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Stahl, Philip Michael

**JOINT CUSTODY: ATTITUDES AND BELIEFS OF PROFESSIONALS AND
JOINT CUSTODY FAMILIES**

The University of Michigan

PH.D. 1983

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JOINT CUSTODY: ATTITUDES AND BELIEFS OF
PROFESSIONALS AND JOINT CUSTODY FAMILIES

by
Philip Michael Stahl

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy
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Dedicated To My Wife Andrea, Who Helped Inspire This
Research And Patiently Waited For Its Completion
And To Our Children, Jason And Rebecca

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CHAPTER I

INTRODUCTION

Over the last fifteen to twenty years, there has been an increasing amount of research on divorce, and its effects on both parents and children. By 1981, there had been such a significant increase in the number of divorces in this country that estimates suggest that over one million children per year were affected by the divorce of their parents. Estimates also suggest that one half of all new marriages would end in divorce. (Haynes, 1982) In Oakland County, Michigan, there were more than 7000 new divorces filed in 1981 with minor children, with nearly 9000 children involved. This was an increase of over 600 divorces from the year before. (Oakland County Friend of the Court, Annual Report, 1981) By the year 1990, it is estimated that over one half of the children of this country will be living in either single parent homes or some form of blended family, in which one or both of their parents have remarried. (Wallerstein, 1982)

Over the last ten years there has been a similar emphasis on child custody and its effects on both

parents and children. In the early 1970s, fueled by an outcry for equal parenting rights, fathers in many states began to assert their equal right for custody of children. At that time, over 90% of all divorcing mothers received sole custody of their children. (Foster & Freed, 1980) In 1980, in Oakland County, Michigan, approximately 85% of all divorces, including those in which the mother allowed the father to retain custody, ended with sole maternal custody. In that year, there had been no joint custody divorce arrangements awarded. By 1981, almost 85% of the mothers retained sole custody, with a large drop in the sole custody awarded to fathers. However, there was a slight increase in the number of joint custody arrangements, nearly 3% of the divorces for the year. For the most part, fathers were simply granted "visitation rights", along with being required to pay child support, with no ability to influence or control the life of their child(ren). In fact, in many states, they were unable even to receive a report card from school, or medical report from doctors whom they were required to pay, without the expressed authorization of the mother, who was sole custodian of their child.

As fathers were starting to assert their rights, a trio of psychoanalysts authored a significant book outlining their belief in the concept of "psychological parent". They recommended that custody and all control

of the child be granted to just that parent. (Goldstein et al., 1973) Most professionals involved in helping to determine custody decisions hailed this recommendation as a landmark. Its principles began to be utilized in an increasing number of custody disputes. In most cases, the recommendations of Goldstein and his associates continued the existing trend to provide custody to mothers and visitation and child support payments to fathers.

In the mid 1970s, however, other professionals began to criticize the book of Goldstein et al. as not recognizing either the child's need for a continuing, stable relationship with his/her father or the father's need for a continuing relationship with his child(ren). Longitudinal research in California suggested that children who maintain a continuing relationship with their father adjusted to their parents' divorce easier and with fewer problems than those whose fathers simply withdraw from their life. (Wallerstien & Kelly, 1980) Research involving fathers in New York suggested that men who maintain continuing relationships with their children are less depressed and more stable following the divorce than those who are encouraged to withdraw from their child(ren)'s life by the custody decision which grants only limited visitation to them and total control of the child(ren)'s life to the mother. (Greif, 1979) In a few landmark child custody disputes in the

1970's, the courts began to look to alternatives to granting sole custody of the children to mothers (e.g. *Salk v. Salk*, *Perotti v. Perotti*, *Molinoff v. Molinoff*). (Roman & Haddad, 1978; "Award of Joint Custody", 1975; Molinoff, 1977) Attorneys, judges, and mental health professionals in many states began looking harder for alternatives to sole custody.

While many alternatives have been explored, the one which has received the most amount of attention in the last seven or eight years has been joint custody. Primarily in response to Goldstein et al., Mel Roman and William Haddad (1978) wrote their comprehensive account of the problems associated with the granting of sole custody to one parent. They strongly suggested that in over one-half of all divorces, joint custody should be granted, primarily to maintain the important father-child relationship. Joint custody has received a great deal of scrutiny by attorneys, family therapists, psychiatrists, psychologists, judges, researchers, and parents. It has either been hailed as the best possible arrangement for divorcing families, as it allows for the continuity of important family relationships, or decried for creating more problems than it solves.

In the past few years, people in Michigan have begun to look more closely at the 1970 child custody law. Originally, as part of the no-fault divorce law,

this section made it difficult for two parents to contest custody without each side attempting to prove the other parent unfit. Typically, as in most of the country, divorces stipulated that the mother would continue legal and physical custody of the child, with the father being granted visitation rights and being required to pay child support through the Friend of the Court. However, many people began to have trouble with this arrangement so that, as early as 1976, a few families were considering joint custody when ending their marriage. Since such records are not accurately kept, it is difficult to determine what was the first joint custody settlement in Michigan. Fathers began to organize into groups to protect their rights when divorcing. These rights included a greater chance to receive sole or joint custody or at least maintain a more stable relationship with their child(ren), if the mother had custody. In order to modify the pattern of granting mothers sole custody, many people urged the Michigan legislature to change the child custody act.

Thus, by 1980, fueled by lobbying efforts by the Fathers for Equal Rights, the Michigan legislature debated proposed changes in the child custody act which would encourage divorcing couples to consider joint custody. The proposed law was supported by many groups, including the Michigan Confederation of Divorced Fathers, the Michigan chapter of the National

Organization of Women, the Family Law Section of the State Bar of Michigan, the Michigan Women's Commission, and the Friend of the Court Association of Michigan. The only known group to be opposed to the revisions was the Michigan Judges' Association, which felt that the existing law was working well and should not be changed. With only limited opposition to this bill, and only minimal support for a bill which more strongly set forth joint custody as the presumed option, the bill was passed by the Michigan legislature and became law on January 14, 1981.

The new law is as follows:

"An act to amend section 3 of Act #91 of the Public Acts of 1970, entitled "An act to declare the inherent rights of minor children, to establish rights and duties to their custody, support and visitation in disputed actions; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts," being section 722.23 of the Compiled Laws of 1970 and to add section 6a.

THE PEOPLE OF THE STATE OF MICHIGAN
ENACT:

Section 1. Section 3 of Act No. 91 of the Public Acts of 1970, being section 722.23 of the Compiled Laws of 1970, is amended and section 6a is added to read as follows:

Section 3. "Best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- a) the love, affection, and other emotional ties existing between the parties involved and the child.
- b) the capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the educating and raising of the child in its religion or creed, if any.

- c) the capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- d) the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- e) the permanence, as a family unit, of the existing or proposed custodial home or homes.
- f) the moral fitness of the parties involved.
- g) the mental and physical health of the parties involved.
- h) the home, school, and community record of the child.
- i) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.
- j) the willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- k) any other factor considered by the court to be relevant to a particular child custody dispute.

Sec 6a. 1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

- a) the factors enumerated in section 3.
 - b) whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.
- 2) if the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

3) if the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.

4) during a time a child resides with a parent, that parent shall decide all routine matters concerning the child.

5) if there is a dispute regarding residency, the court shall state the basis for a residency award on the record or in writing.

6) joint custody shall not eliminate the responsibility for child support. Each parent shall be responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall not constitute grounds for modifying a support order.

7) as used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:

a) that the child shall reside alternately for specific periods with each of the parents.

b) that the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

This act is ordered to take immediate effect."

Essentially, there are two major changes from the previous child custody act. First, in considering "the best interests of the child" the court is now expected

to consider to what degree each of the parents is willing to encourage and support a continuing, stable relationship with the other parent. This is important, lest a parent with sole custody keep the child away from the other parent because of anger between the parents. In fact, recognizing the importance of the continuing relationship with both parents, the Michigan Legislature, as part of its complete revision of the Friend of the Court system, has just authorized the Friends of the Court to mediate child custody disputes and enforce child visitation orders. (House Bill 4870, 1982)

Second, the new joint custody law states that parties who are competing for custody of their child must be advised of joint custody and that, at the request of either party, the judge must consider an award of joint custody and whether it is in the best interests of the child. If both parents agree to joint custody, the judge must award it. The only exception to this decision is if the judge determines, on the record and based on clear and convincing evidence, that joint custody is not in the best interests of the child. In other words, a judge cannot use personal prejudice against joint custody as a means to deny it. Prior to the new law, any judge could deny joint custody for any stated reason, or for no apparent reason at all.

The only other changes in the law are those statements which define the meaning of joint custody and those which deal with child support. (See text of the new law stated earlier)

While the controversy regarding joint custody was taking place in Michigan, there was a great deal of discussion regarding joint custody in other parts of the country. As was mentioned earlier, many people were beginning to explore how the ramifications of divorce affect children and they were looking toward joint custody as a possible solution to the problems of children. Others were afraid of the turmoil which might result if joint custody became too widespread. Many states have begun to explore their existing legislation and to consider changes in their custody laws to encourage or enable their judges to award joint custody to divorcing couples.

In addition, although many books and journal articles have been written regarding joint custody, most of these were based on the subjective assumptions of the authors. In several reviews of the literature, it was noted that little existing objective research was being conducted about joint custody and its effects on parents and children. (Abarbanel, 1979; Sell, 1979) Most of the objective studies, moreover, involved very small samples or looked only at attitudes of the parents. No research exists which has systematically

explored the attitudes of professionals, and which has interviewed both parents and children of the same family. Thus, despite the lack of scientific evidence, many states have been making revisions in custody laws based on the subjective ideas of a relatively small number of people.

Since the amount of research is limited, there are currently few substantial guidelines to aid attorneys and judges, not to mention family members, in their effort to understand all of the options regarding child custody following divorce. Moreover, in reviewing the literature, one finds considerable contradictory "evidence" regarding joint custody.

The present study was designed to assist professionals and family members in Michigan to better understand joint custody. Specifically, it is hoped that this study will provide significant information to judges, attorneys, mental health professionals, Friend of the Court investigators, and divorcing families about prevailing attitudes regarding joint custody, as an aid to their decision making.

It is important to identify the exact scope of the investigation. Specifically, the study looks at the values, beliefs and attitudes of joint custody among a self-selected, non-random sample of judges, attorneys, Friend of the Court Investigators, and mental health professionals who work or reside in a large suburban

county in Southeast Michigan. Emphasis is placed on determining the respondents' beliefs about the advantages and disadvantages of joint custody. In addition, the study addresses the factors which the respondents indicate are necessary to promote the quality of joint custody as well as those factors which may interfere with a smoothly functioning joint custody arrangement. Finally, several families experiencing joint custody arrangements are interviewed in order to determine their thoughts and feelings about joint custody.

Although it would be useful to compare joint custody with sole custody, such a study is beyond the scope of this research. Similarly, it would be difficult to assess what effect, if any, the new joint custody law has had on divorce actions since the law has been enacted. The most that can be claimed is that the information gained by this study should aid in understanding joint custody itself, so that professionals and families will be better informed when deciding among child custody alternatives following divorce.

CHAPTER II

REVIEW OF THE LITERATURE

As was mentioned previously, a major part of this research was a complete review of the literature on joint custody. There was much relevant information on custody in general in the literature, as well as a great deal of research on the effects of divorce on family members, children particularly. All of the literature on divorce is significantly related to research on joint custody, since such research provides a basis for forming conclusions about the effects of joint custody on the family. This is a relatively new field which has very little hard research as of yet. Nevertheless, ideas developed in the divorce literature play a major role in shaping the attitudes and beliefs which various people have had regarding joint custody. This chapter will outline the major ideas presented in the literature about joint custody, as well as pertinent information regarding custody in general and the effects of divorce on all family members.

One of the important aspects of any literature review is the breakdown of major articles among various

types. For example, of those articles reviewed by the writer, only 12% were research focused, and much of this research studied the effects of divorce on family members. In recent doctoral dissertations, Abarbanel (1977), Luepnitz (1980), and Nunan (1980), studied various aspects of joint custody in a formal manner, and Ahrons (1980), Greif (1979, 1982), Nehls (1979), and Steinman (1981), have also conducted formal research on some aspect of joint custody. Beyond this 12%, however, all of the other books and articles on the subject reflected legal opinions or attitudes (40%), socio-psychological ideas (33%), or articles in popular magazines or newspapers reporting about joint custody (15%). Many of these articles discussed the history of custody in general.

History Of Child Custody Laws

Child custody has been written about and debated for hundreds of years. In early English common law, fathers had superior rights for custody, as children were considered part of the property awarded to the father. In the United States, fathers had superior custody rights into the 19th century. In the early 1900's, assumptions were developed based on psychoanalytic ideas, stating that women were better suited to raising children. As an outgrowth of this position, by the early 1900's most states had developed the "tender years doctrine", presuming that mothers

were best suited to raising their children, and this led to nearly all contested child custody being awarded to the mother following divorce. Since World War II, because of many cultural changes and a greater concern for children's emotional needs many states have abandoned the tender years doctrine. Those states, in the 1960's and early 1970's, developed new child custody laws based on "the best interests of the child", citing many factors which the court should weigh in granting custody awards. The Michigan legislature, for example, passed a model law in 1970. This law contained all of the factors existing in the present law presented in Chapter I, except for "factor j", which is related to the willingness of each of the parents to facilitate a continuing parent-child relationship between the child and the other parent. Due to "the tender years doctrine" and "the best interests of the child" concept, over 90% of contested divorces over the years resulted in maternal sole custody. (Foster & Freed, 1980) Except for a few recent changes in some states regarding joint custody, nearly all states have child custody statutes which prominently cite the "best interests of the child".

The first mention of joint custody in the literature was in Goldschneider (1974), where the author briefly discussed a visitation arrangement with his own children and how it differed from the

traditional Sunday visits of going to the park or the zoo. Prior to this, discussions in the literature were about custody in general. (Benedek and Benedek, 1972) In 1975, five more articles appeared in the literature that mentioned joint custody, two in a magazine and a newspaper (Goodman, Levine), and three in legal references ("Award", "Controversial Custody Ideas", and "Schilleman"). *Schilleman v Schilleman* (1975), in fact, is the first reference found in Michigan case law referring to a joint custodial award. In this case, both parents were found to be fit, so that the court awarded "divided custody" in which the children remained in the home and the parents rotated on a six month basis in order that the children could maintain a continued relationship with each parent.

