody.

(2) Initiating Joint Custody Planning (A Joint Custody Association publication)
Distribute to judges, counselors and the divorcing public.

(3) Decree or Agreement, Provisions & Clauses (A Joint Custody Association publication)
Distribute to judges, counselors and divorcing parents.

(4) A reading list of available library and bookstore publications (available from the Joint Custody Association) should be distributed.

Adopt (5) Offer to create and distribute an explanatory brochure. Examine, and utilize, the brochure now being distributed to every divorcing parent passing through the Los Angeles Superior Court system and which was drafted by the Los Angeles Committee to Implement Joint Custody.

(6) Make available for viewing the television film "You're Still Mom & Dad" which was also created to be seen by every divorcing parent passing through the Los Angeles Superior Court system. (Preview copy available for viewing from the Joint Custody Association.)

Counsel (7) Offer to counsel divorcing parents on the procedures and intent of joint custody.

Create (8) Name and address list compilation of local-area parents achieving joint custody in order to protect their status and as an interested group if additional legislative action becomes necessary.

Monitor (9) Maintain records of court-decree results to ascertain the consistency of adherence to your new joint custody statute. Focus on what each parent sought upon entering the court system and what was decreed upon exiting the court system.

One year later, hearings (10) If there has been insufficient courtroom implementation of joint custody, seek public legislative hearings (either interim, or during-session hearings, both geographically convenient and at the state capitol) examining the family court judicial record at implementing the law.

Traditionally, you will find an on-going problem of competition and rivalry between the elected legislative members of your House and Senate Judiciary Committees on the one hand, and the judiciary branch and implementing judges on the other hand. The turnover rate of legislators elected to brief sessions as compared with the longer tenure of judges requires the legislative judiciary committees to periodically review, and insist, through hearings, the implementation of laws previously passed. The legislature is the lay public's only access to change of the judicial system.

(11) Urge more direct, unambiguous, forceful implementation through additional legislation, if necessary. See below

Testimony before the U.S. Commission on Child and Family Welfare, by James A. Cook, Joint Custody Association, May 9, 1995, San Francisco, California.

JOINT CUSTODIAN
May, 1995

IMPACTING PUBLIC POLICY THROUGH JOINT CUSTODY AND CHILD SUPPORT

Contents

Public policy is akin to nailing jello to the wall.

Hard to capture, constantly changing, and subject to numerous influences.

I will not attempt to confine all the parameters.

Instead, I will identify a few of the more significant influences within the lifetimes of the currently living population concerned with custody and support issues.

Furthermore, I contend that most of the public is intelligent enough to respond logically to dilemmas, as they perceive them. Among those response mechanisms could be, can be, altruism.

Joint custody is what I typify as "creative altruism". I'll be making a few remarks on whether that altruism is surviving, or drowning. I'll close with some allied observations about child support enforcement proposals.

I'll attempt to convey this sweep before rigor mortis sets in on the body politic.

At least ten significant public policy developments are governing actions and reactions to family dilemmas by today's adults. I nominate:

Equality of civil rights. For the past forty years the single most dominant political imperative driving American domestic policy has been, and is, that of the equality of civil rights. Most of the public endorses the concept of equality for the races, for the sexes, for the ages, for the religions, and as now evolving, for children as well.

Decades ago, some academics still debated whether equality was suitable, whether the deprived could accommodate it, whether "it would work?" That reaction is now seldom heard. The dedication is toward making equality work. The talents of analysis are focused on dissolving the obstructions rather than accumulating the statistics about failures of equality.

No-fault divorce. The 1969 legislative session in California debated, and adopted, the concept of "no fault divorce" which, thereupon moved across the country in the ensuing decade and a half,

"No fault" drastically changed the perception, by the public, of what was expected of marriage and divorce. In effect, it did wipe away the goals and concepts to which the conscientious citizen could dedicate themselves in expectation of preserving their marriage and family.

With "no fault" that ball-game was handed over, so to seak, to the party most desirous of leaving and there was virtually nothing the conscientious parent could do to forestall divorce. The power was in the hands of the party desirous of leaving. Albeit, the party 'left behind' was encouraged to rationalize that, after all, they wouldn't want to live with a mate who did not love them nor want to live with them, would they?

Although most of the sleuthing and accusation that typified fault divorce disappeared...because it wasn't relevant....there were still attempts at reaction, of roll-back, and of using fault-divorce tools. For over a decade some judges were temporarily tolerating the accusations that typified fault divorces while still trying to convince divorcing couples that the accusations were irrelevant...the divorce was going to take place anyhow....and that those accusations had less influence on allocating the spoils of divorce than they used to.

Proper forum ?

Too often, Federal agencies and Congress will sidestep responsibility for discussing or receiving recomendations regarding family law issues, contending that such issues are reserved as the responsibility of the states. On the other hand, states also sidestep an examination of these issues, contending that the state is subject to Federal mandate, cost and reward incentives and a Federal welfare policy.

From both forums, state and federal, we need recognition of the issues and problems as well as action by both state and federal agencies in resolving these issues.

Among the mechanisms: "Sense of Congress" addenda to federal Acts, and from agencies, the departments, the Presidency, and state equivalents: guidelines, directives, and the scheduling of seminars, conferences, work sessions, reviews of statutes, audits of performance, and distribution of model bills and procedures.

The intent of this testimony is to nurture that process with specific suggestions.

JOINT CUSTODIAN. News and commentary from the JOINT CUSTODY ASSOCIATION, a non-profit association concerned with the joint custody of children and related issues of divorce, including research, information dissemination and legal and counseling practices

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Turmoil of influences. Meanwhile, back at the raunch:

Divorce rate was climbing rapidly in the 1970's.
Wives were filing in increasing numbers.
At the close of the fault-era the divorce filing was about equal between wives and husbands: but by the mid-80's approximately 80-85% of the divorce filings were by wives.
No-fault meant either parent could demand divorce upon filing.
Studies bemoaned the consequences for children.
Homicide and snatching were punishable taboos.
Visitation could be decreed, specifically.
Presumably either sex could be custodian.
Equality was an acknowledged intent of public policy.

The public policy was ripe for resolution. Perhaps even a solution.

Fathers' groups of the 1970's & early 80's. All of these public policy impacts, both intended and unintended, inspired a weed-patch growth of scattered 'fathers groups' around the country.

Overwhelmingly, they were dedicated toward helping being-divorced fathers to obtain sole custody. That goal was the 'group's' logical course of action from their reading of the intended, and coincidental, public policy impacts of the two previous decades.

However, only rarely were such groups effective in aiding a member to successfully achieve sole custody. When, and if they did, the victor had an unofficial blessing as a leader.

Hope ran ahead of reality.

Enter: Joint Custody. Confusion, and exploitation. What is this notion of 'joint custody'? Given the environment and policies enumerated above, at last individual fathers might have an opportunity to achieve sole custody (the only custody disposition sanctioned by law throughout the nation)....and then along comes this proposal to give-up, give-in, forego total victory, and tolerate the opposition in joint custody. Sounded like an idea for wimps.

So, when I came along proposing this procedure...and public policy goal...to various father's groups, I was extremely unpopular, a traitor, an air-head altruist, and an enemy of realists.

Consequently, it is with considerable appreciation, after many months of promoting the joint custody expectation, that a father's organization in San Diego in 1977 became the first, to my knowledge, of groups endorsing the concept.

California wasn't first,except that.... The California legislature debated joint custody during 1977 (when the quest was temporarily halted because of a demand that both parents agree to joint custody, thereby placing the entire leverage with the most recalcitrant parent) and in 1979. At that time, at least four other states had joint custody available (though not stressed nor preferred) in their statutes.

California's was an exception insofar as creating, and implanting, a statement that it is the public policy of the state to encourage frequent and continuing contact by a child with both parents following divorce or separation.

Order of preference

Furthermore, California had an "in the following order of preference" provision. That provision had been a part of California family law even before the Family Law Act of 1970 that introduced no-fault divorce and remained in the '70 Act.. "Order of preference" stems from several U.S. Supreme Court admonishments that a decree should be the least divisive solution given the issue at hand. Since the issue at hand is the divorce of parents (not of the child), the least divisive solution for the child should be the least separation from parents. Therefore, before the advent of joint custody, the least divisive solution was for custody to a parent, thence to a grandparent or nearby relative, or subsequently to a home in which the child had been living or a public agency.

Thus, joint custody was being proposed as the least divisive solution before recourse to a sole parent custodian. There is, at least in the California version, a slight ambiguity due to punctuation and the lack of a "1,2" step indication as to whether there is a clear-cut preference for joint custody.

Rebuttable presumption

There is, in the California version, a presumption for joint custody if both parents have already agreed. Although many proponents would prefer to have the "rebuttable presumption" concept favoring joint custody throughout, approximately two/thirds of parents being decreed joint custody (in California) have agreed prior to the final courtroom appearance on the issue.

Psychological advantage of "preference" and "presumption"

In the usual divorce situation, primarily, one parent seeks the divorce; the other parent is reluctant and inclined toward preserving the marriage and family.

If there is no statute inclination, by "preference" and/or "presumption" for joint custody, then the parent who is less inclined to litigate, less inclined to accuse, less inclined to"make matters worse" must also initiate a litigious fight to achieve some degree of custody access for fear of losing out altogether. Hence, the lack of "p & p" increases, unecessarily, the intensity of litigation.

