

Why Did The Black-White Dropout Gap Widen in the 2000s?

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This research investigates causes of the widening Black-White gap in dropout rates during the 2000s using two cohorts of National Longitudinal Surveys of Youth, NLSY79 and NLSY97. The authors found four factors which contributed to the widening of the Black-White gap: school suspension policies, peer impact, fatherless households, and the student-teacher relationship. Logistic regression and decomposition analysis suggests that the gap would have been narrowed by 2.62% if all conditions had remained the same. This implies that factors that have been considered to impact the Black-White gap in the past do not fully explain the current racial gap. Ongoing and potential societal changes demand a new research model to understand the racial gap.

Introduction

Graduation from high school marks the completion of the first big obstacle in a young person's life. Though the nation's high school graduation rate reached a historic high recently (Brenchley, 2013), there are still many youths who do not get high school diplomas or General Educational Developments (GEDs) until the age of 24. For those students who do not complete their high school education, there may be many consequences later in life. Students who drop out suffer from reduced lifetime earnings and lost opportunities in labor markets. According to the U.S. Census Bureau, there are also significant social and economic costs to the rest of the nation (as cited in Chapman, Laird, & KewalRamani, 2010).

It is widely acknowledged in the literature that Black students have a higher probability of dropping out than their

White counterparts, and the gap is as old as the nation itself (Dalton, Glennie, & Ingels, 2009). Numerous studies have examined factors contributing to dropout, which cover diverse domains of person, family, school, and community (e.g., Lee, Cornell, Gregory, & Fan, 2011; Rumberger, 1983; Suh, Suh, & Houston, 2007). More specifically, some authors (Carpenter & Ramirez, 2007) have examined the sources of the dropout gap between and within student racial groups and have identified variables contributing to dropout gaps. They identified being held back, number of suspensions, time spent on homework, gender, family composition, and parental involvement as discriminating factors between different racial groups. Among the variables, suspensions, being held back, and parental involvement most accounted for creating a gap between White and Black student groups.

US students have made considerable educational attainments and the overall event dropout rate declined substantially over the past few decades. The downward trend in event dropout rates was evident in the change from 6.1% in 1972 to 3.5% in 2008 (Chapman, Laird, & KewalRamani, 2010). However, according to these authors, the decreases happened at different times over this 36-year period for Black and White students. White youth showed a decrease in event rates from 1972 (5.3%) through 1990 (3.3%), an increase from 1990 (3.3%) through 1995 (4.5%), and another decrease from 1995 (4.5%) through 2008 (2.3%). Black youths also experienced a decline from 1972 (9.5%) through 1990 (5.0%), and an increase from 1990 (5.0%) through 1995 (6.4%), but their event dropout rates fluctuated and no improvement was noted between 1995 (6.4%) and 2008 (6.4%). The Black-White gap in event dropout rates over the decades was inconsistent: The rates decreased till early 1990s and then went back up in 2000s.

Overall status dropout rate showed a similar trend. A status dropout rate, in general, refers to the proportion of 16-

through 24-year-olds who are not enrolled in school and have not earned a high school credential (National Center for Education Statistics [NCES], 2013). The status dropout rate substantially decreased from 1972 to 2008, changing from 14.6% to 8.0%. The rate for White students fell from 12.3% to 4.8% and the rate for Black students declined from 21.3% to 9.9% over the same period. This statistic suggests that the difference between the status dropout rates of White youth and Black youth narrowed with a dramatic decrease from an average of 9.28% in the 1970s to 5.54% in the 1980s with no additional measurable change occurring until 2008 (Chapman, Laird, & KewalRamani, 2010). However, according to another statistic, the Black-White gap in dropout rates increased from 4.2% in early 1980s to 6.2% in 2000 and stayed in the 4-5% range until 2009 (NCES, 2013).

The current authors analyzed the National Longitudinal Survey of Youth, NLSY79 and NLSY97 data to learn about dropout trends of the two cohorts. The preliminary analysis of NLSY79 showed that the dropout rate was 15.2% for White students and 17.1% for Black students, resulting in 1.9% racial gap. NLSY97 data shows that the dropout rate was 9.1% for White students and 14.4% for Black students resulting in a widening of the Black-White dropout gap by 3.4% from the 1980s to the 2000s. Depending on how dropout rates are measured, reports can be inconsistent. However, from the data provided above we can conclude that the gap is no longer shrinking, but widening even if the trend is more or less fluctuating.

While researchers have paid significant attention to the narrowing of the Black-White achievement gap in the 1980s and early 1990s (Hedges & Nowell, 1998; Smith & O'Day, 1991), few researchers have successfully addressed the widening of the gap in more recent years. This research focuses on trend changes in the Black-White dropout gap, beginning with the first signs of narrowing that occurred in

the 1980s and continuing until the trend began to reverse in the first decade of the 2000s. Using decomposition analysis, this research also investigates potential causes of the widening Black-White dropout gap during the 2000s.

Research Methods

This study used data from two cohorts of the National Longitudinal Surveys of Youth, 1979 (NLSY79) and 1997 (NLSY97). The NLSYs consist of a nationally representative sample of youths who were 12 to 22 years old as of December 31, 1978 and 1996 respectively. The majority of the NLSY79 cohort was in high school during the 1980s while the NLSY97 cohort was in school during the early 2000s. Initially, researchers for both NLSYs re-interviewed the youths on an annual basis to track their schooling and early entrance to the labor market. Since 1994, the NLSY79 survey has been administered on a biennial basis as many of the respondents have made transitions from school to work, and from their parents' homes to being parents and homeowners. However, the NLSY97 has been continuously administered annually. To compare Black-White dropout rates, youths other than non-Hispanic Black or non-Hispanic White were removed from the sample. The final number of youths included in the analysis was 11,633 for NLSY79 (8,528 White and 3,105 Black) and 7,398 for NLSY97 (5,060 White and 2,338 Black). Youths were determined to be dropouts if they neither graduated high school nor enrolled in high school as of 1991 for the NLSY79 cohort and 2009 for the NLSY97 cohort.

The NLSY surveys collected extensive information about youths' personal, behavioral, familial, and educational experiences over the years. In the current study, researchers selected fourteen independent variables from the NLSY data bank which were found to be statistically correlated with school dropout rate in at least one cohort analysis. Factors

identified as socioeconomic and family conditions include: sex of the youth (GENDER), whether the student lived with both biological parents as of the initial survey year (BIO); number of household members (HHSIZE), ratio of household income to poverty level (POVERTY), and whether the mother was employed for most of the student's childhood (MOMJOB). Variables identified as youth culture, study, and behaviors include: Armed Services Vocational Aptitude Battery score (ASVAB), students who were suspended (SUSPENSION), and number of days absent from school (ABSENT). Factors identified as schooling conditions and practices include: perception of teacher (TEACHER), percent of peers who plan to go to college (PEER), whether the youth was residing in a Metropolitan area (MSA), and census regions of residence compared with the Northeast (REGION1, REGION2, and REGION3).

Qualitative independent variables were coded 1 if the statement was true or present and 0 otherwise, with the exception of the GENDER variable where 1=male and 0=female. The remaining three variables (HHSIZE, ASVAB, and ABSENT) are quantitative variables. The census region of residence variable is divided into four regions and the Northeast is selected as an implicit variable in this analysis. REGION1 represents the North Central region compared to the Northeast, while REGION2 and REGION3 represent the South to the Northeast and the West to the Northeast, respectively. Logistic regression and decomposition methodology were employed for data analysis.

Results

Table 1 shows the change in descriptive variables for the last two decades. For the NLSY79 cohort, the dropout rate was 17.1% for Black students and 15.2% for White students, resulting in 1.9% racial gap. The rate changed to 14.4% and 9.1%, respectively for the NLSY97 cohort and the Black-

White gap increased to 5.3%. As a result, the Black-White dropout gap widened by 3.4%, even though the dropout rate for Black students declined by 2.7% during that period.

Table 1
Change in Descriptive Variables for Black and White Students

Variable	NLSY79		NLSY97	
	Black	White	Black	White
DROPOUT	.171	.152	.144	.091
GENDER	.508	.504	.502	.517
BIO	.496	.745	.263	.578
HHSIZE	5.012	3.979	4.588	4.424
POVERTY	.410	.226	.339	.157
MOMJOB	.628	.616	.867	.810
ASVAB	29.425	51.975	32.522	52.511
SUSPENSION	.365	.210	.479	.219
ABSENT	13.059	11.796	4.865	4.768
TEACHER	.797	.797	.806	.893
PEER	.528	.542	.789	.877
MSA	.723	.676	.834	.790
REGION1	-.001	.058	.024	.092
REGION2	.386	.100	.449	.119
REGION3	-.099	.001	-.095	.039

Table 1 also shows the trends in factors contributing to dropout over the same period. There were mixed patterns between Black and White students among the socioeconomic and family conditions, youth culture and behavior factors, and schooling conditions. However, the general pattern supports a narrowing of the racial gap for individual factors. For example, the portion of male students decreased from 50.8% to 50.2% for Black students, while it increased from 50.2% to 51.7% for White students, resulting in a relative decrease in male students among Black youth. Black and

White students both showed an increase in the MOMJOB, ASVAB, SUSPENSION, TEACHER, PEER, REGION1, and REGION3 variables, while both showed a decrease in BIO, POVERTY, and ABSENT variables. The directional change in the GENDER and HHSIZE variables for White youth was opposite that of Black youth. The magnitude of change fluctuates across variables with the same directionality and contributes to either the narrowing or widening of the Black-White gap. A decrease in the Black-White gap occurred for the following factors: household size, armed service battery score, and days absent from school. Factors showing an increase in the racial gap include: living with biological parents, whether the mother was employed, portion of suspended students, perception of teachers, peers going to college, and the portion of youths living in the South and West regions. The racial gap remained almost the same during the last two decades for the following: portion of youths below the poverty level, living in the metropolitan area (MSA), and portion of youths living in the North Central region.

Logistic Regression

Table 2 summarizes results of a logistic regression analysis after running Black and White samples separately. Most of the contributing factors showed a consistent effect on dropout rates in the two cohorts with the exception of TEACHER, PEER, and MSA variables. A positive coefficient indicates a higher probability of dropping out as the value of a predictor increases, while a negative value indicates a reduced likelihood of dropping out of school. For example, the coefficient of GENDER for Black students in NLSY79, 0.312, indicates that the log odds (probability) of dropping out of school rise by 0.312 when the youth is male

Table 2 Change in Coefficients from the Logistic Regression for Black and White Students

Variable	NLSY79		NLSY97	
	Black	White	Black	White
GENDER	.312	.154	.585	.029
BIO	-.407	-.454	-.491	-.878
HHSIZE	.029	-.040	.156	.049
POVERTY	.396	.478	.612	.538
MOMJOB	-.036	-.058	-.046	-.018
ASVAB	-.056	-.060	-.030	-.037
SUSPENSION	.632	.778	.641	.809
ABSENT	.016	.022	.030	.019
TEACHER	.007	.005	-.434	-.282
PEER	-.902	-.893	.058	-.407
MSA	-.206	.070	.112	-.027
REGION1	.172	-.112	-.084	-.082
REGION2	-.378	.177	.116	.186
REGION3	-.001	.153	.005	.063

(GENDER=1) compared with female (GENDER=0). As suggested in previous research (Suh & Suh, 2011), GENDER, HHSIZE, POVERTY, SUSPENSION, and ABSENT variables have a positive effect on DROPOUT for both Black and White youths in the 1980s and 2000s. Factors that have a consistently negative impact on dropout include BIO, MOMJOB, and ASVAB, which implies that living with biological parents, having a mother on the job, or getting a high battery test score reduces the likelihood of dropping out.

An increase or decrease in the size of the coefficient indicates increased or decreased influence of the predictor variable. For Black youth, GENDER, BIO, HHSIZE, POVERTY, MOMJOB, ABSENT, and TEACHER variables evidenced increased impact on dropout, while the influence of ASVAB, PEER, MSA, REGION1, and REGION2 were weakened from NLSY79 to NLSY97. For White youth,

increased influence occurred for BIO, POVERTY, and TEACHER, while decreased impact was noted for GENDER, MOMJOB, ASVAB, and PEER.

There were other changes for the period that need to be noted. The TEACHER variable had a positive but small effect on dropout in NLSY79 since the coefficients were nearly zero. However, the factor became a strong and negative influence in NLSY97 for both races, implying that the positive perception of teachers by the youth significantly reduced the risk of dropping out. As expected, the PEER factor has significantly reduced the risk of dropping out for both Black and White in NLSY79. In NLSY97, however, the role of PEER was limited, and even appeared to have the opposite effect for Black students. It is plausible that the increase in interracial friendships since complete desegregation in the 1990s may have altered the impact of this variable. Inconsistent impact of MSA for both races reflects a narrowing of the gap in dropout rates between metropolitan youths and suburban youths.

Among factors having a consistent impact on dropout, the focus has been shifted from the environment to family and student experience. It is worth noting that dropout in the NLSY79 cohort was predominately influenced by academic achievement (ASVAB), friends (PEER), and location variables (MSA, REGION1-3). Two decades later for the NLSY97 cohort, the influence of family environment (BIO, HHSIZE and POVERTY) and a school variable (SUSPENSION) came into focus. This shift in contributing factors may signal the need for new interpretations of and policy revisions for dropout. Although previous research and the concomitant understanding of dropout prevalent in the 1980s are still important in the 2000s, the level of influence and the direction of interpretation of individual components have changed significantly.

Decomposition Analysis

Two logistic regression models, NLSY79 and NLSY97, can be decomposed into four components (Blinder, 1973; Le & Miller, 2004; Oaxaca, 1973) to better understand dropout trends in the long-run by subtracting NLSY79 from NLSY97 such that:

Change in the Black-White gap = characteristic change + coefficient change + interaction by Black + interaction by White

The first term on the right-hand side of the decomposition denotes the change in the Black-White dropout gap due to changes in the characteristics (independent variables) between Black and White students. The second term on the right-hand side of the equation expresses the difference in the Black-White dropout gap due to changes in the coefficient. The final two terms represent changes in the coefficients over time weighted by the Black-White gap. The decomposition analysis does not attribute the unexplained portion of the Black-White gap in the dropout rate to specific characteristics. Thus, the decomposition of two interaction terms is not discussed. The results of the decomposition of the trend in the Black-White dropout gap between the 1980s and 2000s are presented in table 3. There are various ways the decomposition analysis can be applied, depending on the choice of the benchmark group. This paper is based on the initial cohort, NLSY79, as the benchmark. As indicated above, we report three sources of components of decomposition due to changes in characteristics, coefficients, and interaction. Column 1, changes in characteristics, indicates that the explained component of the trend in the Black-White dropout gap is -0.0262 in total. The aggregate trend should have been a 2.62% decrease in the Black-White dropout gap if all conditions remained the same. Compared with their White counterparts, Black students recorded a decrease in the portion of male students, average number of

Table 3
Decomposition of Dropout Contribution Factors

Variable	Characteristic Change	Coefficient Change
GENDER	-0.0051	-0.0022
BIO	0.0368	-0.0959
HHSIZE	-0.0421	0.0227
POVERTY	-0.0010	0.0285
MOMJOB	-0.0018	-0.0017
ASVAB	-0.1172	-0.0638
SUSPENSION	0.0751	-0.0046
ABSENT	-0.0254	0.0116
TEACHER	0.0153	0.0067
PEER	0.0397	-0.0242
MSA	0.0000	0.0189
REGION1	0.0002	0.0182
REGION2	0.0011	0.1494
REGION3	-0.0019	-0.0112
Total	-0.0262	0.0524

household members, portion of households in poverty, and the number of days absent from school. The most significant improvement by Black youths occurred in the standardized test score, ASVAB. The Armed Services Vocational Aptitude Battery (ASVAB) is one of the most widely used standardized tests to assess student ability and aptitude. Since more than half of all schools in the US administer the exam, the test is considered to be a good measure of youth's learning level across the nation. The average ASVAB score gap narrowed by 3 points during the 1980-2000 period and should have reduced the gap by 11.7%.

Column 1 also shows that most of the factors describing the socioeconomic (SES) background of the youth's family contributed to a decrease in the Black-White dropout gap. The relatively large drop in the number of Black

students' household members resulted in a 4.2% decrease in the gap. A similar decrease was noted due to the changes in poverty (0.1%) and rate of mother's employment (0.18%). Traditionally, these SES factors were considered to be some of the most important characteristics contributing to the gap between Black and White populations (Cook & Evans, 2000; Morgan, 1996) in a cross-section or cohort analysis. However, a steady decline in poverty rates over the half of the century may actually contribute to a decrease in the Black-White gap as Black students benefit from elevated family status more so than White students. This suggests that the impact of SES factors on the racial gap may fluctuate or even be reversed over time. Contrary to the impact of SES and attendance, four variables contributed to an increase in the racial dropout gap: BIO, SUSPEND, TEACHER, and PEER.

The biggest increase in the Black-White gap was due to the SUSPENSION variable. The portion of Black youths suspended from school increased by more than 30%, while White students had less than a 5% increase for the same period. A significant increase in the number of suspended Black youths combined with a rising regression coefficient on SUSPENSION contributed to a 7.5% increase in the dropout gap. A relatively significant increase in the portion of White youths whose friends plan to attend college (PEER) resulted in a widening of the Black-White gap by 4.0%. As seen in the regression analysis, the influence of BIO increased in NLSY97 for both Black and White students. The 3.7% increase in the gap due to BIO was caused by a significant decrease in the portion of Black youths who live with their biological parents, from 49.6% to 26.3%. TEACHER contributed to a 1.5% increase in the gap. Column 2 of Table 3 represents the change in the gap due to change in the regression coefficients, which contributed to a 5.2% increase in the gap.

Discussion

A comparison of the racial dropout gaps for the NLSY79 and NLSY97 cohorts reveals noticeable differences. Most of the socioeconomic and behavioral variables contributed to a narrowing of the Black-White dropout gap. Black students made relatively more improvements than White students over the approximately two decades. Nonetheless, the gap widened during the past two decades (1980s-2000s) due to changes in school policy and youths' environment. It appears that factors that have been considered to impact the Black-White gap in the past do not fully explain the current racial gap. We limit our discussion to factors which contributed to the recent increase in the gap.

First, suspension was the characteristic that contributed most significantly to the widening of the gap. Researchers found that Black students tend to receive stiffer penalties than White students. Suspension is one of the more severe forms of penalties used to discipline students. Not only are students excluded from classroom learning while suspended, they may be unsupervised at home and thus more likely to get in trouble in the community (Hinojosa, 2008; Raffaele-Mendez, & Knoff, 2003). Dropout rates are consistently much higher for suspended students and research indicates that some schools actually use suspensions to push troublesome students out of school (Raffaele-Mendez, Knoff, & Ferron, 2002; Suh et al., 2007).

Researchers have proposed the possibility that education policies (discipline) may have impeded Black students' progress toward closing the gap since the adoption of the Gun Free School Act of 1994 and the No Child Left Behind (NCLB) Act of 2001. Zero tolerance policy under the Gun Free School Act disproportionately affected disciplinary action for Black students (Shah, 2013). Under NCLB, schools and local school districts were required to report Adequate Yearly Progress (AYP) every year. Troublesome

students may hinder AYP and thus, schools have strong incentives to exclude low-performing students from school through strict discipline for offenders of school policy as a means of achieving AYP (Knaus, C, 2007; Skiba, R., Eckes S., & Brown, K., 2009).

Traditionally, Black students are more likely to be suspended for committing any offense. According to the US Department of Education report (2000), Black students comprised 17% of the U.S. student population, but accounted for 34% of out-of-school suspensions. According to the data collected nationwide by the Education Department's office for civil rights from the 2009-10 school year, Black students were 3.5 times more likely to be suspended or expelled compared to their White peers (Shah, 2013). This pattern of discipline dramatically worsened between the 1980s and 2000s, during which time the portion of Black students suspended from school increased by 11.4%, while for White students the same measure increased only 0.9%. While student test scores have been increasing since NCLB took effect in 2002 and the test scores of minority students have increased the most, critics argue that schools pushed troublesome students out of school to achieve AYP (Skiba et al., 2009).

Second, the influence of peers has become more important to the racial school dropout gap between Black and White youth. The portion of peers who planned to attend higher education was nearly the same for Black and White students in the NLSY 79 cohort, compared with the 8.8% gap in favor of White students in the NLSY97 cohort. This result may indicate that peer pressure for attaining a higher degree was decreased among Black students in the NLSY97 cohort, leading them to sustain less interest in staying in school. Friend's influence on adolescent's behavior as well as their attitudes towards school have been well documented. Peer factors were good predictors of whether students would

drop out (Cairns, R., Xie, H., & Leung, M., 1998; Bagwell, C., Coie, J., Terry, R., & Lochman, J., 2000). After conducting interviews with 8,531 transferred or dropped out students, Kim et al. (2011) found that the biggest influence on students was whether their friends had dropped out of school. Other research on peer influence shows that students isolated from peers lack positive relationships and eventually become disengaged and on the path toward dropping out (Brewster & Fager, 2000; Bryck & Thum, 1989; Sinclair, Christenson, Evelo, & Hurley, 1998). This may also influence the impact of suspensions on dropping out as students who are suspended from school are excluded from the school environment, and therefore isolated from their peers.

Third, the role of biological parents altered the Black-White dropout trend over the last two decades. According to the National Principals Association (2010), 71% of all high school dropouts come from fatherless homes and children with fathers who are involved in their life are 70% less likely to drop out of school. The portion of adolescents living with their biological parents was 49.6% for Black youth and 74.5% for White youth in the NYSY79 cohort. For NLSY97, the rate changed to 26.3% for Black youth and 57.8% for White youth, resulting in a widening of the gap from 24.9% to 31.5%. Over the last century, increases in divorce and unmarried childbearing have changed American family life significantly. The majority of youths from one-parent families live with their biological mother. Thus, living in one-parent families implies living without a biological father for many youths. The father's absence hurts the educational success of youths of all races. Research consistently shows that fatherless children or children who live with only one parent are more likely to drop out of school (McLanahan & Sandefur, 1994; McNeal, 1995; U.S. Department of Health and Human Services, 1993). Our investigation proves that youths who grew up apart from one of their biological

parents were less likely to finish high school and attend college. The differences in this study are significant enough to support the claim that the father's absence is a major cause of the widening of the racial gap in dropout rates (Hanson, McLanahan, & Thomson, 1996, 1997; McLanahan & Sandefur, 1994).

Fourth, school alienation and poor student-teacher relationship is another major cause of high school dropout (Turner, Laria, Shapiro, & Perez, 1993; Wayman, 2002). Studies have pointed out the importance of student-teacher relationships to academic achievement (Calabrese & Poe, 1990; Jordan, Lara, & McPartland, 1996). Poor student-teacher relationships can contribute to negative feelings toward school and eventually lead to school dropout. Alva and Padilla (1995) suggested that student-teacher relationships are particularly important for minority high school students. Minority students often reported that the perception of teacher ethnic bias was the main cause of disengagement from school (Katz, 1999). Though the role of the student-teacher relationship is relatively weak in the cohort analyses for the NLSY79 and NLSY97 datasets, the impact on the trend over time implicates it as one of the main contributors to the Black-White dropout gap. This indicates that although perceptions of teacher ethnic bias are not prevalent, such perceptions do exist and partially impact school dropout.