Also, in 1975, Noble and Noble issued a book outlining problems regarding custody disputes. Their discussion of the issues provided a basis for some of the early ideas regarding joint custody. In 1976, two more reports in magazines appeared (Baum, Holly), as well as three more articles about custody in general in the psychological literature (Derdeyn, Derdeyn, Stack). Since 1977, about fifteen to twenty articles or books have been written on custody each year, especially on joint custody, showing a rapid increase in the amount written in the last five years.

Finally, whereas most of the earlier articles

pertained to custody in general or the effects of divorce, more and more recent articles, both in legal and psychological literature, were specifically directed to the concept of joint custody. They discussed the evolution of joint custody in comparison with other custody arrangements, definitions of joint custody, advantages and disadvantages of joint custody, and factors which were seen as necessary in allowing joint custody to succeed, as well as factors which may greatly impair its potential success. The remainder of this chapter will focus in depth on all of these issues.

Related Divorce Research

The need for alternatives to the typical custody arrangements following divorce became apparent in the early 1970's, following much research on the effects of divorce on children. While it is not within the scope of this study to report all the relevant research on the effects of divorce on family members, those studies which had a major impact on custody legislation and which were also associated with the controversy surrounding joint custody will be discussed.

In a widely cited research project of major scope Wallerstein and Kelly (1980) described the results of their longitudinal study of sixty families in California, which began in 1971. They found that most children expressed feelings of loss following their

parent's divorce, stating that the effects of being left almost exclusively in the care of only one parent were found to be negative. Among the negative effects cited were attachment and separation anxiety, loyalty conflicts among the children toward both parents, strained interactions with both parents, especially with the non-custodial parent, disturbance in the children's play and social relationships, disturbance in cognitive performance and school functioning, and problems in sex role identification. Wallerstein (1982) stated that the most recent findings of this ongoing study suggest that children adjust to divorce better if they can maintain a stable and loving relationship with both parents and that the above-mentioned disturbances diminish over time more easily if such positive relationships exist with both parents.

In her major work on joint custody in 1977, Abarbanel reviewed the literature and found that parental separation and the transition to a single-parent family severely affect the children. The two major factors which she found to contribute to the impact of divorce on children were that they inevitably lose one parent (usually the father) and that the custodial parent (usually the mother) feels shut in with the children and overburdened with the complete responsibilities of parenting. Both children and

parents were seen as suffering from the traditional post-divorce custody arrangement.

In 1977, Rosen sampled 92 children of divorce to elicit feelings regarding their experiences. Her findings revealed that the majority of children interviewed preferred the opportunity for free access to each parent and that restrictions to this access increased the likelihood of developing more severe problems. In 1979, Hess studied the effects of divorce upon child behavior and found that "the negative effects of divorce were greatly mitigated when positive relationships with both parents were maintained. The child's relationship with the non-custodial parent (father) was as important as the continuing relationship with the mother." (pg. 79-80).

Also in 1979, Greif studied fathers in New York and found that those who had a greater say in their child's life maintained a more active involvement in and influence on the child's growth and development. She also noted that divorce led to depression and a sense of loss in fathers as well as children and that, ultimately, those fathers with joint custody felt better and maintained more positive relationships with their children than did any of the other fathers in the study. Finally, in 1981, Hingst studied parental responses regarding their children's attitudes about the divorce of their parents and found that the

overwhelming evidence pointed to the importance of fathers in the lives of those children, even in the relatively high percentage (23%) who maintained little or no contact with their fathers.

Beyond The Best Interests Of The Child

While much of this research was taking place and being written about in the psychological literature, a controversy was developing in both legal and psychological journals regarding child custody and the best interests of the child. In 1972, Benedek and Benedek wrote about Michigan's 1970 child custody act, suggesting ways to guarantee that the child's best interests were being served. Essentially, they felt that mental health professionals could evaluate divorcing families to determine which of the two competing parents should be granted custody. Then, in 1973, Goldstein et al. wrote their landmark book, which was designed to help courts develop guidelines for all child placement decisions, including the child custody decisions in divorce. Utilizing concepts of psychoanalytic theory, the authors observed that the perception of the passage of time is different for children than for adults. Thus, the younger the child the greater the difficulty for that child if the solution to custody decisions is delayed. They concluded that speed in settling the divorce is essential. They also defined the concept of the

"psychological parent", the person who primarily cares for and develops a reciprocal psychological relationship with the child. It was their contention that this psychological parent should be awarded custody when the parents cannot agree. They went on to state that this parent should be allowed totally to control the contact between the child and the other parent. They stated:

Children have difficulty in relating positively to, profiting from, and maintaining the contact with two psychological parents who are not in positive contact with each other. Loyalty conflicts are common and normal under such conditions and may have devastating consequences by destroying the child's positive relationships to both parents. A "visiting" or "visited" parent has little chance to serve as a true object for love, trust, and identification, since this role is based on his being available on an uninterrupted day-to-day basis.

Once it is determined who will be the custodial parent, it is that parent, not the court, who must decide under what conditions he or she wishes to raise the child. Thus, the noncustodial parent should have no legally enforceable right to decide whether it is desirable for the child to have such visits. What we have said is designed to protect the security of an ongoing relationship--that between the child and the 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. It leaves to them what only they can ultimately resolve. (pg. 38)

While there was little or no generalizable empirical research to support their conclusions, their book generated a controversy which continues to this

day. Most of the controversy centered on their stated belief that the non-custodial parent should have no legally enforceable rights to visit his/her child(ren) nor any input into the child rearing.

Some authors, pleased with many of their conclusions, wrote articles and books generally favoring these opinions. First, Derdeyn (1976,1976), in two articles discussing child custody, expressed the belief that the courts should utilize more mental health professionals in their custody decision making. He frequently cited Goldstein et al. (1973) as a basis for encouraging the use of such professionals to determine "the psychological parent" of the child. Nowhere does Derdeyn address the issue of joint custody or its possible use as a way of avoiding custody disputes. Rather, his writings further the belief that such disputes, aided by the wisdom of the mental health professional, are "the best way to decrease the burden on the children." (pg. 1375)

Dr. Richard Gardner, a child psychoanalyst who has written much about divorce and its effects on children, wrote three articles or books regarding child custody. In 1977, he basically discouraged joint custody as a means of resolving custody disputes, though he felt that parents should make their own decisions while they can, since "placing the decision in the hands of others is not likely to result in an arrangement that is in

their children's best interests." (pg. 5) In his 1979 book about divorce for parents, he devoted only one-half of a paragraph to the topic of joint custody, in a chapter on divorce and visitation. Using no supporting research, he stated: "joint custody, in which the child moves back and forth between parents at his option, should be considered more. Obviously, it will not work well for children under seven or eight ..." (pg. 301). Thus, he implied that joint custody may have some merit, but normally should only be considered for children aged seven or eight or over. Finally, by 1982, he seemed to be acknowledging joint custody more, presenting his clearest and most comprehensive review of joint custody to date. Noting the marked upsurge in recent years, he was still reluctant to endorse joint custody. He stated that laws requiring the presumption of joint custody would lead to more harm than good and stated that joint custody should only be granted after careful examination of both parents. Since most parents cannot effectively handle joint custody, he stated that all joint custody awards should be temporary, for six to twelve months, so as to minimize the potential risks involved.

Miller (1981) questioned much of the new interest which had been developing about joint custody and used many of the concepts outlined by Goldstein et al. to

advance his ideas. First, he criticized much of the divorce research, implying that studies of divorce and joint custody were not controlled. Then, he went on to state that "Goldstein, (A.) Freud and Solnit's opinions are persuasive in part because of their intelligent application of the extensive information about child development derived from psychoanalytic studies." (pg. 212) Although he concluded by saying that joint custody could provide greater satisfaction than sole custody, he maintained that the decision for child custody must be based on the "best interests of the child", and not the interests of the parents.

However, Goldstein et. al generated a significantly greater number of opposing viewpoints. Those opposing the ideas of Goldstein et al. have been able to influence legislators and the courts, which have seen a rapid increase in the number of joint custody awards. The first major criticism of Goldstein et al. in the literature was by Stack (1976), where she found two basic problems with their analysis. First, she stated that their guidelines would pit parent against parent, and that each of them must discredit the other in order to prove fitness for custody. In such instances, she maintained, children would be less likely to sustain ties with their non-custodial parent and this would be detrimental to the changing and the continuing needs of boys and girls as they grow up, as

well as to the adults in question. If the custodial parent needed parental relief, the non-custodial parent would be less likely to help since an ongoing relationship has not continued with that parent. If courts rigidly accepted the principles of Goldstein et al. she noted, this could prevent action in the interests of the child and his/her parents. Second, she was concerned about the long-term effects on the child based upon the extent to which the authors value the nuclear family and, following a divorce, the relationship with one specific adult in one specific environment. She proposed that an in-depth relationship with both parents and varied life-styles "may better prepare a child for personal and public life in our society." (pg. 508)

In 1977, Solow and Adams criticized the stress which Goldstein et al. placed on the rights of the one custodial parent. The authors noted that it is impossible to equate parental interests with the child's interests, in the belief that Goldstein et al. do that in their arguments. Then, in 1978, Roman & Haddad published a major book designed to question the practices of the courts in determining child custody following divorce. Whereas the book's major emphasis was to outline the authors' support for joint custody, they spend much of their focus criticizing Goldstein et al.'s work. First, they stated:

Although we cannot be certain that a joint custody arrangement is the answer for all those who raise children after a divorce, it appears to be the most logical and emotionally sound choice. Unlike sole (generally maternal) custody, it does not banish the father or overburden the mother, and, just as important, it does not sever ties between one parent and the children. Quite the reverse: by maintaining the family structure in reorganized form, joint custody, we believe, resolves most of the problems raised by sole custody. Nor is joint custody a merely negative solution; we think it offers positive advantages and opportunities for growth for each of the family members involved. (pg. 104)

Following this, they criticized Goldstein et al. for, in their view, claiming that only one parent is good at being the "psychological parent" and for claiming that joint custody will produce a negative situation in which the child is a "yo-yo", shifting back and forth between two homes. In fact, Roman & Haddad believed that the continuing stable relationship with both parents outweighs the potentially negative effects of both. Finally, they stated:

Not only do we radically disagree with almost all that the book argues with regard to child custody, but we also believe that the authors have failed to support their views or take into account the evidence available on the development of children in various home settings. They do not cite, nor do there exist, any social science data to support the proposition that a single official parent is preferable to two. They seem unaware that the family is undergoing profound changes, and that these changes cannot help but affect our attitude toward custodial care.

The new forms of family life that are coming into being are increasingly evident in intact, as well as divorced, households. As

men and women move beyond sex-defined roles, parenthood and the family are being subject to reevaluation. More women are seeking careers outside the home and more men are finding that they want to, or must, share responsibility for the children. Nor do we anticipate that this trend will be reversed. If anything, our present cultural climate virtually ensures that once a marriage is severed, shared parenthood is more necessary than ever. (pg. 109)

In another major work on joint custody, Galper (1978), wrote about her own co-parenting experience, and also disagreed sharply with the ideas of Goldstein et al. She noted that two homes provide for more continuity in the child's relationships with both parents, and that "the best thing for a child whose parents are divorced is to feel valued, loved, and cared for by both parents. Co-parenting says to the child that whichever parent has moved out of the home will not move out of the child's life, and co-parenting assures the child that he is not responsible for the breakup of the marriage, as so many children imagine." (pg. 88) Like Roman & Haddad, Galper maintained that the many positives of joint custody far outweigh the potential negatives.

Further, and possibly the harshest criticism of Goldstein et al. came from the Group for the Advancement of Psychiatry; Committee on the Family (1981), a prestigious group of ten psychiatrists who practice family therapy. First, they stated that "the proposals advanced in their (Goldstein et al.) work

appear valid, as they apply to adoption and foster care, ... (however) the extension and extrapolation to custody disputes in divorce is not validated." (pg. 77)

They concluded by stating:

What these authors do not recognize is that, in these disputes, we are usually dealing with two psychological parents, a mother and a father. The research cited above, particularly the Wallerstein-Kelly studies, demonstrate the adverse effects of cutting the child off from one of his or her psychological parents. The child needs both parents.

Secondly, the proposal that the custodial parent determine the contact of the child with the other parent fails to take into account the fact that the child has a right as well as a need for contact with both parents. Parents may divorce each other for their own reasons, but in that process, they do not have the right to force their children to divorce the other parent. ...

The evidence and our own experience lead us to what can be called the family perspective on divorce and custody. Briefly, that perspective rests on the following concepts. A couple that comes together to form a family and raise children creates for those children something that is more than the sum of its parts -- more than the dyadic relations one-on-one with mother and separately with father. We find no evidence for the existence of a single "psychological parent" with whom the tie is critically more important than with the rest of the network.

The relationships with mother and father constitute an emotional universe that, especially in the early years, forms a pattern for the child's later relations. If, in the crisis of divorce, one part of that universe is cut off, labeled as bad, and becomes unavailable, there will be adverse consequences for the child's view of himself and of the people he will relate to later in life.

