

Joint Custody: A Comprehensive Review

A. Lura Tibbits-Kleber, PhD; Robert J. Howell, PhD; David J. Kleber, PhD

This article presents a comprehensive overview of joint custody. The history and legislative implications are discussed, as are pertinent issues relative to the reported advantages and disadvantages of joint custody. Finally, the role of the mental health professional in assisting with counseling divorced families either before, during, or after a custody decision is discussed.

There are, essentially, four types of custodial arrangements: (1) sole custody, which has and continues to be the most common and which has typically resulted in the mother's being identified as the custodial parent; (2) split custody, in which the children are divided between the parents; (3) divided or alternating custody, in which each parent has custody for a part of, or an entire year; and (4) joint custody, in which "both parents retain legal responsibility and authority for the care and control of the child" ^{1, p. 7} Of these types of custody arrangements, none appears to have generated the extensive degree of discussion than has joint custody. Joint custody, like any custody decision, is a complex issue. However, joint custody has become quite controversial, having been heralded as timely and pertinent² as well as having been regarded as having the

potential to be detrimental³ and extreme.⁴

Definition

Joint custody is often synonymously referred to as shared custody, co-custody, concurrent custody, co-parenting, shared parenting, joint parenting or joint managing conservators.¹ It is important to note that "joint custody" is a legal term.⁵ Folberg¹ offers a comprehensive definition of joint custody:

An arrangement in which both parents have equal rights and responsibilities regarding major decisions and neither parent's rights are superior. Joint custody basically means providing each parent with an equal voice in the children's education, upbringing, religious training, nonemergency medical care, and general welfare. The parent with whom the child is residing at the time must make immediate and day-to-day decisions regarding discipline, grooming, diet, activities, scheduling social contacts, and emergency care (p. 7).

Therefore, in joint custody, a distinction is made between "legal custody" and "physical custody." Both parents retain legal custody with physical custody being determined by the parent who is

Robert J. Howell is professor and director of the doctoral program in Clinical Psychology at Brigham Young University, and A. Lura Tibbits-Kleber and David J. Kleber were both graduate students in this program.

currently in the physical possession of the child.^{1,6}

There is no one specific type of joint custody arrangement.⁶⁻⁸ The specific arrangements can include block time arrangements, split days, split weeks, alternating days, alternating months, alternating years, "bird's nest" arrangements, in which the parents move in and out of the home, and free access by the parent who does not have physical custody.^{9,10} The type of joint custody arrangement depends upon that which is feasible,⁸ but Charnas⁶ notes that, in general, the living arrangements usually are as follows: (1) the child is in the physical custody of one parent because of a lack of parental cooperation and/or geographic or employment restrictions, and the child has free access to the other parent; or (2) the more common situation, the child alternates between the care of parents on an equal and regular basis.

Background

The earliest reference to child custody is found in the *Bible*, 1 Kings 3:25,¹¹ as cited by Charnas.⁶ In Roman society continuing through the Middle Ages, children were regarded as the father's property.¹² The influence of Judeo-Christian law and English common law, based on the concepts of *patria potestas* and *parens patriae*,⁶ continued to view the child as belonging to the father and therefore, awarded custody to the father.^{6,8}

However, as a result of the influences of the Industrial Revolution, in addition to the importance and emphasis placed upon childhood, custody awards began

to favor the mother.⁸ The determination of moral and parental fitness not only affected custody awards, but also reflected the legal system's recognition of the child.⁴ The legal system assumed the role of *parens patriae* in order to act on behalf of the child.¹² The Talfourd Act officially recognized the court acting as *parens patriae* and subsequently represented the involvement of the legal system into the family when a divorce occurred.¹²

The 1889 court opinion, written by Chief Justice Brewer of the Kansas Supreme Court, established that each parent's right to custody was equal as well as secondary to the rights and interests of the child.^{6,8,13} The "tender years" doctrine, which was a presumption, not a law,¹² basically stated that "nature had given women a unique attachment to children and that the baby would thus receive better care from its mother."^{8, p. 2} Although the doctrine initially established an age limit of seven years in classifying children as being of tender years,^{8,12} gradually all minor children were defined as being of tender years.⁸

The tender years principle continues to influence custody awards to some degree.⁴ However, the "best interests of the child" has emerged as the fundamental factor in determining custody.^{2,14-16} The best interests of the child, which was introduced into custody law in 1925 by Judge Cardozo,⁸ places an emphasis on "meeting the child's needs independently of those of the parents in a custody decision."^{4, p. 410} The Uniform Marriage and Divorce Proposal of 1970, Section