Conclusion

Some improvements in the Black-White dropout gap were made in the 1980s. Since peaking in the late 1980s and staying level for about a decade, the gap began widening in the late 1990s—during a period of strong school reform efforts. Since 2000, the gap has stabilized in the 4-6% range. This research suggests that the magnitude and direction of factors leading to dropout change over time. Decomposition analysis

also suggests that the gap would have been narrowed by 2.62% if all conditions had remained the same. This research identifies a few factors which contributed to the widening of the Black-White gap: school suspension policies, peer impact, fatherless households, and the student-teacher relationship. Due to on-going and potential future changes in familial and societal contexts and youth cultures, a new research model and interpretation are needed for a better understanding of the Black-White dropout gap. Beginning in the 2009-10 school year, the U.S. Department of Education adopted a common measure designed to rigorously assess four-year high school graduation rates (Zubrzycki, 2012). This new nationwide initiative for measuring dropout rates is expected to provide researchers with rich and credible data to further our understanding of dropout issues.

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Shared Physical Custody: Does It Benefit Most Children?

by
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I. Introduction

One of the most complex and controversial issues in family law and custody legislation is: What type of parenting plan is the most beneficial for the majority of children after their parents separate? More specifically, are the outcomes any better for children who continue to live with each parent at least 35% of the time than for children who live primarily with their mother and spend less than 35% of the time living with their father? In other words, is it in most children’s best interests to live in shared physical custody? More important still, is a shared parenting plan beneficial to children when their parents communicate poorly, have high levels of conflict, or have ended up in court or in prolonged legal negotiations in order to resolve their disagreements over the parenting plan? Put differently, do parents have to be cooperative and communicative and “voluntarily” both agree to this plan from the outset for shared parenting plans to benefit the children?

A. Definition of Social Science Terminology

The term “parenting plan” is now often used interchangeably with the term “physical custody.” And the newer term “shared parenting” (sometimes referred to as “shared care”) refers to those families where the children continue to live with each parent at least 35% and typically closer to 50% of the time. In shared parenting plans, neither parent’s home is considered the “primary” residence nor is neither parent relegated to being the “non-residential” parent. Most parents with shared physical custody agreements also share the legal custody so that neither parent has sole legal decision making responsibility for the children. In contrast, the traditional “one size fits all” parenting plan where children live primarily or exclusively with only one parent – 90% of the time with their mother – is now referred to as “sole” residence or a “primary care” plans. In these sole residence plans, children typically spend alternate weekends year

round and a few weeks during summer vacation with their non-residential parent – amounting to roughly 20% of the parenting time with their father. In the present paper these parenting plans will be referred to as “sole” or as “mother” residence plans. Since shared legal custody has become the preferred standard in most states’ custody laws, the controversy has largely become focused on how much parenting time the children will be allowed to receive from each parent in the parenting plan.

B. *How Popular Is Shared Parenting?*

As fathers have become more heavily involved in the daily activities and the physical care of their children, and as more mothers have resumed working full time in the children’s pre-school years, shared parenting after the parents separate has become more common worldwide. For example, in Wisconsin one-third of the parents who divorced in 2007 had a 50-50 shared parenting plan and one-fourth had a 25% time share.¹ It is especially noteworthy that in these families there were nearly as many infants and toddlers (42%) as there were six to ten year olds (46%) in shared parenting.² Moreover, after custody laws were revised to be more favorable to shared parenting, the number of parents who both hired lawyers to settle their custody disputes decreased from 53% to 40%.³ Likewise, in 2008 in Washington State among 4,354 parenting plans, almost half of the children were living at least 35% with each parent.⁴ In Arizona nearly 30% of the parents who separated in 2008 had a shared parenting plan, compared to only 15% in 2002.⁵ In contrast, in Nebraska in a random sample of 392 custody cases statewide from 2002-2012, only 12% had shared physical custody.⁶ Further illustrating the differences among the states, one shared parent-

¹ Maria Cancian et al., *Who Gets Custody Now? Dramatic Changes in Children’s Living Arrangements After Divorce*, 51 DEMOGRAPHY 1381 (2014).

² *Id.*

³ *Id.*

⁴ Thomas George, *Residential Time Summary Reports Filed in Washington from July 2007 to March 2008*, Washington State Center for Court Research (2008).

⁵ Jane C. Venohr & Rasa Kaunelis, *Child Support Guidelines*, 43 FAM. CT. REV. 415 (2008).

⁶ Michael Saini & Debora Brownyard, *Nebraska 2002-2012 Custody Court File Research Study* (Dec. 31, 2013), available at <https://supremecourt.ne->

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ing organization's recent "report card" of states' custody laws gave twenty-three states a "D" and only eight states a "B" in terms of how well their custody laws supported shared parenting and encouraged maximum parenting time for both parents. New York and Rhode Island ranked lowest with an "F."⁷ Since the Census Bureau has never collected data on custody arrangements, no nationwide statistics exist. Still, it is apparent that shared parenting is on the increase in the United States and in other countries. For example, shared parenting has risen in Belgium to 30%, Denmark and the Netherlands,⁸ and France,⁹ to 20% and to nearly 50% in Sweden.¹⁰

Public surveys and revisions in custody laws also reflect changing attitudes towards shared parenting. For example, in a survey of 367 people who had been summoned for jury duty in Arizona, 70% said they would have the children live half time with each parent if they were family court judges. On the other hand, only 28% believed that judges would grant shared parenting.¹¹ In yet another study in Arizona, 90% of the people who were polled favored equal time sharing,¹² as did 85% of the citizens in Massachusetts who voted in favor of shared parenting on a non-binding ballot.¹³ Female and male adults, including many

braska.gov/sites/supremecourt.ne.gov/files/reports/courts/2002-2012-custody-court-file-research-study.pdf.

⁷ Donald Hubin, National Parents Organization, *2014 Shared Parenting Report Card* (2014), available at https://nationalparentsorganization.org/docs/2014_Shared_Parenting_Report_Card%2011-10-2014.pdf.

⁸ An Katrien Sodermans et al., *Post Divorce Custody Arrangements and Binuclear Family Structures of Flemish Adolescents*, 28 DEMOGRAPHIC RES. 421 (2013).

⁹ Laurent Toulemon, *Two Home Family Situations of French Children and Adults*, Inst. Nat'l Demographics, Paris, France (Jan. 25, 2008), <http://ec.europa.eu/eurostat/documents/1001617/4436612/14-35th-CEIES-Seminar-CONFERENCE-25-January-4-1-TOU.pdf/82cc1917-030f-4bf4-8017-c5e5b38769bb>.

¹⁰ Asa Carlsund et al., *Risk Behavior in Swedish Adolescents: Is Shared Physical Custody a Risk or a Protective Factor?*, 23 EUR. J. PUB. HEALTH 3-7 (2012).

¹¹ Sanford L. Braver et al., *Lay Judgments About Child Custody After Divorce*, 17 PSYCHOL., PUB. POL'Y & L. 212 (2011).

¹² Sanford L. Braver et al., *The Court of Public Opinion*, AFCC Annual Conference, Vancouver, British Columbia (2008).

¹³ Fatherhood Coalition, *Shared Parenting Ballot Initiative Election Results*. Fatherhood Coalition, Boston (2004).

who are grandparents, have expressed their support for legislation that is more supportive of shared parenting through organizations such as the National Parenting Organization,¹⁴ as have social scientists who created the International Council on Shared Parenting.¹⁵ And one group of Canadian lawyers have formed an organization called “Lawyers for Shared Parenting.”¹⁶

Changes in attitudes are also reflected in surveys of lawyers, judges, and custody evaluators. For example, in 245 custody cases in North Carolina in 2007, 20% of the court ordered plans granted 50% or more of the parenting time to the father – more fathering time than in plans that were mediated (5%) or negotiated through lawyers (10%).¹⁷ In stark contrast, in a poll of 800 judges conducted fifteen years ago, only 6% believed in shared physical custody.¹⁸ And in another 2002 survey of 149 judges in four Southern states, 40% believed that women were better parents than men.¹⁹ Currently, however, twenty states are considering changes in their custody laws that would be more favorable to shared parenting, while at least ten states have already done so.²⁰ The present legal debates focus primarily on whether custody laws should be revised so that shared parenting with a minimum of 35% shared time becomes the “rebuttal presumption.” But in whatever ways each individual state eventually revises its new custody laws, there is clearly a shift away from the “one size

¹⁴ See generally National Parenting Organization (2015), www.nationalparentsorganization.org.

¹⁵ See generally International Council on Shared Parenting (2014), www.twohomes.org.

¹⁶ See generally Canadian Lawyers for Shared Parenting, www.lawyers4sp.com (2015).

¹⁷ Ralph A. Peeples et al., *It's the Conflict, Stupid: An Empirical Study of Factors that Inhibit Successful Mediation in High Conflict Custody Cases*, 43 WAKE FOREST L. REV. 505, 508 (2008).

¹⁸ Marc J. Ackerman & Linda J. Steffen, *Child Custody Evaluation Practices: A Survey of Family Law Judges*, 15 AM. J. FAM. L. 12 (2001).

¹⁹ Leighton E. Stamps, *Maternal Preference in Child Custody Decisions*, 37 J. DIVORCE & REMARRIAGE 1 (2002).

²⁰ Ashby Jones, *Big Shift Pushed in Custody Disputes*, WALL ST. J., Apr. 16, 2015, available at <http://www.wsj.com/articles/big-shift-push-in-custody-disputes-1429204977>.

fits all” plan where every other weekend and summer vacation with dad is considered in children’s best interests.²¹

The primary questions about parenting plans have now become: How much are children benefitting from shared parenting, if at all? Is there anything that sets these parents apart from those whose children live with their mother and only live with their father on alternate weekends? Can children benefit if the shared parenting plan is court ordered or if the parents do not have a friendly, low conflict, co-parenting relationship?

C. Have You Been Woozled by the Research?

Before addressing these questions, it is important to understand how judges, lawyers and the mental health workers involved in custody issues are too often bamboozled or “woozled” by the research in ways that lead them astray. The process of relying on faulty, limited, partial, or misinterpreted research has been referred to as “woozling” and the myths and misperceptions that consequently arise are called “woozles.” Recognizing this problem, the American Psychological Association’s guidelines explicitly state that professionals who are offering expert opinions should not rely only on a few of the available studies to support a point of view – which is one of the most common ways of “woozling” data. In essence, the A.P.A. is telling expert witnesses: Don’t be woozlers. Social scientists have also pointed out that the research data are too often misrepresented to family court professionals.²² Likewise, judges and lawyers have been warned not to put too much trust in custody evaluations because too many well-intentioned evaluators hold beliefs that are based on distorted, inaccurate, or “woozled” research.²³

²¹ J. Herbie DiFonzo, *From the Rule of One to Shared Parenting: Custody Presumptions in Law and Policy*, 52 *FAM. CT. REV.* 213 (2015).

²² See Judith Cashmore & Patrick Parkinson, *The Use and Abuse of Social Science Research Evidence in Children’s Cases*, 20 *PSYCHOL., PUBLIC POL’Y & L.* 4 (2014); See also Janet R. Johnston, *Introducing Perspectives in Family Law and Social Science Research*, 45 *FAM. CT. REV.* 15 (2007); Sarah H. Ramsey & Robert F. Kelly, *Assessing Social Science Studies: Eleven Tips for Judges and Lawyers*, 40 *FAM. L.Q.* 367 (2006).

²³ See Joan B. Kelly & Janet R. Johnston, *Commentary on Tippin’s and Whitmann’s “Empirical and Ethical Problems with Custody Recommendations”: A Call for Clinical Humility and Judicial Vigilance*, 43 *FAM. CT. REV.*

The process of woozling and its impact on child custody decisions have been extensively described elsewhere, especially as woozling relates to parenting plans for infants, toddlers, and preschoolers.²⁴ To summarize briefly, the words “woozling” and “woozles” come from the children’s story, “Winnie the Pooh.”²⁵ In the story the little bear, Winnie, dupes himself and his friends into believing that they are being followed by a scary beast – a beast he calls a woozle. Although they never actually see the woozle, they convince themselves it exists because they see its footprints next to theirs as they walk in circles around a tree. The footprints are, of course, their own. But Pooh and his friends are confident that they are onto something really big. Their foolish behavior is based on faulty “data” – and a woozle is born. Though data in any field can be woozled, the term “wooze” was first used by the sociologist Richard Gelles in regard to how the research on domestic violence was being distorted and misused by advocacy groups.²⁶

Three common ways to wooze people are to present only a few of the existing research studies that support one particular point of view, to frequently repeat and to publicize these few studies while exaggerating and sensationalizing the findings, and to fail to mention the serious flaws in the studies while making sweeping generalizations about their importance. Woozles are more likely to take hold when they confirm beliefs that people already hold – an effect referred to as “confirmation bias.”²⁷ That is, we are more likely to accept those studies or to adopt without question those beliefs that confirm what we already believe. This means we are overly critical and dismissive of data or ideas that contradict our existing beliefs. As the British philoso-

233 (2005); See also Joel V. Klass & Joanna L. Peros, *Ten Signs of Questionable Practices in Custody Evaluations*, 11 AM. J. FAM. L. 46 (2011).

²⁴ Linda Nielsen, *Being Mislead by Data Related to Child Custody and Parenting Plans*, J. DIVORCE & REMARRIAGE (forthcoming 2015) (on file with author); See also Linda Nielsen, *Woozles: Their Role in Custody Law Reform, Parenting Plans and Family Court*, 20 PSYCHOL., PUB. POL’Y & L. 164 (2014).

²⁵ A. A. MILNE, WINNIE THE POOH (1926).

²⁶ Richard Gelles, *Violence in the Family: A Review of Research in the Seventies*, 42 J. MARRIAGE & FAM. 873 (1980).

²⁷ David A. Martindale, *Confirmatory Bias and Confirmatory Distortion*, in PSYCHOLOGICAL TESTING IN CHILD CUSTODY EVALUATIONS 31 (James R. Flens & Leslie Drozd, eds. 2005).

pher, scientist, and statesman, Francis Bacon, wrote in 1620 in his treatise *The New Scientific Method*: “For what a man had rather were true he more readily believes.”²⁸ Or as a more recent idiom puts it: “I’ll see it when I believe it.” Once these beliefs take hold and become full-fledged woozles, they become accepted as “what the research shows.” But like Winnie the Pooh and his friends, we are misled too often by the woozles and oblivious to the facts. Judges, lawyers, and forensic psychologists have written amusing yet thought provoking essays acknowledging the impact that woozling can have on child custody decisions: “Have you woozled a judge?”²⁹ “Child custody lore: The case of the runaway woozle,”³⁰ “Psychozoology in the courtroom: Dodo birds, woozles, haffalumps and parenting,”³¹ and “A short treatise on woozles and woozling.”³² Throughout this paper a few examples of woozles will be presented to illustrate how easily we can be led astray by distorted, limited, and flawed data.

Keeping in mind the dangers of woozling, the present paper will briefly summarize *all* of the studies that have compared the outcomes for children in shared parenting families to children in sole residence families. The general limitations of these studies will also be mentioned, though it is beyond the scope of this paper to discuss the strengths and weaknesses of each of the forty studies. Finally, both the negative and the positive outcomes of shared parenting will be presented.

II. Low Conflict, and Cooperative Co-parenting: A Prerequisite for Shared Parenting?

To put the findings from the forty studies into perspective,

²⁸ FRANCIS BACON, *NOVUM ORGANON SCIENTIARUM* (NEW INSTRUMENT OF SCIENCE)(1620).

²⁹ Laurie Hutchins, *Have You Woozled a Judge?*, N.C. B. FAM. L. NEWSL. (Mar. 5, 2014), https://www.facebook.com/permalink.php?story_fbid=651432971572588&id=639013169481235.

³⁰ Karin Franklin, *Child Custody Lore: The Case of the Runaway Woozle* (Feb. 23, 2014), <http://forensicpsychologist.blogspot.com/2014/02/child-custody-lore-case-of-runaway.html>.

³¹ Jean Mercer, *Psychozoology in the Courtroom: Dodo Birds, Woozles, Heffalumps and Parenting*, CHILD MYTHS BLOG (Mar. 18, 2014), <http://childmyths.blogspot.com/2014/03/psychozoology-in-courtroom-dodo-birds.html>.

³² Robert Franklin, *A Short Treatise on Woozles and Woozling* (May 14, 2014), available at <http://menz.org.nz/2014/shared-parenting-evaluated-honestly/>.

one question first has to be addressed: Are most parents with a shared parenting plan a special group who have little or no conflict and communicate well as a co-parenting team, and who voluntarily agreed to this parenting plan from the outset – a choice they made “freely” without pressure from mental health professionals or from mediators, lawyers, or judges? If that is the case, then it is possible that these children are doing well for reasons unrelated to the shared parenting arrangement itself. Especially if their parents are highly educated with high incomes, these children might have equally good outcomes even if they had only spent every other weekend with one of their parents. Moreover, if most shared parenting couples voluntarily and eagerly agreed to share from the outset, then there would be reason to wonder whether children would benefit from shared parenting that is “forced” on one of the parents. “Forced” might mean that a reluctant parent was coerced or persuaded by lawyers or mediators into “agreeing” to share rather than risking the expenses and possible outcomes of taking the dispute to trial. Or “forced” might mean that a judge ordered shared parenting over one of the parent’s wishes. “Forced” can also be interpreted to mean that in those states where custody laws are the most supportive of shared parenting, parents are more likely to feel pressured into accepting shared parenting plans because they believe the judge would probably order it if the parents cannot reach a decision. The far reaching impact of custody laws, even on those parents who agree on all custody issues, is referred to as “bargaining in the shadow of the law” - meaning that a state’s custody laws have an impact on *all* separating parents, not just on the 5% -10% who end up having to go to court to resolve their custody disputes.³³

So are low conflict, friendly, communicative co-parenting relationships necessary for children to benefit from shared parenting? And does shared parenting only benefit children when it is voluntarily chosen from the outset by parents who have very little in common with those who are embroiled in litigation or end up in court to resolve their custody plans?

³³ Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

Table One

Researchers Income & conflict 50% time share = 35%-50% ≠	# of Children Physical custody Sole Shared <35% 35%- 50%	Ages	Grades Cognitive Development	Depressed Anxious Dissatisfied	Aggression Drugs & alcohol Misbehavior	Physical health & Smoking	father-child relationship
Bergstrom =	17,350 34,452	12-15	Equal	Better	Better	Better	Better
Bjarnason =	2,206 25,578	11-15		Better			Better
Brevik \$ =	41 483	12-16		Better	Better	Better	
Brotsky =	45 10	1-10		Better	Better		
Buchanan \$ C ≠	51 355	13-16	Better	Better	Better	Better	Better
Cashmore \$ C ≠	84 473 90 411 26 110	0-17 0-17 13-17	Better	Better Better Equal	Better Slightly Better		Better
Campana ≠	207 272	10-18		Better	Better		
Carlsund \$ =	801 270	11-15			Better	Better	Better
Carlsund \$ =	888 2,019	11-15		Better		Better	Better

Fabricius =	30 201	18-20					Better
Fabricius =	337 686	18-20					Better
Fabricius =	75 136	18-20				Better	Better
Fabricius ?	16 56	0-3					Better
Frank =	16 90	College					Better
Irving =	201 194	1-11					Better
Jablonska =	441 2,920	14-15			Better		Better
Janning =	5 17	College					Better
Kaspiew \$ C ≠	947 3,513	0-17	Slightly Better			Slightly Better	
Kline \$ C =	35 58	3-11	Equal		Equal	Equal	Better
L Laftman \$ =	1, 573 1,584	15-18				Better	Better
Lee ≠	20 39	6-12				Better	
Lodge C =	105 398	12-18	Equal			Equal	Better
Luepnitz \$ =	22 30	8-13			Equal		Better
McIntosh \$C ≠ x	18-250 14- 360 *	0-4			Mixed		Better
Melli =	597 595	1-16			Equal		Better
Maccoby \$ C ≠	326 1,050	0-12					Better
Neoh =	27 37	8-15			Equal		Better
Pearson =	62 459 9 83	9-12			Better Equal		Better Equal
Pruett ≠	99 33	2-6			Better-girls		
Spruijt \$ C =	135 250	10-16	Equal		Better (girls)		Better
Smart = x	21 96	6-22			Mixed		Better

Tornello = x	174,1062	0-5			Better	
Turunen \$C =	255,595	10-18			Better	
Vanassche C ≠	395 1,045	12-19			Boys Better Girls Worse	Better
Westphal \$C =	966 2,217	4-16			Better	Better
Wadsby =	324	14-18			Better	Better
Total number of children	736					
total number of parents	31,483 83,674 62,966 167,348					

TABLE ONE OUTCOMES FOR CHILDREN IN SHARED PARENTING FAMILIES

= Equal: All children lived 50% with each parent
 ≠ Not equal: Children lived anywhere from 35% to 50% time with each
 \$ C study controlled for parents' incomes (\$) or levels of conflict (C)
 x Some data came from instruments/procedures with no established validity or reliability
 * The sample sizes varied widely on the different measures

A. *High Conflict: Can These Children Benefit from a Shared Parenting Plan?*

Those people who believe that shared parenting plans only benefit children when the parents are cooperative coparents may be surprised to learn that the children in shared parenting families had better outcomes than those in sole residence even when there was high conflict or where one of the parents had been “forced” to share. As Table One illustrates, in eleven of the forty studies (marked with “+”) the researchers specifically stated that their sample included high conflict and litigating parents. And in sixteen of the studies (marked with a “C”), the shared parenting couples either had as much conflict as those with sole residence parenting plans or, after controlling for conflict, the outcomes were still better for the shared parenting children. As for being “forced” into sharing, according to the seven studies that gathered this information, the number of shared parenting couples who had not initially wanted to share ranged from 20%,³⁴ to 40%,³⁵ to 50%,³⁶ to 82%.³⁷ Given the results of these seven studies, it is unlikely that in the other thirty-three studies, almost all of the couples with shared parenting plans willingly and enthusiastically agreed to share from the outset. Although it is true that 85%-90% of shared parenting plans are “agreed to” without having a custody hearing, this is also true for 85%-90% of sole residence parenting plans. And even though most couples with

³⁴ Howard H. Irving & Michael Benjamin, *Shared and Sole Custody Parents*, in *JOINT CUSTODY AND SHARED PARENTING* 114, 119 (Jay Folberg ed. 1991).

³⁵ Muriel Brotsky et al., *Joint Custody Through Mediation*, in *id.* at 167; Judith Cashmore et al., *Shared Care Parenting Arrangements Since the 2006 Family Law Reforms*, Social Policy Research Centre, University of New South Wales (May 2010), available at <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyLawSystem/Documents/SharedCareParentingArrangementssince2006FamilyLawreformsreport.PDF>; Jessica Pearson & Nancy Thoennes, *Child Custody and Child Support After Divorce*, in *id.* at 114.