Even if the person who is cut off is a very ambivalently held parent with whom contact is difficult and painful, our experience and the evidence convince us that

the later ability to put that relationship in emotional perspective is better served through contact than through separation. (pgs. 78 - 79)

Following these three major publications, Bratt (1979), Folberg & Graham (1979), and Nehls & Morgenbesser (1980), also criticized some of the assumptions proposed by Goldstein et al. Each of these authors stated that the likelihood for animosity between parents is less with joint custody, and that the guidelines developed by Goldstein et. al would promote a situation where parents would be pitted against each other in a winner take all battle. These guidelines also would force the parents to sever their own personal and parental relationship rather than promote emotional support to one another through the difficult child rearing years. Folberg & Graham stated "these authors appear to naively disclaim responsibility for this radical proposal by, in effect, placing the blame at the feet of the parents for legal consequences far more severe than their actual parenting relationship may justify." (pg. B51) Finally, they quoted Law Professor Henry H. Foster, Jr. as saying:

In short, at the whim of the custodial parent, all contact with the other parent would be foreclosed. Such a position ignores the child's needs and desires, as well as those of the other parent, and in the name of continuity and autonomy encourages spiteful behavior. Given such power, one can visualize the blackmailing, extortion, and imposition which might be visited upon the

non-custodial parent who wants to maintain contact with his or her child. (pg. B52)

The Evolution Of Joint Custody

Criticism of the courts and the way that they determine child custody was a major factor leading to joint custody laws being established in several states. In addition, joint custody was promoted by individually divorcing couples who wanted to try it. First, Goldschneider (1974) wrote about his shared parenting arrangement with his ex-wife which allowed him to develop and maintain a close relationship with his children rather than becoming a traditional "Sunday father". In 1975, Goodman mentioned the concept of joint custody in a popular women's magazine, suggesting that it may be a positive alternative to the traditional post-divorce arrangement.

Also in 1975, the concept of joint custody received further attention in a major newspaper (Levine), with a story about Daniel Molinoff, from New York State, one of the first fathers in the country to be awarded a joint custody settlement following a divorce. (Mr. Molinoff later wrote his own article on the same subject in 1977 in another major newspaper.) In this article, Mr. Molinoff's attorney (Doris Sassower) was quoted as saying: "This was the rarest case of its kind I have ever had. It presented the father's right to custody as clear-cut, although there

was no traditional basis for taking custody away from the mother. In effect, we achieved what Solomon attempted to achieve -- dividing the child -- only we have done it without harm to the children." In a similar case in New York State, ("Award of Joint Custody: Perotti v. Perotti, 1975), the author of the note quoted the judge as saying, "The court determined that the dissolution of the parental marriage could be made less traumatic for the children by providing them with maximum accessibility to both parents, and that joint custody could provide for this. In fact, the parents of these young children expect no less from this court than the award of joint custody." (pg. 156)

In 1976, in another major newspaper magazine, Baum wrote about her joint custody experience with her ex-husband and children. Generally, she was quite positive about her joint custody experiences, although she described some of the problems which she experienced. The worst problem she found was the reaction of schools and other parents, who continually cast her in the role of the responsible parent, even when it was her ex-husband's time to be responsible for the children. She concluded her article on a positive note, saying "based on my five year experience, the important point is that living arrangements can be flexible and new ways can be found to reconstitute families in their own image." (pg. 46)

Also in 1976, joint custody received attention in another women's magazine, when Holly described "The New Haven Plan", in which each of twenty-five families in a college town in Connecticut instituted a system of shared custody, with both parents ministering to the daily needs of the children. Like Ms. Baum, this author was generally pleased with her own joint custody experience, and recommended it as a positive alternative to the traditional post divorce arrangement.

Primarily as a result of these forces, and continued efforts on the part of fathers and fathers' rights groups around the country, legislatures and the courts began to explore joint custody as an alternative to traditional custody settlements. Foster & Freed (1980) wrote about legislative reform in many states, growing out of the increased recognition by experts on the need for fathers to continue relationships with their children. With the notion that sexual stereotyping in this country was increasingly considered taboo, joint custody advocates consider joint custody as a viable way to end the practice which had granted child custody to the mother in typically 90% of the contested cases.

In addition, Poll (1981) wrote about the need for joint custody to assure the child's right to continued contact with both parents, and saw this as a major

source of the evolution of the new joint custody law in California. Finally, he stated that he agreed with Wooley (1978), who said "the difference between the professional reaction to shared custody and that of the people who are practicing some form of it is often amazing. ... Not infrequently, I'd spend the day listening to learned arguments as to why such arrangements can't possibly work, and then have dinner with people who, not knowing that it was impossible, found it to be an eminently sensible way of doing things." (pg. 6)

One final argument for joint custody was advanced by Canacakos (1981) who stated that "the recognition of equal parental rights be reflected in a presumption of joint custody ... (and that this) is constitutionally mandated ... (and) proceeds logically from each parent's right of parental autonomy." (pgs. 787 - 788) She saw joint custody as the only legal approach to custody decisions which assures the equality of the right of each parent. Finally, she stated "the burden placed on those seeking to rebut the presumption of joint custody is much greater than what is normally required in present custody cases; to deny joint custody, it must be demonstrated that such a custodial arrangement would result in probable harm to the child. Such a burden is likely to be very difficult to bear in the vast majority of cases." (pg. 800)

Legislatures began to respond to the pressures of joint custody advocates in 1976 when North Carolina became the first state authorizing joint custody awards "if clearly in the best interests of the child". In more recent years, more states have passed legislation authorizing the courts to award joint custody. To date, Iowa, Wisconsin, Oregon, Kansas, Texas, Nevada, Hawaii, and California, in addition to Michigan, have laws that explicitly recognize or encourage joint custody. In addition, Utah, Kentucky, Minnesota, Illinois, Connecticut, New Jersey, New York, Massachusetts, and Ohio are all considering some form of joint custody legislation. (See Foster & Freed, 1980 and Gouge, 1981). Although controversy continues to exist regarding joint custody, there has been an increase in the number of states with laws which allow for or encourage joint custody, while maintaining the primary concept of "the best interests of the child".

Definitions Of Joint Custody

Joint custody has been defined in many ways. In the new Michigan law, joint custody "means an order of the court in which 1 or both of the following is specified: a)that the child shall reside alternately for specific periods with each of the parents, and/or b)that the parents shall share decision-making authority as to the important decisions affecting the welfare of the child." (Public Act 434, 1980) Yet, in

the literature there have been numerous other attempts at defining joint custody. Morgenbesser & Nehls (1979) defined joint custody as the situation in which "both divorced parents share the rights and responsibilities for raising their child or children following their divorce. As a legal concept, joint custody attempts to guarantee divorced parents an equal say in decision-making and in overall child-rearing. In many cases, the joint custody agreement stipulates that the child will alternatively live with each parent." (pg. A7) Murphree (1981) described joint custody as "an arrangement in which the parents share legal responsibility for their child's care and alternate companionship with the child." (pg. 120) Miller (1979), in an attempt to further outline the definition and parameters of joint custody stated the following:

The essence of joint custody is that both parents share responsibility and authority with respect to the children. This involves parental consultation and agreement on all major decisions affecting the children. The decision making process thus approximates that of an intact nuclear family. Parents with joint custody make joint decisions on all matters having a significant impact on their children's lives. Such matters include the upbringing, education, religion and financial support of the children. Also included would be medical and psychological help, if necessary, school vacations and trips, summer camp, and extracurricular activities and associations. The specifics of these decisions are left to the parents themselves; in the eyes of the law the parents are on an absolutely equal footing. (pg. 360)

Following this, he differentiated between joint "legal" and joint "physical" custody, stating:

The former consists exclusively of the shared decision making function. The latter has the additional component of shared residence. That is, under joint physical custody the children live with each parent on an equal or split-time basis. Thus, in a sense, minor as well as major decisions are made by both parents where there is joint physical custody. In joint legal custody, only one parent has physical custody, and that parent makes all day-to-day decisions. (pg. 360)

Other authors have discussed the difference between the two types of joint custody. Foster & Freed (1980) noted that joint custody "embodies two concepts, i.e., a sharing by parents of legal responsibility and authority for decision-making in those vital decisions affecting the child's life, as well as a sharing of physical care and living time with the child." (pg. 24) Galper (1978) discussed a number of factors in her definition of joint custody. She equated joint custody with co-parenting and stated that it involves the assumption on the part of both parents that neither one has ownership (custody) of the children. Her definition of joint custody included the belief that children would spend substantially equal amounts of time with each parent, generally sharing the child equally. In general, all of these ideas encompassed the range of definitions found in the literature. (Abarbanel, 1977; Baum, 1976; Cox, 1978; Eder, 1978;

Gaddis, 1978; Grote & Weinstein, 1977; Jarboe, 1979; Levey, 1981; Roman & Haddad, 1978; Sell, 1979; Trombetta, 1980-81; and Wooley, 1978)

Advantages And Disadvantages Of Joint Custody

Much of the literature has examined the advantages and disadvantages of joint custody. Again, as with the definitions, there was considerable overlap among the authors. In an excellent review of the literature, Sell (1979) found the following advantages to joint custody noted in various writings:

- 1) the parental relationship is not terminated as a result of divorce;
- 2) there is a greater sense of security for children having the care of both parents;
- 3) divided loyalties are less of a problem in joint custody;
- 4) the quality of time spent with each parent is improved;
- 5) parents are not winners or losers in the custody question;
- 6) there is more free time for each parent since the children are not under their direct care continually;
- 7) children can relate more freely to each parent without feeling guilty;
- 8) parents are no longer separated into the significant and insignificant parent; thus, there are stronger bonds to each parent;
- 9) it gives men a new opportunity to parent;
- 10) it encourages cooperation between the ex-spouses;
- 11) the couple is forced to recognize mutual rights;
- 12) it is fairer when both parents are competent providers;
- 13) support and visitation generally become less of a problem;
- 14) both parents are involved in the daily routines of the children; thus, one parent is not delegated to the role of taking the child to the park or zoo while the other has all of the responsibilities;
- 15) the children show greater independence;

and

16) one parent does not have to prove that the other parent is unfit to "win" the custody battle. (pg. 4-5)

In general, all other authors expressed similar opinions, but often in a more elaborate way. For example, Victor & Winkler (1979) noted that the greatest advantage to joint custody was that parents would not be pitted against each other in battle. They stated that under the traditional system, "the parent desiring custody has to prove the 'unfitness' of the other parent, and the one who will stoop the lowest in mudslinging, slander, character defamation, perjury, and vilification of the other is the one who has the best chance of gaining custody or, in the eyes of the law, being declared the most 'fit' parent." (pg. 37)

Diehl (1982), Salk (1977), and many who testified before the Michigan House of Representatives (1981), felt that one of the biggest advantages of joint custody was that it would free the courts from the general practice of granting child custody to mothers in approximately 90% of the contested divorces. It would encourage and almost force judges to consider all of the facts in a divorce case, and therefore decrease the likelihood that a decision for custody would be made primarily on the sex of the parent. As such, it would help to alleviate the injustice of sex discrimination against fathers.

Grote & Weinstein (1977), the Group for the Advancement of Psychiatry; Committee on the Family (1981), Murphree (1981), and many others reported that joint custody best maintains the needed family structure in society. They stated that the greatest advantage to joint custody was that fathers would be more likely to maintain an ongoing relationship with the child, and preserve as much of the original family unit as possible following the termination of the marriage. They believed that the stability of such continuing relationships was the prime factor which would enable the child of divorce to overcome the negative effects of most divorces. It would also help such a child to recognize that he/she can still be loved, even when the parents no longer love each other. This was eloquently outlined by Daniel McClean, a Minneapolis family court referee, in testimony before the Michigan House Judiciary Committee during hearings regarding Public Act 454, 1980, when he said:

Divorce breaks up marriage but not families. Kids are not divorcing their parents. Parents are trying not to divorce their children. The point is that the ordinary kid wants to have mom or dad at his or her high school graduation ceremony, when he or she gets out of college, when the first child is born, wants both parents at the Christening ... and we've got to develop a system where those relationships can survive a divorce and that is why we have gotten rid of fault and that is why we have tried to work on basic problems because we want kids to be able to feel comfortable and invite those parents to that graduation ceremony or

whatever that important function is going to be. The least disruptive custody arrangement following divorce is likely to be the one most resembling the custody and control exercised before divorce, namely, joint custody. (Koenig, pg. 172)

Finally, in further testimony before the Michigan House of Representatives (Second Analysis, 2/6/81), many people stated that joint custody would help to eliminate "perhaps the cruelest result of divorce", namely, the separation of the child from one of his or her parents. In all, the proponents of joint custody found several advantages to both parents and children, and as noted, to the overall family system in particular.

Similarly, the literature had many references to disadvantages of joint custody. Most of these were associated with the alleged disadvantage of moving children back and forth between two homes, and how this would be very difficult for children. Ever since Goldstein et al., authors reflected on the need for children to have one "psychological parent", and the need to maintain the stability of that relationship. Westman (1979), Benedek & Benedek (1979), and Levey (1981) believed that the overwhelming need for children following divorce is stability, and that joint custody greatly interferes with that need. Holub (1979) noted that little is known about the long term consequences of joint custody and he wondered about the effects on

young children of many moves between households, and whether they would need to identify with one primary stable home to achieve the best adjustment. He also wondered whether older children needed the stability of one home in order to maintain positive peer relationships and to facilitate school activities. Finally, he asked "do joint custody arrangements provide sufficient continuity and consistency in the parenting relationship for proper child development?" (pg. B21)

Sell (1979), just as he did with advantages, outlined the prevailing concerns in the literature when he completed his review. He stated that many authors were concerned with the following possible disadvantages to joint custody:

- 1) it is stressful to young children who need a stable environment;
- 2) the children need one primary parent and one stable home;
- 3) there may be a continuing power struggle between the spouses;
- 4) since joint custody requires that the ex-spouses be involved with each other, unresolved difficulties from the marriage may cause conflicts;
- 5) often parents cannot set their anger toward each other aside long enough to focus on the best interests of the child;
- 6) joint custody fosters continued dependence of the parents upon each other when they should be letting go of the relationship;
- 7) value conflicts over childrearing practices may create stress for the children;
- 8) remarriage of one or both parents may complicate the joint custody arrangement;
- 9) geographical mobility is impossible because residence is restricted to a

contiguous geographical area;
 10) it is more expensive to maintain dual residences, clothes, toys, etc.;
 11) it is unconventional, and opposition by friends, neighbors and teachers may complicate the joint custody arrangement;
 12) joint custody disrupts the children's social lives;
 13) fathers are not really capable of the nurturing which is required under joint custody arrangements, and;
 14) joint custody may require the parents to reorder their priorities (e.g. career, promotions, remarriage, or recreation) in order to coparent effectively. (pg. 5)

Many authors addressed the fact that joint custody laws would create difficulty for the judge who must decide custody. Russell (1981) quoted Leslie Kutinsky, chairman of the Michigan Bar Association family law section as saying "it is a hindrance to the trial judge, creates more problems than it solves, and invites havoc for the children." Foster & Freed (1978) believed that joint custody may be a "judicial cop-out" in order to avoid complex and difficult fact-finding. Levey (1981) also raised the concern that joint custody is often used as a bargaining tool between attorneys, and that this interferes with making a rational choice as to whether or not joint custody would be in the best interests of the child. Unlike many proponents of joint custody, she also believed that joint custody would frequently intensify post divorce parental battles, especially if the joint custody had been used as a compromise between contesting parties.