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420,¹⁷ (which fewer than 10 states have adopted) elaborates on the best interests of the child principle in denoting the factors that enter into custody decisions: The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including:

1. The wishes of the child's parent or parents to his custody
2. The wishes of the child as to his custodian
3. The interactions and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest
4. The child's adjustment to his home, school, and community
5. The mental and physical health of all individuals involved

However, the best interests principle has been criticized as being a poor means by which to be aware of and to define the best interests of the child in a custody case.^{8,18} Charnas,^{6,18} in acknowledging the shortcomings of the best interests of the child policy, suggests that the concept of "psychological parent" has become a more definitive means by which to establish the child's best interests. The concept of the psychological parent, which was introduced by Goldstein, Freud, and Solnit,¹⁸ refers to the parent "who, on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs for a parent, as well as the child's physical needs" (p. 98).

Nevertheless, for approximately the past 40 years, the legal system has continued to award custody to the mother.⁸ Such has occurred as the legal system, which generally reflects a middle to up-

per middle class and more traditional bias,^{8,14} has viewed the mother's place as being in the home and with her children; therefore, such is seen as being in the child's best interests.¹² However, the social changes that began in the 1960s and that are presently continuing have begun to influence custody awards.^{4,8} The influx of women into the work place and into higher education, the emphasis of equality between the sexes, and the more active role that fathers are assuming in the rearing of their children have contributed to the challenging of custody awards made in favor of the mother. Challenges of the Fourteenth Amendment¹² and Supreme Court decisions⁴ have resulted in the legal system being forced to be cognizant that the traditional custody awards are discriminatory.^{12,20} Although 15 states have declared that neither parent be given preference for custody,⁸ the awarding of custody to fathers occurs in only one of ten cases.⁴ This 10% figure, however, includes all custody cases. The rate of awarding custody to fathers in contested cases is undoubtedly much higher.

The concept of joint custody has emerged as a result of the difficulties associated with the adversarial process concerning custody cases in the following ways: (1) discontentment arising from sole custody arrangements, to the realization that "divorce terminates a marriage but not a family;"^{2, p. 643} (2) the emphasis placed upon refraining from preference given to either parent regarding custody^{4,8,20}; (3) the concept of psychological parenthood^{6,18}; and finally (4) the overriding emphasis on determining

just what type of custody arrangement would truly be in the best interests of the child.

Joint custody, *per se*, is not new.^{4,21} Nehls and Morgenbesser²² point out that, even though specific statutes regarding joint custody may not have existed, the statutes were and continue to be interpreted in favor of a joint custody arrangement. In the past, joint custody has been awarded when at least one of the following criteria was satisfied: (1) both parents met fitness requirements; (2) the court was of the opinion that joint custody would assuage the effects of the divorce for the parents and the child; and (3) joint custody would be in the best interests of the child.²² Although involving an aunt and a mother, rather than a mother and father, the custody decision in the well-publicized Gloria Vanderbilt case was one of joint custody.⁴ Nehls and Morgenbesser²² cite a 1942 North Carolina case in which joint custody was granted, and in 1957 North Carolina passed a statute allowing joint custody if such met the best interests of the child.¹ At present, approximately 30 states have passed laws that specifically recognize joint custody.¹ In 1980, California passed a statute that mandates a legislative preference for, as well as a presumption of, joint custody as being in the best interests of the child.^{23,24} In California, almost all custody disputes result in the parents being awarded joint legal custody but not joint physical custody.

Joint custody has also gained recognition abroad.^{5,25-27} For example, the Canadian legal system acknowledges the

existence of and grants joint custody awards.^{26,27} However, the Canadian legal system has not endorsed joint custody to the extent that California has.²⁶ Rather, the Canadian viewpoint appears cautious in applying joint custody presumptions as it is yet undetermined whether or not such decisions would actually be in the best interests of the child.^{26,27} In Sweden, even though the law states that either married or unmarried cohabiting parents are entitled to joint custody, joint custody is not popular.⁵ Trost⁵ presents two possible reasons for the lack of popularity regarding joint custody: the lack of support from the legal establishments for reasons that have yet to be explained and economic feasibility given Sweden's tax situation and social policies.