³⁶ Marsha Kline et al., *Children’s Adjustment in Joint and Sole Physical Custody Families*, 25 *DEV. PSYCHOL.* 430 (1989); Deborah Anne Luepnitz, *A Comparison of Maternal, Paternal and Joint Custody: Understanding the Varieties of Post-Divorce Family Life*, in *JOINT CUSTODY AND SHARED PARENTING*, *supra* note 34, at 105.

³⁷ ELEANOR MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD* (1992).

shared parenting plans do have less intense conflict than other parents at the time they separate, it would be a mistake to assume that the level of conflict is the major factor that sets them apart from the parents who have sole physical custody parenting plans, as we will see later in this article. First, in those studies that asked about the conflict over the parenting plan, most of those with shared plans were in conflict over the plan at the outset. One of the parents initially wanted a sole physical custody parenting plan. Second, we will see that most of these couples do not have a conflict free or exceptionally friendly, “co-parenting” relationship and do not necessarily have less conflict than parents with sole residence plans. With the exception of conflict that reaches the level of physical abuse or violence, the conflict between sharing and non-sharing parents is often not as different as we might expect – especially not in the most recent studies. Ten of the forty studies compared the conflict levels or the quality of the parents’ co-parenting in the shared parenting versus the sole residence families.

Beginning with the oldest study back in the late 1980s, the researchers collected data over a four year period from 1,100 divorced families, 92 of which had their children living at least a third of the time with their fathers. It is worth noting that 82% of these mothers were initially opposed to sharing the physical custody – which means these parents were in conflict over the parenting plan. The majority did not have less conflict or communicate better than the parents with sole residence plans. In fact the researchers concluded: “Parents can share the residential time *even though they are not talking to each other* or trying to coordinate the children rearing environments of their two households”³⁸ Four smaller studies from the 1980s with a total of 117 shared divorced couples also found that most of those with shared plans did not have an especially low conflict, friendly, collaborative relationship where they worked together as a parenting team.³⁹ Most of their relationships were distant and businesslike – a relatively disengaged arrangement that has come to be known as “parallel” parenting in contrast to “co-

³⁸ *Id.* at 292 (emphasis added).

³⁹ MACCOBY & MNOOKIN, *supra* note 37, at 292; Pearson & Thoennes, *supra* note 35, at 185.

parenting” which suggests that the parents are working cooperatively as a friendly, low conflict team.⁴⁰

More recent, larger studies also show that most parents with shared parenting plans are “parallel” parenting, not “co-parenting.” For example, in Wisconsin data were collected three years after divorce from a large representative sample of 590 shared residence and 590 sole residence families.⁴¹ Roughly 15% of the couples in both groups described their relationship as hostile. Most shared parenting couples did not have a conflict free relationship. In fact, they were *more* likely to have conflicts over childrearing issues (50%) than couples whose children lived with their mother (30%). Why? The researchers suggested it was because these fathers were more involved in their children’s lives, unlike the other fathers who were restricted to weekend visits or who had dropped out of the children’s lives completely.

International studies confirm these American findings. In a Dutch study, conflict for the 135 couples with shared parenting and for 350 with sole residence were similar four years after their divorce, although the conflict was initially less for those with shared plans.⁴² Likewise, in a large nationally representative Australian study, 20% of the 645 shared parenting couples had ongoing conflicts and distant relationships even three years after their divorce.⁴³ And in a smaller Australian study with 105 shared parenting and 398 sole residence couples, only 25% of the sharing and only 18% of non-sharing couples said they had a friendly relationship.⁴⁴ In a very small study with twenty British

⁴⁰ Rachel Birnbaum & Barbara Jo Fidler, *The Emergence of Parallel Parenting Orders*, 24 CAN. FAM. L.Q. 111 (2010).

⁴¹ Marygold S. Melli & Patricia R. Brown, *Exploring a New Family Form – the Shared Time Family*, 22 INT’L J. L., POL’Y & FAM. 231, 231 (2008).

⁴² Ed Spruijt & Vincent Duindam, *Joint Physical Custody in the Netherlands and the Well-Being of Children*, 51 J. DIVORCE & REMARRIAGE 65 (2009).

⁴³ Rae Kaspiew et al., *Evaluation of 2006 Family Law Reforms in Australia*, Austl. Inst. Fam. Stud., Canberra, Australia (Dec. 2009), available at <https://aifs.gov.au/publications/evaluation-2006-family-law-reforms/executive-summary>.

⁴⁴ Jodie Lodge & Michael Alexander, *Views of Adolescents in Separated Families*, Austl. Inst. Fam. Stud. (2010).

and fifteen French fathers, the majority did not have cooperative, communicative relationships with their children's mother.⁴⁵

Overall then, most couples with shared parenting plans do not have an exceptionally friendly, cooperative relationship with little to no conflict where they are comfortably communicating and actually "co-parenting" as a team. Instead, most have a "parallel" parenting arrangement where they run households and parent the children as each sees fit, minimizing the interactions and the need for much communication between the parents. As already documented, a number of these parents agreed to a shared parenting plan even though that was *not* their initial preference. Still shared parenting couples are very unlikely to have conflicts that ever reached the level of physically injurious abuse or violence. And as we will later see, they tend to be somewhat better educated and have higher incomes than other separated parents, though those differences appear to be shrinking. But, as we will now see, the impact of conflict on the children and the relationship between conflict and whether the parents end up with a shared parenting plan is not as direct, or as straightforward or as significant as many people might assume.

B. *The Conflict over Conflict: The Tail that Wags the Dog?*

As the sixteen studies in Table One demonstrate (those marked with a "C" for conflict), children benefitted more from shared parenting than from sole residence even when their parents had a conflicted relationship and even when the levels of conflict were factored in as a possible cause for the better outcomes. This is not to say that witnessing intense conflict or frequently being dragged into the middle of the conflicts has no negative impact on most children. But this *is* to say there are many reasons why conflict, even if it has been described as "high," should not be the pivotal factor in determining whether shared parenting will benefit the children. It is not in the best interests of children for decisions makers to let the conflict "tail" wag the parenting plan "dog."

⁴⁵ Alex Masardo, *Managing Shared Residence in Britain and France: Questioning a Default Primary Carer Model*, in *SOCIAL POLICY REVIEW* 21: ANALYSIS AND DEBATE IN SOCIAL POLICY 197 (Kirstein Rummery et al. ed. 2009).

One of the first questions is whether children whose parents cannot resolve their custody conflicts without going to court can possibly benefit from a shared parenting plan. Aren't these the parents whose conflict is so intense, so intractable and so pervasive that their children will inevitably be damaged – and will be even more damaged by continuing to live with each parent at least a third of the time? To my knowledge, there is only one study that has actually explored the impact of legal conflict on the children.⁴⁶ There were 94 formerly married parents with one child between the ages of four and twelve participating in the study. On standardized measures of the children's well-being, two kinds of conflict had no impact on the children's well-being. One was the legal conflict over custody issues. The other was "attitudinal" conflict, which meant feeling angry and hostile and disliking one another's parenting styles, but not acting out that conflict in front of the children. The third kind of conflict, interpersonal conflict, meant the parents acted on their angry feelings and exposed their children to their arguments. It was only this kind of conflict that had any negative impact on the children. Based on their review of the empirical data, these researchers conclude that there is no empirical evidence that legal conflict is linked to worse outcomes for children. In another study, all 728 parents had been designated "high" conflict in family court and all were litigating over parenting time or other custody issues. With an average age of thirteen, the 141 children who gave their parents high ratings for being good parents had fewer behavioral problems than those who gave their parents poor ratings. But the more important finding was this: only when the children spent more than eleven nights a month with their father were the high parenting ratings linked to fewer behavior problems. In other words, in this very high conflict sample of litigating parents, only when the children were actually living with their father at least one-third of the time did their high opinions of his parenting have an impact on their behavior.⁴⁷

There are a number of possible explanations why parents' conflicts and poor communication with one another generally did

⁴⁶ Irwin Sandler et al., *Relations of Parenting Quality, Interparental Conflict, and Overnights with Mental Health Problems of Children in Divorcing Families with High Legal Conflict*, 40 J. FAM. PSYCHOL. 1 (2013).

⁴⁷ *Id.* at 18.

not override or cancel out the positive impact of children's continuing to live with each parent at least one third of the time. Many of these reasons have been pointed out by social scientists who urge us not to overemphasize the importance of conflict – even conflict that involves isolated incidents of physical anger at the time of separation – in making decisions about parenting plans.⁴⁸ First, the intensity and the nature of the conflict is often difficult to determine. Conflict according to whom? Conflict in what situations and over what issues and how often and how intense and how recently? How often do the children actually witness or get dragged into the middle of the conflict? With the exception of physical abuse or violence, the terms “high” and “conflict” cover too wide a range of behaviors to be of much practical significance in regard to decisions about parenting plans. The term is used by parents and by family court professionals to describe anything from ongoing feelings of anger and distrust, to frequent disagreements limited mainly to child-rearing issues, to harassing verbal abuse. To complicate matters further, conflict is highest during the time of separation and litigation. And conflict generally declines within the first year or two after the separation. This means the conflict that most lawyers and judges witness may not be a reliable predictor of future conflict – or of the kind of conflict that will have an impact on

⁴⁸ See EDWARD KRUK, *DIVORCED FATHERS: CHILDREN'S NEEDS AND PARENTAL RESPONSIBILITY* (2011); See also Kari Adamsons & Kay Pasley, *Coparenting Following Divorce*, in *HANDBOOK OF DIVORCE* 241 (Mark A. Fine & John H. Harvey eds. 2006); Robin Deutsch & Marsha Kline Pruett, *Child Adjustment and High Conflict Divorce*, in *THE SCIENTIFIC BASIS OF CHILD CUSTODY DECISIONS*, 353 (Robert M. Galatzer-Levy et al. 2009); William Fabricius et al., *Custody and Parenting Time*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* (Michael Lamb ed., 2010); Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update*, 46 *FAM. CT. REV.* 476 (2008); Michael Lamb & Joan B. Kelly, *Improving the Quality of Parent Child Contact in Separating Families with Infants and Young Children*, *THE SCIENTIFIC BASIS OF CHILD CUSTODY DECISIONS*, *supra*, at 187; Marsha Kline Pruett & Tracy Donsky, *Coparenting After Divorce*, *COPARENTING RESEARCH* 124 (James P. McHale & Kristin M. Lindahl, eds. 2011); Irwin Sandler et al., *Quality of Maternal and Paternal Parenting Following Divorce*, in *PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT* 200 (Kathryn Kuehnle & Leslie Drozd, eds. 2012); Richard A. Warshak, *Parenting by the Clock: The Best Interest of the Child Standard and the Approximation Rule*, 41 *U. BALT. L. REV.* 85 (2011).

the children. It is also possible that parents who litigate in court have conflicts that last longer or have a worse impact on children than parents who reach an agreement without having to go to court. But no study has addressed this question, so it would be a mistake to make that assumption. Then too, litigating parents too often exaggerate or provoke conflict, making it difficult to assess whether the children are actually living in a high conflict environment. Even though being dragged into their parents' ongoing conflicts is not beneficial for children, verbal conflicts are not necessarily harmful. This is especially true when the conflict stems from a sincere desire by two loving, fit parents to maintain an active role in their children's lives. Moreover, conflict has the least impact on children when they have good relationships with one or both of their parents. And educational programs or carefully designed, detailed parallel parenting plans can reduce the conflict for most parents. For example, having the parents pick up and deliver the children at school rather than at the other parent's home reduces conflicts at the time they are most likely to occur – the “switching” hour. Finally, it must be remembered that conflict - especially over childrearing issues - is inevitable for *all* parents – some of which is intense, ongoing, and never fully resolved even though they never separate. Separated parents, therefore, should not be held to a higher standard by being expected to have little to no conflict in order “earn” parenting time or to “qualify” for shared parenting.

Several recent studies illustrate that higher conflict and poorer communication are not necessarily linked to worse outcomes for the children. In a nationally representative, three year study with 3,784 separated parents whose children were seven to nineteen years old, the children with high conflict parents did not have any worse outcomes on eight measures of adolescent and young adult well-being: emotional problems, grades, liking school, self-esteem, life satisfaction, substance use, having sex before age 16, having several different sexual partners as teenagers, marrying or living with someone before age 20, and feeling close to their mother. Misbehaving at school, getting into trouble with the police as teenagers and having closer ties to their fathers

as young adults was only weakly related to high conflict.⁴⁹ After reviewing the available studies, these researchers – one of whom, Paul Amato, is one of the most widely published researchers in the field – conclude: Although it is widely believed that cooperative coparenting is linked to better outcomes for children, almost no studies have actually tested this assumption.

Similarly in another study with 270 parents in a court ordered parenting education program, the children were no more likely to have behavioral or emotional problems when their parents had uncooperative, conflicted relationships.⁵⁰ These researchers agree with Amato and his colleagues that the actual benefits of cooperative coparenting are basically unknown. In other words, having a good parent-child relationship and having at least one parent with good parenting skills may be more beneficial than having parents who get along well in a low conflict, cooperative relationship. Although intuitively it may seem that children would benefit greatly from having parents who get along well together after they separate, the data suggest that the impact of this factor is less robust than other factors such as the quality of the child's relationship with each parent.

For many reasons then, conflict should not be the “tail that wags the dog” in terms of denying children the probable benefits of a shared parenting plan - unless the conflict involves abuse or violence or other serious dysfunctions such as substance abuse that were damaging to the children even when their parents were living together. These children need parenting plans that protect or distance them from their dysfunctional parents. It is estimated that only 10%-15% of parents fall into this latter category. In light of the more positive outcomes linked to shared parenting plans in the forty studies, we should be guided by factors that go beyond how much conflict exists between the parents – primarily, the children's having a good relationship with each parent and each parent's being a fit and loving parent. Especially if the conflict is generated by one parent's trying to marginalize the other's participation in the children's lives, high conflict and a poor co-parenting relationship should not be the excuses for re-

⁴⁹ Paul R. Amato et al., *Reconsidering the “Good Divorce,”* 60 FAM. REL. 511 (2011).

⁵⁰ Jonathon J. Beckmeyer et al., *Postdivorce Coparenting Typologies and Children's Adjustment,* 63 FAM. REL. 526 (2014).

stricting the children's time with one of their parents – or for asserting that a shared parenting plan cannot be in these children's best interests.

C. *Shared Parenting: Only for the Well-to-do and College Educated?*

Two factors that do set many shared parenting couples apart from other separated parents are their level of income and education and their previous marital status. But here again, the differences are not as large as might be assumed and they appear to be shrinking. It goes without saying that both parents must have the kind of work schedules that make it possible for their children to live with them at least one third of the time throughout the year. The more well-educated parents generally have more flexible, family friendly work hours and higher incomes which enable them to hire lawyers to negotiate for shared parenting and to provide two adequate homes for the children. They are also far more likely to have been married and raising their children together before separating. Consequently, they are more likely to have shared parenting plans.⁵¹ This does not mean, however, that most shared parenting couples are college educated or financially well off. Most are not.⁵² Also being well educated is not always linked to being more likely to have a shared parenting plan. For example, for 758 Canadian families in a national survey, the mothers without high school degrees and the clinically depressed mothers were more likely to have a shared parenting plan.⁵³ It may be that the more poorly educated mothers wanted more child-free time to finish their educations or that the depressed mothers felt less overwhelmed when the parenting was more equally shared.

Shared parenting plans are also becoming more prevalent in middle class families. For example, in Wisconsin shared parenting

⁵¹ Heather Juby et al., *Sharing Roles, Sharing Custody*, 67 J. MARRIAGE & FAM. 157 (2005); Ragne Hege Kitterod & Jan Lyngstad, *Untraditional Caring Arrangements Among Parents Living Apart in Norway*, 27 DEMOGRAPHIC RES. 121 (2011); Lodge & Alexander, *supra* note 44; Pearson & Thoennes, *supra* note 35, at 185.

⁵² Cashmore & Parkinson, *supra* note 22, at 707; Luepnitz, *supra* note 36, at 105; Masardo, *supra* note 45, at 197; Melli & Brown, *supra* note 41, at 231.

⁵³ Juby et al., *supra* note 51, at 157.

has increased more for middle income than for higher income families in recent years.⁵⁴ In this study with 1,180 separated families, in the shared parenting families the average father's income was \$40,000 (30% college graduates) compared to \$32,000 (25% college graduates) in the sole residence families. The mothers' incomes and educational levels were virtually the same, \$23,000 versus \$22,000 with only 25% of mothers in either group having a college degree. Still, the highest income parents were more likely to share the parenting, with 55% of the parents sharing when they had a combined income of at least \$120,000. Interestingly too, in contrast to the past where young children lived almost exclusively with their mothers, younger children were no less likely than older children to be living in a shared parenting family.

Finally, the child's gender appears to play a role in parents' decisions to share the parenting. Sons are slightly more likely than daughters to be living in a shared parenting family.⁵⁵ This may be because mothers feel less confident about raising sons on their own. Or it may be that fathers and sons feel more comfortable living together than fathers and daughters. Then too, fathers and sons generally have a closer relationship than fathers and daughters both before and after the parents separate.⁵⁶

⁵⁴ Stephen T. Cook & Patricia Brown, *Recent Trends in Children's Placement Arrangements in Divorce and Custody Cases in Wisconsin* (May 2006), available at <http://irp.wisc.edu/research/childsup/cspolicy/pdfs/Cook-Brown-Task3-2006.pdf>.

⁵⁵ Timothy Grall, *Custodial Mothers and Fathers*, in CURRENT POPULATION REPORTS 60-230 (2006); Juby et al., *supra* note 51, at 157; Kitterod & Lyngstad, *supra* note 51, at 1; Jennifer McIntosh et al., *Post-Separation Parenting Arrangements: Patterns and Developmental Outcomes*, Austl. Inst. Fam. Stud. (2010), available at <https://aifs.gov.au/publications/family-matters/issue-86/post-separation-parenting-arrangements>; Melli & Brown, *supra* note 41, at 231; Katherine Stamps Mitchell et al., *Adolescents with Nonresident Fathers: Are Daughters More Disadvantaged than Sons?*, 71 J. MARRIAGE & FAM. 650 (2009); Spruijt & Duindam, *supra* note 42, at 65.

⁵⁶ See LINDA NIELSEN, FATHER-DAUGHTER RELATIONSHIPS: CONTEMPORARY RESEARCH AND ISSUES (2012).

III. How Trustworthy and Reliable Are the Forty Studies?

A. Overall Description of the Forty Studies

As Table One illustrates, to date there are forty studies that have been published in peer reviewed, academic journals where children living in shared parenting families were compared to those living with their mothers and continuing to spend varying amounts of time with their fathers. Dissertations were not included since these studies have not undergone an anonymous peer review process where experts in the field judge whether the study merits publication in an academic journal. The forty published studies were not about the impact of father “absence” because the fathers in these studies were still spending time with their children after the parents had separated. Some studies only included parents who had formerly been married and then later divorced, while others included never married parents who sometimes separated soon after the children were born. These differences in the samples will be noted in the description of the studies. The exact amount of time that the children who lived with their mothers were spending each month with their fathers was not designated. The most common pattern in mother residence families historically has been every other weekend and several weeks during the summer. So it would be logical to assume this was the typical pattern in most of these mother residence families as well. As illustrated in Table One, in 24 of the 40 studies, the shared parenting children lived 50% time with each parent. In the other 16 studies, the children lived with their each parent anywhere from 35% to 50% of the time.

The studies were found through a key word search of the major data bases in the social sciences: Psyche Index and Social Science Index, using the terms: shared or joint custody, physical custody, parenting plans, overnighting, shared parenting and shared care. Fifteen of the 40 studies included children under the age of six. But only six studies focused exclusively on children under the age of five which is why their findings will be presented in a separate section. In sum, the studies included 31,483 children in shared parenting families and 83,674 children in mother (sole) residence families. The studies were conducted during the past 28 years.

B. *Limitations of the Forty Studies*

Trying to determine what impact shared parenting has on children has been difficult for at least two reasons. First, children whose parents have higher incomes or have the least conflict may have the better outcomes after their parents separate, regardless of the parenting plan. So unless the study controls for income and level of conflict, this leaves open the possibility that it was not the shared parenting per se that made the difference. Unfortunately, only 16 of the 40 studies included income and conflict as controls, as noted on Table One. Still, as already discussed, a number of studies found no significant differences in income or in conflict between sharing and non-sharing couples.⁵⁷

A second limitation is that the parents' characteristics and marital status are not the same in all the studies – and those differences can affect the outcomes for children independent of the parenting plan. For example, the majority of parents in some studies were not married or living together when their children were born – a situation that often goes hand in hand with higher rates of poverty, incarceration, physical abuse, and substance abuse. Along the same lines, some studies draw their conclusions from extremely small, non-random samples while others have impressively large, random samples. As each study is presented, the unique characteristics of the sample and the samples sizes will be noted.

A third limitation is that while most of the researchers used standardized instruments and valid procedures, others used measures that had no established validity or reliability. Sample sizes also varied greatly. Describing the methodological details and naming the many standardized tests used in each study is beyond the scope of this paper. But the limitations of each study and whether the data came from standardized measures will be briefly noted as a way of acknowledging that the findings from some studies merit more weight than others.

⁵⁷ See CHRISTY M. BUCHANAN & ELEANOR MACCOBY, *ADOLESCENTS AFTER DIVORCE* (1996); Cashmore & Parkinson, *supra* note 22, at 707; See also Kline et al., *supra* note 36, at 430; See also An Katrien Sodermans et al., *Characteristics of Joint Physical Custody Families in Flanders*, 28 *DEMOGRAPHIC RES.* 821 (2013).

Despite these limitations and despite the differences among the studies in terms of their methodology and rigor, they have reached remarkably similar conclusions.

C. The Outcomes that Were Measured

The 40 studies were identified by searching the databases in Psyche Index and Social Science Research Index. The key words used in the search were: shared parenting, shared care, joint or shared physical custody, shared or dual residence, and parenting plans. The findings of the studies were grouped into five broad categories of child well-being as presented in Table One: (1) academic or cognitive outcomes which includes school grades and scores on tests of cognitive development such as language skills; (2) emotional or psychological outcomes which includes feeling depressed, anxious, or dissatisfied with their lives; (3) behavioral problems which include aggression or delinquency, difficult or unmanageable behavior at home or school, hyperactivity, and drug or alcohol use; (4) physical health and smoking which also includes stress related illnesses such as stomach aches and sleep disturbances; and (5) quality of father-child relationships which includes how well they communicate and how close they feel to one another.

IV. Does Shared Parenting Benefit Most Children?

The first section below begins by summarizing the positive outcomes in the shared parenting families in the forty studies that included children between the ages of one and twenty-two. The six studies that only included children under the age of five will be presented in a separate section. The next section turns to the negative outcomes for children in shared parenting families.