On the other hand, the statute existence of "p and/or p" means that the accepting, forgiving and tolerant parent need not litigiously attack. The burden of proof, to demonstrate that joint custody is not in the best interest of the child, is upon the party who is most desirous of sequestering sole custody. Sole custody can be achieved, but it must be done through satisfying the criteria of "best interest".

Since cooperation is preferred in joint custody situations, the artificial generating of litigious conduct by an otherwise accepting parent runs the risk of appearance of non-

How many achieve it; when and why

Increased implementation

The legislative passage of joint custody does not necessarily imply immediate comprehension and decree, however.

At the conclusion of the first two years of implemented law, it was estimated that only about 3% to 5% of the families were being decreed joint custody.

By the end of the first six years of implementation, nearly 80% (79. and a fraction) of all divorce decrees (in California) were resulting in joint custody.

Passing expectations; when originally envisioned and legislated it was anticipated that joint custody might apply to about one/third of all divorcing couples. However, the concept appears to have been applicable, now, to well over two/thirds of all cases.

The numerical volume of joint custody decrees is increasing. It is important to recognize that virtually any problem or disenchantment could occur in a "joint custody case". That is by coincidence of the large numbers and not necessarily because of specific issues unquestionably related to the viability of only joint custody. Later, I'll caution again about confusing volume of cases with joint custody.

Skeptics about the volume to joint custody decrees will be demanding a breakdown between joint legal, and joint physical, custody decrees. That information will be illuminated, below, in "Varying time accommodation" and "Substantial equality".

Eventual joint custody, nevertheless

One particularly exhaustive survey (Mnookin & Maccoby) revealed that, in addition, 13 months after a decree of sole custody, 15% of those parents had voluntarily switched to joint custody, nevertheless.

Majority voluntarily adopted

Following statute adoption and implementation, 62% of parents were voluntarily opting for joint custody in their transformation from the date they antagonistically filed against each other and by the date of their appearance for final court decree.

Attorney facilitated

24% of joint custody decree/decisions were achieved by what we'd like to characterize as a new breed of facilitating attorney through negotiation. Attorneys had become the second most significant influence for achievement of joint custody, following the 62%of parents who were deciding upon joint custody, voluntarily.

Varying time accommodations

34 different time schedule proposals for dividing joint physical custody time that provided children with access to both parents had been observed and recorded by the Los Angeles County court system.

solving rather than reliance on litigation and the exopectation that the ciurt would be punitive toward the opposite parent.

Substantial equality

20% of decisions decreed 'nearly equal' in pnysical custody time. (In that study, 'equal' was 5 to 9 overnights with each parent in average two-week period). A study of court-conducted mediation indicated 4% 'equality', (probably limited to exactly 'equal') and may also indicate agreeing couples and privately mediated cases not seen by Conciliation Court are more likely to achieve equality.

Consequences? Who are these people?

Conscientious family preservers

76% of the individual parents seeking joint custody did not initiate nor file for divorce. 72% of those joint custody seekers sought reconciliation after receiving a divorce summons.

The individual parent most interested in achiving joint custody tends to be the parent most interested in preserving some form of family life and an opportunity to be involved in the children's welfare.

Satisfied parents

85% - 90% of joint custody families report "highly satisfactory" judging from a 200 family survey. 70% of those parents not awarded support in their particulary joint custody situations reported "satisified" nevertheless.

Voluntary extras

There is a three times greater payment of extras, voluntarily, by joint custodians, as compared with those parents in sole custody decrees.

60% of joint custodians contribute such "extras" as camps, music lessons, allowances, car payments and repairs. Only 20% of non-custodial parents in sole custody situations were found to be paying such extras.

Model of expectation for parents

"We too often forget that one of the most noble functions of law is to provide a model of what is expected of people. I believe that the approach of (Joint Custody Assn's legislative bill), creating a "preference" for joint custody, is the best alternative." (Professor Jay Folberg, at that time a Lewis & Clark College of Law professor and became President of the Assn of Family and Conciliation Courts.)

Abuse reducing

Divorce separates parents potentially abusive of each other; restraining orders restrict contact. Neutral drop-off sites and parenting classes further dampen the likelihood of abuse. All such mechanisms are applicable in both sole, and joint, situations.

However, joint custody further reduces the frustration that foments abuse.

"best interests" : safety, health, clothing, shelter, warmth, food, rest, love, education, and an opportunity to benefit from the living standard and mode of life in the households of both parents.

Overview from the specialists

Majority of studies

21 studies and 86 journal articles qualifying for academic and professional journals, between 1978 and 1989, discussed joint custody. 9 of the 21 compared, to a limited extent, the results and consequences of joint and sole custody. Overwhelmingly, the majority endorsed joint custody. The most derogatory comment: "joint custody was no worse than sole custody."

Professional support

A survey by a marriage and divorce professionals' newsletter surveyed membership and found: 77% of professionals support joint physical and legal custody; 81% support joint legal custody; 74% of professionals support joint physical and legal custody even when parents are antagonistic to each other.

Warring is least beneficial

Continued warring by the parents is the least beneficial for children. On that, most professionals agree.

Sole custody does not stop the warring, however. Sole custody often assures the antagonism that continues the warring.

Joint custody removes some of the warring by assuring less frustration in access by the children to both parents.

Shortcomings of the warring objection

Warring between parents can be damaging to children, regardless of sole or joint custody.

Inadequate analysis. Some studies of "warring" have failed to analyze an important ingredient, however. That is, an examination or itemization of what the parents are warring about. Failure by one parent to allow access emerges as the most frequent reason for warring. More firmly decreeing the availability of access could diminish this impetus to warring.

For instance, a few of the persons in studies of "warring" (parents repeatedly returning to the courts) have eventually found their way to the Joint Custody Assn where we inquired what they were warring about. Most often cited was the refusal by one parent to allow access, despite a decree of joint custody or despite a sole custody order that decreed visitation.

The issue, thereby, was not that exclusively of joint custody but an underlying need for an enforceability of access which was requiring parents to continually petition the courts.

Abnormal cases.A few studies suffer from having been an examination of the more serious cases referred by courts. They suffer also from encompassing few subjects or clients. Thus, they often represent a compartively few number of parents already in recognizeably severe situations. Such studies fail to compare with a sample of numerically larger number of otherwise average or normal cases.

We must caution against drawing conclusions from pathological cases in dictating procedures for the otherwise average public.

Numerically larger. Furthermore, as we cautioned earlier, as joint custody becomes more widely decreed, an ever-larger number of parents will emerge from the court system with joint custody decrees. In the case of problems, we must caution against merely placing blame with joint custody rather than examining for problems found in divorce relationships, regardless of the form of custody.

To simplify: We could easily conclude: 'marriage causes divorce.' While true, it's inadequate. We need to know more about the specific problem so as to improve relationships in both joint and sole situations.

Warring survivors. Analysis (M.Schaefer,PhD,U of Mich Psychiatric Hospital) was made of difficult "warring" sole custody cases. Findings: children who best survived such warring situations, nevertheless, were those who had continued and substantial access to both parents, developed their own relationship with each, their own opinions about each parent. (Not an endorsement of warring; but warring is insufficient reason to foreclose access.)

Non-cooperation does not negate

Cooperation (for joint custody) is preferred, but not categorically essential. When "failure to cooperate" is touted as a reason not to decree joint custody, this could inspire the recalcitrant parent to generate non-cooperation in hopes of achieving sole custody.

The need is to determinme who is being uncooperative and why, not to provide a convenient excuse to sabotage joint custody.

In cooperative cases, judges need not decree so many specifics.

In uncooperative cases more specific details are generally decreed.

The usual practice: at the outset decree the fewest details, if couples return to litigate, decree more specifics. The less intrusion into the family, albeit divorced, the better. But, if they can't resolve it on their own time, decree.

Applicable to the unwed

Unwed births are rising rapidly. Twenty years ago most of the individual parents getting in touch with the Joint Custody Assn were from wedded situations.

Nowdays the overwhelming majority getting in touch with us are from unwed situations.

Presumably the fastest rising 'family law' statistic is that of the more numerous Caucasian unwed births, reportedly 25% of Caucasian births. In the less numerically large Black population, unwed births are reported as 55%.

CHILD SUPPORT ENFORCEMENT EVALUATION

TIME FOR 'FINE-TUNING', BALANCING, EQUITABILITY AND A SEARCH FOR WIDER ACKNOWLEDGMENT OF GUIDELINES

DECADE DEVELOPMENT

For over a decade America has eased, politically, toward increased dollar amounts of child support, toward support guidline formulas (rather than litigated support) and for more universal enforcement mechanisms (rather than leaving the effectiveness of collection to the resources of the recipient-parent).

We believe it is not likely that the decade's trend will be completely obliterated.

However, now that the reaction problems have surfaced, the time is at hand for making corrections.

The need, now, is for:

- "Fine-tuning" of guidelines,
- Recognizing the legitimacy of problems that have emerged.
- Balancing the equities involved,
- And thereby create an environment that will achieve wider acquiesence by both recipients and payors, rather than cultivating an open warfare between recipients and payors.

That, then, is the intent of the following.