Despite the status of joint custody in other countries, joint custody enjoys legislative, legal, and popular support in the United States. Nevertheless, surveys of judges indicate that joint custody is judicially unpopular.^{14,28} Settle and Lowery²⁸ found that, in the few cases in which joint custody was considered, the decision to award custody was primarily based on there being parental cooperation and a stipulation for formal joint custody arrangement.

Legislative Forms of Joint Custody

Joint custody is beginning to reflect a movement away from the single-parent home as a result of divorce.²⁵ The gradual emergence of joint custody is reflected in current legislation in which joint custody can be presented as an

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option, an option only if the parents are in agreement, a request by one of the parents, and a “preference” or “presumption.”³ Of these four types of joint custody legislation, it is the latter three, but particularly joint custody as a preference or presumption, that are regarded as having significant drawbacks.

When joint custody is viewed as an option, the court is able to order joint custody even if the parents do not desire a joint custody arrangement. Therefore, as Schulmann and Pitt³ state, the drawback of this type of legislation is the lack of “adequate limits or standards on the court’s power to order joint custody” (p. 211).

Joint custody as an option when both parents agree to joint custody is probably the optimal type of joint custody arrangement, according to Schulmann and Pitt.³ However, these authors point out that there is the potential for problems that are similar to those that may occur when one parent requests joint custody. If one parent is opposed to joint custody, the other parent is placed in the difficult position of either having to accept the joint custody arrangement or risking not being awarded joint custody or sole custody should the custody decision be further contested.

As a result, what Schulmann and Pitt³ refer to as “friendly parent provisions” have developed. Under these types of provisions, it is the parent in favor of joint custody who is viewed by the court as being the “better” parent and who is subsequently given greater consideration should sole custody be awarded. However, there exists the possibility for

friendly parent provisions to defeat the aim of joint custody, as being an attempt to maintain the parent-child relationships that existed before the divorce because custody may develop into a bargaining issue.

Schulmann and Pitt³ further write that it is the legal system’s advocacy of joint custody as either a “preference” or “presumption,” both forms of evidentiary standards, that appears to generate the most controversy. For purposes of definition, the authors state that preference statutes “prioritize available custody resolutions and mandate that joint custody be given first consideration by the courts” and that presumption statutes [“presumption” legally defined as “the inference that a fact exists, based on the proved existence of other facts” (Webster’s New World Dictionary²⁹)] view joint custody to be “presumed by the law to be in the best interests of the child.”

The argument against the use of presumption (and despite definitional differences can also appear to be extended to “preferences”) is that joint custody will become viewed as being the standard.³ As a result, the court’s responsibility to view each custody case independently and with care and subsequently to make a custody decision that will best meet the needs of the child is endangered.^{26,27,30} Additionally, the evidentiary standards stipulation will require a parent who opposes joint custody to present substantial evidence demonstrating that joint custody would not be in the child’s best interests.³ However, these authors question the criteria for,

and the evaluation of, such presented evidence. A last shortcoming of this type of arrangement is again the issue of the friendly parent provisions.

Despite Goldstein's³¹ opinion that presumptions are essentially conditional and are valid only if the parents are in actual and rare agreement regarding their concern for their child and their desire to continue in their parenting roles, there is significant legal emphasis upon preference and presumption. As a result, some states, e.g., California require the courts to state reasons for the denial of joint custody.¹

The last type of joint custody-related provisions to be considered involves statutes that allow awards of sole custody to be changed to awards of joint custody.³ These authors state that such legislation clearly favors joint custody and is contrary to the "change in circumstance standards" that have been the criteria by which requests for alterations in custody awards have been considered. Thus, Schulmann and Pitt³ point out that sole custody awards will frequently be challenged and that existing unsatisfactory joint custody awards may be difficult to alter. However, Blau³² states that modifications of custody awards are seldom granted. Furthermore, custody award modifications are granted only when it can be demonstrated that the child will experience emotional and/or physical injury as a result of the existing custody arrangement.