A. The American Studies

Beginning with the oldest studies, the Stanford Custody Project collected data from 1100 divorced families with 1,386 children randomly chosen from the county's divorce records. At the end of four years, the 51 adolescents in the shared parenting families made better grades, were less depressed, and were more well-adjusted behaviorally than the 355 adolescents who lived

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primarily with their mother. The data came from interviews with the adolescents, parents' questionnaires, and a battery of standardized tests measuring depression, anxiety, substance use, anti-social behavior, truancy, cheating, and delinquency. The shared parenting children were better off on these measures than the other children of divorce. The quality of the parent-child relationship and how often they felt caught between their parents was also assessed through interviews. The shared adolescents were less likely to be stressed by feeling the need to take care of their mother. Moreover, having closer relationships with both parents seemed to offset the negative impact of the parents' conflicts in those families where the conflict remained high. Importantly, this study controlled for parents' educations, incomes, and levels of conflict, used standardized measures to assess the children's well-being, used a randomized sample, followed the children over a four year period, and gathered data from both parents and the children.⁵⁸

Five smaller studies conducted in the late 80s and early 90s also found equal or better outcomes for the shared children. The first study included 35 shared parenting and 58 sole residence children ages three to eleven with white, college educated parents.⁵⁹ Standardized tests were used to measure the parents' anxiety and depression and the children's social, emotional, and behavioral problems, in addition to clinicians' observations of parent-child interactions. Although there were no differences in the children's social or behavioral adjustment scores, the shared children were better adjusted emotionally. Having a depressed mother, having parents in high conflict (which was similar in both types of families), or the child's having a difficult temperament was more closely linked to the children's well-being than was the parenting plan. In another study of similar size, three years after the divorce, the 62 shared parenting children were less depressed, less stressed, and less agitated than the 459 children in sole residence based on standardized tests completed by the mother about the child's mental states and behaviors. Especially important is that all of the children had similar scores three years earlier when their parents divorced, suggesting that the shared

⁵⁸ BUCHANAN & MACCOBY, *supra* note 57, at 1

⁵⁹ Kline et al., *supra* note 36, at 430.

parenting was indeed having a positive impact.⁶⁰ The other study by these same researchers should be viewed more speculatively since there were only 9 children in shared parenting families compared to 83 children living with their mothers. Using a standardized child behavior checklist, the two groups of mothers reported no differences in their children's depression, aggression, delinquency or somatic complaints. And in another very small study with only 11 shared parenting families and 16 sole mother and 16 sole father families four years after divorce, the parents reported no differences in how well adjusted the children were on standardized measures of their well-being and based on researchers' interviews with the parents and the children.⁶¹ In yet another study with small samples, high conflict parents who had volunteered for free counseling to resolve their co-parenting issues reported, at the end of one year, the 13 shared children were better off in regard to stress, anxiety, behavioral problems, and adjustment than the 26 sole residence children. Notably, the children whose parents needed the most intensive counseling at the outset to make the shared parenting work ended up faring as well as the children whose parents initially got along best. The data were derived from clinicians' assessments of the children on standardized measures, interviews with both parents, and feedback from teachers and day care workers at the time of separation, then again at six months and one year. It is worth noting that the shared parenting children ranged in age from one to ten and that in both types of families children under the age of four were better adjusted than the older children.⁶² In a larger study in Toronto only one-third of the 201 parents with shared parenting plans said their parenting plan worked out well from the outset. Despite this, at the end of one year, 91% of these parents said their children were happy and well adjusted, compared to only 80% of the 194 couples without shared parenting plans.⁶³ Overall then, even though the sample sizes were small in these studies, the findings were consistent with the larger studies in regard to the benefits of shared parenting.

⁶⁰ Pearson & Thoennes, *supra* note 35, at 185.

⁶¹ Luepnitz, *supra* note 36, at 105.

⁶² Brotsky et al., *supra* note 35, at 167.

⁶³ Irving & Benjamin, *supra* note 34, at 114.

More recent studies with far larger samples that gathered data from both parents have reached similar conclusions. In a large, randomized sample in Wisconsin, the children in the 590 shared parenting families were less depressed, had fewer health problems and stress related illnesses, and were more satisfied with their living arrangement than the children in the 590 sole residence families.⁶⁴ The data came from both parents' answers to a series of questions asked in telephone interviews. Ranging in age from one to sixteen, the shared children were 30% less likely to have been left with babysitters or in daycare. Nearly 90% of their fathers attended school events, compared to only 60% of the other fathers. And almost 60% of the mothers said the fathers were very involved in making everyday decisions about their children's lives. In fact 13% of the mothers wished the fathers were less involved. In a smaller study with ten to sixteen year olds, the 207 shared children were more likely than the 272 in sole residence to have parents with authoritative parenting styles, which was linked to less anxiety and less depression as measured by standardized tests.⁶⁵ In a very small study with six to ten year-olds, the 20 children in shared parenting were no more aggressive and had no more behavioral problems than the 39 children in sole residence after controlling for parental conflict and the quality of the mother-child relationship.⁶⁶

Studies with college age children have also found better outcomes for those from shared parenting families. In the oldest study, the 30 American college students from the shared parenting families reported having better relationships with both parents than the 201 who had lived with their mothers. In fact, they rated their relationships with their fathers higher than the students from intact families.⁶⁷ Similarly, 105 Canadian students from shared parenting families gave their mothers higher ratings than the 102 students from intact families and rated their fathers

⁶⁴ Melli & Brown, *supra* note 41, at 231.

⁶⁵ Kathryn L. Campana et al., *Parenting Styles and Children's Adjustment to Divorce*, 48 J. DIVORCE & REMARRIAGE 1 (2008).

⁶⁶ Moyee Lee, *Children's Adjustment in Maternal- and Dual-Residence Arrangements*, 23 J. FAM. ISSUES 671 (2002).

⁶⁷ William Fabricius, *Listening to Children of Divorce*, 52 FAM. REL. 385 (2003).

almost as highly.⁶⁸ In an even larger study, the 337 shared parenting students reported having closer relationships with their fathers than the 686 who had lived with their mothers. What was especially important was that the quality of their relationships was linked incrementally to how much overnight time the fathers and children had spent together. That is, as the actual amount of overnight time they spent together during adolescence increased from 1% up to 50%, the young adults' positive ratings of their relationships with their fathers also increased. Even the worst relationships got higher ratings when the father and child had spent more time together during the teenage years.⁶⁹ Similarly in a very small study, the five college students from shared parenting families reported better relationships with their fathers and felt that their parents were equal in terms of their authority compared to the other 22 students with divorced parents.⁷⁰ The young adults' ratings of their relationships with their parents in all of these studies came from questionnaires created by the researchers. And, as was true in the studies with younger children, 75 young adults who had lived in shared parenting families had fewer health problems and fewer stress related illnesses than the other 136 students with divorced parents.⁷¹

B. International Studies

Studies from other countries have yielded similar results to those in the United States and Canada. Seven studies were conducted in Sweden, using national data from standardized tests and national surveys. In the first study, 441 shared parenting children had more close friends and fewer problems making friends than the 2,920 children in sole residence, and were no different in

⁶⁸ Hallie Frank, *Young Adults' Relationships with Parents: Marital Status, Conflict and Post Divorce Predictors*, 46 J. DIVORCE & REMARRIAGE 105 (2007).

⁶⁹ William Fabricius et al., *Parenting Time, Parent Conflict, Parent-Child Relationships and Children's Physical Health*, in PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT 188. (Kathryn Kuehnle & Leslie Drozd, eds. 2012).

⁷⁰ Michelle Janning et al., *Spatial and Temporal Arrangements: Young Adults' PostDivorce Experiences*, 51 J. DIVORCE & REMARRIAGE 413 (2010).

⁷¹ William Fabricius & Linda Luecken, *Postdivorce Living Arrangements, Parent Conflict and Physical Health for Children of Divorce*, 21 J. FAM. PSYCHOL. 195 (2007).

regard to being aggressive or violent, using drugs and drinking.⁷² In the second, the 17,350 shared parenting adolescents rated themselves higher on seven of the eleven scales of wellbeing than the 34,452 in sole residence.⁷³ The shared children were better off in regard to: their emotional, social, and psychological wellbeing, peer relationships and social acceptance, and physical health. Interestingly too, the fifteen year-olds were even more similar than the twelve year-olds to the 112,778 children living in intact families, suggesting that the benefits of shared parenting may become more pronounced after several years. More important still, the shared parenting teenagers felt the most comfortable talking to both of their parents. In the third study, the 270 shared adolescents fared better than the 801 in sole residence families in regard to: smoking, having sex before the age of 15, getting drunk, cheating, lying, stealing, losing their tempers, fighting, bullying, and disobeying adults.⁷⁴ And in the fourth study, the 888 shared children reported being more satisfied with their lives, feeling less depressed, and having fewer stress related health problems. Importantly, after controlling for their parents incomes and educations, the shared children were not significantly different from the intact family children in regard to having stress related health problems and feeling comfortable talking to their parents about things that bothered them.⁷⁵ In the next study the 225 ten to sixteen year-olds who lived equal time with each parent were less stressed than the 595 who lived primarily with one parent. Trained interviewers administered a questionnaire to the children as well as interviewing both the parents and the children. Importantly this study took account of parental conflict, socioeconomic status, and the quality of the parent-child relationship. Interestingly too, regardless of family type, the amount of conflict that the parents reported was not linked to the amount of

⁷² Beata Jablonska & Lene Lindberg, *Risk Behaviors and Mental Distress Among Adolescents in Different Family Structures*, 42 SOC. PSYCHIATRY & EPIDEMIOLOGY 656 (2007).

⁷³ Malin Bergström et al., *Living in Two Homes: A Swedish National Survey of Wellbeing in 12 and 15 Year Olds with Joint Physical Custody*, 13 J. EPIDEMIOLOGY & COMMUNITY HEALTH 868 (2013).

⁷⁴ Carlsund et al., *supra* note 10, at 318.

⁷⁵ Asa Carlsund et al., *Shared Physical Custody: Implications for Health and Well Being in Swedish Schoolchildren*, 102 ACTA PAEDIATRICA 318 (2013).

stress their children reported.⁷⁶ In yet another study with 736 high school students in sole residence and 324 in shared parenting, the shared teenagers were equal to the 2,076 from intact families in terms of mental health, quality of the relationships with their parents, and their overall feelings about the quality of their lives.⁷⁷ And in the one study that looked at 323 teenagers in blended families, these teenagers turned to their parents for help and advice less often than the 1,573 teenagers in the shared parenting families. Turning to parents for advice was then linked to feeling less sad and afraid and to having fewer stress related physical problems like stomach aches and insomnia.⁷⁸

Similar results have emerged in Norway and in the Netherlands. In the Norwegian study, although the 41 shared adolescents were no less likely to drink or use drugs than the 409 adolescents in sole residence, they were less likely to smoke, to be depressed, to engage in antisocial behavior, or to have low self-esteem. The study used standardized tests and controlled for the father's educational level.⁷⁹ In the Netherlands, for 135 children aged ten to sixteen, the shared girls were less depressed, less fearful, and less aggressive than the girls in the 250 sole residence families, as measured by standardized tests. There were no differences for the boys. Moreover, both the boys and the girls in the sharing families reported being as close to their fathers as the children from intact families, even though the sharing parents had similar levels of conflict and the same socio-economic status as the non-sharing parents.⁸⁰ Similarly in another study, the 385 shared adolescents rated their relationships with both parents higher than the 1,045 adolescents who lived with their mother,

⁷⁶ Jani Turunen, *Shared Physical Custody and Children's Experience of Stress*, Families and Societies Working Paper Series #24 (2015), available at <http://www.familiesandsocieties.eu/wp-content/uploads/2015/04/WP24Turunen.pdf>.

⁷⁷ Marie Wadsby et al., *Adolescents with Alternating Residence After Parental Divorce: A Comparison with Adolescent Living with Both Parents or with a Single Parent*, 11 J. CHILD CUSTODY 202 (2014).

⁷⁸ Sara Laftman et al., *Joint Physical Custody, Turning to Parents for Emotional Support and Subjective Health: Adolescents in Stockholm Sweden*, 42 SCAND. J. PUB. HEALTH 456 (2014).

⁷⁹ Kyrre Breivik & Dan Olweus, *Adolescent's Adjustment in Four Family Structures*, 44 J. DIVORCE & REMARRIAGE 99 (2006).

⁸⁰ Spruijt & Duindam, *supra* note 42, at 65.

although they were no less likely to report feeling depressed.⁸¹ The third study also found that the 966 shared children ages four to sixteen were better off than the 2,217 children who lived with their mother in regard to their pro social behavior, hyperactivity, peer relationships, behavioral problems, and psychological problems. Importantly this study controlled for parents' incomes, levels of conflict, and how involved the father was with the children before the parents separated. Half of the positive impact was linked to the parents having higher incomes and less conflict in the sharing families and half to the shared parenting arrangement itself.⁸²

Turning to Australia, the largest study was based on data from a national survey involving 1,235 children in shared care (the term used in Australia for shared parenting) and 6,415 children in primary care.⁸³ Unlike all of the studies discussed so far, half of these parents were not married when their children were born. Notably, even though the two groups of parents were just as likely to say there had been violence between them, "children in shared care time arrangements seem to fare no worse than children in other care time arrangements where there has been a history of violence or where there is ongoing high conflict between the parents."⁸⁴ Importantly, even after accounting for parents' levels of education and violence, the shared care children had marginally better outcomes on the behavioral and emotional measures, according to their fathers, and had similar outcomes according to their mothers. On the other hand, if the mothers were concerned about the safety of the children when they were with their fathers, they reported worse outcomes for the children in shared care. In three other Australian studies shared care was again more advantageous based on data from standardized tests. In the first study, 84 shared care and 473 primary care children were assessed at ages four and five and then again two years

⁸¹ Sofie Vanassche et al., *Commuting Between Two Parental Households: The Association Between Joint Physical Custody and Adolescent Wellbeing Following Divorce*, 19 J. FAM. STUD. 139 (2014).

⁸² Sarah Westphal & Christiaan Monden, *Shared Residence for Children of Divorce: Testing the Critics' Concerns* (under review, copy on file with author, 2014).

⁸³ Kaspiew et al., *supra* note 43, at 1.

⁸⁴ *Id.* at 273.

later. The shared care children were less hyperactive and had fewer social or academic problems than children in primary care. In the second study, the 90 shared care parents reported better outcomes for their children than the 411 primary care parents in regard to overall happiness, problems moving between homes, and the children's relationships with their parents and their grandparents. Again though, those mothers who had concerns about their children's safety in their father's care reported worse outcomes for the children in shared care. And in the third study, even though the 110 children in primary care and the 26 in shared care were equally satisfied with their living arrangement, more than 40% of the primary care children said they wanted more time with their father.

Smaller Australian studies confirm these findings from the larger studies. For 105 adolescents living in shared care, 398 living with their mother and 120 living with their father, those in shared care reported having the best relationships with both parents, their stepparents and their grandparents two years after their parents' separation. They were no different on social adjustment and academic achievement. But they were much more likely than those in primary care to confide in their fathers (80% versus 45%) and to say they had a close relationship with him (97% versus 65%).⁸⁵ In a smaller study with ten year olds, the 27 shared care children were reported by their mothers as being less hyperactive than the 37 children in primary care. The children reported being equally satisfied with either parenting plan, but the shared care parents reported being more satisfied and less stressed than the other divorced parents. The researchers suggested that being less stressed may have enabled the sharing parents to provide higher quality parenting which, in turn, helped reduce their children's hyperactivity.⁸⁶

Only one shared parenting study has included children from different countries.⁸⁷ In this impressive study, the researchers analyzed data from 36 countries involving nearly 200,000 chil-

⁸⁵ Lodge & Alexander, *supra* note 44, at 1.

⁸⁶ Jennifer Neoh & David Mellor, *Shared Parenting: Adding Children's Voices*, 7 J. CHILD CUSTODY 155 (2010).

⁸⁷ Thoroddur Bjarnason & Arsaell M. Arnarsson, *Joint Physical Custody and Communication with Parents: A Cross-National Study of Children in 36 Western Countries*, 42 J. COMP. FAM. STUD. 871 (2012); Thoroddur Bjarnason et

dren: 148,177 in intact families, 25,578 in single mother, 3,125 in single father, 11,705 in mother/stepfather, 1,561 in father/stepmother, and 2,206 in shared parenting families. The data came from the World Health Organization's national surveys of eleven, thirteen, and fifteen year-olds. Consistent with the studies already discussed, only 29% of the shared parenting children said it was difficult to talk to their fathers about things that really bothered them, compared to 41% of the children who lived with their single mother or with their mother and stepfather. In fact, the children from shared families were somewhat less likely (29%) than those in intact families (31%) to have trouble talking to their fathers. What is especially important about this study is that, in all types of families, how satisfied the children felt with their lives was closely related to how well they felt they communicated with their fathers. In contrast, their satisfaction was not related to how well they believed their family was doing financially. Since the shared parenting children felt they communicated best with their fathers, they were the most satisfied with their lives, regardless of the family's financial situation. Unfortunately daughters were twice as likely as sons to say it was hard to talk to their fathers about things that were worrying them, regardless of family type.

C. Do Girls Benefit More than Boys?

In regard to daughters another question is whether girls benefit any more or any less than boys do from shared parenting. Girls' relationships with their fathers are generally more damaged by their parents' divorce or separation than boys' relationships.⁸⁸ Given this, we might wonder whether girls benefit more than boys from living with their fathers at least 35% of the time after the parents separate. According to the studies that have asked this question, several studies suggest that girls might benefit more than boys. Although adolescent girls felt more caught in the middle of their parents' arguments than the boys did, the girls in shared parenting felt closer to their fathers and felt less need

al., *Life Satisfaction Among Children in Different Family Structures: A Comparative Study of 36 Western Countries*, 26 *CHILD. & SOC'Y* 51 (2010).

⁸⁸ Nielsen, *supra* note 56; Linda Nielsen, *Divorced Fathers and Their Daughters: A Review of Recent Research*, 52 *J. DIVORCE & REMARRIAGE* 77 (2011).

to take care of their mothers than the girls in sole residence.⁸⁹ This suggests that even though girls tend to get more embroiled in their parents' problems, living with their fathers helps to offset the damage this would otherwise do to the father-daughter relationship. Likewise, unlike the boys, adolescent Dutch girls in shared parenting families were less depressed, less fearful, and less aggressive than the girls who lived with their mothers even though they saw their fathers regularly.⁹⁰ On the other hand, in another Dutch study where parent conflict was extremely high, the girls were more depressed and more dissatisfied than the boys when they lived in a shared parenting family.⁹¹ This suggests that boys may find it easier than girls to remain uninvolved in their parents' conflicts. And even much younger girls who were only four to six years old were less socially withdrawn when they spent one or two nights a week with their fathers than when they never spent overnight time in his care. For the boys, however, the overnighing made no difference.⁹²

Overall then, children in shared parenting families had better outcomes than children in sole residence in terms of their psychological, emotional, and social well-being, as well as their physical health and stress related illnesses. Of equal if not greater importance, they had closer, more communicative and more enduring relationships with their fathers.

V. What Plans Are in the Best Interests of Infants, Toddlers, and Preschoolers?

A. *Woozle Warning: What Does "Attachment" Mean?*

Before looking at the six studies that focused exclusively on parenting plans for children under the age of four, we need to put ourselves on "woozle alert." Three of these studies were measuring or were making claims about infants "attachments" to their mothers. Most people, including well educated family court professionals, hearing the term "attachment" would assume that these researchers were measuring either the "quality" of the

⁸⁹ BUCHANAN & MACCOBY, *supra* note 57.

⁹⁰ Spruijt & Duindam, *supra* note 42, at 65.

⁹¹ Vanassche et al., *supra* note 81, at 139.

⁹² Marsha Kline Pruett et al., *Critical Aspects of Parenting Plans for Young Children*, 42 FAM. CT. REV. 39 (2004).

mother's relationship to her baby or the "strength" of their "bond." And when we hear the term "insecurely attached," we would probably assume that the baby has an insecure "relationship" with the mother or that the mother and child are not "securely bonded" to each other. None of these assumptions, however, are correct. When researchers talk about infants' "attachment classifications" or "attachment ratings" *they are not talking about the quality of the child's relationship with the mother or the quality of her parenting.* "Attachment" measures are merely assessing how infants and toddlers react when they are in stressful, new, or challenging situations. For example, if the mother leaves the baby for several minutes in a laboratory playroom, does the baby react happily but without distress when she returns, and does the baby confidently explore new surroundings without fear while in the mother's presence? If so, these are signs of being "securely attached." But if the baby withdraws or gets angry and frustrated when stressed in these situations, or is reluctant to explore new surroundings, then these are signs of being "insecurely attached." When the baby's behavior is too erratic or inconsistent, then it is classified as having a "disorganized attachment." This is, of course, an overly simplified description of the procedures that are used. But the point is that judges and lawyers can easily be woozled by the term "attachment" and by the two research studies where babies who frequently overnights in their father's care had "more insecure attachments" on these attachment measures. To avoid being woozled in regard to parenting plans for infants and toddlers, people would have to be aware that *in the research studies "attachment" is not synonymous with "bond" or "relationship."*⁹³ With that in mind, we can appreciate the way that several of the "baby" studies have been woozled in the media and in custody decisions.

B. *The Six "Baby" Studies: Data vs. Woozles*

Only six of the forty studies were exclusively focused on infants, toddlers, and preschoolers. Since shared parenting for these very young children is a particularly controversial issue and since the parents in these studies differed considerably in terms

⁹³ Pamela S. Ludolph & Milfred D. Dale, *Attachment in Child Custody: An Additive Factor, Not a Determinative One*, 46 FAM. L.Q. 225 (2012).

of marital status, income, and education, additional details about these six studies are provided. Having infants or toddlers live 50% of the time with each parent is so rare that the term “shared parenting” is rarely used for these very young children. Instead, researchers consider the number of overnights the babies spend each month in the father’s care. The word “frequent” or “occasional” overnighting did not mean the same thing in each study. So in order to avoid confusion, the exact numbers of overnights are provided in the following summaries.

The oldest study from 1999 only addressed one question: Is overnighting linked to how securely babies respond when separated from their mothers in a laboratory attachment procedure?⁹⁴ This study is important because it is often mistakenly cited as evidence that spending overnight time with the father contributes to babies being more “insecure attached” to their mothers. The study compared infants 12 to 20 months old in three types of families: 44 who spent some overnight time with their fathers (one to three nights a month), 49 who never overnighted, and 52 who lived with married parents. The infants were categorized as securely or insecurely attached based on the Strange Situation Procedure.

The limitations of this study have been pointed out by a number of scholars, as well as by the researchers themselves.⁹⁵ Since a sizeable minority of the parents were not married or had no stable relationship with each other when their children were born, most of these infants had no relationship with their fathers before the overnighting began. Then too, all of the infants, even those in the married families, had exceptionally high levels of dis-

⁹⁴ Judith Solomo & Carol George, *The Effects on Attachment of Overnight Visitation on Divorced and Separated Families: A Longitudinal Follow up*, in ATTACHMENT DISORGANIZATION IN ATYPICAL POPULATIONS 243 (Judith Solomon & Carol George, eds. 1999).