Gardner (1982) presented a clear understanding of

his belief of the disadvantages of joint custody. In addition to those ideas already mentioned by others, he saw joint custody as increasing the likelihood that children would be used as weapons if there were no restraints on the parents. He felt that most parents could not satisfy the need to cooperate in the joint custody arrangement, and because of this stated that joint custody would increase rather than reduce the animosity between warring parents.

Finally, in testimony before the Michigan House of Representatives (1980), the following possible disadvantages of joint custody were expressed:

- 1) the belief by many that most divorces are marked by the inability of couples to communicate and that joint custody is not practicable in most instances;
- 2) the bill contains no mechanism for resolving "inevitable" disputes arising out of joint custody;
- 3) some felt that the bill might allow for joint custody even against the "best interests of the child", and;
- 4) no one knows the effects of joint custody decisions on a large number of children.

Kelly (1982), in an address before the Association of Family and Conciliation Courts, found much of the resistance to joint custody coming from judges, attorneys, therapists, and legislators who "believe the children belong to their mother." She stated that joint custody is subjected to a level and intensity of scrutiny never directed toward the traditional divorce arrangement, where one parent has sole custody, and the

other a few days of visitation per month. She reported that most psychological theories pertain to the "intact" family, and that opponents of joint custody use this research to suggest that children "need" the stability of one home. She then stated "there is no reason that geographical stability, i.e. one home, is any more important than the stability of on-going relationships with two loving people." She also stressed the arguments that center on the inability of divorced parents to cooperate, in part because they are still emotionally married. She refuted this by stating that anger subsides in most parents following divorce, with only 10 - 15% of parents still maintaining "pathological" anger toward each other by the end of one year post divorce. Kelly concluded her address as follows:

Increasingly we are seeing before us, in the courts and in our offices, two parents of reasonable psychological health, both of whom want to parent full-time. Such cases have the potential to push counselors and clinicians beyond the limits of current psychological knowledge and predictive capacity. In these instances, we are more likely to make judgements based primarily upon unconscious, irrational or irrelevant factors.

Where each parent is deemed to be a good enough parent and each supports and encourages the child's relationship with the other there is really no basis, in either psychology or law, for making a rational choice. In these families, the lawyer, the judge, and the mental health professional, can truly address the child's best interests by encouraging each parent to take an active role post-divorce in the child's life by

sharing parental responsibility on an ongoing basis in two separate locations, thus with joint custody.

Factors Involved In The Feasibility Of Joint Custody

From this review of the literature, it becomes apparent that there is a great deal of inconsistency and mixed opinion among attorneys and mental health professionals regarding joint custody. Yet, in spite of these differences, some factors exist on which most of the writers agreed. These factors were identified in nearly all of the writings as being necessary for joint custody to be a viable option. In addition, most authors described many factors which might interfere with the smooth functioning of a joint custody arrangement. Irrelevant of the advantages and disadvantages which were previously discussed, these factors were seen as consistent in how they might affect the eventual outcome of any joint custody arrangement.

Most authors (Abarbanel, 1977; Ahrons, 1980; Alexander, 1977; Bratt, 1979; Cook, 1980; Cox & Cease, 1978; Eder, 1978; Elkin, 1978; Gaddis, 1978; Gardner, 1982; Gouge, 1981; Miller, 1979; Murphree, 1981; Nehls & Morgenbesser, 1980; Salius, 1979; Sell, 1979; Trombetta, 1980-81; and Trombetta, 1979) agreed that joint custody would be viable if both parents were well suited to assume the responsibilities of child rearing, if they could communicate with each other in an adult

manner regarding the child(ren) and if they were willing to put aside their differences in order to cooperate for the child(ren). They felt that a commitment to joint custody and an agreement on the implicit rules of the arrangement were necessary for joint custody to work to the mutual benefit of all family members.

Among these writers, most felt that it would be important for both parents to live near each other, so that joint custody would not disrupt school functioning or peer relationships. Money was frequently seen as an important factor, as parents who make more money would be able to handle the extra cost typically involved in a joint custody arrangement. Along with this, if both parents were working or involved with other pursuits, many authors stated that joint custody would be more feasible. Ramos (1979), like many others, felt that joint custody would work if both parents shared child rearing during the marriage, and if the parents were prepared for the inconvenience of the child moving back and forth. She also stated that both parents must be flexible enough to adjust to the many needs inherent in any joint custody arrangement.

Finally, consistent with the above considerations, Folberg & Graham (1979), in a handbook prepared for the Association of Family Conciliation Courts, outlined a basic test of whether joint custody was preferable to

sole custody. They stated:

The relevant criteria for joint custody should be 1) both parents are fit; 2) both parents wish to continue their active involvement in raising the child; 3) both parents are capable of making reasoned decisions together in the best interests of the child; and 4) joint custody would disrupt the parent-child relationship less than other custody alternatives. (B64)

Just as many authors discussed those factors which are necessary for joint custody to work effectively, they similarly reported on many factors which would interfere with the smooth operation of joint custody or with its effectiveness altogether. For the most part, the authors believed that the absence of the above-mentioned factors would hamper the smooth transition from intact family to divorce with joint custody. In particular, however, the authors reported that severe animosity between the parents was the single most detrimental factor to joint custody. Most authors felt that bitterness between the parents would cause children to be placed in the middle more than they might under sole custody circumstances. As Eder (1979) said, "joint custody can become, or continue to be, the source of a power struggle between the parents, with the child caught in the middle. Where there is still unresolved hostility or resentment, these negative feelings are perpetuated with joint custody." (pg. B22) The other factors typically mentioned were the geographic closeness of the parents, with greater

distance causing more problems, and logistic rigidity, which would interfere with the flexibility necessary for joint custody. Finally, Fineberg (1979) found that age was an important factor, as joint custody with infants would be difficult, though not impossible.

Co-parenting

In 1978, Miriam Galper wrote a book about her experiences with her own joint custody arrangement. This was a well-written book, designed for parents who wanted to consider joint custody yet knew very little about what was involved. She effectively outlined the commitment required between the parents and stressed the positive relationship she had with her ex-husband, although she noted that it wasn't always pleasant. She talked about the resistance she often felt from the legal and school community and what she was able to do to overcome this.

One of the most useful features of the book was the way in which she described the endless number of ways in which families could organize living arrangements, and she stressed the need to do this in a manner most constructive for the family as a whole. She outlined various alternative living arrangements, e.g. split week, split month, every other week, every other month, split year, etc., and possible generalized advantages and disadvantages of each type of arrangement. In arranging the schedule, she stated

that it is important for the schedule to be made as soon as possible, and that it needs to be adhered to fairly rigidly, for everyone's best interest and ease of adjustment. She also believed that most children can adjust to any schedule fairly easily, once it becomes routine, and believed that parents and their children must remain flexible to the need for changing the schedule, as circumstances dictate.

After much discussion about other logistics, Ms. Galper talked about the future of joint custody. She felt that joint custody evolved out of a need for an improved way to end the marital relationship while maintaining the parent-child relationships. She noted that joint custody was frequently the best solution among various custody alternatives. At the end of the book, she said:

There was a time, not too long ago, when the intact family was seen as the only environment in which to raise emotionally healthy children. In recent years, we have learned not to romanticize the ideal of the nuclear family any longer. We have learned, through our experience, that we can provide emotionally safe environments for our children in various kinds of living situations. Co-parenting, with parents sharing their children equally, is one such kind.

Mothers and fathers want to provide their children with love and warmth, with affection and fun. They also want to live their own lives to the fullest. After separation or divorce, co-parenting provides a dynamic, effective way for that to happen. (pg. 134-35)

Joint Custody Research

As was noted at the beginning of the chapter, there have been a few research studies on joint custody in the last few years. Abarbanel (1977) was the first to do any systematic research on this topic. Essentially, she used the case study approach to interview intensively and follow four families in the San Francisco, California area in order to identify issues regarding joint custody and to see how it was working. Greif (1979) used a questionnaire to interview fathers in the New York area regarding their feelings about their divorce and their relationship to their children. Since a sizable proportion of her sample maintained a co-parenting style with their ex-spouse, she discussed her findings regarding joint custody. Ahrons (1980) discussed joint custody arrangements and her findings about how joint custody seemed to work for the families in her study. Steinman (1981) studied children of joint custody arrangements to see how they viewed it. Nunan (1980) studied the effects of joint custody versus sole custody on child development, and Luepnitz (1980) studied families after divorce in relation to maternal, paternal, and joint custody. In all of these studies, the overwhelming evidence was that joint custody was and is an effective way to continue significant parent-child relationships

following divorce. Although all of the authors reported complications with joint custody, the conclusion of each was that joint custody seemed to work because it helped to maintain close relationships with both parents. As Steinman stated:

These children were remarkably able to keep each home, and their relationship with each parent, separate in their minds, and did not feel they confused one parent with another. Most appeared able to adapt to each household with a minimum of conflict and confusion. (pg. 408-09)

The present findings indicate that, in general, the parents who chose joint custody found the arrangement satisfactory despite some difficulties, ... overall, the children did not like the divorce and preferred the marriage, but most valued the joint custody arrangement in that it gave them access to both parents. It appeared as if the most crucial and beneficial components of joint custody for the children lie in the attitudes, values and behavior of their parents. (pg. 413-414)

Finally, some of the authors felt that joint custody would work even if the parents did not get along very well. Abarbanel noted some animosity between parents of her sample, and Greif, in particular found that joint custody worked well, according to fathers, even when friction between the parents existed. She concluded her research by saying:

We should do everything in our power to maximize contact between the child and both parents. One clear way of doing that is through joint custody arrangements. ... A different quality of psychological involvement grows out of the opportunity to take care of (i.e. to be a parent to) one's child, rather than "visit" with one's child.

... Fathers with joint custody are more likely to involve themselves in all aspects of their child's growth and development. The maintenance of such ties can be critical for both father and child. (pg. 319)

Summary And Conclusions

Obviously, there have been numerous writings by attorneys and therapists in the last few years regarding joint custody. Authors, quoting each other, have not reached any consistent agreement regarding the effects of joint custody. Many advantages and disadvantages have been elaborated. The major advantages of joint custody cited were the opportunity for both parents to remain fully involved with their child(ren) for the benefit of both parent and child, and the continuing stability of pre-divorce relationships. The major disadvantages cited were the moving back and forth between two homes, and the resultant instability to the child, as well as the likelihood of continued hostility between the parents, often with the result that the child is put in the middle of the parental arguments.

In spite of this expanding amount of writing, there have only been six formal research projects designed to study joint custody and its possible effects on families. Based on these research findings, as well as all of the other ideas presented, it is the writer's belief that joint custody is "An Idea Whose Time Has Come." (Eder, 1978) All of the research on

divorce has suggested that the loss of a continuing parent-child relationship is the single most critical variable in the depression which follows. Joint custody provides a greater opportunity for stable and consistent relationships to continue between a child and both his/her parents. It would seem that the positives to be gained for both parent and child in a continuing co-parental or joint custody arrangement far outweigh possible negatives when both parents are interested in the child. It would probably work best if the parents cooperate and communicate well, and if they live near each other. In addition, if all family members could maintain flexibility as the child(ren) get older and circumstances change, joint custody would no doubt have the greatest chance of success. However, even with somewhat hostile parents, joint custody should work as long as both parents focus on and work for the best interests of the child(ren). The writer is in agreement with Sell (1979), who concluded his extensive review of the literature by stating, "By the end of the 1980s, joint custody will be the rule rather than the exception, ... 50% of divorcing couples could carry out joint custody, and another 25% could do it with counseling. ... With increasing knowledge and education, joint custody should be able to benefit more families in the future." (pg. 10)

CHAPTER III

BASIC DESIGN AND METHODOLOGY

The basic thrust of this research was two-fold. First, the literature review discussed in Chapter II was conducted in order to determine the content of most of the prevailing arguments regarding joint custody. Second, and more important, this study used comprehensive interviews of judges, attorneys, Friend of Court Investigators, and mental health professionals in a suburban county in Southeast Michigan in an attempt to gain a solid understanding of the attitudes of this sample regarding joint custody. These interviews focused on the beliefs and attitudes attributed to joint custody by the respondents, and the rationale for their expressed attitude or beliefs. The format for the interviews was based primarily on open-ended interview items with the respondents, essentially with a clinical format to allow for complete exploration and inquiry into the reasons for these beliefs.

More specifically, interviews with the following sample were included in this study:

Circuit Court Judges -- Nine of the thirteen judges of the Oakland County Circuit Court were interviewed regarding their attitudes and beliefs about joint custody. This sample included eight male and one female judge, and at the time of this study they had served on the Court from one through twenty-three years.

Mental Health Professionals -- Eight mental health professionals from various geographic areas of Oakland County were interviewed. The sample included one psychiatrist, three psychologists, and four clinical social workers. All members of the sample were involved on a daily basis in work with children of divorced families. Three were male and five were female. Four members of the sample worked primarily in non-profit community mental health or court agencies and the other four worked primarily in private practice.

Attorneys -- Eight attorneys, all male, from various geographic areas of Oakland County were interviewed. All of the attorneys interviewed spent a majority of their practice working with divorce cases, and some of them were members of the Family Law Section of the State Bar of Michigan. Five of the attorneys worked in middle to lower class settings, while the other three worked in more exclusive settings, dealing primarily with high paying, professional clients.

Friend Of Court Investigators -- Three

investigators from the Oakland County Friend of the Court, all female, were interviewed. This sample was selected from a request for volunteers from the agency. In Oakland County, investigators work exclusively with one judge, and each judge has a personal investigator. Thus, the sample represented one-fourth of the investigators in the department. One of the thirteen judges did not employ an investigator.