Goldstein *et al.*¹⁹ additionally support the position that, once a custody award is made, the award should be regarded as final. Their position, which continues

to be maintained by Goldstein,³¹ is based on the premise that the child has the need for a continuity of relationships. The emphasis that Goldstein *et al.* place upon there being no modification of custody decree is based on their opinion that, although a child has two psychological parents, the occurrence of a divorce creates an emotionally negative environment for the child given the parental conflict. Furthermore, their preference for unlimited state/legal involvement in the family is designed not only to circumvent continued litigation, but to create a situation that will "protect the security of an ongoing relationship between the child and custodial parent. At the same time, the state neither makes nor breaks the psychological relationship between the child and the noncustodial parent, which the adults involved may have jeopardized."^{19, p. 38}

Types of Joint Custody Awards

As an indirect as well as a direct result of legislation, three types of joint custody awards have emerged: (a) de facto joint custody; (b) stipulated joint custody; and (c) court ordered joint custody.¹ De facto joint custody did not emerge as a result of the courts' viewing joint custody as being in the child's best interest, nor did it emerge from legislation favoring joint custody. Rather, it developed from sole custody awards in which the custodial and noncustodial parents established an informal parenting arrangement. Folberg¹ and Benedek and Benedek²¹ indicate that the actual number of de facto custody arrangements is not known. However, the fact that such ar-

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rangements can and do exist is an argument against joint custody legislation because divorced spouses appear able and willing to continue in the parental role without the involvement of the legal system. Stipulated joint custody involves the parents' presenting to the court a request for a joint custody award and a plan for a joint custody arrangement. Although there exist the shortcomings associated with the previously mentioned friendly parent provision, he notes that stipulated joint custody is often awarded.¹ The existence of both de facto and stipulated joint custody may appear contradictory, given the desire for each adult to continue in a parenting capacity and the degree of cooperation and commitment that is required. However the legal distinction and existence regarding the custody arrangements are significant. Physical and legal custody remains with the court-designated custodial parent in de facto joint custody whereas stipulated joint custody recognizes both parents as being custodial parents, with each retaining legal custody. Furthermore, stipulated joint custody is a legal award that exists after the divorce decree is finalized whereas de facto joint custody has no legal recognition and does not, theoretically, exist after the divorce was granted.

Court-ordered joint custody is the most controversial of the joint custody arrangements. Under this type of joint custody arrangement, the court awards joint custody, regardless of one or both of the parent's wishes.¹ Court-ordered joint custody has contributed to concerns regarding friendly parent provi-

sions, preferences, and presumptions, particularly if preferences and presumptions gradually no longer reflect interests and wishes of the parent.³ A related concern is that the court's imposition of joint custody may possibly create a difficult living arrangement and aggravate conflict between former spouses.³⁰ However, Roman and Haddad¹² suggest that parental conflict may diminish as a result of joint custody.

Factors Affecting the Advisability of a Joint Custody Award

Despite legislation and the tendency for there to be the general acceptance and adoption of joint custody as a feasible alternative to traditional sole custody awards, a significant number of legal and mental health professionals^{7, 10, 21, 26, 33, 34} stress that the awarding of joint custody should not be indiscriminate. Rather, in an attempt to assure that joint custody will be a satisfactory and beneficial living arrangement for the children and parents, there are certain criteria that must be evaluated before the consideration of joint custody.

Ifeld *et al.*³⁵ state that factors such as the age and number of children, socio-economic status, and race are factors that influence the outcome of custody awards. However, Gardner³³ lists three provisions that must be met before joint custody is warranted: (1) the parents are able and willing to be involved in the raising of their children and both parents have essentially equivalent relationships with their child; (2) parents are able to communicate and cooperate; and (3) the

joint custody living arrangements will not disrupt school attendance and/or performance. Elkin³⁴ presents similar but more specific criteria necessary for joint custody: (1) parental commitment to joint custody; (2) parental understanding of their roles in a joint custody arrangement and ability to resolve differences effectively; (3) parents' awareness of and willingness to give priority to the needs of the child; (4) ability to separate the parental from the former marital role and relationship; (5) parental ability to cooperate and adequately communicate; and (6) parents who are flexible. Ilfeld *et al.*³⁵ also state that joint custody is further enhanced when: (1) children are able to spend equal amounts of time with each parent; (2) children are in the geographical proximity of each parent's home; (3) there is a formal written joint custody arrangement; and (4) mediation/arbitration is sought if there are differences of opinion regarding the joint custody arrangement.