⁹⁵ Judith Cashmore & Patrick Parkinson, *Parenting Arrangements for Young Children: Messages for Research*, 25 AUSTL. J. FAM. L. 236 (2011); Michael E. Lamb & Joan B. Kelly, *Using the Empirical Literature to Guide the Development of Parenting Plans for Young Children*, 39 FAM. CT. REV. 365 (2001); Marsha Kline Pruett et al., *Supporting Father Involvement After Separation and Divorce*, in PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT 257 (Kathryn Kuehnle & Leslie Drozd, eds. 2012); Richard Warshak, *Who Will Be There When I Cry in the Night? Revisiting Overnights: A Rejoinder to Biringen, et al.*, 40 FAM. CT. REV. 208 (2002).

organized attachments. Disorganized means that the infant's behavior toward the mother in the laboratory experiment was too inconsistent to be classified as either secure or insecure. The two groups of separated parents were also very different from one another. The overnighters' parents were far more combative, more violent, more likely to have children out of wedlock from several different relationships, and more likely to have never lived together. The overnighting was also very inconsistent and rare. Only 20% of the overnighting infants spent more than three nights a month in their father's care and many went for weeks without seeing their father between overnights.

First and foremost, the overnighting infants were not rated as more insecure on the laboratory procedure. The insecure attachment ratings were not related to how often the infants' overnights or to how long they had been overnighting. Second, regardless of whether they overnights, even in the married families the infants with insecure ratings were the ones whose mothers were the most unresponsive and inattentive to their needs. Third, overnighting infants had more disorganized (too inconsistent to be categorized) attachment ratings than infants in married families, but not more disorganized than non-overnights infants. The bottom line is that the researchers concluded that overnighting was not linked to insecure attachment ratings. Likewise, in the second phase of the study one year later, the overnighters did as well as the non-overnights on a challenging problem solving task with their mother. One finding from the second phase of this study, however, often gets woozled into evidence against overnighting: When briefly separated from their mother a second time, 40% of the overnighters were angry, resistant, or unsettled compared to 30% of the *combined group* of intact family and non-overnights toddlers. But this finding tells us nothing about overnighting since the intact and non-overnights babies were combined into one group. In sum, the researchers concluded that whatever differences emerged in "disorganized" attachments were linked to the parents' characteristics – not to the overnighting.

Five years later, a second study was conducted at Yale University with children between the ages of two and six. Ninety-nine of these 132 children were overnighting, typically eight

times a month, but sometimes more.⁹⁶ The other 33 children spent no overnight time with their fathers, although they did have contact with him during the day. The parents were a representative sample of lower middle class couples with average levels of conflict and no history of substance abuse or physical abuse. Most were Caucasian (86%) and had been married to one another (75%) when their children were born. All data came from standardized tests.

For the two to three year-olds, there were no significant differences between the overnigheters and non-overnigheters in regard to: sleep problems, depression, anxiety, aggression, attentiveness, or social withdrawal. Likewise, for the four to six year-olds, overnighting was not linked to any negative outcomes, but was associated with more positive outcomes in regard to: social problems, attention problems, and thought problems (strange behaviors and ideas, hallucinations, psychotic symptoms). Unlike the two to three year-olds, there were gender differences on several outcomes for the four to six year-olds. The girls who overnighted were less socially withdrawn than girls who did not overnight, while there were no differences for the boys. The girls were also less anxious than the boys when the parenting schedule was inconsistent and when several different people were taking care of them throughout the day. The researchers attributed this to the fact that girls are more socially and verbally mature than boys their age.

Importantly, this study examined the impact of having a number of different people taking care of the child throughout the day. This is important because one of the arguments against overnighting and shared parenting for infants and toddlers is that children this young will be more anxious and distressed if several different adults are taking care of them. As it turned out, the four to six year-olds with multiple caregivers had fewer social, behavioral and attention problems, but had more anxiety and sleep problems. Surprisingly though, having multiple caregivers had no impact at all on the two to three year-olds. Given this, the researchers emphasized that there is no reason to be concerned about toddlers' being taken care of by many adults in an

⁹⁶ Marsha Kline Pruett et al., *The Collaborative Divorce Project: A Court-Based Intervention for Separating Parents with Young Children*, 43 FAM. CT. REV. 38 (2005).

overnighting parenting plan. On the other hand, having a consistent, unchanging schedule and having a good relationship with each parent was more closely related to children's outcomes than whether or not they overnighted. Overall though, overnighting had no negative impact on the two to three year-olds and had a positive impact on the four to six year-olds, especially the girls.

The third study was conducted in Australia.⁹⁷ The children ranged in age from zero to five. Three types of parenting plans were compared: no overnights, occasional overnights (one to three nights monthly for infants and one to nine nights for the two to five year-olds) and "shared care" which meant 4-15 overnights a month for infants and 10-15 overnights for the two to five year-olds. We will look at these findings carefully because this particular study has been widely woozled in the media as evidence that overnighting or shared care have a negative impact on babies and toddlers.

For the four and five year-olds, there were no differences on any of the six measures of well-being or physical health. Similarly for the infants and toddlers, there were no differences on physical health, developmental problems, or reactions to strangers. The shared care toddlers wheezed less often (these researchers interpreted wheezing as a sign of stress). Their scores on a behavioral problems test were higher than the less frequent overnigheters – but the scores were perfectly within normal range. The shared care mothers said their babies stared at them and tried to get their attention more often, which the researchers claimed was a sign of insecurity on a three question test which they designed for their study – a "test" which had no established validity or reliability. Further, *the researchers stated that they were using these three questions as a "proxy" for measuring insecure attachments between mother and child even though this was not a validated attachment measure that is used by attachment researchers.* The shared care mothers said their babies were more irritable than the infants who overnighted one to three times monthly, *but the researchers did not mention that the shared care irritability scores were identical to those of infants from intact families.* Moreover they were no more irritable than infants who never overnighted. Likewise, although the nineteen shared parenting

⁹⁷ McIntosh et al., *supra* note 55, at 1.

toddlers' scores were lower on the "task persistence" scale, the scale did not differentiate healthy/normal scores from unhealthy/abnormal ones. In other words, there is no way to determine whether a lower score means the child has any noticeable or significant problems that would generate any concern about lack of persistence.

Unlike the other baby studies, this particular study has been heavily criticized for its shortcomings and its questionable interpretations of the data. Most importantly, most of the data came from measures with no established validity or reliability, meaning that we cannot know what was actually being measured or how to interpret the findings. Also the sample sizes were extremely small and most of these parents were not married or living together when the babies were born (60% to 90%). Many social scientists have concluded that this study provides no convincing evidence that overnighting or shared parenting had a negative impact on infants or toddlers.⁹⁸ Given its many flaws, it is troubling that this study has been frequently misrepresented or "woozled" in the media and in academic settings as evidence that overnighting has a "deleterious impact" on infants and toddlers.⁹⁹

⁹⁸ Cashmore & Parkinson, *supra* note 95, at 707; Michael Lamb, *Critical Analysis of Research on Parenting Plans and Children's Well-Being*, in PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT, *supra* note 96, at 214; Pamela S. Ludolph & Milfred D. Dale, *Attachment in Child Custody: An Additive Factor, Not a Determinative One*, 46 FAM. L.Q. 225 (2012); Linda Nielsen, *Shared Residential Custody: A Recent Research Review (Part I)*, 27 AM. J. FAM. L. 61 (2013); Linda Nielsen, *Shared Residential Custody: A Recent Research Review (Part II)*, 27 AM. J. FAM. L. 123 (2013); Patrick Parkinson & Judith Cashmore, *Parenting Arrangements for Young Children - A Reply to Smyth, McIntosh and Kelaher*, 25 AUSTL. J. FAM. L. 284 (2011); Pruett et al., *supra* note 95, at 152; Richard Warshak, *Securing Children's Best Interests While Resisting the Lure of Simple Solutions*. University of Haifa, Conference on Parenting in Practice and Law, Haifa, Israel (2012); Richard Warshak, *Social Science and Parenting Plans for Young Children*. 20 PSYCHOL., PUB. POL'Y & L. 46 (2014).

⁹⁹ For a description of the woozling of this study, see Nielsen, *supra* note 98, at 164 (2014).

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The fourth study¹⁰⁰ which was published in 2013 is distinct from the others because it focused exclusively on inner city, impoverished, never married, poorly educated, minority parents with high rates of incarceration, drug and alcohol abuse, and mental health problems who were part of the ongoing “Fragile Families” study.¹⁰¹ Given the unique characteristics of these parents, the findings cannot be generalized to the vast majority of separated or divorced parents – or to most American parents who are living in poverty.

Using six standardized measures of well-being, the researchers compared 384 one year-olds and 608 three year-olds who spent varying amounts of overnight time in their fathers’ care to 1,062 who did not overnight and who rarely had any contact with their fathers. They categorized the infants’ as “occasional” overnights (1-51 overnights a year), and “frequent” overnights (51-256 nights). But they categorized the three to five year-olds differently: rare overnights (1-12 a year), occasional (12-127 nights), and frequent (128-256 nights). Consistent with the other overnighting studies, there were virtually no differences between the frequent, the occasional, and the non-overnighters. On the standardized measures of wellbeing, only one statistically significant difference emerged: The three year-olds who frequently overnighted displayed more positive behavior at age five than those who had rarely or never overnighted. The three year-olds who had overnighted from 51 to 256 nights as infants had more insecure scores on attachment to their mothers than those who overnighted less than 51 times. Unfortunately the attachment ratings were not valid because the mothers did the rating, instead of trained observers, which invalidates the results.¹⁰²

The one finding that received the most media attention and was widely “woozled” was this: 41% of the 51 frequently overnighting infants had insecure attachment ratings compared

¹⁰⁰ Samantha L. Tornello, *Overnight Custody Arrangements, Attachment and Adjustment Among Very Young Children*, 75 J. MARRIAGE & FAM. 871 (2013).

¹⁰¹ Sara McClanahan, *Outcomes for Children in Fragile Families*, in CHANGING FAMILIES IN AN UNEQUAL SOCIETY 108 (Paula England & Marcia Carlson, eds. 2011).

¹⁰² Marinus H. van Ijzendoorn et al., *Assessing Attachment Security with the Attachment Q Sort: Meta-analytic Evidence for the Validity of the Observer AQS*, 75 CHILD DEV. 1188 (2004).

to 25% of the 364 non-overnighters and 16% of the 219 occasional overnighters. But for the three year-olds, there was no clear link between attachment and overnighting. For the babies and the toddlers, those who occasionally overnights had more secure attachment ratings than those who never overnights. Ignoring the fact that there were no differences on any of the other five measures of well-being, this one finding was widely misreported in the media under alarming titles. For example, the British Psychological Society reported the study under the headline: “Staying away affects a baby’s attachment”¹⁰³ and the University of Virginia’s press release headline read, “Overnights away from home affect babies attachments.”¹⁰⁴

Why is this an example of woozling? First because the attachment data came from the mothers’ ratings, but when mothers do the rating there is no established validity for the test.¹⁰⁵ It is not clear, therefore what was being measured. Second, although it might seem alarming that 41% of the frequently overnighting infants were rated by their mothers as insecurely attached, this number needs to be put into context. In general population surveys, 61% of the infants and 41% of the toddlers who are living in poverty are rated as insecurely attached.¹⁰⁶ In other words, the children in this study had *lower* rates of insecure attachments than other children living in poverty. But the way this finding was presented in the media created an “anti-overnighting” woozle: spending any overnight time in the father’s care causes babies to have a less secure relationship and a weaker bond with their mother. Consequently, the message to judges and lawyers and parents was: parenting plans should not allow overnights in the father’s care until children are past the age of three or four. Overnighting will weaken the child’s bond with the mother and create ongoing problems related to insecurity in future years. In

¹⁰³ *Staying Away Affects a Baby’s Attachment*, BRIT. PSYCHOL. SOC’Y, July 24, 2013, <http://www.bps.org.uk/news/staying-away-affects-babies-attachments>.

¹⁰⁴ Farris Samarrai, *Overnights Away from Home Affect Children’s Attachments, Study Shows*, UVA TODAY, July 18, 2013, <http://news.virginia.edu/content/overnights-away-home-affect-children-s-attachments-study-shows>.

¹⁰⁵ van Ijzendoorn et al., *supra* note 102, at 1188.

¹⁰⁶ Carol Andreassen & Philip Fletcher, *Early Childhood Longitudinal Study: Psychometric Report for the 2-Year Data Collection*, National Center for Education Statistics, Washington, D.C. (2007).

sum, this fourth study, despite its being widely woozled, found little to no negative effect linked to overnighting.

The fifth study re-analyzed the attachment test data that was used in previous Fragile Families' Study.¹⁰⁷ Using exactly the same attachment data, Sokol and her colleagues found no link at all between the actual number of overnights for each child and each child's rating on the attachment procedure. Rather than dividing the children into separate groups according to how frequently they overnighted, these researchers took each child's attachment rating and exact number of times the child overnighted each month to determine whether there was any link. There was none.

Similarly, the sixth and most recent study found no negative link between overnighting as an infant or toddler and the quality of the children's adult relationships with their mother.¹⁰⁸ The 31 adult children who had overnighted six to fourteen times a month as infants or toddlers rated their relationship with their mother just as favorably as those who had not overnighted early in their lives. In short, they did not have less secure or less meaningful relationships with their mother even though they had spent as much as half of each month in their father's overnight care in the earliest years of their lives. But in contrast to those who had not overnighted at least six times a month, those who had overnighted had much better adult relationships with their fathers. These young adults felt more important to their fathers, felt their fathers were more responsive and involved in their lives, and were less likely to blame either their mother or their father for problems in the family. They also had fewer stress related health problems and better overall health. What is especially important about these findings is that the researchers controlled for the amount of conflict and the educational levels of the parents. The more frequent early childhood overnighting was linked to more positive outcomes regardless of the conflict or the educational levels of the parents. As the researchers pointed out, the primary goal of infant overnighting studies

¹⁰⁷ Katerina Sokol, *Short Term Consequences of Overnight Parenting Time for Infants: Current Literature and Re-analysis*, Workshop presented at Association of Family and Conciliation Courts, Toronto (2014).

¹⁰⁸ William Fabricius, *Long Term Correlates of Parenting Time for Infants*, Association of Family and Conciliatory Courts Conference, Toronto (2014).

should be to determine the long term, not the short term, impact of overnighting. Since this is the only study that has looked at these long term outcomes, it is especially relevant in regard to considering the importance of overnighting for the very youngest children.

In sum, the six studies did not provide evidence that regular and frequent overnighting undermines infants' or toddlers' well-being or weakens their bonds to their mothers.

C. *Woozling the Baby Studies: Why Is It So Common?*

Compared to the studies with older children, several of the six baby studies have been frequently woozled in the media and in the academic community.¹⁰⁹ Why? One reason is that most of us have very strongly held beliefs and very emotional feelings about mothers and babies. And as mentioned earlier, “confirmation bias” inclines us to believe those data that confirm our pre-existing beliefs and to discount data that refute our beliefs.

As mentioned earlier, according to confirmation bias, we more accept research that supports what we already believe. We are more easily woozled and more apt to be led astray by studies that reinforce our gut feelings or our personal experiences – even when those studies are flawed and even when they do not represent the larger body of research. In regard to the baby studies, three common beliefs can get in the way of seeing the data clearly and not overreaching the actual data. First, many people still believe that females are, by nature, better than males at raising, nurturing, or communicating with children – especially infants and toddlers. For those individuals, data showing any negative link between the baby's being away from the mother overnight would be more appealing and more likely to capture their attention in the media. In fact, however, there is no empirical evidence that human females have a maternal “instinct” – an inborn, automatic, natural, built in or hard-wired set of skills that better equips them for taking care of babies or older children. A mother's responsiveness or nurturance of a baby – just like a father's - is largely acquired through experience, not through in-

¹⁰⁹ See Nielsen, *supra* note 24, at 164, for a detailed description of this woozling.

instinct or through some unique feature in her brain.¹¹⁰ Indeed certain parts of the mother's brain and the father's brain become more activated when they are interacting with their baby or when they hear their baby cry.¹¹¹ Likewise, fathers are just as capable as mothers of matching and understanding their baby's social signals and emotions – a skill referred to as “synchronicity.”¹¹² In fact, among gay male couples, the father who was doing most of the daily caregiving was better at synchronizing and understanding the baby's signals and had more neural activity in those parts of the brain associated with nurturing behaviors.¹¹³ Then too, both the father's and the mother's oxytocin levels (the amino acid associated with nurturing and affiliative behavior), increase when they are interacting with their baby, while the father's testosterone levels (the hormone associated with aggression) decrease.¹¹⁴ The point is that, despite the scientific evidence, data will be more readily accepted – even if it is woozled data – if it confirms people's pre-conceived notions about mothers and babies.

Another reason the negative findings from some of the overnighting studies attract more attention than the positive or neutral findings might be because those particular findings confirm three other beliefs about babies and their mothers: first, that babies are naturally more attached to their mothers than to their

¹¹⁰ SARAH BLAFFER HRDY, *MOTHERS AND OTHERS: THE EVOLUTIONARY ORIGINS OF MUTUAL UNDERSTANDING* (2009).

¹¹¹ Eyal Abraham, *Father's Brain Is Sensitive to Childcare Experiences*, 111 *PSYCHOL. & COGNITIVE SCI.* 9792 (2014); Shir Atzil et al., *Synchrony and Specificity in the Maternal and Paternal Brain: Relations to Oxytocin and Vasopressin*, 51 *CHILD & ADOLESCENT PSYCHIATRY* 798 (2012); Jennifer S. Mascaro et al., *Behavioral and Genetic Correlates of the Neural Response to Infant Crying Among Human Fathers*, 12 *SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE* 166 (2013); James E. Swaim & Jeffrey P. Lorberbaum, *Imaging the Human Parental Brain*, in *NEUROBIOLOGY OF THE PARENTAL BRAIN* 83 (Robert S. Bridges, ed. 2008).

¹¹² Ruth Feldman, *Infant-Mother and Infant-Father Synchrony: The Coregulation of Positive Arousal*, 24 *INFANT MENTAL HEALTH J.* 1 (2003).

¹¹³ Eyal Abraham, *Father's Brain Is Sensitive to Childcare Experiences*, 111 *PSYCHOL. & COGNITIVE SCI.* 9792 (2014).

¹¹⁴ Ilanit Gordon et al., *Oxytocin and the Development of Parenting in Humans*, 68 *BIOLOGICAL PSYCHIATRY* 377 (2010); Patty X. Kuo et al., *Neural Responses to Infants Linked with Behavioral Interactions and Testosterone in Fathers*, 9 *BIOLOGICAL PSYCHOL.* 302 (2012).

fathers; second, that the infant's attachment or bond with the mother is more "primary" than with the father; and third, that the bond will be weakened if the baby spends too much time away from the mother. According to contemporary attachment research, however, these beliefs are not supported by the empirical data. Babies form equally strong attachments to both parents at around six months of age. And a secure attachment to the father is just as beneficial and just as "primary" in importance. Among a few of the findings from specific studies are that infants and toddlers seek comfort equally from both parents,¹¹⁵ that although most 12-18 month-olds turn first to their mothers when they are distressed, there is no strong preference for either parent,¹¹⁶ that fathers support children's attachment security as much as mothers,¹¹⁷ and that having an insecure relationship with the father at the age of 15 months is just as closely tied to children's behavioral problems at the age of eight as having an insecure relationship as in infant with the mother.¹¹⁸

The baby studies also seem to have been especially vulnerable to being presented out of context, especially by the media – a woozling technique where a study's findings are presented as if they applied to the general population, when in fact they do not. A recent example of woozling in the media relates to Tornello's overnighting study. As already discussed, the university's press release and the study's abstract did not present a balanced overview of the findings. Not surprisingly then, the study was soon being woozled internationally under alarming headlines: "Over-

¹¹⁵ Inge Bretherton, *Fathers in Attachment Theory: A Review*, in EMERGING TOPICS ON FATHER ATTACHMENT: CONSIDERATIONS IN THEORY, CONTEXT, AND DEVELOPMENT 9 (Lisa A. Newland et al., eds. 2011).

¹¹⁶ Michael Lamb & Charlie Lewis, *Father-Child Relationships*, in HANDBOOK OF FATHER INVOLVEMENT 119 (Natasha J. Cabrera & Catherine S. Tamis-LeMonda, eds. 2013).

¹¹⁷ HARRY FREEMAN ET AL., NEW DIRECTIONS IN FATHER ATTACHMENT (2011); L. Alan Sroufe et al., *Placing Early Attachment Experiences in Developmental Context*, in THE POWER OF LONGITUDINAL ATTACHMENT RESEARCH: FROM INFANCY AND CHILDHOOD TO ADULTHOOD 48 (Klaus E. Grossman et al. eds. 2005); Richard Warshak, *New Blanket Restrictions* (under review; copy on file with author 2013).

¹¹⁸ Hannah Furness, *Babies Who Spent More than One Night a Week Away from Mother Are 'More Insecure,'* TELEGRAPH (U.K.), July 22, 2013.

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night separation linked to *weaker bond*,”¹¹⁹ “Babies who spent more than one night away from mother are *more insecure*,”¹²⁰ “Nights away from mum leave babies *less secure*: New findings could affect custody rulings for young children,”¹²¹ “*Divorce study show infants’ attachment to caregivers affected by joint custody*.”¹²² Keep in mind that very few of the parents in the study were divorced because 85% of them had never been married. Illustrating how grossly distorted the data became, one NBC article stated: “A new study suggests parents make or break their child’s ability to form healthy relationships *for life before the baby’s first birthday*. This study uncovered that when babies spend *even one night away from their primary caregivers in that first year* those babies may be in for tough times building relationships as adults.”¹²³ Beyond the United States, similar stories appeared in newspapers and parenting blogs in India,¹²⁴ the United Kingdom,¹²⁵ and Australia,¹²⁶ as well as on a medical

¹¹⁹ Robert Preidt, *Overnight Separation from Mother Linked to Weaker Bond*, HEALTH DAY (July 18, 2013), <http://consumer.healthday.com/kids-health-information-23/child-development-news-124/overnight-separation-from-mother-linked-to-weaker-infant-bond-678506.html>.

¹²⁰ Furness, *supra* note 118, at 1 (emphasis added).

¹²¹ *Nights Away from Mum ‘Leave Babies Less Secure’: New Findings Could Affect Custody Rulings for Young Children*, DAILY MAIL (U.K.), July 21, 2013, <http://www.dailymail.co.uk/news/article-2372868/Nights-away-mum-leave-babies-secure-New-findings-affect-custody-rulings-young-children.html> (emphasis added).

¹²² *Divorce Study Shows Infants’ Attachment to Caregivers Affected by Joint Custody*, HUFFINGTON POST, July 29, 2013, http://www.huffingtonpost.com/2013/07/29/divorce-study_n_3672185.html (emphasis added).

¹²³ Maria Hallas, *New UVA Psyche Study Shows Attachment Issues Newborns Can Have*, NBC29.Com, July 21, 2103, <http://www.nbc29.com/story/22896553/new-uva-psych-study-shows-attachment-issues-newborns-can-have> (emphasis added).

¹²⁴ ANI, *Spending Nights Away from Home Affects Baby’s Attachment*, SIFY NEWS, July 21, 2013, <http://www.sify.com/news/spending-nights-away-from-home-affects-babys-attachment-news-international-nhvoOnfadfhsi.html>.

¹²⁵ *Id.*; Furness, *supra* note 118, at 1; *Nights Away from Mum*, *supra* note 121.