Families -- Six families were interviewed for

this study. Since all family respondents were identified by referral of friends or a single parents' group, or from a request for volunteers on the writer's part, they represent a non-random sample. The parents were married an average of thirteen years prior to separation, with a range from eight to eighteen years. At the time of the interview, the parents had been divorced an average of 2 1/3 years, and the range was from four months to five years. Each of the families involved had from one to four children, and the children ranged in age from three to seventeen years at the time of the parental separation, and from five to nineteen years at the time of the study. All of the adults were white, primarily middle to upper-middle class professionals, and all twelve adults had worked continually since the time of the divorce. However, one of the mothers had been laid off from her teaching

job just prior to the interview. Prior to their separation, only three of the women had worked full time. Finally, at the time of the interviews, all twelve households were located in southeast Oakland County, though one of the fathers has since moved to Tennessee.

Potential subjects were found in many different ways. All of the Oakland County Circuit Court judges were asked of their willingness to participate, and nine of the thirteen agreed. For various reasons, each of the other four declined to participate. Attorneys and therapists were identified from many sources. First, the writer used the phone book to develop a large list of potential subjects. Once this was accomplished, phone calls were made to various potential subjects. Some of the selection also utilized referral from other professionals, especially from a membership list of the Michigan Inter-Professional Association, a group organized to deal with and understand laws associated with divorce and the family and their effects on family members. About 1/3 of the attorneys and mental health professionals interviewed were members of that organization. Again, the final list of respondents was determined by the willingness of potential subjects to participate.

Finally, families were selected and asked to

participate from a number of sources. First, colleagues were asked if they personally knew anyone who was divorced and had joint custody. Along with this, the professionals who were interviewed were asked if they knew anyone with joint custody who might be willing to participate in the study. Finally, an announcement was placed in a newsletter of a divorced parents' group seeking volunteers for this study. If the colleagues and professionals knew of prospective referrants, they made the initial contact to the family, in order to protect the subject's right to confidentiality. If the adults agreed, or if volunteers from the divorced parents' group called, the researcher identified the research in an initial phone call, seeking tentative approval to participate in this research project. For a family to be included in the study, both parents were required to participate, as well as all children over the age of ten who were still living with either parent. This minimum age was chosen in order to gather useful information, and avoid risking potential problems with younger children who might have difficulty talking about their parents' divorce. In addition, the parents either must have had joint legal custody, or joint physical custody, or be practicing a de facto joint custody style divorce arrangement. Once this tentative approval was granted, an appointment was made for the interview. Prior to

any interview taking place, all respondents were guaranteed confidentiality, were asked again of their willingness to participate in the study, and were asked to sign an Informed Consent Form acknowledging their willingness to participate in the interview.

All respondents were interviewed separately in order to avoid contamination, although in one instance siblings were interviewed together following the initial interviews. In another instance, both parents and their four children were interviewed together, at their request, following the initial interviews.

As was noted above, the information for the research was gathered from the subjects via a clinical interview. It was the assumption of the researcher that this would be the best way to gather the information and to receive the greatest understanding and clarification of the belief's of the respondents. The researcher personally conducted all interviews, all but three of which were audio-taped to assure a more comprehensive analysis of the findings. Three participants agreed to participate but preferred that their interviews not be taped, so lengthy notes were recorded of these interviews.

The interviews were based on specific questions aimed at developing and understanding the attitudes and beliefs of the subjects, followed by clarifying questions in order to ensure completeness and

thoroughness of this understanding. All follow-up questions were worded in such a way that they would not provide any bias to the subject.

All of the interviews took place from May, 1982, through September, 1982. The timeliness was important to help minimize any effect of other publicity on the respondents, such as from newspapers, magazines, journals, or television.

The following primary questions were asked of the professionals:

- 1) How would you define joint custody?
- 2) How would you define sole custody? What are the differences between the two?
- 3) If you were a (judge/attorney/consultant) in a divorce case, under what conditions would you recommend or oppose joint custody?
- 4) Can you identify those specific factors which you think are necessary for joint custody to be a practical and workable divorce arrangement, or impractical and unworkable divorce arrangement?
- 5) Have you known families in which joint custody was awarded? Did you ever disagree with the decision? Why?
- 6) Who do you think is more likely to ask for joint custody, the mother or the father? Why?
- 7) Specifically considering "the best interests of the child", under what circumstances would joint custody be preferable? Unworkable?
- 8) Under what circumstances do you think children should have a say in the parental custody decision?
- 9) If parents agree on a custody arrangement, under what circumstances do you think the judge should be allowed to change that plan and proscribe a different custody arrangement?

10) Under what custody circumstances do you think that children will have fewer post-divorce problems?

11) Under what custody circumstances do you think that parents will have fewer post-divorce problems?

12) For both parents and children, can you identify some potential problems with joint custody?

13) For both parents and children, can you identify some potential advantages of joint custody?

14) In your experience, are people seeking joint custody more, or are the courts changing the number of joint custody awards being granted since the change in the law approximately a year ago?

15) Any final comments?

The following primary questions were asked of the parents:

1) How long have you been separated? Divorced?

2) How long were you married at the time of the separation?

3) Who initiated your divorce?

4) How many children do you have? At the time of the separation and divorce, how old were they?

5) When the divorce was initiated, what was your preference for custody? If this is different than what you currently have, why did the court not follow your preference?

6) How would you define joint custody?

7) How had you first heard of joint custody?

8) Who first suggested/requested joint custody in your divorce?

9) To what extent did the judge participate in the final custody determination?

- 10) What living arrangements have you and your children used?
- 11) What has it been like to implement these plans?
- 12) What do you think are the problems with joint custody? Advantages?
- 13) How do you think your children feel about your custody arrangement?
- 14) What allows joint custody to work for you?
- 15) What interferes with your joint custody arrangement working smoothly?
- 16) Overall, how do you feel about your custody arrangement?
- 17) If it were your choice to pick any possible custody and living arrangement for you and your family at this time, what would you choose?
- 18) Any final comments?

Similarly, all of the children who were interviewed were asked the following primary questions:

- 1) How old are you?
- 2) How old were you when your parents separated?
- 3) What do you recall about how your parents told you about their divorce and who you would be living with?
- 4) Whom do you live with now, and how do you split your time between your mom and dad?
- 5) How do you feel you've adjusted to this?
- 6) How do you feel about the living arrangements? What do you like/dislike about them?
- 7) How do you think it compares with friends of yours whose parents are divorced?
- 8) If it were up to you who you lived with and how you spent your time with your parents, what would you like?

9) Any final comments?

Once the interviews were completed, the writer analyzed all of the responses to determine the range of beliefs expressed by the subjects. Results were analyzed according to subject type: first the professionals, then the adults, and finally the children. These results were analyzed by more qualitative rather than statistical means in order to understand the meaning and attitudes of the subjects. Although no trends can be determined with such small samples, scrutiny of the range of responses provided the writer with a rich account both of perceived advantages and disadvantages of joint custody and of the factors seen as related to the success or failure of joint custody. Finally, family members provided the writer some clear-cut ideas about joint custody, based on their subjective experiences. These results will be discussed in the next chapter.

CHAPTER IV

RESULTS

Whereas many research studies have specific hypotheses and relate any discussion of results to those hypotheses, this study was of a different nature. The study reviewed prevailing attitudes and beliefs about joint custody among various professionals, as well as among family members who were experiencing joint custody arrangements. Thus, it was impossible to attribute specific results to any hypothesis of the study. The following results summarize the main points elicited by the respondents regarding joint custody, primarily focusing on the definitions of joint custody, the factors seen as being related to the success or failure of joint custody, the advantages and disadvantages of joint custody, and the general feelings of the respondents regarding the viability of joint custody for divorcing families. For the family members, special attention was also given to the variety of physical arrangements which the families had used to implement their joint custody arrangements. Since the study questioned three primary groups of

respondents, i.e. professionals, parents, and children, the results are presented separately for each group.

The Professionals

As was mentioned in Chapter 3, nine judges, eight attorneys, eight mental health professionals, and three Friend of the Court Investigators were interviewed for the study. In general, all three Friend of the Court Investigators responded that their beliefs were based on the attitudes and beliefs of the judges with whom they worked. Because of this, the responses of the Friend of the Court Investigators were not separately analyzed for the results of this study.

With twenty-five respondents (excluding Friend of Court Investigators), there were twenty-five somewhat differing responses regarding the definition of joint custody. Primarily, definitions centered around two concepts. First, joint custody was sometimes defined in terms of joint legal custody, in which both parents share all of the major decision making regarding their child(ren), are equally involved in important activities of the child(ren), and work together to the benefit of the child(ren). With joint legal custody, the primary physical custody is with one parent, and the other parent maintains some type of visitation which allows for the sharing of time between the parents. Usually, this arrangement is based on the needs and availability of all parties involved. The

Key to most definitions of joint legal custody was that it was a cooperative situation in which both parents were seen as equal and would have parity in relation to the child(ren).

Second, joint custody was defined in terms of joint physical custody, in which the child(ren) spend(s) approximately 50 per cent of his/her time with each parent, and both parents are totally involved in a significant way in the life of their child(ren). These definitions follow the guidelines of the statute, which was clear in its definition. The results of this study showed that four attorneys and three therapists had only a vague idea of the law, while the rest of those professionals interviewed were clearer in their definitions. Nonetheless, each respondent elicited a definition suited to the assumptions and attitudes held by that respondent about joint custody.

Generally, several factors were seen as related to the probable success or failure of joint custody. The respondents believed that the presence of these factors contributed to the likely success of a joint custodial arrangement, while the absence of these factors contributed to the failure of joint custody. Since joint custody was defined in terms of joint legal and joint physical custody, factors were enumerated for each.

Most professionals felt that joint legal custody

needed to be a voluntary situation entered into by both parents, without the coercion of the courts or attorneys. Both parents needed to think it was a useful idea and be willing to work at it. The ability to communicate well with each other was seen as being helpful, with both parents working together as a team, though four stated that joint custody could work without such communication if the parents could utilize a neutral third party to help in the resolution of any differences that might develop. They stated that both parents needed to be reasonably sound, rational, emotionally and physically healthy people, with no major problems such as alcoholism, drug abuse, neglect or child abuse. While approximately one-half of the professionals felt that parents must have emotionally accepted the divorce, the other half stated that this was less important as long as the parents could put their child(ren)'s welfare and developmental needs above any bitterness, hostility, blaming, suffering or anger which remained following the divorce. Six professionals noted that it was helpful if both parents were relatively equal financially, and five of them stated that both parents should have relatively equal values, especially regarding fundamental areas of the child's life, such as school, religion, peer relationships, medical and psychological decisions. At the very least, all professionals felt that there must

be an acknowledgement of the rights of the other parent and that other parents' involvement with the child. They felt that all other factors could be managed, possibly with help, as long as such acknowledgement was present. Finally, one of the judges noted that grandparent involvement could often help settle the problems which might develop with joint custody if the parents could not work well together for the benefit of the child(ren). In this situation, the judge felt that grandparents could help to mediate and soften the animosity between the parents.

Nearly all of the professionals felt that joint physical custody could rarely work, though some felt that it would be possible if most of the above factors were met and also if the parents lived near enough to each other, so as not to disrupt the daily life of the child. Those who felt that joint physical custody could not work cited the disruptions to the child's life, moving back and forth, and having no place to call home as the major interfering factors with joint physical custody. Finally, as was noted, most of the professionals felt that the absence of the above-named factors would in some way interfere with the success of the joint custodial arrangement. The animosity of the parents was frequently cited, with their inability to work out their differences. In those instances, it was felt that the bitterness, acrimony, blaming, lack of

mutual respect for each other, selfishness, or hostility would render joint physical custody essentially ineffective and may even harm the child by putting the child in the middle of such a divisive atmosphere. Finally, one judge stated that there was no such thing as joint physical custody, except in marriage or where the divorced couple share a home. He stated that joint physical custody implied that the child must live in both parental homes at once, which would be impossible. He referred to mixed or shared physical custody and believed that it was not different from physical custody to one parent with visitation to the other.

Many advantages were noted regarding both legal and physical joint custody. All professionals cited the benefit to both parent and child of the continuing, stable relationship between the child and both of his/her parents. For the children, this would eliminate much of the loss associated with the divorce as it would let the child know that both parents remain actively involved and continue to be mother and father in the child's life. This would provide a sense of continuity for the child, and emotional security in the belief that he/she has not lost either parent. Often two parents contribute different things to a child, and this would enhance the child's psychological development. For the parents, the continuing

relationship with their child contribute to improved self-esteem, as the parents remain actively involved in the daily life of their child. In addition, most respondents noted that joint custody would allow for more parental breathing room, a sharing of responsibilities and a relief from the burdens of single parenting.

Many other advantages to joint legal custody were noted, though usually by only a small number of respondents. These included the perpetuation of the stable family relationship, the increased likelihood of continuing of child support payments, the formal acknowledgement for parents and child of the need to work out problems and thus help it along, possible improvements for financial inheritance to the child and stability for the child if one parent dies. One of the judges noted that joint legal custody decreased the likelihood that cases would come back to court and another felt that such joint custody could be used as a tool to end the fighting and settle the divorce in a shorter span of time. One of the therapists noted that joint legal custody could offer a mother an increased opportunity to improve her education and further develop her career, and that it could allow fathers a greater opportunity to become more nurturing parents. Finally, one of the therapists clearly outlined another advantage for joint legal custody, stating that it is

"a statement of recognition that both parents have rights and that this will not invest one person in a position of control and dominance." Thus, he saw joint custody as settling some of the typical acrimony and divisiveness between the parents.

With regard to joint legal custody, there was unanimous agreement that disadvantages were few. Primarily, the only concern noted by the professionals was for the situation in which bitterness and hostility continued for the parents, to the degree that the child would be placed in the middle of this tension. Most respondents felt that joint legal custody could exacerbate such a problem, since such joint custody would give equal rights to both parents, possibly continuing and encouraging arguments over control. Interestingly, all of the mental health professionals felt that this was a significant disadvantage to joint legal custody, whereas only two of the attorneys and one of the judges saw this as potentially significant. The attorneys and judges felt that this would generally be a problem in only 10 per cent of divorces, at most. One judge noted that joint legal custody increased the likelihood of difficulty in decision making for the parents, and noted that he always forces one parent to assume the responsibility for decision making regarding school, medical decisions, and religion, in the event that the parents cannot agree. By appointing one of

the parents as the decision maker in such circumstances, he felt that he would discourage any such problem. It should be noted that many attorneys felt that this judge effectively wipes out the major benefit to joint custody, namely, the equality of the parents in the decision making process. The only other potential disadvantages noted were that joint legal custody requires hard work by the parents, and it may interfere with possible future changes in plans, e.g. moving, remarriage, etc. Frequently it was noted that these disadvantages were inherent to divorce in general but are possibly exacerbated by joint custody.