Joint custody is inadvisable when there is: (1) a lack of parental cooperation and communication; (2) one parent continues litigation in order to seek sole custody; (3) joint custody is a means of vengeance or is sought in order to socially "save face"³³; (4) there is a parental history of substance abuse; (5) family violence and/or child abuse or neglect has occurred; (6) there is/are mental disorders; (7) the parents disagree about the raising of the child; (8) parents place their own needs equal to or more important than those of the child; (9) there is a lack of family structure; (10) the parent(s) and/or child oppose joint cus-

tody; and (11) practical issues are unresolvable.³⁴ However, these authors seem to assume that joint custody means joint physical custody. It is our experience that, in California, although most custody awards are joint legal custody, the physical custody (or the primary place of residence) is typically awarded to just one parent.

Charnas⁶ takes issue with parental geographic proximity and parental cooperation as being prerequisites for a satisfactory joint custody arrangement. In regard to geographic proximity, Charnas argues that what is crucial in joint custody is both parents having legal custody, with physical custody being of less importance, given the variations on joint custody arrangements.

The issue of parental cooperation is more controversial. Although a minimal level of parental cooperation is required in order to establish schedules and make arrangements, this is not as important as the parents' wanting to be fully involved in their child's life as parents.^{2,6} Furthermore, Robinson² states that parents should be able to prevent personal conflict from interfering with the parental role. Whereas parental conflict might result in a joint custody arrangement being characterized by discord,⁶ the conflict would not necessarily disappear in a sole custody award particularly in terms of visitation.^{2,6} Green²⁵ adds a further dimension to the issue of parental conflict and cooperation in his examination of conflict between ex-spouses. He indicates that the possible source of conflict between parents after a divorce is the result of the parents' no

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longer being able to act as parents; therefore, joint custody in recognizing both parents as equals will lead to a reduction in conflict.

Abarbanel,³⁶ Rothberg,³⁷ and Luepnitz⁸ found that parental cooperation was of particular importance in joint custody arrangements. Miller³⁸ acknowledges that a joint custody arrangement is feasible even when there is parental conflict, but adds that it is essential for the child to have a solid relationship with each parent. However the central issue is whether or not conflict has any effect upon the child's adjustment to divorce. It is not the divorce per se that affects the child, but rather that which occurred before and after the divorce.^{39,40} Grana³⁹ states, "Children who have had a high level of exposure to hostility before and after the divorce appear to have a greater level of maladjustment than children who did not experience hostility associated with parental loss" (p. 698). However, it is important to note that Grana is referring to parental conflict in relation to sole custody rather than joint custody. Deredeyn and Scott³⁰ sum up the status of this issue by observing that, although the assumption exists that joint custody will result in parental cooperation, the issue remains to be adequately addressed and explored.

Implications of Joint Custody

The implications concerning joint custody merit careful consideration as such are the everyday occurrences that affect the lives of the parent and the child. The research in this area, although

growing, tends to be limited, inconclusive, and contradictory. The studies conducted thus far tend to include just a limited number of subjects and are descriptive in nature (e.g., Abarbanel,³⁶ Rothberg,³⁷ and Grief⁴¹). As a result, it is difficult to make any definitive statements as to whether joint custody is the better custody arrangement. The following discussion is not exhaustive but rather representative of some of the issues that arise in examining the issues in joint custody.

Parent-Child Relationships Even though a divorce may be preferable to a home in which there is parental conflict, stress, and unhappiness,³⁹ the occurrence of a divorce is traumatic for the adults and the child. The divorce trauma can be further aggravated if there is a custody dispute.⁶ Adults may have periods of depression as well as a sense of loss and identity as they experience various phases of emotional reaction to the divorce (e.g., Grana³⁹ and Defazio and Klenbort⁴²). Kelly and Wallerstein⁴⁰ and Wallerstein and Kelly⁴³ have examined the psychological effects of divorce upon early and latency-aged children mainly in middle and upper class families, at the time of and one year after the divorce. Their findings, which initially characterize both groups of children as being lonely and sad and having a poor sense of identity, indicate that at the one year follow-up only one half of the children had adjusted to the divorce. Such research lends support to Hetherington and Parke's⁴⁴ statement "that feelings of distress and unhappiness in parents, poor parent-child relationships, and the

social and emotional adjustment of children actually get worse during the first year of divorce” (pp. 456–457).