¹²⁶ *Joint-Custody Infants Who Overnight Away from Mums Struggle with Attachment*, MOTHER & BABY, Apr. 10, 2014, <http://www.motherandbaby.com.au/baby/development/2014/4/joint-custody-infants-who-overnight-away-from-mums-struggle-with-attachment/>.

news website,¹²⁷ a law firm's website,¹²⁸ and the Psyche Central website.¹²⁹ Even the British Psychological Association reported the study on its website with the title, "Staying away affects a baby's attachment."¹³⁰ These alarming media reports and woozled versions of the actual data are reminiscent of what happened in the media several years earlier with the Australian baby study whose woozling has been documented elsewhere.¹³¹ In the case of both studies, shortly after the studies were published, the woozles started running amuck in the media.

VI. When Is Shared Parenting Not Beneficial for Children?

Overall the forty studies show that children generally fare better in families where most of them lived at least one-third of the time and usually half time with each parent. But this does not mean that all of the shared children were doing as well or better than children who were living with their mother and spending varying amounts of time with their father. Under some circumstances, the outcomes were worse for the shared parenting children. What were those circumstances?

First, when the mothers in a nationally representative sample of Australian families were worried about the children's safety when they were with their father, the mothers rated the children as being more stressed and more poorly adjusted when they had a shared parenting plan.¹³² These mothers were worried about the father's violent or aggressive behavior or about his being negligent in ways that might jeopardize the children's safety.

¹²⁷ Susan Scutti, *Frequent Overnights with Nonresident Parent Leads to Infant Insecurity*, MED. DAILY, July 21, 2013, <http://www.medicaldaily.com/infant-bonding-and-attachment-frequent-overnights-non-resident-parent-leads-insecurity-247907>.

¹²⁸ Molly Kenny, *Divorce Study Links Infant Attachment Issues with Joint Custody*, Aug. 14, 2013, <http://www.mollybkenny.com/news/divorce-study-links-infant-attachment-issues-with-joint-custody.cfm>.

¹²⁹ Janice Wood, *Overnight Stays Away from Home Affect Babies' Attachments*, PSYCH CENTRAL, July 21, 2013, <http://psychcentral.com/news/2013/07/21/overnight-stays-away-from-home-affect-babies-attachments/57400.html>.

¹³⁰ van Ijzendoorn et al., *supra* note 102, at 1188.

¹³¹ See Nielsen, *supra* note 24, at 164.

¹³² Kaspiew et al., *supra* note 43, at 1.

As for parental conflict, one of the American studies found that teenagers in the shared parenting families were more likely to feel caught in the middle of their parents' disagreements – girls more so than boys. On the other hand, the quality of these teenagers' relationships with their parents was *not* linked to the quality of their parents' relationship with each other – and the shared teenagers had closer relationships with their parents than the teenagers in the sole residence families.¹³³ Similarly, in Belgium, the teenage girls, but not the boys, felt more depressed in a shared parenting family than in sole residence if their parents were in high conflict.¹³⁴ These studies suggest that girls might be more easily stressed than boys by high conflict. Finally, the quality of the children's relationship with their father matters, as evidenced by an American study with 141 teenagers (average age of thirteen) all of whose parents had all been designated as "high" conflict by a judge and all of whom were litigating over parenting time or other custody issues. The teenagers who felt they had a bad relationship with their father had more behavioral problems when they lived in a shared parenting family than when they lived primarily with their mother.¹³⁵

Although not a negative outcome in the sense of creating significant or long lasting problems for the children, living in two homes is more inconvenient for adolescents than for younger children. Given their more complicated social and academic lives, this is not particularly surprising. Nevertheless, even the adolescents reported that living in two homes was worth the trouble, namely because they maintained close relationships with both parents. These studies were based on interviews with 22 children¹³⁶ and 105 adolescents in Australia,¹³⁷ 37 Swedish ado-

¹³³ BUCHANAN & MACCOBY, *supra* note 57.

¹³⁴ Vanassche et al., *supra* note 81, at 139.

¹³⁵ Irwin Sandler, Lorey Wheeler & Sanford Braver, *Relations of Parenting Quality, Interparental Conflict, and Overnights with Mental Health Problems of Children in Divorcing Families with High Legal Conflict*, 27 J. FAM. PSYCHOL. 915 (2013).

¹³⁶ Monica Campo & Belinda Fehlberg, *Shared Parenting Time in Australia: Children's Views*, 34 J. SOC. WELFARE & FAM. L. 295 (2012).

¹³⁷ Lodge & Alexander, *supra* note 44, at 1.

lescents,¹³⁸ 21 British adolescents,¹³⁹ and 22 elementary age children,¹⁴⁰ and 80 college students in the United States.¹⁴¹

VII. Is There Any Consensus on Shared Parenting Among Professionals?

Have the experts ever reached any group consensus on shared parenting? On three occasions groups of social scientists or family law professionals have stated their mutual opinions and mutual recommendations on custody issues in published papers. These three papers are considered “consensus” reports because they represent the shared views of a group of professionals in contrast to co-authored articles where several individuals express their mutual views and recommendations.

The first group convened more than two decades ago in 1994 under the sponsorship of the National Institute of Child Health and Human Development.¹⁴² The eighteen participants were experts from developmental and clinical psychology, sociology and social welfare who were asked to evaluate the existing research on how children were affected by divorce and different custody arrangements. Among their conclusions were that most fathers fail to maintain or are prevented from maintaining significant contact with their children. “Time distribution arrangements that ensure the involvement of both parents in important aspects of their children’s everyday lives and routines – including bedtime and waking rituals, transition to and from school, extracurricular and recreational activities” keep fathers playing important and central roles.¹⁴³ As for parenting plans that allow children to live with each parent, they agreed that “the psychological continuity”

¹³⁸ Gry Mette D. Haugen, *Children’s Perspectives on Shared Residence*, 24 CHILD. & SOC’Y 112 (2010); Anna Singer, *Active Parenting or Solomon’s Justice? Alternating Residence in Sweden for Children with Separated Parents*, 4 UTRECH L. REV. 35 (2008).

¹³⁹ CAROL SMART ET AL., THE CHANGING EXPERIENCE OF CHILDHOOD: FAMILIES AND DIVORCE (2001).

¹⁴⁰ Luepnitz, *supra* note 36, at 105.

¹⁴¹ William V. Fabricius & Jeff A. Hall, *Young Adults’ Perspectives on Divorce*, 38 FAM. CT. REV. 446 (2000).

¹⁴² Michael E. Lamb et al., *The Effects of Divorce and Custody Arrangements on Children’s Behavior*, 35 FAM. & CONCILIATION CTS. REV. 393 (1997).

¹⁴³ *Id.* at 400.

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generally, though not always, “outweighs the disadvantages arising from transitions between parental homes.”¹⁴⁴ Further they concurred that there was too little research about the impact of conflict on children to jump to conclusions about which parenting plans were most beneficial for children with high conflict parents. In sum this group recommended that parenting plans provide children with more fathering time – including time living with him in his home – and that this plan not be ruled out simply because the parents were in high conflict with each other.

The second group was sponsored by an interdisciplinary organization, the Association of Family and Conciliatory Courts (AFCC) in 2013.¹⁴⁵ In the “think tank” there were 19 social scientists or mental health practitioners in the group of 32. The other 13 were judges, lawyers or law school professors. And one was a domestic violence activist. The interdisciplinary group reached no consensus on parenting plans for children younger than five. But they did agree that “having parenting time that is not solely on weekends typically contributes to higher quality parenting and more enduring relationships with children.”¹⁴⁶ They also concurred that: “There is enough research to conclude that children in families where parents have moderate to low conflict and can make cooperative, developmentally informed decisions about the children would clearly benefit from shared parenting arrangements.”¹⁴⁷ A “handful” of participants believed that equal shared parenting should be the norm in custody law. But the majority took the position that each custody decision should be made on a case by case basis rather than relying more heavily on the empirical research. The report did not disclose how many of the 32 participants disagreed with these conclusions and did not describe the process by which these 32 individuals were invited to participate. In sum, the majority of these family law professionals and social scientists felt that shared parenting benefits children, but only if their parents have “low to medium” conflict, collaborative relationship – and only if the children are

¹⁴⁴ *Id.* at 401.

¹⁴⁵ Marsha Kline Pruett & J. Herbie DiFonzo, *Closing the Gap: Research, Policy, Practice and Shared Parenting*, 44 *FAM. CT. REV.* 152 (2014).

¹⁴⁶ *Id.* at 161.

¹⁴⁷ *Id.* at 162.

older than a certain age, which is not clearly specified in the report.

After the report was released, two articles were published expressing the concerns of two highly regarded researchers who did not participate in the AFCC meeting. Sanford Braver whose work on divorced parents and their children was supported for over forty years by eighteen federal research grants deemed the report “disappointing.” As Braver explained, the report failed to say much of substance, failed to consider the negative impact of individualizing custody decisions, and failed to give proper weight to the empirical research.¹⁴⁸ Michael Lamb, editor of the American Psychological Association’s journal, *Psychology, Public Policy and Law*, agreed with Braver. Further, Lamb criticized the group’s report for overstating the empirical research on high conflict, exaggerating its impact on children and inflating its importance as a factor working against shared parenting. Lamb also noted that the report had embraced the erroneous assumption that individualized decision making is inherently superior to decisions that are guided by the empirical data – an assumption that has been proven incorrect in the research literature.¹⁴⁹ In short, Lamb concluded that the AFCC’s group report was “embarrassingly inconclusive.”¹⁵⁰

The third group of experts to make recommendations about shared parenting was unique in several ways.¹⁵¹ First and foremost, the group consisted of 111 international experts in psychology who were able to reach a consensus on specific recommendations regarding parenting plans. Second, all of the group members were social scientists or mental health practitioners. None were lawyers, judges or law school professors. Third, most of them held or had held prestigious positions or had long histories of publishing books and articles on issues germane to child custody decisions. Among this preeminent group of scholars and researchers were 11 people who had held major office in

¹⁴⁸ Sanford Braver, *The Costs and Pitfalls of Individualizing Decisions and Incentivizing Conflict*, 44 FAM. CT. REV. 175, 180 (2014).

¹⁴⁹ Michael E. Lamb, *Dangers Associated with the Avoidance of Evidence Based Practice*, 44 FAM. CT. REV. 193, 197 (2014).

¹⁵⁰ *Id.* at 194.

¹⁵¹ Richard A. Warshak, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20 PSYCHOL., PUB. POL’Y & L. 46 (2014).

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professional associations, 2 former Presidents of the American Psychological Association (APA), 5 university Vice Presidents, Provosts, or Deans, 14 professors emeriti (including the doyenne of divorce research, Mavis Hetherington), 17 department chairs, 61 full professors, 8 endowed chairs, 2 former presidents of the American Association of Family Therapy, a former president of APA's Division of Family Psychology, and several of the leading attachment and early childhood development researchers in the world. These 111 experts endorsed the conclusions and recommendations in a paper published by the American Psychological Association and written by psychologist and researcher, Richard Warshak whose decades of work on children of divorce are world renown. Among the recommendations and conclusions of these 111 professionals were: "The social science evidence . . . supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children."¹⁵² Contrary to the conclusions reached by Jennifer McIntosh et al. and by Samantha Tornello et al. in their own baby studies, the consensus of these 111 professionals was: "There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers." And in respect to parental conflict, the group concurred that: "Denying joint physical custody when the parents are labeled high conflict brings additional drawbacks to children by denying them the protective buffer of a two nurturing relationships." "We recognize that some parents and situations are unsuitable for shared parenting, such as parents who neglect or abuse their children and those from whom the children would need protection and distance even in intact families. . .and parents who have no prior relationship or a peripheral one at best with their child."¹⁵³ In sum, these 111 accomplished scientists – professionals whose qualifications to judge the scientific literature relevant to this topic are beyond dispute - concur that shared parenting plans are in the best interests of the majority of children and that shared parenting should not be ruled out just because the children are very young or just because their parents were in high conflict.

¹⁵² *Id.* at 59.

¹⁵³ *Id.* at 59-60.

The only published article that has attempted to rebut the consensus paper was written by the three Australian researchers whose baby overnighting study had been refuted in the consensus paper.¹⁵⁴ Jennifer McIntosh, the lead researcher of the Australian baby study and the lead author of the rebuttal article, and her two co-authors stated that Richard Warshak and the 111 experts who endorsed his paper did not measure up to their definition of a “consensus.” Why? First because the paper was not “commissioned” by any organization. Second because the 111 social scientists had not been “nominated” as “experts.” And third because Warshak did not report how many people who read his paper declined to endorse it and did not explain how the 111 social scientists had become part of this consensus group. In light of these criticisms, it is important to know that Warshak specifically acknowledged in his paper that it did not represent the views of *all* scholars in the shared parenting field and that the paper had been specifically designed to present the views of people who were social scientists. It was not designed, as was AFCC’s think tank, to try to achieve an interdisciplinary consensus in a group that included family law professionals. It is also worth noting that McIntosh was among the 32 people that AFCC’s leaders had “commissioned” and “nominated” as part of their expert panel. Moreover, the 111 members of the consensus group had concurred that the conclusions drawn by McIntosh and by Robert Emery and Tornello in their own infant overnighting studies were unsupportable: Neither of their studies had reliable data that linked frequent overnighting or shared parenting to negative outcomes for infants and toddlers.¹⁵⁵ Finally, it should be noted that in a keynote address at the AFCC annual conference in Australia, McIntosh dismissed the consensus paper published in an APA journal and endorsed by the 111 scholars as “dull, unnecessary, divisive and retrograde” without presenting any arguments to support devaluing the work of such a large group of esteemed colleagues. Further, McIntosh told the audi-

¹⁵⁴ Jennifer McIntosh et al., *Responding to Concerns About a Study of Infant Overnight Care Postseparation, with Comments on Consensus: Reply to Warshak*, 21 PSYCHOL., PUB. POL’Y & L. 111 (2015).

¹⁵⁵ See Nielsen, *supra* note 24, at 164, for details about the woozling of the Australian baby study.

ence that her colleague, Robert Emery, considered the consensus paper “undeserving of time or attention.”¹⁵⁶

In sum, the two groups that were entirely composed of social scientists (129 in total) agreed that the parents’ conflicts should not be a pivotal factor in determining parenting plans. Metaphorically, high conflict should not be the tail that wags the dog. In contrast, some portion of the AFCC group (the numbers were not disclosed) that included family law professionals felt that shared parenting should not be an option for high conflict parents. These two groups agreed that shared parenting plans were in the best interests of most children. But only the group composed entirely of 111 social scientists endorsed overnighting and shared parenting even for the youngest children.

VIII. But the Forty Studies Are Not Applicable to This Case Because . . .

People who dismiss or ignore the findings from the forty studies often make four claims to support their position that “We can’t apply the findings from the forty studies to this particular family or even to the majority of separated parents.” First, all families are unique - which means judges, custody evaluators, and other professionals involved in a case can “predict” more accurately than the forty studies whether the children in the case before the court are likely to benefit from shared parenting. Second, the forty studies compared the average scores of the group of shared parenting children to the average scores of the group in sole residence – which means we cannot apply the findings to any individual child since these are aggregate, actuarial data. Third, even though there was a correlation between shared parenting and better outcomes, this does not “prove” that shared parenting “caused” these benefits. Fourth, these studies are not trustworthy

¹⁵⁶ Jennifer E. McIntosh, J. *Beyond the Baby Wars: Toward an Integrated Approach to the Post-Separation Care of Very Young Children*, Keynote Address: Association of Family and Conciliatory Courts Conference, Melbourne, Australia, Aug. 15, 2014, http://www.familytransitions.com.au/Family_Transitions/Family_Transitions_files/%20McIntosh%20Beyond%20the%20Baby%20Wars%20AFCC%20Australia%20Keynote%20August%202014_JK%20formatted%20for%20website.pdf.

and reliable enough because each study had flaws and because forty studies are not “enough.”

First, the forty studies included almost a quarter of a million parents with varying socio-economic, racial, and cultural backgrounds and varying levels of conflict (including isolated incidents of physical anger and litigation in court). The 115,157 children ranged from one to twenty-two years of age and “sole residence” families included children who were living with their parent and stepparent. Given this, unless it has been established that a particular family has little to nothing in common with the thousands involved in the forty studies, it would be illogical to assume or to predict that the children cannot benefit from shared parenting. Guided by the results of the forty studies where most children benefitted more from actually living at least one-third of the time with each parent, parenting plans can still be individualized to meet a family’s special needs.

Second, actuarial or aggregate data in social science studies have been shown to increase reliability and trustworthiness of predictions. In contrast, serious concerns have been raised about relying on or trusting data from one individual’s custody evaluation¹⁵⁷ or relying on the opinions of family law professionals or expert witnesses who are not well informed about the empirical studies.¹⁵⁸

Third, in regard to trusting correlational data, studies that are comparing the well-being of children in various types of families (rich vs. poor, single parent vs. two parent, shared parenting vs. sole residence, etc.) *have to be correlational* since researchers cannot ethically or practically design “experiments” that would establish direct cause and effect. These correlational studies and aggregate data yield valuable information about which factors

¹⁵⁷ Marc J. Ackerman & Linda J. Steffan, *Custody Evaluators’ Views of Controversial Issues*, 20 AM. J. FAM. L. 200 (2006); James N. Bow et al., *Attorneys’ Beliefs and Opinions About Child Custody Evaluations*, 52 FAM. CT. REV. 213, 239 (2011); Robert E. Emery et al., *Assessment of Child Custody Evaluations*, 6 PSYCHOL. SCI. IN THE PUB. INT. 1 (2005); Kelly & Johnston, *supra* note 23, at 233; Robert F. Kelly & Sarah H. Ramsey, *Child Custody Evaluations: The Need for Systems Level Outcomes Assessments*, 47 FAM. CT. REV. 286 (2009); Klass & Peros, *supra* note 23, at 46.

¹⁵⁸ Braver, *supra* note 148, at 148; Kelly & Johnston, *supra* note 23, at 233; Lamb, *supra* note 149, at 19; Ludolph & Dale, *supra* note 98, at 225; Nielsen, *supra* note 24; Warshak, *supra* note 151, at 46.

are linked to children's well-being. If policy-makers ignored or dismissed correlational data or aggregate data, many policies and laws that benefit children would not exist: for example, laws about adolescent drinking, smoking, driving while texting, or getting a marriage license. Many advances in family law are based on correlational and aggregate data. For example, correlational and aggregate data showed that more fathering time benefitted children which, in turn, led to nationwide change in custody laws to provide children with more fathering time.

Fourth, all social science studies have flaws. This is an inescapable reality. And all areas of research can benefit from more studies. But this does not mean that we should *ignore* the existing research or *do nothing* differently until we "get more information." Finally we need to keep in mind that all of us are inclined to insist on more data when the findings do not confirm our existing beliefs. Conversely, we are easily satisfied with much less data when the findings confirm what we already believe – a flaw in our thinking processes that psychologists refer to as "confirmation bias."¹⁵⁹

In short, it is not in the best interests of children for us to ignore or to dismiss the findings from the forty studies.

IX. Summary and Recommendations

What are five of the most important messages for judges and lawyers from the forty studies? First, shared parenting is linked to better outcomes for children of all ages across a wide range of emotional, behavioral and physical health measures. But these studies should not be misconstrued to mean that children benefit from living with an unfit, unloving, neglectful, or abusive parent – or from a parent who had little or no relationship with the children before the parents separated. Second, regular and frequent overnights for infants and shared parenting for toddlers and other children under five is not linked to negative outcomes. Specifically it does not weaken the young child's relationship with or "attachment" to the mother. Third, even if the parents are in high conflict, most children still benefit from shared parenting if they have loving, meaningful relationship with their parents. In that vein, we should keep in mind that most parents with shared

¹⁵⁹ Martindale, *supra* note 27, at 31.

parenting plans do not have an exceptionally friendly, conflict free, collaborative co-parenting relationship. Fourth, even though most shared parenting couples have higher incomes and less conflict than other separated parents, these two factors alone do not explain the better outcomes for shared parenting. Finally, even though most children acknowledge that living in two homes is sometimes an inconvenient hassle, they feel the benefits outweigh the inconvenience. One of the most beneficial outcomes linked to shared parenting is children's maintaining a loving, meaningful relationship with both parents. Given this, we need to keep in mind that this particular benefit may not become apparent until later in the children's lives. So although children who are living almost exclusively with one parent may appear to be doing "just fine" at present, the relationship with their other parent is more likely to be weakened or to be irreparably damaged as time goes by. And that disadvantage may last a lifetime.

Rather than trusting or being willing to consider empirical data that refute their long held beliefs, some professionals might try to defend their beliefs by insisting that the correlational studies cannot "prove" that shared parenting is responsible for the children's better outcomes. Embracing this position, they might contend that any number of factors in the family's past or in the present may have been the actual cause of the better outcomes for the shared parenting children. This posture brings to mind the anecdote from Mark Twain's *Huckleberry Finn*. Huck is arguing with a girl over the actual "cause" of the death of someone they both knew. The perturbed girl explains to Huck that a person might stump his toe and take medicine for the pain which makes him so dizzy that he falls down a well and breaks his neck and "bust his brains out." Then "somebody come along and ask what killed him and some numskull up and say, Why, *he stumped his toe*." Twain's point, of course, is that we can always claim that what appears to be the most proximal, most obvious, or most immediate "cause" of a particular outcome is not in fact the actual cause – that the real cause, lying elsewhere in the past, has evaded us. In that vein, it is worth remembering that many of the forty studies did factor in other variables such as the family's income and the level of conflict between the parents – and still found better outcomes for the children in the shared parenting families.

Once having been informed of the research, family court professionals should incorporate the empirical data into their decision making and should share the research with their less knowledgeable colleagues. Being familiar with this research decreases the odds that we will act on faulty assumptions or be duped by data that have been distorted, misrepresented, or “woozled.” These research studies enable us to respond more confidently and more effectively when our “woozle alert” sounds the alarm – for example, to question and to be wary when others assert that “the research shows” children cannot benefit from shared parenting plans if their parents do not get along as coparents, or if the custody issues had to be settled in court, or if the children are younger than four. Shared parenting plans, of course, are not the only factors that are correlated with better outcomes for children. Decades of research have established that a number of factors are correlated with negative outcomes for children whether their parents are still living together or not – factors such as the parents’ low incomes, poor parenting, physical abuse, or a parent’s psychological or substance abuse problems. Still, it has become clear that continuing to live with each parent at least one third of the time *is* one of the most beneficial factors – and, unlike low incomes or poor parenting, it is a factor over which family court professionals have some control or influence. Putting our trust in the current research means putting aside negative predictions about shared parenting that are based on the worst situations seen in court – or based on the assumption that a parent’s weaknesses in parenting will cancel out the benefits of shared parenting. Rather than being swayed by hearsay about “what the research shows,” we serve the best interests of children by relying on data over dogma and by being on the alert for woozles that can lead us astray in making decisions about the most beneficial parenting plans for children.

Stemming the Tide of Misinformation: International Consensus on Shared Parenting and Overnighting

by
Richard A. Warshak, Ph.D.*

Abstract

Richard Warshak, with the review and endorsement of 110 researchers and practitioners, analyzed more than four decades of research and issued a peer-reviewed consensus report on parenting plans for children under the age of four. As intended, the report stemmed a tide of misinformation that was threatening to resurrect myths about infant attachment and child development and enshrine them in professional practice and family law. The list of endorsers and their professional accomplishments reflect the widespread acceptance among scientists of the consensus report's findings that favor shared parenting and overnighting for young children under normal circumstances. Nearly four years after its publication, the conclusions and recommendations of the Warshak Consensus Report remain supported by science.