CULTIVATING WHAT WORKS

Also, for over a decade, the thrust has been toward increasingly imaginative punitive enforcement. The Nation is cultivating vindictiveness rather than creating an environment for people to work out their problems between themselves.

Meanwhile, instead, the focus of our Association has been, and is, an increased use and decree of those mechanisms and concepts that elicit more-nearly voluntary payment of support and that inspire larger amounts more frequently paid. Those examples are found throughout our material.

LESS EXPENSIVE

We also prefer to propose those solutions that are less costly to the taxpayer, less demanding of new bureaucracies, and less expensive for the public making use of support services.

GUIDELINES, YES/UNIFORMITY, QUESTIONABLE

We favor guidelines, openly established with informed debate. Guidelines are far better to give separating parents an advance impression of what is likely to occur, rather than the previous era of litigated support when recipients had grandiose expectations of what they could achieve and paying-parents were frightened beyond reason about how they would be damaged in litigation.

However, statewide, or nationwide uniformity could be unreasonable for parents while being administratively simplistic and judicially sterile. Rigid simplicity overlooks the economic variations.

Example: While sitting through Judicial Council hearings I was struck by such problems as the mother and child who had moved to San Francisco (one of the Nation's highest cost-of-living communities) while the father was a field hand in Stanislaus County grubbing for minimum wage. The ability to consume, and the ability to provide didn't mesh.

Also, California has counties that are poorer than some states; and it has other enclaves among the richest in the Nation. At its longest, California is equivalent to the distance between Boston and Savannah. It is not easy to imagine that all the states between Boston and Savannah could readily agree on a single guideline, considering the various economies that distance encompasses.

Instead, we are inclined toward guidelines developed around economies of a region, of a group of counties, or of a county, or of smaller states, so that the court has a more immediate grasp of whether the parents are subtlely out to extort each other through personal decisions of where each lives, or where each works.

Policy of Joint Custody Assn:

To encourage payment of child support, first, the system should examine and implement those practices which are already demonstrating comparative success at achieving more nearly-voluntary payment of child support. Only thereupon, after implementing the procedures that have elicited payment, should the system proceed to impose the punitive enforcement and collection procedures that require tax-supported bureaucracies to extract payment. But, those enforcment measures need to be equitable, cost-effective, reasonable and financially feasible.

We do not assist obligated parents to avoid support altogether. We do believe in monitoring the collection system to assure that it is rational and not the tool of the vindictive, however.

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EVALUATING MOVES OUT-OF-STATE

Moves out-of-state by custodial parents with the child inspire the most frequent and extensive delinquency in payment of child support and also bring about the laborious inter-state pursuit of support.

Individuals are, presumably, protected in their right to move. Less clearly understood, however, is the right of the child to frequent and continuing contact with both parents.

Consequently, the Joint Custody Association believes that there should not be a categorical provision of whether a parent can, or cannot move; however the Association is engaged in an analysis of criteria which could become a checklist of qualifications and responsibilities in determining whether a move is acceptable, necessary, and with minimum damage for a child's relationship with both parents.

ENFORCEABLE VISITATION QUID PRO QUO

As a prerequisite for participation in federal aid programs, enforceable visitation provisions should be enacted in state statutes and pursued with the same vigor as child support enforcement and collection. Generally, visitation enforcement provisions are less costly to administer than support enforcement, and the existence of visitation provisions would dispense with the arguments, whether right or wrong, that lack of support payment is the justified reaction to lack of visitation.

STEPPED WAGE ASSIGNMENT

Wage assignment by degrees rather than categorical. For instance: First offense: for amounts past due. Second offense: 2 months delinquency in two years, wage assignment for one year. Third offense: 2 months delinquency in three years, wage assignment for three years.

INCENTIVE TO LIFT WAGE ASSIGNMENT

The categorical imposition of wage assignment, from the outset and with no relief until the child's majority has not inspired any conscientiousness in payment. In fact, the hopelessness of such a draconian provision causes some paying-parents to assume an attitude of "alright, catch me if you can find me."

Voluntary and regular payment of child support is less costly for the system. To achieve that economy, we need provisions for the lifting of wage assignment upon conscientious compliance and we need not impose wage assignment until delinquency does occur.

PARENT LOCATION

Strive for equitable application of the parent-locator files system for location of children hidden from access for visitation as is used for child support collection.

FINANCIAL COUNSELING

Financial problems are considered one of the three major causes of divorce.

Make financial counseling available for both parents upon dirvorce, and thereafter when needed, as a means of clarifying income and expense and the receipt and expenditure of support funds. Psychological and sociological needs are frequently counseled, but there is rarely, if ever, any consideratioin for the morale factors needed to inspire production of income or an analysis of justification for expenditures.

FOCUS ON THE NEEDY

Enforcement and collection emphasis should be directed, and redirected, to the needy.

There has been a tendency to dissipate collection and enforcement efforts toward the less needy, largely because they are more articulate in forcing collection procedures, to the detriment of improving conditions for the truly needy. Question seriouisly whether the poor are deprived of services when middle-income and wealthier parents can utilize tax-supported collection enforcement services rather than relying upon the conventional judicial system.

CHILD CARE SET AMOUNT

We are coming to the conclusion that it is wiser to set a standard child care dollar amount and allow payment of the amount, even to 'child care' relatives when child care is obviously required, rather than playing catch-up with fluctuating child care claims. Establishing amounts predicated on what a parent may, or may not, be actually paying contributes another possibility for subterfuge.

PERSONAL PRODUCTIVITY

The economic well-being of this country depends on the incentive and desirability of personal productivity. However the punitive nature for a former mate, who may not have married the wage earner or whose relationship with the wage-earner was many years ago, whereby the recipient can continue to claim a portion of increases in the obligated parent's income is a disincentive to economic productivity. If we persist with this policy, it behooves obligated parents to relax, and not be so diligent at increasing their income, until the obligation has dissolved in future years.

We need to either drop the claim on future income increases (allowing the obligated parent to make their own, personal expenditures upon the child instead), or to increasingly drop the percentage of obligation as income increases.

We need to stimulate personal economic productivity, not discourage it.

JOINT CUSTODIAN

How does the wording of a statute induce, or reduce, litigation?

Effectiveness of joint custody at reducing judicial burden.

Several states are grappling with the economic problem of sufficient funds to support county superior courts if divorce/custody trials increase in duration time.

Does joint custody reduce custody litigation, or is it at least no more demanding than sole custody?

What is the litigation/cooperation impetus when joint custody is first in an order of preference, or a rebuttable presumption, or if there is no preference for sole custody (as the 1988 modification in California law added)?

Volume (in California):

Currently, about 185,000 family law civil filings annually.
(about 27% of total civil filings.)

1987-1988 (joint custody era) Family law civil filings in Calif: 179,252,
(27% of total civil filings.)

Ten years ago, '77-'78 (sole custody era) family law civil filings; 175,160,
(33% of total civil filings.)

Dispositions:

1987-88. Before trial family law dispositions or stipulations: 95,567
(Increase of 25% over '86-'87)
1986-87. Before trial family law dispositions or stipulations: 75,552
1985-86. Before trial family law dispositions or stipulations: 67,163

Contested dispositions:

1987-88 (joint custody era) Contested family law dispositions: 9,478
(a drop of 24% over '86-87)
and, **19% less than sole custody litigation era of 1977-78.**
Ten yrs ago, '77-'78 (sole custody era) contested dispositions: 11,961

Who gets joint custody in decree?

Most recent, numerically largest survey reveals almost 80% of all custody/divorce decrees result in joint custody.

In-so-far as time allocation for a child with both parents:
(and considering as many as 35 different ways of dividing the "time" with each parent,)
20% of all custody/divorce cases result in nearly equal split of time.

By "nearly equal split of time" we mean:
Child has between 5 and 9 overnights with each parent in average two-week period.

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JOINT CUSTODIAN

TIME

Allocating joint custody "time".

From the **Joint Custody Association,**
a new approach to deciding allocation of "time" in joint custody cases.

Overcoming the apprehensions, recognizing the practicalities, and taking the bogey-man out of "exactly equal 50%-50%" joint custody time.

The 'equality movement', which was one of the dynamics that spurred joint custody into existance, also ignited the quest for a 50%-50% split in time for the child with each parent.

However, 50%-50% has some practical limitations and tends to overlook the underlying apprehensions which "visitation" can diminish. Not every parent can accommodate 50% of the time. Many want the assurance and status of joint custody but have limitations on their available time.

Furthermore, the quest for 50%-50% with its focus on fairness and equality seems to have overlooked the underlying drive that spurs parents in such a quest. That drive is usually a concern and a desire to be recognized as equal, to be a significant part of the children's lives, and to enjoy recognition as an acceptable parent while taking nothing away from the opposite parent's equal share.

The 'least available parent', the 'most otherwise obligated parent.'

In most marital and divorce situations at least one of the parents has many outisde obligations and work, schedules to tend, and demands upon their time largely to survive in an economics-driven society.

Therefore, on behalf of protecting each child's "frequent and continuing contact" with the busiest parent, we typify this proposal as "the least available parent."