A family’s adjustment to divorce has been found to be influenced by the quality of the parent’s postdivorce relationship and the custody arrangement.⁴⁵ In addition, children appear to have a more positive adjustment if they are able to have continuing nonstressful contact with both parents.^{10,46} Therefore, the ability of parents and children to be able to continue active involvement in each other’s lives and to have a meaningful relationship is the most important aspect of joint custody. By creating a distinction between marital and parental relationships,⁶ with emphasis being placed upon the absolute permanency of the latter, the children and the parents are not faced with having to experience the loss of one another.^{6,22,33,34,38} This is of particular importance because children in traditional sole custody arrangements have tended to experience feelings of abandonment and rejection³⁴ and often have wishes of parental reconciliation and fantasies concerning the absent noncustodial parent.^{38,46} However, Clingempeel and Reppucci²⁰ and Noble⁴ note that joint custody could contribute to the child(ren)’s maintaining of a desire for parental reconciliation. In turn, the noncustodial parent’s reaction to decreased interaction with the children has been found to affect perception of the parental role and subsequently involvement with and visitation of the children as well as resulting in physical and emotional disorders.^{4,41,47}

Rather than there being the creation

of an artificial visitation situation, which “does not give sufficient opportunity for the variety and richness of contact that is necessary to sustain complex family relationships,”^{4, p. 411} both parent and children are able to interact in the security of a home. In addition, instead of the noncustodial parent tending toward being a “weekend Santa Claus”⁴⁶ and the custodial parent alone being confronted with the everyday responsibilities of having to raise the children, both parents are able to function as role models and share parenting responsibilities.^{25,33,48} This is important not just to the child’s immediate, but future development, for as Fischer⁴⁹ states, “Children need to see both of their parents as valued and capable if they are to have more positive relationships with their parents and if they are to grow up valuing themselves and, at some point, their own spouses” (p. 357).

However, Alexander⁵⁰ questions the ability of the child to be involved in an emotionally close relationship with two parents who reside separately as well as the stability provided by a joint custody arrangement. Clingempeel and Reppucci²⁰ suggest that alternating between households and pragmatic issues (such as leaving books and clothing at one home) could have a negative influence on the child’s adjustment. In turn, the child’s school performance could be adversely affected unless the child attended a school that was in the same school district²⁰ or a private school.³⁷ However, despite the limited research regarding children’s perceptions of joint custody, Noble⁴ and Luepnitz⁸ found that the

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majority of children not only favored joint custody but were aware that each household had certain rules. Over one third of Luepnitz' sample, however, had difficulty in moving from home to home, and Rothberg³⁷ reported that two thirds of the parents indicated that their children expressed negative feelings about moving between homes. Although the environment of parental homes can differ in regard to: differences in discipline and parenting, daily routine, peer relationships in each home's neighborhood, and physical and economic factors,²⁰ initial research suggests that differences in the home environments need not result in the child's experiencing a lack of stability.³⁶ Although younger children appear to have a better adjustment to joint custody when the home environments are similar and there is parental cooperation, children can adjust to dissimilar home environments if the differences are stated, information about the children is exchanged between parents, and there is a routine in each home.³⁶

Child Snatching Although not often discussed in relation to joint custody, it is possible that joint custody may reduce the potential for child snatching because "joint custody should prove to be a valuable alternative to traditional custody decrees which have spawned parental child-stealing by disgruntled parents."⁵¹

In sole custody awards, the noncustodial parent's desire to be actively involved in the child's life and the threat that such may not be possible become the means by which the act of child snatching is justified.^{51,52} The snatching

of the child often occurs during periods of visitation,^{52,53} because during visitation: (1) the custodial parent, in trusting the care of the child to the noncustodial parent, will tend to delay reporting the child's delay in being returned from visitation; (2) there is no suspiciousness, force, or lack of predictability involved in the noncustodial parent's acquisition of the child; and (3) visitation periods often allow time for relocation in another area.

Joint custody, however, does not assure that child snatching will not occur. The negative aspects of court-ordered joint custody and the danger associated with presumptions, coupled with a parent's wrong intentions regarding joint custody, create the potential for child snatching still to be present.

Finances The financial arrangements in joint custody vary depending upon income levels, costs, age, and number of children, and the specific type of monetary agreements.^{8,37,54} However, finances may be one of the most overlooked and practical aspects of joint custody. Patterson⁵⁴ indicates that lack of consideration as to costs involved in joint custody may be one reason that joint custody may fail.

Finances are much more of a concern for divorced women than for divorced men, as women experience a significant decline in income after a divorce.⁸ Luepnitz⁸ presents data which indicate that, after a divorce, women experienced as much as a \$10,500 decrease in income whereas men's income either remained stable or increased. Ware⁵⁵ points out that, in 1978, women who did not re-

ceive child support had an average annual income of \$6,216 compared to an income of \$8,940 when child support was received. As many as 69.3 percent of divorced mothers never receive any child support from their former husbands.