For joint physical custody, there was much greater concern. All of the respondents felt that it could only work in exceptional or unusual circumstances and that the instability provided to the child would be a significant disadvantage to the plan. Children would feel like yo-yos or ping-pong balls bouncing back and forth, with no single home and thus no stability. It could likely increase confusion for the child and parents, and it could provide problems with school and/or activities of the child. Many raised concerns about the difficulties arising if the child does not want to move to the other house when it is time to do so as well as concerns about parents not being as receptive to the developmental needs of the children, especially when their needs interfere with the shared

parenting schedule which has been developed.

Three professionals cited a few possible advantages for joint physical custody. These included more natural parenting by both parents, where one parent is not "the Wicked Witch" and the other is not "Santa Claus". In addition, one therapist noted that joint physical custody most approximated the situation in the pre-divorced family, and thus could improve stability for the child. Finally, one attorney noted that joint physical custody increased the likelihood that children will get to know about the positives and negatives of each parent, with this providing an improved framework to the child regarding life in general.

There were mixed feelings about the viability of joint legal custody. This seemed to be split according to three factors. First, all of the respondents felt that joint legal custody was quite viable in those instances where both parents willingly agreed to it, without the coercion of the attorneys or the courts, because of their desire to maintain a stable relationship with the child(ren) and to encourage a continuing relationship between the child(ren) and the other parent. However, all but two of the therapists generally felt that this would be very rare, and the other two felt that probably only half of the parents could arrange and work together on such a plan. On the

other hand, six of the attorneys and seven of the judges felt that a substantial number, perhaps as many as 90 per cent of divorcing parents, could arrange a viable joint legal custody plan. Thus, this study revealed that there was an apparent difference in how the various types of professional respondents viewed the viability of joint legal custody.

Second, there was general disagreement about the viability of joint physical custody. Whereas most all respondents felt that it was not viable, about half felt that they would recommend or accept it in those few instances where the parents were both interested in sharing the physical custody and where they devised their own plan for implementing it. Typically, the other half felt that they would oppose joint physical custody in all instances. In these situations, there was no apparent difference among the groups of the professionals interviewed.

Finally, there seemed to be a philosophical difference among the judges and attorneys as to the fundamental approach to joint custody. Five judges and six attorneys assumed the presumption of joint legal custody for all divorces. They felt that they needed to be shown why it would be detrimental to the best interests of the child before they would oppose it. They noted that the law states that "the court SHALL award joint custody", unless the judge deemed it

against the best interests of the child based on clear and convincing evidence. The remainder of the judges and attorneys felt that parents or the courts would need to show how joint legal custody would be best for the children before they would recommend or accept it. This fundamental philosophical difference seemed to reflect personal biases and/or understanding of the law, and seemed to affect all other ideas regarding joint custody, both legal and physical. Interestingly, none of the therapists commented at all regarding this presumption, possibly due to a lessened awareness of the legal concept of presumption.

The Joint Parenting Adults

All of the families who were interviewed had joint physical custody. Generally, the adults interviewed agreed with their ex-spouses about all of the factual information regarding their divorces. They gave the same information about how long they had been separated and what the various living arrangements have been like. In all but one case, both parents had assumed from the beginning of the divorce process that there would be some form of co-parenting or joint custody. For the most part, there was also general agreement about the joint custody, what it meant, and about its implementation. There was only one instance where there was substantial disagreement between the two parents about the joint custody, its implementation,

and how it was working. This couple also disagreed about whether they wanted the joint custody to continue, with one parent pleased with it and the other parent upset with it.

The adults interviewed generally defined joint custody in terms of the law, indicating that it meant a sharing of responsibilities and a sharing of the time which the children spent with each parent. There was a strong emphasis on the fact that each parent continued to have a say in the major decisions affecting the child's life, where neither parent could unilaterally make a decision without consulting the other parent. There was also strong emphasis on the fact that all children could have generally equal access to both parents, based on the needs of the child and the availability of the parent at any given time. Seven of the parents noted that there would also be a sharing of the financial responsibilities for the child(ren).

Each of the parents also included in their definition a meaning based on how they were living under the joint custody agreement. For example, one father noted that joint custody included the fact that "both parents would have as a foundation as much agreement as is humanly possible in terms of cooperating." However, another parent, who was strongly opposed to the joint custody stated that joint custody was "taking a child and splitting ... (the

child) right down the middle." Another parent defined joint custody as "being a full time parent one-half the time, so that when I have ... (my child) I have total responsibility." Finally, another parent defined joint custody by stating "it is a custody based more on the child's needs than on the parent's needs or rights. It is changeable, the responsibility is split, there is less control on the parent's part and more control for the children, based on their needs." In general, all of the parents, even the one who was opposed to joint custody, noted that it included the sharing of responsibilities and the opportunity for the child(ren) to equal access to both parents.

With six different families, there were six different arrangements for rotating the children between parents. The families with only one child, each under eleven years of age, had a relatively rigid schedule, which has not changed much since the time of separation or divorce. The other families, in which there were two or more children who were at least twelve years old at the time of this study, had schedules which were either totally flexible according to the wishes of the children, or mixed, in which one child was developing a very flexible rotation between parents, but where the younger child was still utilizing the original schedule of rotating between his parents. The details of each arrangement were unique

to the families interviewed and represent only a small sample of possible variations of joint custody living arrangements.

For Family 1, both parents lived about two blocks from each other, both within the same city and near the child's school. Their seven year old daughter would spend the time after school on Wednesday until dinner time on Saturday with her mother one week, and after school Wednesday until dinner time on Sunday with her mother the next week. She was with her father from dinner time on either Saturday or Sunday through Wednesday morning before school. This schedule has not changed since the divorce and it has resulted in approximately a 50 - 50 split of her time between both parents. Both parents reported flexibility within this schedule, depending on the needs of the parents, such as for work or vacation needs, but generally the schedule has never changed.

For Family 2, both parents lived about two to three miles from each other, both within the same city, but a different distance from the child's school. Their ten-year-old son would spend every Monday, Wednesday, and Friday night, and most of the day Saturday with his father, and Tuesday night, Thursday night, Saturday night and all of Sunday with his mother. He had the advantage of taking the bus to school, so he would simply take a different bus to and

from school, depending on where he spent the night or where he was going. Thus, the school was also involved in the schedule. This arrangement resulted in approximately a 45 - 55 split of his time between the parents. Again, both parents reported flexibility within this schedule, based on the needs or vacation plans of the parents. When the parents were first divorced, the schedule was slightly different, as the child was only with his father on Wednesday and Friday nights. It changed after he expressed an interest in being with his father more.

Family 3 has had a great deal of change and flexibility in the living arrangements since the time of separation. At first, the father moved about a mile from the home, and the four children, aged eight, nine, eleven, and thirteen at the time, lived primarily with their mother. They stayed at their father's apartment on weekends and generally saw him for dinner once or twice per week. After a short time, the oldest child no longer wanted to spend every weekend with her father, as it interfered with her life. She began to develop a more flexible arrangement of moving back and forth based on her interests. Over the next few years, until the father bought a condominium approximately 1/4 mile from the house, the two older boys similarly developed a flexible arrangement based on their interests. The youngest child generally retained the

schedule of seeing his father on weekends and a couple of times during the week. Once the father moved close to the family home, however, an even greater degree of flexibility developed. Everyone realized that it was harder to move four children than two adults, and frequently the father and mother switched residences for short periods of time to accomodate their needs. Along with that, each of the children stayed at the father's condominium according to their wishes, even if they just wanted a break from the rest of the family. At the time of the study, the father generally came to the house two or three evenings a week and cooked dinner for whichever children were home, or take them out for dinner, and see them for the evening. As one of the children put it, "some of the time we are my father's responsibility, and the rest of the time we are my mother's responsibility, and they come to where we are to make sure things are going o.k." All of the family members felt that this extensive flexibility evolved out of the many needs of each of the family members at any given time.

Family 4 also had a mixed arrangement. Since the separation, the children, aged 10 and 13 at that time, lived primarily in the family home with their mother, while their father lived about one-quarter mile from the home. At the beginning, both children moved back and forth on a fairly complicated, rigid schedule. On

that schedule, they stayed with their father alternate weekends and generally on Wednesday nights. Typically on Tuesday nights one child went with him and the other child stayed with the mother, alternating weeks between them. Thus, both children had time together with each parent and some time alone with each parent. This schedule changed slightly from the time of the divorce, when the parents used to split each weekend, having the children with their father every Friday night and their mother every Saturday night. Generally, the current schedule resulted in approximately a 45 - 55 split between the parents. As with the other parents, both mother and father reported flexibility in relation to the parental needs. However, they also reported some developing flexibility in relation to the needs of their fifteen-year-old daughter, who was recently becoming more reluctant to stay at her father's apartment because of difficulties with friends and arranging clothes and other personal items. At the time of the study, this flexibility was in transition. Both parents and the girl expected that she would stay at her father's less and generally see him for dinner and other activities as they both could arrange.

Family 5 had another unique arrangement, which was also in transition at the time of the study. When first separated, the mother moved to an apartment a few minutes from the marital home and the father and three

children, aged 10 1/2, 14 1/2, and 17 at the time, remained in the house. Generally, the two younger children stayed with their mother on weekends, though the older child saw her mother only sporadically due to tension between them. Within a few months, the thirteen-year-old boy began to have some problems with his father, and he moved into the apartment with his mother. About a year later, the father remarried, and the mother moved back into the marital home, with the son and youngest daughter. The father moved to a new residence, about ten minutes away, with his new wife. The older daughter started college and moved away from home altogether. This took place about a year before the study. About two months before the study, the father and his new wife decided to move to another state within the region, and they moved there just after the interview with him. The arrangement at that time was that the oldest daughter, still in college away from home, would visit both parents when possible. The boy, now aged 17, was to move in with his father, and the youngest daughter, now aged 13, would remain in the marital home with her mother. Because of the continued switching of the arrangements, it was difficult to determine any split of time between the parents, but both parents remained actively involved with and responsible for their children.

Finally, Family 6 had a rigid schedule with their

joint custody arrangement. However, they did not always have the joint custody. During their initial separation, approximately two years before the study, they tried a joint custodial arrangement with their daughter, then age 3, which remained in effect for approximately three months. During the next year, though still before the divorce settlement, the mother maintained custody with liberal visitation arrangements for the father. There was no apparent pattern to the living and/or visiting arrangements before the divorce was finalized, approximately four months before the study. At the time of the study, with the joint custody in effect, the five-year-old daughter was living with her mother from Monday morning through Wednesday morning every week and with her father from Wednesday after school through Friday morning every week, and she alternated the weekend with each parent. This arrangement resulted in a situation where she lived with her mother for two days, then her father for five days, then her mother for five days, and then her father for two days, with this pattern repeating every two weeks. As the father said, "my daughter lives with me exactly 50 per cent of the time." Both parents reported little flexibility with this arrangement, except around vacations, primarily because of the continued animosity between them.

Therefore, it appears that there are a great many

ways in which joint physical custody can be arranged. For the families in the study, each of the arrangements was specifically suited to the various needs and wishes of the family members involved. As children got older and into their teen years, they began to dictate the specific circumstances of where they lived, in contrast with the younger children, who generally moved back and forth between parental homes according to the joint custody schedule. Finally, five of the six families reported a great deal of flexibility and willingness to change the schedule as needed.

In general, there was a great deal of agreement between the adults interviewed and the professionals regarding the factors which allowed joint custody to work. Except for the one parent who felt that joint custody was not working, the others all felt that their joint custody arrangement was working fairly well because of certain things. First, each of them mentioned that they had an overwhelming desire to see the joint custody be successful, for their child(ren). They were invested in the success of their joint custodial arrangement and felt that it would be beneficial to their child(ren). Second, most of the adults stated that hard work was responsible for joint custody working smoothly. A third factor often noted was positive communication between the two parents and the fact that they generally liked the other parent as

a person. They had gotten over or put aside the marital problems and were able to concentrate on the needs of the children. However, three of the eleven adults who generally liked their joint custody arrangement noted that they did not get along well with their ex-spouses, and rarely communicated directly with them.

Another factor frequently mentioned was flexibility. Nearly everyone cited flexibility with the ex-spouse and flexibility regarding the needs of the child as being necessary for the success of joint custody. Several parents found themselves to be very accomodating to the wishes of the other parent or the children, and they saw this as being helpful. Also, most of the adults cited the fact that they were generally intelligent, reasonable and nice people who had an abiding respect for the family, a commitment to parental responsibilities, and a concern for the welfare of their children.

Individual factors cited by some of the adults included personal satisfaction, the ability to negotiate, the strong belief that joint custody was best for the child, guilt related to not wanting the child to miss out on something with either parent, possibilities for personal and professional growth, living close to the other parent and having enough money to manage the arrangement. Each of these factors

was cited by one or more of the professionals in the study and seemed to reflect most of the prevailing attitudes regarding joint custody.

Many of the parents also noted some things that made the joint custody difficult to implement. While some parents noted that hard work was necessary for joint custody, others saw this as the primary factor which sometimes interfered with the continued success. Some parents noted that physical distance between the parents interfered, especially for those parents who lived some distance from each other. Those adults who still remained somewhat angry about the divorce noted that it was often difficult to put aside their anger to allow joint custody to work. In fact, one of the adults clearly was unable to see any success to the joint custody because of the continued anger and resentment toward the ex-spouse. Another parent said, "where two parents are in conflict as people, there is less incentive to cooperate as parents, and then as a result, the kids suffer." A third parent said that feelings of anger, bitterness, hostility, vengeance and power also interfered with the success of joint custody. Occasionally, parents noted that the logistics of the children moving back and forth sometimes interfered, especially when children forgot things at the other parent's house. Another parent noted that children's behavioral problems occasionally

interfered with the success of joint custody. Finally, another parent noted occasional fundamental differences with the other parent, stating that this had interfered with the smooth operation of the joint custodial arrangement. Basically, however, all but one of the parents felt that the factors which allowed joint custody to work were able to override the factors which occasionally interfered.