Procedure

1. Determine which parent has the largest number of time obligations above and beyond being with the child.
2. Establish the desirability of assuring the child the maximum amount of time with the "least available parent." Obviously, the available time is likely to be less than 50% of all time available.
3. Allocate all the possible time available from the "least available parent" for joint custody time with the child (provided it is 50% or less of the total time.)
4. Thereupon , the opposite parent is allocated the remiander of the time as their joint custody time with the child.

Hence, in such a situation, a caretaker parent who might otherwise complain about the inroads of an exactly equal 50%-50% split of time is likely to wind up with more time available to them than 50%-50% because of the outside obligations of the busiest parent.

Furthermore, of particular advantage, this procedure honors and respects the productive economic dedication of a 'breadwinner' by protecting their 'available' joint custody time with the child

Underlying goal: On behalf of the child's best interest, preserve as much of the busiest parent's time with the child as possible. All parties will benefit from such a scheme.

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JOINT CUSTODIAN

April 1991

RELITIGATION & JOINT CUSTODY

Significant policy considerations.

Some skeptics ask, 'Is it true that the relitigation rate for joint custody is less than that for sole custody situations?"

It is important to know why this is so, and to understand the ramifications.

NOTE: Trial and appeal is one of the means whereby a democratic society can seek justice. Hence, not all relitigation is necessarily 'bad.' In the early stages of a recent legal concept, relitigation and appeal is a means of achieving definition and clarification. On the other hand, the process can be abused and become a costly nuisance for a publically tax-supported system. With this in mind, you can draw your own conclusions about the following.

NEW CONCEPTS RAISE QUESTIONS

After the advent of a new statute and a new concept in family law there is, customarily, a series of lawsuits testing the definition, the scope, the intent, and the ramifications that may not have been spelled-out in the new law/concept.

This "testing" of the law was particularly evident, for instance, immediately following the implementation of "no fault" divorce in California in 1970 (and other states in subsequent years). There was a rash of cases testing the meaning of "no fault" and the extent to which surmised fault could be introduced in divorce cases, nevertheless, as a means of gaining concessions or advantages in property and funds distribution.

Almost invariably, new conepts in family law inspire a follow-on rush of cases. Thereupon, the concept is further refined by case precedent law.

JOINT CUSTODY TEST CASES

In California, following the advent of a preferred joint custody in 1980 there was a modest rush of cases testing such hypothesis as whether a joint custodian could skip the state and jurisidiction with the child since the parent was, in fact, a custodian...albeit a joint custodian. Eventually, such cases were settled in protecting a child's right to access to both parents and the custodial access by both parents limited the ability of an individual parent to abrogate joint custody rights without a hearings or written agreement with the alternate parent.

VOLUME AS AN INDICATOR OF CASES

Overwhelmingly, in California for instance, the number of decrees awarded are joint custody decrees rather than sole custody decrees. Eventually, most case precedents and relitigation will be of joint custody cases and not sole custody cases because there are so few sole custody decrees. For this reason, a decision of merits cannot be made on merely the number of joint custody relitigation cases versus sole custody cases. The real factor is the content and impetus of the cases, regardless of whether they are joint or sole. Some classic, continuing divorce issues continue in both joint or sole custody cases.

JUDGES, SKEPTICISM INTO SUPPORT

Judges became supporter s of joint custody, predicated largely by the demonstration that the new joint custody statute did not, in fact, create a "rush" for the courthouse as they had anticipated. Until the legislative passage of joint custody in California, most judges, and their Association, opposed joint custody and the proposed legislative statute. Upon implementation, however, judges, and their Association, have supported joint custody in California and have proposed no major deviation from the basic intent of the original statute.

STRUCTURED DECREE/AGREEMENT

Among the earlier "test" cases a contributing factor to relitigation was the lack of "spelled-out" conditions of the joint custody agreement/decision. Such cases primarily sought definition.

Since then, the single most effective service by the Joint Custody Association has been in providing a directive, "Initiating Joint Custody Planning", which outlines questions that parents need to ask themselves, and each other, to arrive at a point where the structure can be developed. Thereupon, the Joint Custody Association also provides a "shopping list" compilation of clauses and phrases for decrees and agreements which helps the parents construct, or a judge to create, a structured specified detailing of the practice of joint custody for a particular family.

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INITIAL PRESUMPTION:
EQUALITY & PROTECTION OF PARENT-CHILD BONDING*

THE JOINT CUSTODY ASSOCIATION

*Source: "Joint Custody: Recent Research & Overloaded Courtrooms Inspire New Solutions to Custody Disputes"

by Diane Trombetta, PhD
Journal of Family Law
University of Louisville School of Law
Volume 19, Number 2, 1980-81

The first, most basic step to take is to change the starting point or premise for determination of child custody, thus changing the nature and course of the process itself. Instead of a win or lose, all or nothing presumption, there must be a presumption of consensus, equality and the protection of parent-child bonding. The courts in effect must say to parents, "We don't care how you feel about each other. As long as there is no clear, convincing evidence that either of you is abusive and unfit to be a parent, our assumption is that you are both qualified to continue as parents, albeit under different circumstances."

Presuming joint custody as a first stage in resolving a custody dispute eliminates the necessity of proving which parent should "have" the children; there is no battle because there is no contest and no prize to win. There is no loyalty conflict because children do not have to choose between parents and one parent does not need to convince the child that the other parent is less fit. Thus the kinds of problems that exist under the present system—courtroom litigation, friends and relatives taking sides, thousands of dollars spent on attorney and expert witness fees and difficulty in enforcing the resulting "treaty"—all would be reduced substantially or avoided by this simple, clear legal presumption of equal protection of the parental status of both parties. This parallels our presumption in criminal cases that one is innocent until proven guilty. At present, however, custody statutes, by stating that children will be awarded to either parent, are saying in effect, "We must choose between you; one of you must be judged less fit than the other; somebody has to be guilty." Ironically, while we criticize married parents for not sharing the care and responsibility for their children more equitably, we actually prevent divorced parents from doing so. Of course, a presumption in favor of joint custody will not mandate such an arrangement in cases where one parent relinquishes custody voluntarily or both parents agree that sole custody is preferable.

WHY DO YOU OPPOSE JOINT CUSTODY?

As an aid to counselors, the following may be distributed to divorcing parents to hasten recognition of underlying reasons for opposing joint custody.

Excuses and rationalizations disguise motives for opposing joint custody and for seeking sole custody.

Therefore, without antagonizing through personal questioning, this itemization will convey the reasons most frequently recognized by the public as causes of a parent's refusal of joint custody.

The intent of this listing is to assist all parties in the comprehension of intuition, of motives, and the tendency to play-act or live-out a hidden agenda; a process which is often accompanied by the creation of socially-palatable excuses to forestall the alternative of an otherwise equitable or more humane solution such as joint custody.

WOMEN opposing joint custody and desirous of sole custody often do so for the following reasons, in addition to validation as a mother and for their-interpretation-of-love of their children.

1. Money, greed — Sole possession of the child tends to reinforce the follow-on decision: an assured flow of money toward the parent retaining sole custody, A failure to require accountability for the expenditure of child support money increases the appeal of such tax-free income.

2. Leverage — Sole custody is inherently perceived as a useful tool for harassing and demoralizing the excluded parent Sole custody aids in forcing subservience in negotiation (from the excluded parent) at the expense of the child's emotions.

3. Self-righteousness & punishment. — Self-centeredness begets self-justification. Therefore, a court decision affirming sole custody becomes a convenient substitute and personal glorification in place of a natural law or an ethical, religious or moral preference for shared parenting.

4. Fear of knowledge. — A fear that the child of divorce might become more knowledgeable about the other parent and more understanding and sympathetic of the other parent stimulates a necessity to covet, 'guide', and channel a child's thoughts through sole custody.

5. Forestall weaning. — Sole custody forestalls 'weaning' the child from solely the mother's influence and attentiveness and to permit access to a father's presence, influence and counter-balance.

6. Unilateral scheduling. — Sole custody eliminates the need to accommodate the other parent in scheduling, decision-making, coordination or cooperation in child-rearing. Selfishness in decision-making can prevail with the 'blessing' of a court's award of sole custody.

7. Use of services. — The services, attentiveness, or 'reflected alter ego' by having a child solely at one's command are enhanced through sole custodianship. Those 'services' extend across a spectrum from being a love-substitute in place of the excluded former spouse to the simple performance of chores at the command of the sole custodian.

6, Potential sexual orientation. — If the sole custodian has an ingrained or adopted distaste for the opposite sex, the possession of sole custody without meaningful interaction by the child with the other parent can be a mechanism for extending those presuppositions about the opposite sex to the next generation.

marriage and divorce today

The Professional Newsletter for Family Therapy Practitioners

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JOINT CUSTODY BEST ALTERNATIVE WHEN EX-SPOUSES ARE HOSTILE: NEW RESEARCH

Joint custody is typically viewed as a viable post-divorce option only when former spouses can be cooperative parents. Now a new study reveals that joint custody is the best option when there is a hostile and antagonistic post-divorce relationship between former spouses. That is the conclusion reached by *MDT* subscriber Dr. Sue Klavins Simring, D.S.W., based upon her research with 44 divorced and/or remarried fathers with legal joint custody. (See sidebar for more details on study organization.)