I. Introduction

A. Main Issues

Judges and lawmakers hear competing versions from the mental health field about what type of parenting plans are best for very young children. Discussions of parenting time for young children who are raised by parents who live apart from each other generally address three main issues.

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1. Should young children's time be concentrated predominantly under the care and supervision of one parent, or should their time be more evenly divided between parents?
2. Should young children under the age of four spend nights in each parent's home, or should they sleep in the same home every night?
3. Are the benefits to the child of involvement with both parents, or overnight care, diminished or erased if the parents disagree about the parenting plan, or if one or both parents feel great discomfort or hostility toward the other?

Differences of opinion regarding shared parenting time for children under the age of four years focus on the issue of whether giving children more time with their fathers, aimed at strengthening father-child relationships, risks harming mother-child relationships.¹ The concern is that spending too much time away from the mother, or having overnights away from her, rather than increasing the odds that a child will have a high quality relationship with both parents, will result in the child having poor relationships with both parents.

B. Background

American society holds a curious double standard when it comes to encouraging hands-on shared parenting. For instance, society encourages dads' involvement with their infants and toddlers—diapering, feeding, bathing, putting to bed, soothing in the middle of the night, cuddling in the morning. But when parents separate, some people think that young children need to spend every night in one home, usually with mom, even when this means losing the care their dad has been giving them. Despite promising strides in cracking gender barriers, many people still think that moms should care for infants and toddlers, and that young children's wellbeing is jeopardized if we trust dads to do the job.

¹ Marsha Kline Pruett & J. Herbie DiFonzo, *Closing the Gap: Research, Policy, Practice and Shared Parenting*, 52 *FAM. CT. REV.* 152, 163 (2014).

The idea that mothers, by nature, are uniquely suited to raise young children—known as the tender years doctrine—dominated child custody decisions throughout the nineteenth century and most of the twentieth.² In 1973 the preference for maternal custody received support in an acclaimed book by Joseph Goldstein, Anna Freud, and Albert Solnit.³ Their position assumed that an infant initially forms an attachment to one parent, usually the mother, and then perhaps to other people, and that if parents separate, young children need maximum time with the primary parent, also called the psychological parent, even if this compromises the child's relationship with the other parent. They believed that separations from the mother carry potential for long-term damage. For a long time this belief fueled opposition to mothers working outside the home because of concerns about leaving children with babysitters and daycare attendants.

Where does science stand on these issues? A body of research from the 1970s to the 1990s challenged stereotypes and prejudices that had governed child custody decisions throughout most of the nineteenth and twentieth centuries. The results of social science studies throughout the United States converged to support the position that most children needed and wanted more contact with their fathers after divorce than they were having.⁴

² *Commonwealth v. Addicks*, 5 Binn. 520 (Pa. 1813). For another early expression of the tender years doctrine, see *Helms v. Franciscus*, 2 Bland 544, 563 (Ch. Md. 1830)

³ JOSEPH GOLDSTEIN, ANNA FREUD, & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1973).

⁴ See, e.g., SANFORD L. BRAVER & DIANE O'CONNELL, *DIVORCED DADS: SHATTERING THE MYTHS* (1998) (Arizona); CHARLENE E. DEPNER & JAMES H. BRAY, *NONRESIDENTIAL PARENTING: NEW VISTAS IN FAMILY LIVING* (1993) (Arizona); E. MAVIS HETHERINGTON & JOHN KELLY, *FOR BETTER OR WORSE: DIVORCED RECONSIDERED* (2002) (Virginia); JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* (1980) (California); RICHARD A. WARSHAK, *THE CUSTODY REVOLUTION* (1992) (Texas); E. Mavis Hetherington, Martha Cox, & Roger Cox, *Effects of Divorce on Parents and Children*, in *NONTRADITIONAL FAMILIES: PARENTING AND CHILD DEVELOPMENT* 233 (Michael E. Lamb ed., 1982) (Virginia); John W. Santrock & Richard A. Warshak, *Father Custody and Social Development in Boys and Girls*, 34 J. SOC. ISSUES 112 (1979) (Texas); Richard A. Warshak, *Father-Custody and Child Development: A Review and Analysis of Psychological Research*, 4 BEHAV. SCI. & L. 185 (1986) (Texas); Richard A. Warshak & John W. Santrock, *The Impact of Divorce in*

In 1994 a multidisciplinary group of experts, sponsored by the U.S. National Institute of Child Health and Human Development (NICHD), met to evaluate the empirical evidence regarding the ways in which children are affected by divorce and the impact of various custody arrangements. In 1997, eighteen experts from the NICHD group issued a statement concluding:

Time distribution arrangements that ensure the involvement of both parents in important aspects of their children's everyday lives and routines—including bedtime and waking rituals, transitions to and from school, extracurricular and recreational activities—are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children. How this is accomplished must be flexibly tailored to the developmental needs, temperament, and changing individual circumstances of the children concerned.⁵

Over time, custody policy and decisions increasingly reflected the importance of frequent and continuing contact between children and both parents, including giving children more contact with their fathers. Nevertheless, professional opinions continued to favor the practice of denying infants and toddlers overnight contact with their fathers, even those children who had been accustomed to seeing their dads every day and experiencing his care at bedtime, in the middle of the night, and in the morning.⁶ I labeled presumptions against “overnighting” until children reach the age of four or five, *blanket restrictions*.

Between 2000 and 2002 a well-cited exchange of articles in *Family Court Review* addressed the wisdom of guidelines that restricted young children from sleeping in their fathers' home. One group of authors supported flexible, individualized parenting plans rather than absolute rules favoring or prohibiting overnights.⁷ Those authors recommended that decision makers

Father-Custody and Mother-Custody Homes: The Child's Perspective, in CHILD. & DIVORCE 29, 38, 42–43 (Lawrence A. Kurdek ed. 1983) (Texas).

⁵ Michael E. Lamb, Kathleen J. Sternberg, & Ross A. Thompson, *The Effects of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment*, 35 FAM. & CONCILIATION CTS. REV. 393, 400 (1997).

⁶ Richard A. Warshak, *Blanket Restrictions: Overnight Contact Between Parents and Young Children*, 38 FAM. & CONCILIATION CTS. REV. 422 (2000) (giving examples of guidelines in the professional literature advocating restrictions against overnights).

⁷ Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 FAM. & CONCILIATION CTS. REV. 297 (2000); Michael E. Lamb & Joan B.

consider the option of overnights with fathers for its potential benefits to the children's developing stable and lifelong relationships with both parents. Those opposing this view conceded the need for some relaxation of blanket restrictions, but continued to emphasize the potential harm rather than potential benefits of overnights.⁸ They proposed that overnights should be viewed with caution rather than prohibited or contraindicated on an a priori basis, thus accepting that in some cases overnights with their fathers might be in young children's best interests.

In the aftermath of the 1997 consensus statement, subsequent articles on parenting plans for young children, and a growing body of research relevant to parenting plans, the importance of providing sufficient opportunities for children to develop and maintain high quality relationships with both parents became generally recognized as the accepted and settled science with respect to child custody issues.⁹ The decade between 2001 and 2011 saw increasing acceptance of overnights for infants and toddlers among mental health professionals, courts, and parents. This remained the zeitgeist until 2011.

Controversy over the previous decade's accepted science with respect to overnights for young children reignited in 2011

Kelly, *Using the Empirical Literature to Guide the Development of Parenting Plans for Young Children: A Rejoinder to Solomon & Biringen*, 39 FAM. CT. REV. 365 (2001); Warshak, *supra* note 6; Richard A. Warshak, *Who Will Be There When I Cry in the Night? Revisiting Overnights—A Rejoinder to Biringen et al.*, 40 FAM. CT. REV. 208 (2002).

⁸ Zeynep Biringen et al., *Commentary on "Blanket Restrictions: Overnight Contact Between Parents and Young Children"*, 40 FAM. CT. REV. 204 (2002); Judith Solomon & Zeynep Biringen, *Another Look at the Developmental Research: Commentary on Kelly and Lamb's "Child Development Research to Make Appropriate Custody and Access Decisions for Young Children"*, 39 FAM. CT. REV. 355 (2001).

⁹ See, e.g., Gordon E. Finley & Seth J. Schwartz, *The Divided World of the Child: Divorce and Long-term Psychosocial Adjustment*, 48 FAM. CT. REV. 516 (2010); Seth J. Schwartz & Gordon E. Finley, *Troubled Ruminations About Parents: Conceptualization and Validation with Emerging Adults*, 88 J. COUNSELING & DEV. 80 (2010). See also Marsha Kline Pruett, Rachel Ebling, & Glendessa Insabella, *Critical Aspects of Parenting Plans for Young Children: Interjecting Data into the Debate About Overnights*, 42 FAM. CT. REV. 39, 55 (2004) (stating: "This initial glimpse suggests that, for the behavioral and emotional outcomes under study, the worry about implementing overnights and parenting plans with multiple caretakers for infants and toddlers is misplaced.").

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when the Association for Family and Conciliation Courts (AFCC) gave a unique platform to Jennifer McIntosh via an invitation to guest edit a special issue of its journal, *Family Court Review* (FCR) in which McIntosh listed herself as an author on nine articles, eight of which were edited transcripts of interviews that McIntosh conducted with people she selected as commentators. The same year AFCC bestowed upon McIntosh its Distinguished Research Award, and then in 2012 invited McIntosh to deliver a plenary address at its annual conference.¹⁰ McIntosh advocated that one parent should be designated the primary caregiver, discouraged joint physical custody for children under the age of four, and called for the resurrection of blanket restrictions unless overnights were necessary and helpful to the primary caregiver.¹¹ Subsequent articles criticized AFCC, FCR, and Mc-

¹⁰ See, e.g., Peter Salem & Arnold T. Shienvold, *Closing the Gap Without Getting to Yes: Staying with the Shared Parenting Debate*, 52 FAM. CT. REV. 145, 146 (2014) (“AFCC and FCR were criticized for allowing one side of a controversial issue to be represented in FCR without counterpoint in the same issue and for highlighting that same perspective in a plenary session without an alternative view during the same session. Hindsight is 20/20 and in retrospect, we would have made adjustments in order to create the best possible discussions.”); See also Joan B. Kelly, *Paternal Involvement and Child and Adolescent Adjustment After Separation and Divorce: Current Research and Implications for Policy and Practice*, 2 INT’L. FAM. L., POL’Y & PRAC. 5, 10 (2014) (“These heated controversies in the United States and elsewhere in the last decade were exacerbated by a *Family Court Review* special issue on attachment (McIntosh, 2011), which focused on infant-mother attachment research and policy conclusions regarding overnights.”).

¹¹ Jennifer E. McIntosh, *Guest Editor’s Introduction to Special Issue on Attachment Theory, Separation, and Divorce: Forging Coherent Understandings for Family Law*, 49 FAM. CT. REV. 418, 424 (2011) (stating that McIntosh and the commentators she interviewed concurred strongly that “Overnight stays away from the primary caregiver in early infancy are generally best avoided, unless of benefit to the primary caregiver.”). See also Jennifer McIntosh, *Special Considerations for Infants and Toddlers in Separation/Divorce: Developmental Issues in the Family Law Context*, in ENCYCLOPEDIA ON EARLY CHILDHOOD DEVELOPMENT [online] 1, 4 (Robert E. Emery, topic ed., Richard E. Tremblay, Michel Boivin, Ray DeV. Peters eds., 2011), <http://www.child-encyclopedia.com/divorce-and-separation/according-experts/special-considerations-in-infants-and-toddlers> (In a section titled “Implications for Parents, Services and Policy,” McIntosh states: “In early infancy [defined by McIntosh as under 2 years old], overnight stays are contra-indicated, undertaken when necessary or helpful to the primary caregiver.”).

Intosh for presenting a narrow perspective.¹² Joan Kelly noted “the absence of any articles or consideration of infant-father attachments, and the limited and methodologically flawed research used to establish broad conclusions that substantial time with fathers and overnights after separation were detrimental.”¹³

II. Current Consensus of Social Scientists on Parenting Plans for Young Children

Practitioners and scholars in the field of child custody expressed concerns that this seeming reversal of a decade-long endorsement of shared parenting for preschool children was generating widespread confusion and uncertainty about where the scientific community stood on these issues. To give voice to those concerns, and in an effort to right a ship that was listing from a tide of misinformation, I spent two years reviewing the relevant scientific literature. Then I vetted my analyses by incorporating feedback from an international group of experts in the fields of attachment, early child development, parent-child relations, and divorce. The results appeared in *Social Science and Parenting Plans for Young Children: A Consensus Report* (Warsak Consensus Report) published in the American Psychologi-

¹² See, e.g., Kelly, *supra* note 10, at 10. See also Michael E. Lamb, *A Wasted Opportunity to Engage with the Literature on the Implications of Attachment Research for Family Court Professionals*, 50 FAM. CT. REV. 481 (2012) (commenting on the restricted range of views in the issue of *Family Court Review* that McIntosh guest edited: “The resulting special issue contained a total of 11 articles—an introduction by McIntosh, two invited articles, and the edited transcripts of eight interviews by McIntosh with one or (in three cases) several commentators. Nine of the articles were ‘authored’ by the editor, and (remarkably) all 11 listed her as a corresponding author, underscoring the narrowness of the perspective offered to readers of the special issue.”); See also Pamela S. Ludolph, *The Special Issue on Attachment: Overreaching Theory and Data*, 50 FAM CT. REV. 486, 493 (2012) (noting: “[T]he Special Issue, and particularly its summary [the one article in the journal issue solely authored by McIntosh] overreaches the available research data, doing so by remarkable omissions and over-generalizations. The voluminous literature on the role of fathers in early childhood was barely touched upon. Monotropy was reified, despite its being an idea unsupported by empirical evidence. The serious attention many researchers have given to the attachment capabilities of both parents was virtually unmentioned. Serious losses of childhood were confounded with trivial ones.”).

¹³ Kelly, *supra* note 10, at 10.

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cal Association's journal, *Psychology, Public Policy, and Law*, that is edited by Cambridge University Professor Michael Lamb, a prominent child development scholar.¹⁴ The report was published with the endorsement of 110 of the world's leading researchers and practitioners, several who had conducted the seminal studies cited in the report.

David Faigman, John Monahan, and Christopher Slobogin offer suggestions for measuring general acceptance of scientific opinions. Consistent with those suggestions, the endorsers of the Warshak Consensus Report were an independent group of scientists with expertise across a broad spectrum of the science underlying child custody dispositions and with no financial, professional, or ideological overinvestment in a position either for or against shared parenting and overnights for young children.¹⁵

The first goal was to provide a balanced and accurate overview of settled, accepted research from the past 45 years relevant to parenting plans for children under the age of four whose parents lived apart. The second goal was to provide empirically informed guidelines for policy makers and for people involved in making custody decisions.

No compelling evidence was found for the idea that children under four need or benefit from restrictions with parents who are loving and attentive. Warnings against infants and toddlers spending overnight time with each parent are inconsistent with what we know about the development of meaningful, positive parent-child relationships in the first few years of children's lives. Babies and toddlers need parents who respond consistently, affectionately, and sensitively to their needs. But infants and toddlers do not need, and most do not have, either parent's full-

¹⁴ Richard A. Warshak, with the endorsement of the researchers and practitioners listed in the Appendix, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20 *PSYCHOL., PUB. POL'Y. & L.* 46 (2014). This article, available to legal and mental health professionals on request from the author, lists in the Appendix the names and positions of the endorsers, and provides reference citations for all the studies included in the consensus report literature review and analysis. Others can purchase the article at <http://psycnet.apa.org/journals/law/20/1/46/>.

¹⁵ David L. Faigman, John Monahan, & Christopher Slobogin, *Group to Individual (G2i) Inference in Scientific Expert Testimony*, 81 *U. CHI. L. REV.* 461 (2014).

time, round-the-clock presence. Many married mothers work night shifts that keep them away from their infants and toddlers at night without damaging their children's secure attachment or their development. Given these observations, after the parents separate, most mothers should have no reason to worry about leaving their very young children in the father's care. In fact, fathers who are more involved with their infants and toddlers become better parents and have better relationships with their children.¹⁶ Better parent-child relationships, in turn, lead to better outcomes in other spheres of development, such as stress-related physical health, grades, mental health, and behavior.¹⁷

To maximize infants' chances for a secure lifelong bond with both parents, public policy should encourage both parents to actively participate in daytime and overnight care of their young children. Scholars who study the benefits of children's relationships with both parents find no empirical support for the belief that mothers are more important than fathers in their infants' and toddlers' lives. In short, after their separation, in most circumstances both parents should maximize the time they spend with their young children, including sharing overnight parenting time. This lays a strong foundation for parent-child relationships and allows children to enjoy the unique and overlapping contributions of each parent to the children's development and well-being.

¹⁶ E.g., Joyce Magill-Evans et al., *Interventions with Fathers of Young Children: Systematic Literature Review*, 55 J. ADVANCED NURSING 248 (2006), doi: 10.1111/j.1365-2648.2006.03896.x (reviewing evidence from 12 interventions the review noted methodological weaknesses in the studies but nonetheless concluded that that a father's active participation with or observation of his infant or toddler improved the father's confidence in parenting, positive view of his child, knowledge of his child, and child care skills).

¹⁷ E.g., W. Thomas Boyce et al., *Early Father Involvement Moderates Biobehavioral Susceptibility to Mental Health Problems in Middle Childhood*, 45 J. AM. ACAD. CHILD. & ADOLESCENT PSYCHIATRY 1510, 1516 (2006) (reporting that high father involvement and coparenting during infancy helped "ameliorate a child's susceptibility to disturbances of mental health and behavior."); William V. Fabricius & Linda J. Luecken, *Postdivorce Living Arrangements, Parent Conflict, and Long-Term Physical Health Correlates for Children of Divorce*, 21 J. FAM. PSYCHOL. 195 (2007), doi:10.1037/0893-3200.21.2.195.

III. Analytic Gaps Between Scientific Evidence and Blanket Restrictions

An extensive knowledge base, drawn from more than four decades of research directly relevant to this topic, informed the conclusions of the international consensus report. The Warshak Consensus Report refutes the claim that a scientific foundation exists for a general policy of limiting or discouraging young children's overnights with one parent when their parents live apart. Those who advocate such a policy often cite two studies to support their concerns about the risks of shared parenting and overnights for children under the age of four.

The first study was a 2010 report written by Jennifer McIntosh, Bruce Smyth, and Margaret Kelaher, issued by the Attorney General's department in Australia, and copyrighted by a clinic founded by the study's first author.¹⁸ The second study, by Samantha Tornello et al., was published in 2013.¹⁹ The Warshak Consensus Report identified significant problems and limitations in both studies that should affect the admissibility and weight of testimony that relies on these studies.²⁰ As the U.S. Supreme Court in *General Electric Co. v. Joiner* noted: "[C]onclusions and methodology are not entirely distinct from one another. . . . A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered."²¹ The analyti-

¹⁸ Jennifer McIntosh, Bruce Smyth & Margaret Kelaher, *Parenting Arrangements Post-separation: Patterns and Developmental Outcomes, Part II. Relationships Between Overnight Care Patterns and Psycho-emotional Development in Infants and Young Children: Report to the Australian Government Attorney-General's Department*, in POST-SEPARATION PARENTING ARRANGEMENTS AND DEVELOPMENTAL OUTCOMES FOR INFANTS AND CHILDREN: COLLECTED REPORTS 85 (Jennifer McIntosh, Bruce Smyth, Margaret Kelaher, Yvonne Wells & Caroline Long eds., 2010), <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyLawSystem/Documents/Postseparationparentingarrangementsanddevelopmentaloutcomesforinfantsandchildrencollectedreports.PDF>. The report is copyrighted by Family Transitions, a private clinic founded and directed by McIntosh.

¹⁹ Samantha L. Tornello, Robert Emery, Jenna Rowen, Danile Potter, Bailey Ocker, & Yishan Xu, *Overnight Custody Arrangements, Attachment, and Adjustment Among Very Young Children*, 75 J. MARRIAGE & FAM. 871 (2013).

²⁰ See *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993).

²¹ *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). See also JOHN A. ZERVOPOULOS, *CONFRONTING MENTAL HEALTH EVIDENCE* 8 (2d ed. 2015)

cal gap metaphor offers a useful critique of some experts who have expressed opinions based on these two studies. Understanding several kinds of analytical gaps in the testimony of experts who rely on these two studies should inform trial examinations of the reports and testimony of these experts.²²

A. *Gaps Between Research Samples and Custody Litigants*

One obvious and wide gap between the findings from these two studies and expert witness testimony is the difference between the populations studied and typical custody litigants. The Australian study's sample of children under four years old is not representative of parents who are going through a divorce because most of the parents in the study were never married to each other (90% for the sample of infants and 71% for toddlers), and 41% had never even lived together. Nothing is known about the behavior and relationships between the parents and children prior to the couples' separations. Even if the study reached verifiable conclusions, the differences between Australian children of unmarried fathers who may or may not have had any pre-separation relationship with their children and American children whose married parents are divorcing and who are accustomed to their fathers' care are too wide a gap to bridge. The Warshak Consensus Report affirmed that optimal parenting plans are different for children who have a pre-existing relationship with both parents and those who do not.²³

The second study similarly focused predominantly on children whose parents had never been married (75%), half of whom were not living together at the time of the child's birth. Tornello et al.'s sample was even less typical than the Australian sample of most parents who take a custody dispute to trial or who mediate a settlement with lawyers. The study's data came from the Fragile

(referencing *General Electric Co. v. Joiner*: "Courts may view opinions with analytical gaps that are too wide as unreliable and thus inadmissible.")

²² For a discussion of strategies to cross-examine mental health experts who rely on unwarranted inferences from unreliable data, see JOHN A. ZERVOPOULOS, *HOW TO EXAMINE MENTAL HEALTH EXPERTS* (2013).

²³ Warshak, *supra* note 14, at 60 ("[O]ur recommendations apply to children who have relationships with both parents. If a child has a relationship with one parent and no prior relationship with the other parent, or a peripheral, at best, relationship, different plans will serve the goal of building the relationship versus strengthening and maintaining an existing relationship.").

Families sample of inner-city children born in impoverished circumstances: 62% of the age 1 sample lived below the poverty line, 60% of the parents were imprisoned before the children's fifth birthdays, 85% were Black or Hispanic, 65% had parents who had non-marital births from more than one partner in their teenage or young adult years, and nearly two-thirds had not completed high school.²⁴ In sum, even if the results from these two studies are trustworthy their relevance to U.S. custody disputes is slim.