All twelve of the adults, even the one who was essentially opposed to joint custody, cited the primary advantage of joint custody as being the continued, consistent relationship with both parents. They felt that joint custody enabled both parents to remain actively involved with the child(ren), and that joint custody guaranteed their children equal access to both parents. All of the adults respected the child(ren)'s right to maintain a good relationship with the other parent and wanted them to get along well. Most of the parents noted that joint custody indicated to the child(ren) that both of the parents cared about and loved them and helped them realize that, even though the parents were divorced from each other, the parents were not divorcing themselves from their child(ren). Others cited the advantage of knowing that their children were being well cared for when not with them, and that they were able to rely less on sitters than they imagined would be necessary if they did not have

joint custody. Many adults cited that joint custody allowed their child(ren) the opportunity to avoid choosing between the parents, since they remained completely involved with each other. A few of the adults noted that joint custody helped to establish open communication between the parents, stating that the desire to succeed encouraged this openness. Finally, others noted that joint custody allowed the children an increased amount of control over their lives, since it provided them with the opportunity for moving back and forth between their parents at will.

Several parents noted some other advantages to joint custody. Several mothers reported that they had a greater opportunity for personal growth and success because of the joint custody, and believed that joint custody enabled them to avoid being overburdened and frightened with the responsibilities of single parenting. Many of the fathers who sought the divorce said that the joint custody assuaged some of the guilt they would have had if they had been unable to remain so involved with their children, and others noted that they could maintain more of a feeling of family life and stability than if they did not have the joint custody. For many of those adults who developed new relationships or remarried, there was a sense that joint custody gave them a greater opportunity to develop intimacy within the new relationship without

the interference of the children. Other adults noted that the equality of the co-parenting relationship allowed neither of them to feel a disproportionate sense of power. Two adults also felt that the joint custody guaranteed that the ex-spouse would not move out of state. Finally, all but one parent felt that the advantages of joint custody greatly overshadowed any possible disadvantages which existed.

In general, few disadvantages or problems were noted regarding joint custody. Several noted that the schedule was difficult to set up at first, and that it required some revisions before it was settled upon. Along with this, many noted that joint custody created extra work, confusion, and driving than might exist without the joint custody. However, they all stated that things improved once the schedule became more routine. One adult noted that joint custody created some problems for her until she fully accepted it. She noted that she had previously lived her life in terms of her child and that the adjustment was difficult. Although she felt that the joint custody initially exacerbated this problem, she also stated that joint custody may have helped to speed up her adjustment to her divorce. One of the parents noted some confusion to the children regarding the meaning of the co-parenting, and another found that there was initial confusion for the child regarding the schedule. Two of

the parents imagined that it must be difficult for their child(ren) to go back and forth between homes with their clothes, and where friends might not know where to find them, except that they indicated that their child(ren) seemed to be adjusting well to it. For those parents who had relatively flexible schedules for their children, many noted that there was some confusion for everyone about what to expect, and about who would be where at any given time. They typically felt that the advantage of the flexibility, however, outweighed the disadvantage of this confusion. Finally, one parent noted that his child sometimes wanted to be with the parent that wasn't there, although the parent stated that this was probably a function of the divorce and not of joint custody itself.

As was noted previously, one parent was very dissatisfied with the joint custody arrangement. That parent believed there were several disadvantages to the child because of the joint custody. The parent felt that joint custody encouraged manipulation by the child and also felt that the child had developed some regressed behavior since the joint custody started. Frequently, the parent noted, the child threatened to call the other parent in order to get the child's way, playing one parent against the other. This parent was very concerned about the potential negative effects on

the child of the continued battles between the parents, and the continued back and forth moving, especially as the child gets older. The parent stated that the child needed "one school, one set of friends, and shouldn't have to travel with a suitcase and blankets. ... (The child) needs one home and needs to know where ... (the child's) body belongs." Finally, the parent was most upset by the continued, almost daily contact with the ex-spouse. As the parent said "I thought that when I divorced my ex-spouse, I would be through with these conflicts, but I find that they are not only continuing, but maybe getting worse." It is important to note that the other parent, while acknowledging the hostility and many disagreements which continued to exist, felt that the child was adjusting very well to the divorce and the joint custody, with no problems. It is possible that this difference was related to the many differences between these two ex-spouses or to special personal problems being experienced by one or both of them.

Thus, in general, eleven of the twelve adults interviewed were pleased with their joint custodial arrangements, while one was not. When asked to select from any number of infinite custody and living arrangements that they preferred, ten of the twelve adults interviewed said that they would like to keep the arrangement currently in effect. One wanted sole

custody with liberal visitation for the other parent, and another, while being pleased with and wishing to keep the joint custody, wanted their child to be living with that parent approximately two-thirds of the time instead of one-half of the time. Examples of the beliefs of the parents came from the following statements. One mother said: "I realize there are disadvantages for him and a few for me and his dad, but in general, I feel ... (the joint custody) is excellent and I don't want it to ever change. It is ideal and gives me everything I want for me and my ex-husband and my son." Another mother summed up her feelings by stating: "I cannot imagine them having less contact with their father, and I think it has been real important to them, and it has been a good arrangement. If we didn't have joint custody, it would probably be the same anyway. ... (However) I do not think joint custody is for everybody, it takes a lot of patience and working together, but I prefer it." A third mother discussed joint custody by saying that her joint custody arrangement took "a hell of a lot of self-confrontation ... a tremendous amount of energy and effort on everyone's part ... but we have developed a very workable and acceptable relationship with a lot of love ... (and) the kids get minimal loss and bad feelings and less need for divided loyalties and less need for guilt." She went on to say that she felt

"very good overall and grateful that we've been able to do this, ... (because) we have a very good arrangement that we have created, (since) we have a commitment to making this work and being happy." Finally, one of the fathers ended his comments by saying "More people should be aware of (joint custody) and I fault attorneys for not informing their clients about it. I feel there should be education about it. ... fathers have been left out so long that they don't know that joint custody is available. ... I'd like to see more publicity so more people could take advantage of it."

The Children

The research found that the prevailing belief among professionals and adults was that any custody and living arrangements between parents and their children following divorce should be based on the needs and interests of the children. In this study, four of the six families had children aged ten or older who were willing to be interviewed. At the time of the interviews, there were ten children, aged 10 - 19, in the study. In general, they all agreed on two things. First, every one of them said that they would have preferred it if their parents had not gotten divorced in the first place. Although they acknowledged that their parents were probably happier since the divorce, and two of them noted that there have been many positive changes in their lives since the parental

divorce, the primary wish of all of these children was that their parents would have stayed together. The second unanimous belief of the children was that they preferred joint custody and their living arrangements over any other possible choice. None of the children identified any other arrangement that they felt would be better than their current living arrangement.

While some of the children noted some disadvantages related to moving back and forth between two homes, such as not always knowing where they might be at any given time, all of them stated that the advantages far outweighed the disadvantages. They discussed several advantages to joint custody and their current living arrangements. The older children were pleased with the flexibility given to them by their parents. They enjoyed the opportunity to have a place to go when they wanted to get away from the rest of the family. This was especially true in the family with four children. All the children felt that their parents were quite willing to talk openly about the living arrangements and accept the wishes of the children, within reason. Everyone cited the easy and continued access to both parents as another prime advantage of the joint custody. All the children expressed the beliefs that both of their parents still loved them, and that they were not responsible for the parental divorce. They felt that the joint custody

helped with this because of the fact that it encouraged more and easier access to both parents. Many of the children noted that they had friends whose parents were divorced, and they generally felt that their own living arrangement was better than the divorce and visitation arrangements of their friends. Several children had friends who rarely saw their fathers, and two mentioned friends who never saw their father because the father had moved out of state.

Beyond these prime advantages, the children individually noted some other advantages as well. One of the boys felt pleased that his parents could get along so well, and that they never argued over him or his siblings. He felt that the joint custody was partly responsible for that since his parents didn't want him to have to take sides. Several of the children noted that they did not have to choose sides between their parents, that they felt comfortable that their parents wanted them to love both of their parents. Another child noted the personal growth her mother had made, and felt that joint custody as well as the divorce helped make that possible. A couple of the children noted some advantage in that they had more material things and were involved in more activities since both parents wanted to do things with them. Finally, they all believed that they were happier than if they were not able to see both parents as much.

As was noted, the children expressed some occasional problems with their arrangements, even though they were unanimous in their belief that the advantages were more important than these disadvantages. One of the children noted that he occasionally got involved in disagreements between his parents. Once in a while, he wanted to do something that one of his parents would allow and the other disallowed. When his parents were married, he had the belief that he got his way about one-half the time, but now felt that he always lost to the parent who said no. Three children noted that sometimes when they were at one house they wanted things that were at the other parent's house. Two children noted that sometimes their friends did not know where to find them. All of the children whose father moved to another state felt bad about that, since they would not be able to continue the close relationship with him. Interestingly, all the children said that the disadvantages which existed in the present custody arrangement would probably have occurred with any living arrangement and might even have been worse in different circumstances.

Finally, one of the children seemed to say what many meant when he said "being able to see both parents an equal amount of time makes up for moving back and forth." Although he noted that sometimes he cannot

always see his parents when he wants to because he is at the other parent's house, he went on to say that the situation has "more advantages than disadvantages". Although he stated that he would prefer his parents to live across the street from each other so that he could do whatever he wanted, he felt that his parents' joint custody arrangement was by far the best possible solution to his parents' divorce. In fact, when asked for final comments, he said "if all kids had the choice to pick what they wanted (when their parents divorced), I'd advise them to pick joint custody so that they could get to see their parents equal time or at least more than if their parents didn't have joint custody."

CHAPTER V

DISCUSSION

The results of the research were consistent with many of the research findings in the literature review. Essentially, the study revealed that nearly all of the family members who had joint custody were pleased with their joint custodial, co-parenting arrangement. The major advantages of joint custody were found in the continued relationship of the children to both parents, the opportunity for easy and equal access to both parents by the children, the freedom from the burden of single parenting for the parents, especially the mothers, and the opportunity for the fathers to continue a stable relationship with their children after the divorce. The major disadvantages noted were the occasional problems associated with moving back and forth between two homes, such as a child having something at one home and wanting it at the other, or not having friends know where to find them, as well as the amount of work which the joint custody took in order to work smoothly. Although there were some problems with the joint custody, and some disadvantages

were found, nearly all of the respondents were pleased with their living arrangements, and only one of them wanted to make any substantial change in the custody and living situation. This is consistent with the results obtained by Abarbanel (1977), Greif (1979), Nunan (1980), Luepnitz (1980), Ahrons (1980), and Steinman (1981).

Another important finding was that many factors seemed to be involved in the success of joint custody. The most frequently cited factor was the cooperation of the parents, at least in being able to put aside any of their differences for the benefit of the children. Another factor which contributed to the success of joint custody was an abiding belief in the concept of joint custody and a desire for the child(ren) to maintain a stable relationship with the other parent. Other factors which contributed were money, close physical proximity of the parental homes, and flexibility. Several factors seemed to interfere with the smoothness of the joint custody arrangements. These factors included the fact that joint custody continually required hard work by the parents, physical distance when the parents did not live close to each other, anger, and occasionally the logistics of the arrangement. The overwhelming belief of the adults, as well as the children, was that joint custody was primarily beneficial, that the advantages outweighed

the disadvantages, and that the factors which supported the joint custody were more significant than the factors which only occasionally interfered with the arrangement.

Adults were also questioned about their post divorce living arrangements with their child(ren). Two primary findings were revealed. First, in situations where very young children were involved, families tended to have relatively rigid, stable schedules for the child for moving back and forth between the parental homes. These schedules were somewhat complex, and were established to satisfy the needs of the parents, and their assumptions regarding the needs of the child(ren). Second, the findings revealed that as children moved into their teen years, schedules were essentially dissolved, and the children moved between parental homes according to their wishes, within reason. In one instance, the parents even moved back and forth between the homes in order to make it easier logistically, psychologically, and socially for their four children.

Another part of the research was concerned with children in the families, and children beyond the age of ten were interviewed to determine their beliefs about their own living arrangements and the joint custody of their parents. All the children were essentially pleased with their parents' joint custody

arrangement, and encouraged by the amount of time they were able to spend with each parent. These attitudes of the children were generally similar to the attitudes of their parents. Since all of the children interviewed talked about a good relationship with their parents, and were proud of the open communication which existed between them and their parents, this result was expected.

Another major part of the research was related to the definition of joint custody. Basically, all of the respondents defined joint custody in either one or both of two ways. First, there was the definition of legal joint custody, in which both parents would have equal parenting rights. There would also be free and easy access to both parents by the children, and both parents would be involved in the major decisions affecting the children. Implicit in this definition representative of most of the respondents was the fact that the parents would work cooperatively for the welfare of the child. The second definition was of physical joint custody in which the children would generally move between the two parental homes on a relatively consistent, scheduled, equal time basis.

Another major part of the study was the interviews with the professionals. The results of those interviews, though consistent within each subgroup, was quite different than the results obtained with the

families interviewed. Nearly all of the professionals were highly skeptical of any physical joint custody arrangement in which the child moved back and forth between two parental homes. Many of the professionals stated that adults would not be able to put aside the hurts and bitterness of the divorce in order to cooperate sufficiently for a successful joint custody agreement. However, the results showed that all but one of the families interviewed were able to successfully develop and participate in a physical joint custodial arrangement as well as a legal one. Also, in all but one case the families were able to get over the "business of the divorce" (as one parent said) and get on with the "business of raising the children". The one family out of six in this study that experienced difficulty with joint custody was probably part of the small group of families alluded to by many of the professionals as families that would have difficulty getting over the fears, hurts, anger and bitterness of the divorce. As one of the judges interviewed noted, "my estimate is that in nineteen out of twenty cases there is no need to worry about child custody ... the parents are mature enough, they love their children enough ... and they conduct their lives with their children as near as can be like before their divorce. With one out of twenty, they disagree, are immature, and they quarrel over the children." As for

the advantages and disadvantages of joint custody, as well as the factors involved in the success or failure of joint custody, there was essentially substantial agreement between the professionals and the family members interviewed.