STUDY ORGANIZATION

Simring bases her conclusions on research exploring the fathering experiences of 44 divorced and remarried fathers with legal joint custody. All of the fathers had at least one child under the age of 16. The fathers filled out a questionnaire and were interviewed about the frequency of their participation in various child care activities, and their perceived influence on their child's growth and development. Three fathering measures were derived from the questionnaire. The father's perception of the relationship with the mother (coparenting relationship) was correlated with the fathering measures to determine if the amount of interaction between coparents and the amount of support or conflict in their relationship was associated with high or low scores on the fathering measures.

Many of the fathers told Simring that they believed that without joint custody, they would have been shut out of any parenting responsibilities for their children. Hostility from ex-wives -- one-third of those interviewed used this term to describe their post-divorce relationship -- would have led to attempts to sabotage relationships with their children.

In contrast with other studies of father's post-divorce parenting relationships, which report on the "disappearance" of a large percentage of fathers, these 44 fathers maintained active and involved relationships with their children. And this positive relationship continued even when a father remarried. The fathers reported that they were satisfied with the time they spent with their children. They felt influential in their children's growth and development.

During the course of her research, Simring found that previous involvement in caretaking for one's child was no indication of post-divorce conditions. Many of these 44 fathers had previously maintained very traditional roles; none had ever been the primary administrator in their home. However, all were able to create a satisfactory home for their children after the divorce. "Their amount of involvement or influence with their children was truly impressive." This involvement is extremely important. Previous research has linked a father's post-divorce involvement with his children with their physical and psychological well-being.

"Joint custody fathers in nonsupportive relationships with their former wives were not undermined in their ability to be with their children, as fathers without custody have traditionally been. Their equal power in joint custody did not give the mother a legal advantage, and thereby prevented her from using that power to control the father's access to the child. The security of the father's legal position allowed him to function as a father somewhat independently of how good the co-parental relationship was. Almost unanimously, fathers advocated joint custody as a means of securing equal legal rights and responsibility for their child, and as a guarantee that they would not be dispossessed from their child's life. Although most of the fathers desired that their children live with them at least half the time, when this was not possible, their legal status contributed to the father's confidence in his position. The confidence, and freedom from the fear of being displaced, helped them sustain their commitment to their child."

Contact Dr. Sue Klavans Simring, D.S.W., Family Solutions Center for Divorce and Custody Consultation, 163 Engle St. Englewood, NJ 07631, 1-201-569-7666

CAUTION. BEWARE.

In joint custody legislation, statutes and decrees

There need not be a primary parent or primary residence

There need not be a principle parent or principle residence

WATCH OUT FOR THIS TRICKERY. UNDERSTAND WHAT IS HAPPENING.

Anti-joint custody:

"Primary parent" or "primary residence" starts the warfare all over again. It triggers attempts at superiority and one upmanship. It inspires last minute litigation to be designated as "primary".

Opponents of joint custody have warped the background reason, and attempt to apply the concept to all custody cases.

The background concept contends (partially falsely) that there needs to be designation of a "primary parent and residence" solely for purposes of collecting welfare aid, exclusively in those cases that are welfare situations.

(The false assumption was that both joint custody parents might consider themsevles entitled to tax supported welfare payments and would cost the government twice as much money if both parents were designated joint custody parents. The imperfectly worded interim solution was to declare (solely in potential welfare cases) that one parent was entitled to designation as a primary parent. Now, we have heard of joint custody opponents who are not likely welfare receipients striving to be designated as "primary parent.")

<u>The better solution; the best solution</u>:

Be sure that legislative bills and statutes have the following wording (not the "primary parent" wording):

" One parent may be designated as a welfare recipient in situations where welfare aid is necessary. "

marriage and divorce today

The Professional Newsletter for Family Therapy Practitioners

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MDT Survey: Majority of Respondents Support Joint Custody

A majority of respondents to *Marriage and Divorce Today's* latest survey reveal their support of "presumptive" joint custody laws. In answering the question, 52.3% said that they supported the passage of such statutes. This contrasts with 37.2% who said that they did not support such legislation. An additional 3.5% did not answer the question at all, while 7% said they were undecided or unsure. Both the "yes" and "no" votes state similar reasoning for their decisions: their belief that joint custody is or is not in the best interest of children.

In Support Of Joint Custody

"Custody disputes are power struggles. Sole custody maintains the conflict. Presumptive joint custody moderates the problems and equalizes the power," comments a Kansas City, Missouri subscriber, explaining why he supports joint custody. And a Los Angeles, California therapist emphasizes "it is clear that children of divorce and separation do better when they have continued contact with both parents."

"Most definitely! Even though a couple may divorce each other, they do not stop being parents. With society supporting both parents, custody will not be used as a weapon and the parents will be more likely to cooperate regarding the children," comments a Philadelphia, Pennsylvania practitioner. "Absolutely! Remember — sole custody doesn't 'work' EITHER when parents don't cooperate! Joint custody works better even with fighting parents. Jo Ann Schulman says the battle 'stops' when sole custody is awarded. Does *anybody* believe that?" questions a father's rights member from Albany, New York.

"Continued interest, participation of the father in parenting is in the best interests of the child(ren). Court-mandated joint custody may need to include mandated counseling to set up joint custody in a way that will work," states a respondent from Providence, Rhode Island.

JOINT CUSTODIAN

November 1997

Marriage education, Marriage testing. Can they reduce the divorce rate?

Is it time for tax-supported, government assisted, marriage and divorce research?

/1 state legislatures considered (during 1996) whether such programs should be legally required or encouraged before granting marriage licenses.

Maryland, Michigan: proposed delay in granting licenses to couples unwilling to take marriage-skills classes.

Alaska, Kansas: Consider reducing license fee as inducement to take classes.

Missouri: An outright mandate died in committee.

165 Questions on
Their personalities,
Backgrounds,
Values,
Aspirations.

Determining which behaviors are most predictive of divorce.

Process to reveal likelihood of long-term incompatibility

U.S. military encouraging married enlistees to attend marriage-education classes.

Psycho-educational arsenal
Communication
Conflict resolution,
Marriage enhancement

John Gottman
Of hi-tech lab, U of Washington, Seattle.

Followed 658 couples:
Several up to 14 years,
Some had intensive observation
(Monitoring heart rate, stress indicators in blood & urine,)

Differentiation
"Static factors"
(i.e.: those they couldn't expect to modify such as age, & economic status)
"Dynamic factors"
(communication patterns)

If they could change the predictors, could they change the prediction?
(Goal:Change patterns learned from their families.)

Stage set for research-based marriage education.

Found that contempt (as indicated by eye-rolling) is one of four strongest divorce predictors.
Others:
Criticism,
Defensiveness,
Stonewalling
90% accuracy in identifying those who would divorce.

David Olson - Univ. of Minnesota
Written survey of couples' attitudes, background, & behavior styles
Combined with demographic data associated with high divorce rate:
Marriage at an early age,
Education deficiency,
Low economic status,
Religious differences

Couples who stayed happily married, higher in:
Realistic expectations,
Communication,
Conflict resolution,
Compatibility

JOINT CUSTODIAN. News and commentary from the JOINT CUSTODY ASSOCIATION, a non-profit association concerned with the joint custody of children and related issues of divorce, including research, information dissemination and legal and counseling practices.

James A. Cook, President 10606 Wilkins Avenue, Los Angeles, California 90024 (310) 475-5352

Markham: Need for communication & conflict-management skills.
Destructive conflict is the most predictive. but the most changeable.
"Interventions" haven't done a good enough job.
Knowing what is dysfunctional is not enough.
Must also study what works in successful marriage.
Premise: Marital happiness depends on way couples solve problems & resolve conflicts thru good communication.
"Wrong" says Gottman
They never do solve their problems.
Happy couples do have problems, year after year.
Instead, they develop a dialogue trying to effect change with humor & affection.
Accepting their partners as they are.
Also, he claims they do not employ "active listening" during conflict.
Happy couples have less negative communication.
Antisocial or borderline personalities, chronic depressives, psychotics, incest & child abuse survivors require different methods.

A model study. Requires:
10,000 couples.(varying ethnic, racial, educat.. economic background & degree of pathology.)
Need $10 million a year for five years.
Skills training at stress points: when 1st child is 3-mos old; after birth of 2nd child; when 1st reaches teen years.

With costs of divorce now in billions annually, doesn't a modest investment in divorce reduction make sense?
(British government financing small pilot begins this year to test marriage-strengthening programs, from skills ed to psychotherapy, to hot lines.)
Represents a clear stand by the gov't.

Long range

Every child born in a successful marriage means one more adult enters the marriage pool with a behavioral advantage. That child, multiplied again & again, reduces size of divorce crisis.

Obvious prudent caution:

Talk to previous husband(s).
Talk to previous wife(ves).

Is "no fault" turning into "no guilt"?

Before 1969, fault-finding was the game to justify divorce and appropriation of spoils. It was awful.

Thereupon, "no fault" placed the entire decision process into the hands of the person wanting divorce. The loyally-married person is powerless to prevent it.

Hence, observors say, 'it's converting into "no guilt".',
to obliterate feelings of guilt for destroying the children's family,
and eliminating the other parent.

Proposing of Joint Custody.

Joint custody implies the proposing parent is willing to forgive, tolerate, cooperate with the opposite parent, and assure the opposite parent will not be eliminated by loss of custody altogether.