Using government statistics and calculating the costs needed to rear two groups of children (respectively, two preschoolers and two school-aged children aged eight and thirteen years), Patterson⁵⁴ estimated that joint custody households are 25 to 58 percent more expensive than single-parent households. Rothberg³⁷ cited the concern of joint custody parents as to costs.

However, Luepnitz⁸ surmises that joint custody may be less expensive than sole custody. In joint custody, there were fewer cases of relitigation (and therefore a decrease in legal fees) and child support payments were not delinquent. In regard to child support payments, joint custody doesn't appear to result in resentment of paying child support, as the parent continues to be an integral part of the child's life.

Remarriage Little research has been conducted on remarriage and joint custody.^{20,56} Luepnitz⁸ found that divorced men dated frequently and regularly, with a majority stating a desire to remarry. Oakland⁵⁷ stated that men are more likely to remarry.

Grief and Simring⁵⁶ addressed five factors that are unique to stepfamilies: (1) losses experienced by the child upon remarriage, (2) the bond between the natural and stepparent, (3) the presence of another natural parent, (4) the step-

parent having no formal relationship with the stepchild, and (5) the children being members of two homes in relation to joint custody and the traditional sole custody. In regard to the child's experience of loss when a remarriage occurs, the authors point out that a joint custody arrangement diminishes the child's feeling that a parent has been lost because the child continues to maintain a relationship with both parents. This viewpoint is additionally supported by Clingempeel and Reppucci.²⁰ The second factor, the bond created between the natural and stepparent, is very important for the stability and quality of marriage. Grief and Simring⁵⁶ note that joint custody allows there to be time with as well as away from the children. Subsequently, there is a period of natural adjustment for all parties involved. However, as Clingempeel and Reppucci²⁰ point out, such does not diminish the potential for the stepchild to attempt to create marital difficulties between the natural and stepparent, particularly if reconciliation issues have not been resolved. Because both parents continue to be actively involved in their child's life in a joint custody arrangement, remarriage will not necessarily result in difficult issues concerning the presence of a stepparent. Grief and Simring⁵⁶ postulated that not only is the former spouse not as threatened by the new spouse in terms of the new spouse's relationship to the child(ren), but also the natural parents experience less pressure to remarry. Remarriage in conjunction with a joint custody requires contact between former spouses, contact that may

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threaten the remarriage.⁵⁸ However, Clingempeel's⁵⁹ study suggests that the frequency of the contact rather than contact per se influenced the quality of the remarriage; he noted, "Divorced-remarried persons who maintained moderate levels of contact with quasi-kin exhibited better marital quality than remarried persons who maintain either low or high levels of quasi-kin contact" (p. 898).

The fourth factor, that of there being no formal type of relationship between stepparent and stepchild, has been referred to in the discussion of the marital bond between the natural and stepparent. Essentially, the lack of a formal relationship allows the stepparent and stepchild to learn to adjust to one another gradually without either party being placed in a compromising situation.

Lastly, with children being members of two homes, joint custody has been shown to diminish children's experiencing loyalty conflicts between the stepparent and the same-sexed natural parent. The child discovers that he or she can have a relationship with the natural and same sexed stepparent and thus the stepparent may feel more free to be in a relationship with the child. Atwell *et al.*⁶⁰ describe the positive influences of "highly competent stepparents" as being individuals who are not threatened by the children and instead function as role models and make significant and additional contribution in the stepchild's life.

Rothberg³⁷ found that joint custody made the period of postdivorce adjustment easier and provided each parent with time to develop social relationships.

However, Wooley⁹ and Nehls and Morgenbesser²² point out that joint custody may complicate a former spouse's ability to emotionally accept the divorce. Stepparents may object to the custody arrangement and may "have negative motivations for encouraging his or her spouse to seek custody."^{60, p. 213} Also, if it is known that the stepparent was the cause of the divorce, the former spouse and stepchildren may have unconscious and unresolved issues that will complicate an interpersonal relationship.⁶⁰ In specific regard to joint custody, remarriage can result in there being a change made in the custody award.^{20, 61}

Relitigation The presence of children in a divorce is a factor that increases the potential for relitigation.⁶² In order to determine whether there was a difference between the relitigation rates in single and joint custody, Ilfeld *et al.*³⁵ compared the rates for these two groups. The results indicated that joint custody awards had a relitigation rate that was just one-half that of sole custody awards. Further analysis of the data revealed that a subgroup comprised of court-ordered joint custody had a relitigation rate that was essentially comparable to that of sole custody awards.