Finally, this study attempted to compare findings in the literature with that resulting from the interviews. In general, the findings in the review of the literature were consistent with the interviews of respondents in this study. Definitions of joint custody found in the literature were essentially the same as those of the respondents. The advantages and disadvantages of joint custody which were debated in the literature were similarly addressed by those interviewed in this study. Basically, those factors noted by various authors as being related to the success or failure of joint custody were the same as the factors noted by the professionals and adults interviewed in this study. In addition, while there was a basic inconsistency in the general belief in the viability of joint custody in the literature, there was a similar inconsistency noted in the responses of those interviewed in this study. Finally, as was discussed, the families interviewed in this study were in essential agreement with families studied in California, Wisconsin, and New York as to the basic success and pleasure experienced with their joint

custody arrangements.

Reasons For Findings

Many reasons probably exist for the specific results found in this study. Although the writer believes that most families who are practicing joint custody would probably view it in favorable terms, it would be a mistake to generalize the results of this study. First, the adults interviewed were not drawn from a random sample, but rather from a self-selected sample. In attempting to find subjects to be interviewed for the study, many names were given to the researcher to contact for permission to engage in the study. On several occasions persons did not want to participate without stating a reason for their refusal. One could speculate that one possible reason for this decision not to participate was some dissatisfaction with the joint custody arrangement which the person would not want to talk about. On other occasions, one parent agreed to be interviewed, but did not want his/her ex-spouse to be interviewed, often citing anger and difficulty with the ex-spouse as reasons for this refusal to have their ex-spouse interviewed. Thus, the method of using two willing ex-spouses most likely skewed the sample in favor of cooperating joint custody families. Second, sample size was quite small, and that also may have skewed the sample in some direction, though it would be difficult to predict which

direction. Third, results were also likely skewed toward cooperative joint custody families since all but one of the interviewed families willingly agreed to joint custody prior to the divorce rather than go through a lengthy court battle. Thus, these results may or may not represent the beliefs of the majority of joint custody families, and the sense of cooperation noted among the families of this study may have been partially related to the sampling technique.

Another finding noted in Chapter IV was the apparent disagreement among professionals as to the viability of joint custody in general. While nearly all of the mental health professionals interviewed seemed to believe that a successful joint custody arrangement was rarely viable, most of the attorneys and about two-thirds of the judges seemed to feel that legal joint custody could work positively in approximately 85 to 90 per cent of divorcing families. Similar discrepancies also occurred in the non-research writings reviewed in the literature, in that those writers with mental health backgrounds were more skeptical than those with legal backgrounds. The only group of writers with a mental health background who consistently supported joint custody had a strong family therapy orientation to their practice.

One possible reason for this difference among those professionals interviewed could be found in the

fact that the majority of mental health professionals interviewed typically see individual clients in their practice who are having significant emotional problems many of which are related to family problems. During a divorce, therapists hear about all of the anger and hurts which their client feels toward the ex-spouse or that the child feels. The orientation of mental health professionals who work with individual adults is mainly to assist the client to resolve his/her own emotional problems, and typically is not so much to work at achieving a divorce solution that could be of benefit to all members of the reorganizing family. One could also speculate that mental health professionals might assume that a majority of people going through a divorce would have significant difficulty working cooperatively with their ex-spouses. This could lead to the belief among mental health professionals that divorcing couples are unable to resolve their differences sufficiently to work out a joint custodial arrangement which would benefit all family members and focus on their needs.

Attorneys, especially those primarily working with families during their divorce, are accustomed to developing solutions which are ultimately aimed at cooperation and conciliation. Although the legal process is an adversarial one, most attorneys who practice family law indicated that they try to help

their clients resolve their differences and work cooperatively to settle the divorce. This philosophy was expressed by the majority of attorneys and judges interviewed. The fact that approximately 90 per cent of all divorces are settled prior to the court hearing is partly indicative of that effort toward conciliation. This emphasis on resolving differences between divorcing spouses might lead many attorneys and judges to the belief that divorcing couples would be able to resolve their differences sufficiently to work out a joint custodial arrangement which would benefit all family members and focus on their needs. Thus, it is likely that the discussed differences among professional practice and philosophy may account for the differing beliefs of the attorneys, judges and mental health professionals.

Further, it is the opinion of the writer that another important finding involves the family which did not successfully resolve their marital differences. Whereas all of the other families entered into the joint custodial arrangement freely and willingly, this family was forced into joint custody after a very lengthy, costly, and emotionally draining court battle, over the objection of one of the spouses. Such a battle seemed to solidify and reinforce much of the anger, bitterness, and hurt which existed between the ex-spouses. In addition, the divorce had only been

finalized for four months at the time of the interviews, which had not given much time for those feelings to subside. In contrast, all but one of the other families had been divorced at least two years, and that period of time seems to have been adequate for them to work out and settle their differences. Thus, it is the researcher's belief that the combination of the divisive court battle and the short period of time since the divorce was a key factor responsible for the intensity of the disagreement regarding the joint custody arrangement. As Kelly (1982) noted, most of the families studied had a substantial decrease in resentment and bitterness approximately one year after the divorce. Thus, it is possible that this family might be more cooperative in another year, especially since both of the adults were interested in the welfare of the child and in the maintenance of a positive relationship between the child and the other parent.

Personal Conclusions Of The Writer

While it is difficult to generalize from the results of this study, the writer believes that certain conclusions can be reached about the viability of joint custody. First, the evidence seems clear that there are some families who can practice and benefit from a joint custodial, co-parenting arrangement. This study corroborated the findings of several other research studies which showed that joint custody is viable and

workable.

Second, it is important for professionals and family members to understand that joint custody can mean many different things to different people. As mentioned in the results, there were as many different definitions to joint custody as there were respondents in the study. While the law defines joint custody in legal terms, the practical application of the law seems to vary with respect to families. If it is assumed that joint custody is defined narrowly, and only includes 50 - 50 physical sharing of the child and decision making authority, then there is likely to be only a small minority of families who could successfully arrange a divorce with joint custody. Such parents would have to live near each other and be willing to work extremely hard at achieving a successful joint custodial outcome. However, if it is assumed that joint custody could mean any one of an infinite number of possible arrangements, then the writer believes that the vast majority of divorcing couples could develop and accomplish a successful joint custodial, co-parenting arrangement. Each divorcing parent would need to determine his/her goals regarding a joint custody arrangement, and then the two parents could work together for the benefit of all family members. Further, it is the writer's belief that even angry couples who are experiencing an emotionally

painful divorce could be encouraged to arrive at a reasonable plan, since adults usually want what they deem to be best for their children.

Third, the writer believes that the major stumbling block which impedes more families from utilizing joint custody is the lack of education about joint custody. The interviews discovered a significant lack of knowledge among many of the professionals regarding joint custody and its potential advantages. This was especially true among the mental health professionals who were not very well acquainted with the concept. In addition, attorneys who were less aware of the needs of the family during a divorce also seemed to lack knowledge about joint custody. On the other hand, a majority of attorneys and judges, as well as some of the mental health professionals seemed to be very well aware of the factors associated with joint custody and of its possible advantages and disadvantages. Individuals comprising that group were the ones who were more likely to recommend joint custody, at least in some form, and to recognize its potential benefit for the majority of divorcing families. Thus, joint custody education seemed to be a major component in the belief about the viability of joint custody. Therefore, it is the writer's position that more professionals would encourage their clients to at least attempt a joint custodial arrangement if

they were better educated on the subject.

Finally, this study has shown that joint custody can have many benefits to both parents and children. While the writer acknowledges possible difficulties to joint custody, and assumes that some families have neither the interest nor the ability to implement a successful joint custody plan, the writer also believes that the benefits of joint custody far outweigh any of the possible difficulties which have been associated with it. These primary benefits include, but are not limited to, the following:

- 1) the child(ren)'s knowledge that he/she is still loved by both parents.
- 2) the child(ren)'s continued access to both parents, on a regular basis.
- 3) the child(ren)'s opportunity to continue a relationship with each parent that is as close to normal as possible; one in which both parents continue all parenting functions and in which neither parent is delegated to the role of visitor.
- 4) the child(ren)'s opportunity to avoid choosing between two competing parents, since every act of loyalty toward one parent automatically has with it an act of disloyalty toward the other parent.
- 5) both parents' opportunity to continue a normal relationship with and a free and easy access to their child(ren), and not be delegated to the role of visitor.
- 6) both parents' opportunity to pursue individual goals, careers, and lives without the burdens typically associated with single parenting, and,
- 7) the opportunity for all family members to put aside the differences which led to the

divorce in the past and work cooperatively at the task of continued child rearing for the future.

In addition, the writer believes that joint custody, by encouraging and requiring a cooperative attitude between parents, can aid all family members to overcome the pain and bitterness of a divorce more quickly. With joint custody, there could be fewer court battles, which tend to reinforce the hostility of the divorcing couple. Finally, as many different people have said, joint custody provides an opportunity for a couple to divorce each other but not the children.

Directions For The Future

Many things are still necessary for the greater understanding and utilization of joint custody. Further research into the effects of joint custody on family members is critical as a way of testing the beliefs of the author. Not only would replication studies be helpful, but longitudinal studies of a larger sample of joint custody families would also give greater insight into the viability of joint custody. While there have been other recent doctoral dissertations regarding joint custody (Abarbanel, 1977; Greif, 1979; Nunan, 1980; Luepnitz, 1980; and Steinman, 1981), there has been very little research of a formal nature on joint custody and its practices and effects on the parties involved. One design that would be

extremely important would be to study whether or not hostile joint custody families could begin to work more cooperatively over a period of time, such as one or two years, and thus gain the benefits attributed to joint custody. Another possible design would be a study to ascertain if there is a difference as to whether families with joint custody or with sole custody and visitation are more likely to return to court to settle differences. A third practical study would be to determine the effects of joint custody on child support, and whether fathers with joint custody are more likely to maintain child support, with fewer problems and for a longer period of time, than fathers without joint custody. Finally, a more difficult, but still useful study would be to measure the effect of joint custody on a child's happiness, self esteem, and later success in life.

Another important area is legislative. At the time of this writing, there were only nine states that had passed laws specifically encouraging or authorizing joint custody for couples divorcing in those states. While court rulings in some states will allow joint custody in those states, it is still a rather rare occurrence unless bolstered by legislative action. Thus, if more state legislatures could debate the pros and cons of joint custody, based on factual information, it is this writer's belief that they would

pass laws authorizing their courts to grant joint custody in a divorce. This would not only provide the obvious benefit that more families who know about and definitely want to utilize a joint custody situation could do so, but there would be the added benefit through education and more widespread use of joint custody for those families who might never have known about or considered it.

As has been noted, the writer believes that a major necessity is for more education regarding joint custody. Attorneys, through their various legal associations, as well as in law schools, need to learn about joint custody, its practical advantages, and ways to encourage their clients to utilize it. Similarly, mental health professionals who work with divorcing families need to learn more about joint custody and to develop an orientation that can help divorcing families overcome their differences and work toward a mutually agreeable divorce arrangement, for everyone's benefit. Judges need to recognize the benefits attributed to joint custody and take a more active interest in the divorces in their courtroom, so that they can encourage greater knowledge about and more widespread use of joint custody, for the best interests of the children. As stated in the Michigan joint custody law, "the court SHALL grant joint custody", unless it is found not to be in the best interests of the child. Judges, if more

Knowledgeable on the subject, could better recognize those cases in which it is to the child's benefit for his/her parents to have joint custody. Finally, it is especially important that the public become more aware of joint custody, its advantages and disadvantages. For it is only through an informed public that rational decisions can be made. As more and more people become aware of the option of joint custody and its potential advantages to all family members, it is the writer's belief that the vast majority of divorcing families will attempt some form of it.

This leads to the final change proposed by this writer. There needs to be a fundamental shift in divorce law from a basically adversarial to an essentially cooperative philosophy. Inherent in the adversarial divorce system is the competition between two competing parties, each trying to "win" what he/she wants. Whenever someone wins something in a competitive divorce, everyone loses. This is especially true for long, drawn out child custody battles between two competing parents. As one of the judges who was interviewed said, "if you really want to destroy a child, ... put him in the judicial system with a divorce battle that is going to last for four years. If the divorce is inevitable, get it over with in a few months, for everyone's sake." Recently, the Michigan legislature passed another new law which

mandates County Friends of the Court to encourage divorce mediation around the issue of child custody. (House Bill 4870) Recognizing that lengthy court battles hurt everyone, it was the hope of the legislature that this new law would discourage fighting and promote cooperation between divorcing parents. While it does not mandate that families utilize divorce mediation, and no law could ever force parents to cooperate if they are unwilling to, it provides a clear message from the state that cooperation is preferable to adversarial litigation in divorce proceedings. Michigan is in the forefront of this apparently emerging trend, being the only state aside from California to pass such a law.

Along with this legislative trend, there is a national move to encourage more divorce mediation and divorce counseling rather than divorce litigation. The Association of Divorce Mediators is proposing guidelines for the training of divorce mediators, and the Association of Conciliation Courts is encouraging more divorce mediation through the courts and Friend of the Court clinics. Many attorneys, judges, and mental health professionals have also proposed that divorce be removed entirely from the adversarial court process, via the establishment of family courts which will be specifically aimed at achieving more cooperative divorces for the benefit of all family members. In

Michigan, the Michigan Council for Family and Divorce Mediation was recently formed to promote divorce mediation and develop training for divorce mediators. It is a multi-disciplinary organization, including attorneys and mental health professionals who would like to see a change in the way divorce is processed.

As was noted at the beginning of this study, especially in that divorce has reached epidemic proportions, drastic steps need to be taken to ensure that all the victims of divorce, especially the children, have every possible safeguard to their emotional and material well-being. It is the writer's belief that further research, legislative change, divorce mediation, and education about the benefits of joint custody are important steps toward ensuring a healthier adjustment to the increasing number of divorces in the United States.

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