Sole custody implies the proposing parent seeks to eliminate the other parent, minimize and control access by children to the other parent, and pave the way for a "moveaway".

Love is a driver in this competition.

Fearful fathers, insecure and threatened with loss of their children's love, are scrambling to find "research" that substantiates joint custody. They're motivated as much by self-interest as by altruism.

Fearful mothers (often, but not always), insecure that the child might love the excluded parent more-so are scrambling to find "litigation arguments" that foretell chaos for joint custody and strangulation of love.

Legislate the higher moral road.
Blessed are the peacemakers.

Customarily, an individual so ideologically inclined as to propose and desire participation in joint custody is less likely to aggressively generate and conduct the attack necessary to destroy the opposite parent as sole custody litigation requires.

A parent proposing joint custody and proposing acceptance of the alternate parent for part-time parenting cannot logically and vigorously contend that the alternate parent is unfit for full-time parenting.

Yet, a legal system that has merely options rather than goals and that pronounces decrees predicated on aggressive adversary litigation perpetuates destructive battles unless that system is instructed with "presumptions," "preferences," and burden of proof upon the most destructive party.

Legislate preference for peace proposals.
Joint custody is a peace proposal.

Endorse a preferance and presumption for Joint Custody.

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ENABLING HIGHER EDUCATION FOR CHILDREN-OF-DIVORCE

JOINT CUSTODIAN
March 1996

College education, vocational training, business start-up, investment or savings

Discretion for judges & paying parents

Educating the post-18-yr old adult children-of-divorce through existing child support

Disclaimer: This legislative proposal, by itself, does not reduce nor increase the child support dollar amounts of state child support guidelines, as currently constructed

Need: Improved assurance of available funds for the minor, or adult, children-of-divorce when the moment of need arises.

Lack of funds for post-18 education for children of divorce or separation:

> Reportedly, children of divorce are less assured of funds for post-18 education than children of conventional, intact, not-divorced families.
>
> Although, 60% of children fortunate enough to be in a joint custody situation receive "extras" (camps, music lessons, allowances, car payments, etc) as compared with only 20% of children in sole custody situations receiving similar "extras" from the non-custodial parent (according to a study of such payments based on differences between joint and sole custody.)

INCREASED TENSION

Individual child support dollar levels increased substantially during the 1980's and early 1990's. (Though dollars decreed have multiplied, this does not necessarily mean that the higher dollar amounts have been, or are being, paid, given the depressed state of the economy and lingering resentments that motivate, or deter, obligor parents.)

Basis of Support

Shift. Decree of child support shifted (during the mid-1980's) from being based on the cost of raising a child into shifting dollar resources from the pocket of a wealthier non-custodial, obligor-parent based on that parent's income to the pocket of a less-wealthy, less income-producing, custodial parent.

Customarily, this shifting of future income had been predicated on the assumption that the recipient parent had given the homelife, assistance and morale backup that provided the working and paying-parent with the ability to increase future income. However, in this modern era, a large number of separations, or divorces, involve couples who never did live together and/or whose relationship was so brief as to not provide the basis for occupational-backup nor justification for "tapping" future income.

Another justification for shifting funds from one household to another has been stated as providing a child with the "standard of living" and income that the child would have enjoyed by being resident in the wealthier, married, household. However, this rationalization has not been accompanied by an equal effort to assure that the child physically resides in both households in order to enjoy the "standard of living" of each, whatever that may be.

("Standard of living", in this latest context, has come to be definied solely as dollar amounts for which there is no accountability. Herein, we broaden the context of "standard of living" to include inducements and mechanisms for savings, investment, deferred gratification, goal-setting and economic preparation for the future. In a child's best interest, we believe this proposal also establishes a "standard of living" by example and intent that is valuable for a child.)

Extreme aggravation

No accountability is required of a recipient parent to deliver a verifiable record that any of the received child support funds are spent, or saved, for the child's future welfare. Financial mismanagement and financial irresponsibility ranks among the top three major causes of divorce. Yet, during mediation and 'counseling' no financial counseling is provided in divorce or separation cases as it is in bankruptcy, debt-workout, and purely financial cases.

> Example: Typical of cases we see, recently a distraught businessman-father reported to us that the opposite parent, within a single credit card reporting period, ran-up $80,000 of credit card charges. Rather than mediate or counsel the mother insisted on filing for divorce, is demanding full sole custody (so as to receive the maximum child support without certifying how she spends it) and is filing for spousal support so as to increase her income without responsibility for working. The businessman father, at the risk of his credit reliability for the next eight years, is filing for bankruptcy.

Procedural crunch

Currently, the average four-year university education cost is estimated at $125,000 in state and modest-level colleges.

Relitigation is filed and occurs as the child of divorce is 17-years of age and approaching 18. Although, such relitigation is not always successful.

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Economic safe-harbor for children.

A legislative bill proposal.

Assuring the economic security for children of divorce and separation by providing a discretion priority for the ruling court of jurisdiction.

Intent:

Reassure the economic security of children of divorce and separation.

Establish economic responsibility as in the best interest of children.

Encourage each parent toward economic productivity.

Reduce the reliance on demonstrating impoverishment as a mechanism for a petitioning parent to qualify for support funds.

Refocus the expensive resources of the District Attorney offices on behalf of families in genuine need and toward the truly delinquent.

Reduce the dissipation of District Attorney resources on families that otherwise demonstrate a financial capability by a parent to provide economic security for the family's children.

Encourage, recognize and reward economic productivity with acknowledgment of a qualification justifying custody.

Reduce the antagonism and the tendency toward exploitation that arises as funds are moved from the pocket of a parent of one sex to the pocket of the parent of the opposite sex when no verifiable accounting disbursement for the child occurs.

Structure family status in a concept that encourages mediated agreement rather than reliance on exploitation of each other.

Text

Policy statement: Economic security is among the criteria that comprise the "best interests" of children of divorce and separation.

Parents are encouraged to share the joint custody of their children and to

JOINT CUSTODIAN

CHILD SUPPORT ENFORCEMENT EVALUATION

TIME FOR 'FINE-TUNING', BALANCING, EQUITABILITY AND A SEARCH FOR WIDER ACKNOWLEDGMENT OF GUIDELINES

DECADE DEVELOPMENT

For over a decade America has eased, politically, toward increased dollar amounts of child support, toward support guidline formulas (rather than litigated support) and for more universal enforcement mechanisms (rather than leaving the effectiveness of collection to the resources of the recipient-parent).

We believe it is not likely that the decade's trend will be completely obliterated.

However, now that the reaction problems have surfaced, the time is at hand for making corrections.

The need, now, is for:

- "Fine-tuning" of guidelines,
- Recognizing the legitimacy of problems that have emerged.
- Balancing the equities involved,
- And thereby create an environment that will achieve wider acquiesence by both recipients and payors, rather than cultivating an open warfare between recipients and payors.

That, then, is the intent of the following.

CULTIVATING WHAT WORKS

Also, for over a decade, the thrust has been toward increasingly imaginative punitive enforcement. The Nation is cultivating vindictiveness rather than creating an environment for people to work out their problems between themselves.

Meanwhile, instead, the focus of our Association has been, and is, an increased use and decree of those mechanisms and concepts that elicit more-nearly voluntary payment of support and that inspire larger amounts more frequently paid. Those examples are found throughout our material.

LESS EXPENSIVE

We also prefer to propose those solutions that are less costly to the taxpayer, less demanding of new bureaucracies, and less expensive for the public making use of support services.

GUIDELINES, YES/UNIFORMITY, QUESTIONABLE

We favor guidelines, openly established with informed debate. Guidelines are far better to give separating parents an advance impression of what is likely to occur, rather than the previous era of litigated support when recipients had grandiose expectations of what they could achieve and paying-parents were frightened beyond reason about how they would be damaged in litigation.

However, statewide, or nationwide uniformity could be unreasonable for parents while being administratively simplistic and judicially sterile. Rigid simplicity overlooks the economic variation s.

Example: While sitting through Judicial Council hearings I was struck by such problems as the mother and child who had moved to San Francisco (one of the Nation's highest cost-of-living communities) while the father was a field hand in Stanislaus County grubbing for minimum wage. The ability to consume, and the ability to provide didn't mesh.

Also, California has counties that are poorer than some states; and it has other enclaves among the richest in the Nation. At its longest, California is equivalent to the distance between Boston and Savannah. It is not easy to imagine that all the states between Boston and Savannah could readily agree on a single guideline, considering the various economies that distance encompasses.

Instead, we are inclined toward guidelines developed around economies of a region, of a group of counties, or of a county, or of smaller states, so that the court has a more immediate grasp of whether the parents are subtilely out to extort each other through personal decisions of where each lives, or where each works.

Policy of Joint Custody Assn:

To encourage payment of child support, first, the system should examine and implement those practices which are already demonstrating comparative success at achieving more nearly-voluntary payment of child support. Only thereupon, after implementing the procedures that have elicited payment, should the system proceed to impose the punitive enforcement and collection procedures that require tax-supported bureaucracies to extract payment. But, those enforcment measures need to be equitable, cost-effective, reasonable and financially feasible.

We do not assist obligated parents to avoid support altogether. We do believe in monitoring the collection system to assure that it is rational and not the tool of the vindictive, however.