The research evidence and theory presented thus far supports joint custody as being a realistic and viable alternative to traditional sole custody. Yet, as Payne and Dimock²⁶ appropriately state, "Caution must be exercised before assuming that joint custody decisions are preferable to sole custody dispositions" (p. 195). It is much too easy for parents to agree to joint custody without actually being

aware of what is involved or for parents who want joint custody, to find personal difficulties preventing them from reaching consensus on certain issues. The mental health professional can be of significant assistance in the area of pre- and postdivorce in not only helping parents and children to have a more clear understanding of joint custody, but also in making the divorce transition much easier.

Counseling and Joint Custody The involvement of mental health professionals in custody decisions is not new for, as Rado⁶³ points out, it is the mental health professional who has provided to the court highly reliable and credible information regarding custody. For example, Israel requires court-ordered counseling when there is a question of child custody.⁶⁴ California's Senate Bill 961 requires mediation for all cases of contested custody and visitation⁶⁵ with mediation and counseling being considered as synonymous.¹²

In this area of counseling, mental health professionals are assuming roles of helping the family to establish joint custody arrangements and/or functioning as arbitrators and mediation when there is disagreement on issues in the joint custody arrangement.³⁵ Musetto⁶⁶ views the mental health professional as acting as a "facilitator of change" and the counseling process as being more beneficial as the family is actively involved in the making of decisions. Charnas⁶ identifies the four goals of joint custody counseling as helping the parents to: (1) come to terms with the realities of a different type of parenting re-

sulting from the decision to divorce; (2) assess their parenting desires, strengths, and liabilities; (3) define the demands and needs of their new lifestyles and living arrangements as well as those of the children; and (4) arrive at a satisfactory and workable plan of parenting that can optimally fulfill and reconcile their severed roles as husband and wife with their continuing roles as parents. Thus, the overall aim is for the parents "to be comfortable in their roles as separate-but-joint parents"³⁹ (p. 695).

Joint custody counseling may have positive results,⁴⁹ particularly when both parents are initially and continue to be supportive of one another.³⁹ However, Pearson *et al.*⁶⁷ point out that despite the popularity of mediation/counseling, there is a notable lack of actual use of mediation services. Although the disuse of mediation/counseling services may be attributed to a variety of factors, Melton and Lind⁶⁸ suggest that the adversarial process may have been prematurely and unfairly criticized and that a major positive aspect of the process was the derived sense of fairness and control.

Although mental health's inroads into joint custody counseling may result in mental health professionals no longer functioning as expert witnesses and/or consultants in custody cases,³⁵ the likelihood of such appears to be slight. Although mental health professionals will continue to function as evaluators of competence and as objective and credible sources as to the custody arrangement that would best meet the needs of the specific child and family,^{24,63,69} the mental health professional is assuming a

more active role in custody decisions. The judicial system's perspective of custody being a purely judicial decision is being questioned. Charnas¹⁸ states, "Divorce-related child custody requires an interdisciplinary approach rather than a solely legal or psychological one" (p. 66). This viewpoint is echoed by Atwell and Moore⁷⁰ and Settle & Lowery.²⁸ In addition, it is further supported by Watson,⁷¹ who recognizes the lack of common knowledge between law and behavioral sciences.

Conclusion

As a result of the interdisciplinary approach, custody decisions can be better evaluated and implemented, thereby minimizing the trauma for the family. Most importantly, there can be an awareness that the "best interests of the child" doctrine should, above all, be the deciding factor of custody awards. In contrast, Schreiber⁷² and Trost⁵ point out, quite appropriately, that in actuality it is the needs and interests of the parents rather than the children that are often given preference. Although Canacakos⁷³ stresses that joint custody is a "fundamental right" of parents, such becomes invalid when the rights, needs, and interests of the child are ignored. In many cases, joint custody can sufficiently meet the needs of both children and parents. However, if joint custody is to be not only an option, but a better custody arrangement than sole custody, then it is mandatory that the child's, as well as the parent's, interest be presented and carefully evaluated before custody is awarded.

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