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EVALUATING MOVES OUT-OF-STATE

Moves out-of-state by custodial parents with the child inspire the most frequent and extensive delinquency in payment of child support and also bring about the laborious inter-state pursuit of support.

Individuals are, presumably, protected in their right to move. Less clearly understood, however, is the right of the child to frequent and continuing contact with both parents.

Consequently, the Joint Custody Association believes that there should not be a categorical provision of whether a parent can, or cannot move; however the Association is engaged in an analysis of criteria which could become a checklist of qualifications and responsibilities in determining whether a move is acceptable, necessary, and with minimum damage for a child's relationship with both parents.

ENFORCEABLE VISITATION QUID PRO QUO

As a prerequisite for participation in federal aid programs, enforceable visitation provisions should be enacted in state statutes and pursued with the same vigor as child support enforcement and collection. Generally, visitation enforcement provisions are less costly to administer than support enforcement, and the existence of visitation provisions would dispense with the arguments, whether right or wrong, that lack of support payment is the justified reaction to lack of visitation.

STEPPED WAGE ASSIGNMENT

Wage assignment by degrees rather than categorical. For instance: First offense: for amounts past due. Second offense: 2 months delinquency in two years, wage assignment for one year. Third offense: 2 months delinquency in three years, wage assignment for three years.

INCENTIVE TO LIFT WAGE ASSIGNMENT

The categorical imposition of wage assignment, from the outset and with no relief until the child's majority has not inspired any conscientiousness in payment. In fact, the hopelessness of such a draconian provision causes some paying-parents to assume an attitude of "alright, catch me if you can find me."

Voluntary and regular payment of child support is less costly for the system. To achieve that economy, we need provisions for the lifting of wage assignment upon conscientious compliance and we need not impose wage assignment until delinquency does occur.

PARENT LOCATION

Strive for equitable application of the parent-locator files system for location of children hidden from access for visitation as is used for child support collection.

FINANCIAL COUNSELING

Financial problems are considered one of the three major causes of divorce.

Make financial counseling available for both parents upon dirvorce, and thereafter when needed, as a means of clarifying income and expense and the receipt and expenditure of support funds. Psychological and sociological needs are frequently counseled, but there is rarely, if ever, any consideratioin for the morale factors needed to inspire production of income or an analysis of justification for expenditures.

FOCUS ON THE NEEDY

Enforcement and collection emphasis should be directed, and redirected, to the needy.

There has been a tendency to dissipate collection and enforcement efforts toward the less needy, largely because they are more articulate in forcing collection procedures, to the detriment of improving conditions for the truly needy. Question seriouisly whether the poor are deprived of services when middle-income and wealthier parents can utilize tax-supported collection enforcement services rather than relying upon the conventional judicial system.

JOINT CUSTODIAN

EVALUATING THE SUCCESS OF JOINT CUSTODY DECREES

Repeat court appearances as an indicator of custody stability.

One measure of relative success is the frequency of return to court for relitigation of joint custody as compared with sole parent custody.

Two years of custody decrees evaluated in California analysis

On November 7, 1980, Commissioner John R. Alexander of the West District (Santa Monica) of the Los Angeles County Superior Court summarized the rates of controversy in joint and sole parent custody cases from the Fall of 1978 through September 30, 1980. In the next few months Commissioner Alexander will have completed a more extensive commentary on his statistical review. Meanwhile, this advance 'look' at his preliminary findings will be of special interest to the critics and supporters of joint custody.

Statistics were gleaned from case files and index cards compiled by Commissioner Alexander and fellow jurists in the Santa Monica family law court.

Joint custody awards compared with sole custody decrees

From Fall 1978 to September 30, 1980, 414 custody cases occurred in this court, of which 67% (277 cases) were sole custody awards and 33% (137 cases) were joint custody awards.

Joint custody relitigation one-half as frequent as sole custody

Of those cases, only 16% of the joint custody awards resulted in repeat courtroom appearances (22 of the 137 cases). However, 31% of the sole custody awards resulted in courtroom reapparances (86 of the 277 cases).

Results when one parent doesn't agree to joint custody

The gratifyingly high rate of 'stability' within cases where joint custody was decreed regardless of opposition to joint custody by one of the parents is illuminating.

17 decrees of joint custody were awarded although parents objected (in 14 of which there was opposition to joint custody by one parent and in 3 of which there were 'defaults' by one parent.)

71% of those cases (12) resulted in no later flareups or courtroom controversy despite the initial objection by one parent to joint custody. 5 (of the 17) resulted in later controversy, 2 of which were settled by agreements, 2 were settled after contested hearing, and 1 is still pending, a notice of appeal having been filed August 26, 1980.

Joint custody decrees, even when there is no initial agreement, are more stable than arbitrary sole parent custody decrees

Obviously, a preference is for both parents to agree to joint custody.

But, even when both parents don't agree to joint custody there are fewer flareups in unconsented joint custody than in exclusive sole custody decrees. (29% as compared with 31%).

In short, a decree of joint custody even when one parent disagrees appears to be more stabilizing than the arbitrary and decisive decree of sole parent exclusive custody.

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SCHOOL REPORTS & RECORDS

JOINT CUSTODIAN

YOU ARE ENTITLED

Both parents, divorced or otherwise, are entitled to seeing and receiving the school records and reports about their children. Usually this right arises from the federal Family Educational Rights abd Privacy Act of 1974 (FERPA). Furthermore, these rights have been tested and amplified in court by such pioneering parents as Robert Fay, M.D. pediatrician of Albany, New York. In some situations, these rights have been additionally guaranted by state statutes and case precedents.

Occasionally, an excluded or overlooked parent (usually as a consequence of divorce) has been denied access to such records or accidentally excluded. We have found it helpful for such parents to submit to school authorities a written explanation of the guarantees in FERPA.

Consequently, we are providing you with the following, which is a verbatim transcript of a written explanation by the United States Department of Education of the intent of the Act.

RIGHTS OF NON-CUSTODIAL PARENTS

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974

The Family Educational Rights and Privacy Act (FERPA) sets out requirements designed to protect the privacy of parents and students. In brief, the law requires a school district to : (1) provide a parent access to records that are directly related to the student; (2) provide a parent an opportunity to seek correction of records he or she believes to be inaccurate or misleading; and (3) with some exceptions, obtain the written permission of a parent before disclosing information contained in the student's education record.

The definition of parent is found in the FERPA implementing regulation under 34 CFR 99.3.

> "Parent": means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

Section 99.4 gives an explanation of the rights of parents.

> An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody, that specificallly revokes these rights.

This means that, in the case of divorce or separation, a school district must provide access to both natural parents, custodial and non-custodial, unless there is a legally binding document that specifically removes that parent's FERPA rights. In this context, a legally binding document is a court order or other legal paper that prohibits access to education records, or removes the parent's rights to have knowledge about his or her child's education.

Custody or other residential arrangements for a child do not, by themselves, affect the FERPA rights of the child's parents. One can best understand the FERPA position on parent's rights by separating the concept of custody from the concept of rights that the FERPA gives parents. Custody, as a legal concept, establishes where a child will live, and often, the duties of the person(s) with whom the child lives. The FERPA, on the other hand, simply establishes the parents' right of access to, and control of education records related to the child.

Here are the answers to questions frequently asked about the rights of non-custodial parents.

1. Does the FERPA require a school to keep a parent informed of the child's progress even though the parent is divorced and living some distance from the child?

   No. The FERPA does not require schools to inform parents of student progress whether the parents are divorced or not.

2. Does the FERPA require a school to provide a parent copies of records?

   Generally, a school is not required to provide parents copies of records. However, if the distance is great enough to make it impractical for the parent to visit the school to review the records, the school must make copies of the records and send them to the parent when that parent requests access to the records.

3. May a school charge for copies of records?

   Yes. A school may charge a reasonable fee for copying.

4. Does the non-custodial parent have the right to be informed of and to attend teacher conferences?

   The FERPA does not address conferences for the purpose of discussing student performance. Thus, a school has no obligation under this law to arrange a conference to accommodate the non-custodial parent. However, if records of conferences are maintained, the non-custodial parent has the right to see those records.

JOINT CUSTODIAN. News and commentary from the JOINT CUSTODY ASSOCIATION, a non-profit association concerned with the joint custody of children and related issues of divorce, including research, information dissemination and legal and counseling practices.

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Violence and the Family: Report of the APA Presidential Task Force on Violence and the Family -- Executive Summary

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The American Psychological Association's Presidential Task Force on Violence and the Family was convened to bring psychological research and clinical experience to bear on the troubling problem of violence in the family and to make recommendations for solutions. The task force faced a formidable challenge: Although considerable work has been done in areas such as child abuse, partner abuse, dating violence, elder abuse, and adult survivors of childhood abuse, only recently have the disparate forms of abuse that occur in the home been considered as part of a unified field of study with important crosscurrents and linkages. Furthermore, because standard definitions of key terms have not been adopted, communication across disciplines has been difficult, and much confusion has arisen when researchers and journalists attempt to draw conclusions by comparing studies in which different definitions are used. The task force defined *family violence and abuse* as including a range of physical, sexual, and emotional maltreatment by one family member against another; according to this definition, the term *family* includes a variety of relationships beyond those of blood or marriage, in recognition that similar dynamics of abuse may occur in these relationships.

Approaching the forms of family violence as a unified field of study underscores the common dynamic at the heart of them: the perpetrator's misuse of power, control, and authority. Because of this common dynamic, the odds rise that when one form of abuse occurs in the family, another form also is present--or may occur in the future unless helpful interventions take place. Unfortunately, all indications are that family violence and abuse are significantly under reported at all levels of society. Especially likely to go unreported is abuse of women and children of color and of others outside the majority culture. Social and economic barriers and inequities, especially those that affect African Americans and other ethnic minorities, have significant effects on the rates of interpersonal violence, yet those same barriers lead to fear of reporting and limit access to help.

No specific profiles exist of those who perpetrate family violence, because, like

their victims, they are a heterogeneous group. No one can say exactly why one person in a family may turn to violence while another in the same family does not, but the research suggests that a constellation of risk and resiliency factors influences the complex phenomena of family violence. Risk factors include specific sociocultural and interpersonal influences and factors such as alcohol and other drug abuse and a history of previous violence. Some people exposed to risk factors are resilient, however; and because of their psychological hardiness, they appear to be less vulnerable to the effects of violence.

Societal attitudes and practices regarding violence also have an influence on the risk of family violence. The presence of guns in the home increases the risk that a homicide will occur, and viewing violence in the media significantly affects attitudes and behaviors about violence. Research has shown that heavy viewing of violence on TV by children increases aggressive behaviors, and those behaviors persist into adulthood.

Society, in turn, reaps the terrible fruit of family violence. Violence in the home may well be the learning ground for later violence in other social settings and in other interpersonal relationships. For the victim and the family, violence and abuse may lead to destructive long-term psychological and physical consequences. Beyond the family, violence has serious economic and social consequences in society.

Adult Victims

Violence against adult family members may occur at any stage of family life, but it can be thought of broadly as occurring within four contexts: in dating relationships, during marriage or partnership, after separation, and against elders in the family. Violence that begins when a couple is dating is likely to continue and to escalate when the couple lives together or marries.

Battering is a pattern of physical, sexual, or psychological abuse in intimate relationships. Men batter women far more frequently than women batter men. Boys who witness or experience violence in their own homes as children are at major risk for becoming batterers. Alcohol use, especially binge and chronic use, is strongly associated with battering and its more serious aftermath, but it does not cause the violence. Both victims and perpetrators under report their use of nonprescription drugs.

Many people believe that a battered woman should leave a relationship with a man who batters them, but the violence does not necessarily stop when the relationship

is terminated. Couples are particularly vulnerable during periods of separation and divorce. The risk of serious or lethal violence may actually increase after separation. When a marriage ends in divorce, the legal system may become a symbolic battleground where the batterer continues to abuse. Women who have been battered exhibit a range of measurable psychological effects. They generally resist their batterers in some way, but a variety of obstacles impede their attempts to avoid or escape the violence.

In addition to the pattern of physical, sexual, and psychological violence, elder abuse also includes emotional or psychological abuse or neglect, or financial and material exploitation of an older person by someone who has a special relationship with the elder. The abuse may take place in the older person's own home or in the home of a caregiver. Elder abuse is significantly underreported, and little information is available to suggest how culture and ethnicity affect the likelihood of elder abuse or to describe the characteristics of perpetrators and victims. The majority of perpetrators of elder abuse are family members, and a surprisingly large number of male partners continuing their battering throughout the relationship. The majority of perpetrators of elder abuse are family members, usually adult children, but standard reporting systems do not reveal the extent of battering among elderly couples. Women are most often the caregivers for elderly persons and are reported most as perpetrators of abuse; however, when cases of neglect are removed from the statistics, men are the most frequent perpetrators of physical abuse against elders.

Child Victims

Tragically, child victims are vulnerable both to abuse within their families and to the failures of the systems intended to protect them. Historically, children have been regarded as the property and responsibility solely of their parents; this philosophy, however, places children of abusive parents in considerable danger. Public agencies and professionals have been given the authority to act to protect children, but because of resource scarcity and procedural issues, child protection agencies are not always able to intervene swiftly and decisively, much less to provide treatment or prevention programs to end the child abuse and maltreatment.

Child abuse occurs across all segments of the population, but affluent middle-class abusers may be less likely to be the subject of formal abuse reports. Although poverty may be the most significant risk factor for children, other factors also seem to put children at risk, too. These factors include family structure, being unwanted, resembling someone the parent dislikes, and having physical or behavioral traits that are different or that make the child especially difficult to care for. Parents are

more likely to maltreat their children when the parents abuse alcohol and drugs, or when they have been sexually abused as children. Abused children may show a variety of initial and long-term psychological, emotional, and cognitive effects, but not every child demonstrates such long-term effects. Children who are exposed to parental violence, even if they themselves are not the targets of this violence, have reactions similar to those of children exposed to other forms of child maltreatment.

When abused children are not given appropriate treatment for the effects of abuse, the lifetime cost to society per abused child is very high. For example, adult survivors of child abuse make up a large percentage of adults who seek psychotherapy and other mental health treatment. These survivors may demonstrate significant long-term effects of the trauma, especially if they received no helpful interventions at the time of the abuse. In their adult relationships, frequently survivors of child abuse are battered by their partners and exploited by other adults in positions of trust. Resolving the symptoms in adult survivors of child abuse may require treatment that deals with the original trauma as well as its aftereffects.

Intervention and Treatment for Victims

To mitigate both the individual and societal effects of family violence, appropriate treatment must be widely available. Intervention and treatment efforts must be customized to meet the complex needs of many individuals who are victims of family violence. Psychologists have developed new models for intervention and treatment for each kind of violence and for families in which multiple forms of abuse and trauma occur. Recent treatment techniques emphasize the strengths that victims have developed to cope with abuse and maltreatment. Families with the greatest need often do not have access to high-quality treatment services by professionals trained to understand the effects of violence. In addition, people who have been severely traumatized through childhood abuse may need inpatient or long-term outpatient psychotherapy, which may not be available because of financial limitations.

Interventions for battered women often have been designed by community-based battered women shelters and advocacy groups, sometimes with the collaboration of psychologists. Initially a place of safety and support, shelters for battered women now often serve as the locus for a network of legal, psychoeducational, and social services for the woman and, increasingly, for her children as well.

Much more must be done to safeguard the welfare of abused children, both in the immediate aftermath of a report of child abuse and for the long term. The most

common intervention for abused children is to remove them from their homes and place them in other environments and, eventually, foster care. This is not always a useful strategy and often may not even be safe, because children may be at risk for abuse by adults and by other children while living in foster homes. Promising alternative approaches include the placement of a helpful person in the child's own home.

Specialized interventions for victims of elder abuse or neglect are based on the principle of invoking the least restrictive alternative in determining environmental and legal protections. The problem of elder abuse is complex, however, and new forms of intervention are needed to respond to elder abuse as a part of the continuum of violence within a family.

Treatment for Perpetrators

Treatment of those who perpetrate family violence is essential, not only to end current violent behavior but to prevent future violence by the abuser. A variety of methods are used to assess and treat perpetrators of family violence, depending on the clinician's theoretical orientation. Researchers have not yet concluded that any approach is significantly more effective than others, assuming equivalent training of the providers and a comprehensive treatment strategy. Most treatment programs include some type of cognitive-behavioral psychotherapy techniques, although the specifics vary with the types of abuse for which the perpetrator is being treated. Treatment must address the perpetrator's use of power and control as well as attitudes and perceptions that support acts of violence.

Legal Issues

Most victims of family violence will have some contact with the legal system that is not well designed to handle such cases. In addition, inequities in the application of the law, racial and class bias, and inadequate investigations have harmed rather than helped many families. The low priority given to funding for implementation of child protection laws results in a legal system that frequently fails to work. Many battered women find themselves in dangerous positions because the courts often do not give credence or sufficient weight to a history of partner abuse in making decisions about child custody and visitation. Racial bias often influences the court's decision about whether to order treatment or to imprison offenders.

Abuse at the point of and after separation is so serious that courts must pay attention to ways of keeping battered women safer. Researchers indicate that the use of mediation is not appropriate when family violence is an issue. Child custody

and visitation decisions must be made with full knowledge of the previous family violence and potential for continued danger, whether or not the child has been physically harmed. Most lawyers, judges, and others in the justice system are not trained in the psychology of family violence and abuse.

Future Directions

Because family violence has been a discrete area of study for a relatively short time, there are still gaps in the knowledge about ways to prevent family violence. There is general agreement that prevention efforts are needed to address the societal conditions that contribute to family violence, and intervention and treatment efforts must take place in every community if family violence is going to be reduced or eliminated.

Psychology has a key role to play in building the community-based coalitions that can prevent and treat family violence. The best way to promote violence-free families is to stop the development of abusive behavior, especially in boys and men; to strengthen and empower potential victims to resist or avoid victimization; and to change the environment that promotes the use of violence.

A single complimentary copy of the 156-page report can be obtained by writing to

Violence and the Family
Public Interest Initiatives
American Psychological Association
750 First Street, NE
Washington, DC 20002-4242

The cost for each additional copy is $5.00, payable in advance. Please make checks checks payable to the American Psychological Association.

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