B. *Gaps Between Methodology and Conclusions*

In-depth analyses of the McIntosh et al. and the Tornello et al. studies, published in the Warshak Consensus Report and in other papers, reveal multiple problems in each study's measures, procedures, data analyses, and data reporting—problems that expose wide gaps between each study's methodology and its conclusions. In the McIntosh et al. study, two examples of analytic gaps that undermine the trustworthiness of the study's conclusions are found in one sentence from the synopsis: “Infants under two years of age living with a nonresident parent for only one or more nights a week were more irritable and were more watchful and wary of separation from their primary caregiver than those primarily in the care of one parent.”²⁵ The first author subsequently described these negative outcomes as “a cluster of stress regulation problems.”²⁶

Only in the Appendix of the 169-page report can readers discover that the irritability score for babies with no overnights actually is slightly worse than the score for babies who spent one or more nights per week with their other parent.²⁷ Also, the mean irritability score for the frequent overnights and the infants in intact families was identical, and the mean irritability score for all groups was within the normal range. Since, for these

²⁴ Sara McLanahan, *Fragile Families and Child Wellbeing Study Fact Sheet* (2013), [ChildWellbeingStudyFactSheet.pdf](#). See also *Parental Incarceration and Child Wellbeing in Fragile Families*, 42 FRAGILE FAMILIES RESEARCH BRIEF 1-2 (2008), <http://fragilefamilies.princeton.edu/sites/fragilefamilies/files/researchbrief42.pdf>.

²⁵ McIntosh et al., *supra* note 18, at 9.

²⁶ McIntosh, *Special Considerations*, *supra* note 11, at 3.

²⁷ McIntosh et al., *supra* note 18, at 166.

researchers, the irritability scores generated such concern about “stress regulation” for overnighting infants, they should have expressed equal concern about infants being raised in intact, two-parent Australian homes.

Another problem with generalizing from the McIntosh et al. sample—other than the gap between the characteristics of their sample and the characteristics of most parents who are separating—is the study’s tiny sample sizes. The irritability scores for infants with occasional overnights came from a sample of 14 infants. Only 11 infants saw their fathers on a schedule that would fit standard definitions of shared parenting. The sample sizes for the 2- to 3-year-olds with frequent overnights ranged from 5–25 depending on the variable analyzed (e.g., only five toddlers were rated for how well they got along with teachers and daycare attendants). An analysis based on five respondents is unlikely to provide meaningful data.²⁸

The second analytic gap is the discrepancy between the trustworthiness of a measure and the conclusion based on the results from that measure. The synopsis concluded that the overnighting infants were more “watchful and wary of separation from the primary caregiver.”²⁹ The implication is that overnighting had somehow damaged the security of the babies’ relationships with their mothers. This conclusion, repeatedly cited to discourage overnights for children younger than two years of age, came from three questions that the researchers extracted from a standardized scale designed to measure young children’s readiness to learn language. The three questions are unreliable in the sense that they have not been established as a valid or reliable measure of children’s stress, anxiety, or attachments to their mother.

²⁸ Although the sample size in Tornello et al., *supra* note 19, is larger than previous studies, Emery (who coauthored the Tornello et al. study) and McIntosh included in a list of limitations of the Tornello et al. study that it relied on “small subsample sizes for the attachment indicator.” Bruce M. Smyth, Jennifer E. McIntosh, Robert E. Emery, & Shelby L. Higgs Howarth, *Shared-Time Parenting: Evaluating the Evidence of Risks and Benefits to Children*, in PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT (2D ED.) 118, 133 (Leslie Drozd, Michael Saini & Nancy Olesen eds., 2016).

²⁹ McIntosh et al., *supra* note 18, at 9.

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McIntosh et al. concluded that a child under the age of two who spends more than three nights a month with dad is more likely to have “emotional regulation” problems reflected in the child’s “insistent visual monitoring” of the mother.³⁰ To measure insistent visual monitoring, the researchers asked each mother (only about four percent of the respondents were fathers) three questions: does your child sometimes or often try to get your attention, look to see if you are watching her or him at play, and try to get you to notice other objects?³¹ There was no rating of “insistence.” The authors made the false assumption that because infants when anxious look at their mothers and try to get their attention, being anxious is the only reason infants look at their mothers, and that the more infants look at their mothers, the more anxious the infants must be. This error in logic is known as affirming the consequent. No one, including McIntosh et al., has ever shown that these three questions yield reliable information—would the answers be the same a week later? Nor have McIntosh et al. shown that the three questions are valid measures of a baby’s emotional health, anxiety, ability to manage stress, or ability to regulate emotions. On the instrument from which these three questions were extracted, more frequently looking at the mother and trying to get her attention indicates advanced cognitive development—a precursor of language acquisition—not impaired emotional regulation as McIntosh et al. stated.³²

The Warshak Consensus Report observed that none of the four significant outcomes reported by McIntosh et al. were derived from measures that met basic scientific standards,³³ a point also noted by Linda Nielsen in greater detail.³⁴

³⁰ Jennifer E. McIntosh, Bruce M. Smyth & Margaret A. Kelaher, *Responding to Concerns About a Study of Infant Overnight Care Postseparation, with Comments on Consensus: Reply to Warshak (2014)*, 21 *PSYCHOL., PUB. POL’Y. & L.* 111, 116 (2015).

³¹ Warshak, *supra* note 14, at 55 n.1.

³² AMY M. WETHERBY & BARRY M. PRIZANT, *COMMUNICATION AND SYMBOLIC BEHAVIOR SCALES DEVELOPMENTAL PROFILE- PRELIMINARY NORMED EDITION* (2001).

³³ Warshak, *supra* note 14, at 55.

³⁴ Linda Nielsen, *Woozles: Their Role in Custody Law Reform, Parenting Plans, and Family Court*, 20 *PSYCHOL., PUB. POL’Y. & L.* 164 (2014).

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Similarly, Tornello et al. used an instrument with no established reliability or validity to assess the child's attachment to the mother. The instrument was abbreviated and modified from an established instrument, but there is no evidence of the validity of the modified version instrument. Also, the Warshak Consensus Report and other scholars have questioned the meaning of the attachment findings because the instrument was completed by mothers rather than by trained professional raters.³⁵ Other researchers using this same attachment measure have acknowledged that it lacks objectivity,³⁶ which is an important factor in determining the admissibility and weight of opinions based on this measure.

Tornello et al. acknowledged that their measure of attachment was questionable, but nevertheless reported that children who at age one had frequent overnights (1 to 5 overnights per week) were more likely than those with some overnights to be insecurely attached to their mothers at age three. The press release issued by the lead investigators' university, while failing to mention the unreliability of the attachment measures, incorrectly claimed that infants who spent at least one night per week away

³⁵ See Warshak, *supra* note 14, at 54. See also, e.g., Marsha Kline Pruett, Carolyn P. Cowan, Philip A. Cowan, Lisa Pradham, Sarah Robins, & Kyle D. Pruett, *Supporting Father Involvement in the Context of Separation and Divorce*, in PARENTING PLAN EVALUATIONS (2D ED.), *supra* note 28, at 85, 102; Paul Millar & Edward Kruk, *Maternal Attachment, Paternal Overnight Contact, and Very Young Children's Adjustment: Comment on Tornello et al. (2013)*, 76 J. MARRIAGE & FAM. 232 (2014); Nielsen, *supra* note 34, at 170; Marinus H. van IJzendoorn et al., *Assessing Attachment Security with the Attachment Q Sort: Meta-Analytic Evidence for the Validity of the Observer AQS*, 75 CHILD. DEV. 1188 (2004); Everett Waters, *Assessing Secure Base Behavior and Attachment Security Using the Q-sort Method*. Stony Brook University, State University of New York (2013), http://www.psychology.sunysb.edu/attachment/measures/content/aqs_method.html2013.

³⁶ Sangita Pudasainee-Kapri & Rachel Razza, *Attachment Security Among Toddlers: The Impacts of Coparenting and Father Engagement*, Fragile Families Working Paper WP13-01-FF, at 29, 48, 51 (2013), <http://crcw.princeton.edu/publications/publications.asp> (stating: "[B]ecause the AQS is not an objective assessment of parent-child attachment, it is possible that the mothers' tendencies toward socially desirable responses may have resulted in higher levels of reported attachment security."). This may account for the fact that all the groups of children rated by their mothers in the Tornello et al. study had lower percentages of insecure attachment than would be expected for these children who were living in poverty with poorly educated mothers.

from their mothers had more insecure attachments than babies who saw their fathers only during the day. In fact they did not.³⁷

Scientists should take pains to ensure that all the measures they use are properly calibrated so that the results can be trusted. Scales need to yield consistent results, known as the instrument's *reliability*, and the instrument must measure what it is intended to measure, known as its *validity*. McIntosh and her team used scales with insufficient, if any, indications of reliability or validity. For instance, without adequate calibration a scale that lacks reliability can one day show a readout of ten pounds for a ten-pound baby, and the next day show a readout of fifteen pounds for the same ten-pound baby. If the scale lacks validity, the scale can be off by five pounds even though it might consistently show the same incorrect weight every time the baby is weighed.

C. Gaps Between Data and Interpretation

Another analytic gap is created when important information or portions of the data that undermine the researchers' conclusions are ignored or deemphasized. In Tornello et al.'s study the results were ambiguous. Insecure attachment scores were more common among the frequent overnights, followed by the never overnights, followed by the occasional overnights—the same nonlinear patterns that characterized the McIntosh et al. results.³⁸ Thus, as the Warshak Consensus Report and others have

³⁷ Fariss Samarrai, *Overnights Away from Home Affect Children's Attachments, Study Shows*, UVA TODAY NEWS RELEASE (July 18, 2013), <https://news.virginia.edu/content/overnights-away-home-affect-children-s-attachments-study-shows>. Also, there were no significant links between overnights between the ages of one and three and attachment.

³⁸ See William V. Fabricius, Karina R. Sokol, Priscilla Diaz & Sanford L. Braver, *Father-Child Relationship: The Missing Link Between Parenting Time and Children's Mental and Physical Health*, in PARENTING PLAN EVALUATIONS (2D ED.), *supra* note 28, at 74, 81 ("Ambiguous U-shaped patterns emerged in both studies, in which the 'no overnights' group did not differ from the 'frequent overnights' group (suggesting that frequent overnights were not harmful), but the 'some overnights' group showed fewer negative child outcomes than the 'frequent' group (suggesting they were). It is unclear how to interpret these U-shaped patterns. More clarity might have been achieved by not grouping all families into a few categories, but instead testing for linear relations between overnights and outcomes."). Karina Sokol, conducted a test for linear relations in the Tornello et al. data and found no correlation in these data between the absolute number of overnights with father and insecurity with

noted, frequency of overnights did not predict insecurity in either study.³⁹

Interpreting the attachment findings is also complicated by the fact that Tornello et al. did not report this important information: More than half of the children classified as frequent overnights lived predominantly with their fathers. But the data were reported and interpreted as if the mother was always the “resident” parent and the children were overnights with a “nonresident” father. Thus the “resident” and “nonresident” parents were mislabeled. Without knowing more about why these babies were living with their fathers, it would be a mistake to assume that frequent overnights in their fathers’ homes caused the children’s more insecure attachment to their mothers. The gap between the data and the researchers’ conclusions about insecure attachments is too wide to bridge. The mothers in this sample were drawn from a population of women who had higher rates of substance abuse, depression, and incarceration.⁴⁰ These factors and others, such as domestic violence, can affect mother-child attachments. Even if the attachment measure had met scientific standards, these results should not be relied upon in making decisions about parenting plans for most divorcing parents, especially for parents with the resources to take a custody dispute to trial or to hire lawyers to negotiate and mediate out-of-court settlements.

D. Additional Gaps Between Data and Opinions

Another gap is created when expert opinions downplay certain findings and over-emphasize others. Those who rely on the data from McIntosh et al. and Tornello et al. to discourage overnight parenting plans for young children often fail to mention the results from these two studies that do not support this conclusion, in addition to the significant limitations discussed above

mother. Karina Sokol, *Short-term Correlates of Overnight Parenting Time for Infants: The Current Literature and Re-analyses*. Address at the Association of Family and Conciliation Courts Annual Conference (May 31, 2014). See also *infra* text at note 62.

³⁹ See, e.g., Fabricius et al., *supra* note 38, at 81; Michael E. Lamb, *Critical Analysis of Research on Parenting Plans and Children’s Well-Being*, in PARENTING PLAN EVALUATIONS (2D ED.), *supra* note 28, at 182.

⁴⁰ McLanahan, *supra* note 24.

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that undermine their usefulness as a basis for custody decisions. For instance, one of the authors of the Tornello et al. study, Emery, coauthored a chapter which provided this interpretation of their study's results: "Spending frequent overnights [with fathers] between the ages of 1 and 3 years did not predict attachment insecurity at age 3 but did predict positive behavior at 5 years of age."⁴¹ Yet Tornello et al. cautioned that the link between overnights and positive behavior—derived from a standard, well established instrument with strong evidence for its reliability and validity and administered in the standard manner—could be due to chance. Tornello et al. did not mention this positive finding for overnights in the article's Abstract. Instead the authors placed more confidence and emphasis on the one finding that linked overnights to attachment insecurity, despite having acknowledged the uncertain trustworthiness of the attachment measure.

Furthermore, experts who rely on these two studies should be aware that data were available only from one parent, not both. Yet reports of mothers and fathers about their children's wellbeing often vary significantly.⁴²

Given the wide gaps between the circumstances and characteristics of the parents in these two studies and those of most separating parents (especially custody litigants), the gaps between the flawed measures and the conclusions drawn from those measures, and the gaps between the actual data and opinions proffered about the data, the Warshak Consensus Report agrees with other scholars⁴³ that these two studies provide no reliable

⁴¹ Smyth et al., *supra* note 28, at 153.

⁴² E.g., Nabanita Datta Gupta et al., *Does Mother Know Best? Parental Discrepancies in Assessing Child Behavioral and Educational Outcomes*, 14 REV. ECON. OF THE HOUSEHOLD (2016), DOI 10.1007/s11150-016-9341-1 (reporting on a longitudinal study of 6000 Danish children using standardized outcome measures and finding large discrepancies between mothers' and fathers' evaluations of their 11-year-old child's behavior and academic performance, with neither parent a more accurate informant than the other.); Rae Kaspiew et al., *Evaluation of the 2006 Family Law Reforms Melbourne*: Australian Inst. Fam. Stud. (2009), <https://aifs.gov.au/sites/default/files/publication-documents/evaluationreport.pdf>.

⁴³ See, e.g., Judy Cashmore & Patrick Parkinson, *Parenting Arrangements for Young Children: Messages from Research*, 25 AUSTL. J. FAM. L. 236 (2011); Lamb, *supra* note 12; Pamela S. Ludolph & Milfred D. Dale, *Attachment in Child Custody: An Additive Factor, Not a Determinative One*, 46 FAM. L. Q. 1 (2012); Linda Nielsen, *Shared Residential Custody: A Recent Research Review*

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basis to support custody policy, recommendations, or decisions that restrict overnight shared parenting for young children.⁴⁴

IV. Conflict and Parenting Plans

A central question about studies that report positive outcomes in shared physical custody and overnighting arrangements is whether they are relevant to parents who litigate custody or display high levels of conflict when interacting with each other. Some scholars speculate that children do well in joint physical custody because their parents voluntarily agreed to share physical custody from the outset and that couples who share custody are fundamentally different from other parents. They are better educated, more cooperative with each other, and better parents.⁴⁵ This view assumes that couples who settle out of court for shared physical custody begin with lower levels of conflict and that the same factors that play a role in their agreeing to share custody may also contribute to the positive outcomes for the children in these families. This speculation leads to the concern that if the mother does not want her child spending more time with the father, or the parents have a lot of conflict, spending more

(Part Two), 27 AM. J. FAM. L. 123 (2013); Linda Nielsen, *Parenting Plans for Infants, Toddlers, and Preschoolers: Research and Issues*, 55 J. DIV. & REMARRIAGE 315 (2014); Linda Nielsen, *Shared Residential Custody: A Recent Research Review (Part Two)*, 27 AM. J. FAM. L. 123 (2013); Nielsen, *supra* note 34; Patrick Parkinson & Judy Cashmore, *Parenting Arrangements for Young Children: A Reply to Smyth, McIntosh and Kelaher*, 25 AUSTL. J. FAM. L. 284 (2011); Richard A. Warshak, *Securing Children’s Best Interests While Resisting the Lure of Simple Solutions*, 56 J. DIV. & REMARRIAGE 57 (2015).

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⁴⁴ For extensive evidence about the impact of the McIntosh et al. study on custody policy, recommendations, and decisions, see Linda Nielsen, *Pop Goes the Woozle: Being Misled by Research on Child Custody and Parenting Plans*, 56 J. DIV. & REMARRIAGE 595 (2015), and Nielsen, *supra* note 34.

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⁴⁵ The consensus report cited a 2011 keynote address by David Martindale as an example of support for this position, however in a personal communication Martindale clarified that in using the phrase “joint custody” he was referring to shared decision-making authority and not shared physical custody arrangements. Warshak, *supra* note 14, at 56 (citing David A. Martindale, *Imposed Joint Custody: Does It Work?* Keynote address at the Annual Program of the New York State Interdisciplinary Forum on Mental Health and Family Law, New York County Lawyers Association (May 2011)). Nevertheless, others have discounted the relevance of shared physical custody research for parents in conflict. See, e.g., Smyth et al., *supra* note 28, at 118.

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time with dad will harm rather than help the child. The corollary concern is that if parents are not on the same page with respect to overnights, especially if they take their dispute to court, overnights will harm young children so they are better off seeing their dad only during the day, at least until they are eighteen months old, and some say until four or five years old.⁴⁶

This hypothesis lacks empirical support. A meta-analysis reported better emotional, behavioral, and academic functioning for children in joint physical custody compared to children in sole custody, regardless of the level of conflict between parents.⁴⁷ Rather than magnify harmful effects of parental conflict, several studies suggested that joint physical custody may protect children from some of the potential negative consequences of conflict.⁴⁸

⁴⁶ See, e.g., *Charting Overnight Decisions for Infants and Toddlers (CODIT)*, available at Jennifer McIntosh's website: <http://childrenbeyonddispute.com/resources-for-parents/>.

⁴⁷ Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16 J. FAM. PSYCHOL. 91, 99 (2002).

⁴⁸ BRAVER & O'CONNELL, *supra* note 4, William V. Fabricius, Sanford L. Braver, Priscila Diaz & Clorinda E. Velez, *Custody and Parenting Time: Links to Family Relationships and Well-Being After Divorce*, in THE ROLE OF THE FATHER IN CHILD DEVELOPMENT 201 (Michael E. Lamb, ed., 5th ed. 2010); William V. Fabricius, Karina R. Sokol, Priscilla Diaz & Sanford L. Braver, *Parenting Time, Parent Conflict, Parent-Child Relationships, and Children's Physical Health*, in PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT 188, 200 (Kathryn Kuehnle & Leslie Drozd eds, 2012); Marjorie Lindner Gunnoe & Sanford L. Braver, *The Effects of Joint Legal Custody on Mothers, Fathers, and Children Controlling for Factors that Predispose a Sole Material Versus Joint Legal Award*, 25 LAW & HUM. BEHAV. 25 (2001); Irwin Sandler, Jonathan Miles, Jeffrey Cookston, & Sanford Braver, *Effects of Father and Mother Parenting on Children's Mental Health in High- and Low-Conflict Divorces*, 46 FAM. CT. REV. 282 (2008). See also Irwin N. Sandler, Lorey A. Wheeler & Sanford L. Braver, *Relations of Parenting Quality, Interparental Conflict, and Overnights with Mental Health Problems of Children in Divorcing Families with High Legal Conflict*, 27 J. FAM. PSYCHOL. 915, 921 (2013) (noting that in their study of high conflict divorces, positive parenting by fathers was associated with children's better mental health when the children spent an average of approximately 12-21 overnights per month with their fathers, but not when the average number of overnights was 2.61 per month). It is important to note, however, that as with most research on the impact of divorcing parents' conflict on child adjustment, Sandler et al. studied older children and not children younger than four years.

Nielsen conducted the most recent, comprehensive peer-reviewed analysis of joint physical custody studies that controlled for parental conflict.⁴⁹ Nielsen concluded that couples with joint custody are no special breed of cooperative, low conflict parents who agreed from the outset to share custody. They do not have lower levels of conflict at the time of separation or in the years following. Joint physical custody is no panacea. It does not reduce levels of parental conflict as some advocates believe. But conflict is not more damaging for children in joint physical custody than those in sole custody. Conflict does not erase the benefits of joint custody.

Nielsen identified sixteen studies that controlled for conflict when comparing children's outcomes on various measures of well-being in joint physical custody and sole physical custody homes. Only the study led by McIntosh reported worse outcomes on some measures for children in joint physical custody. One study found that boys did better and girls worse in joint physical custody when conflict was high. The other fourteen studies reported either better outcomes in joint custody or no differences, even after taking conflict into account.

The fact that joint physical custody children had better outcomes even when a parent initially opposed the plan and even when conflict was high suggests that parental conflict has been oversold as the main factor linked to children's postdivorce adjustment. Nielsen found that in predicting positive outcomes, high quality parent-child relationships are more important than low conflict or cooperative co-parenting. And high quality relationships need sufficient time to develop and flourish.

A. *Should Parental Conflict Trump Shared Parenting Time?*

A policy of automatically restricting children's time with one of the parents when a couple is labeled as "high conflict" brings additional drawbacks and deprives children of the protective buffer of a nurturing relationship with one of their parents.⁵⁰ This

⁴⁹ Linda Nielsen, *Re-examining the Research on Parental Conflict, Coparenting and Custody Arrangements*, 23 PSYCHOL., PUB. POL'Y. & L. 211 (2017).

⁵⁰ See Kelly, *supra* note 10, at 14 (citing ROBERT E. EMERY, THE TRUTH ABOUT CHILDREN AND DIVORCE: DEALING WITH EMOTIONS SO YOU AND YOUR CHILDREN CAN THRIVE (2004)). "Some authors (e.g., Emery, 2004) have

policy sends parents the message that generating or sustaining conflict can be an effective strategy to override shared custody.⁵¹ This discourages civil communication and cooperation, and may reduce children's time with the parent who is less angry, who does a better job of shielding the children from conflict, and who recognizes and supports the children's need for positive relationships with both parents.⁵² Any policy that encourages the instigation and maintenance of conflict between parents by suggesting that such behavior might be rewarded with more parenting time puts the needs of the children second to the desires of whichever

recommended that when the co-parental relationship is highly conflicted that children's time with one of the parents should be restricted as a way of reducing the impact of conflict on the children. Since mothers are most often the "primary" parent and the fathers the non-resident parents, such a recommendation is likely to disproportionately reduce father-child time. It also ignores the reality that mothers are just as often impaired in their functioning and are as hostile as fathers, but nevertheless are designated the primary residential parent. Relying on more current research, others have argued that this broad policy recommendation will deny children adequate time with supportive, competent fathers. The Emery proposal does not differentiate the type of conflict, consider whether the child is exposed to the conflict, identify the parent primarily fueling the conflict, or consider the parenting skills and mental health of each parent. Moreover, such a recommendation ignores the fact that the majority of parents with high conflict after separation substantially diminish their conflict in the first and second year after final court orders (citations omitted).") Notwithstanding Kelly's critique, and the studies in the ensuing twelve years that support opposite recommendations, Emery continues to recommend strong restrictions on contact between "nonresidential parents" and their infants and toddlers. Compare Robert E. Emery, *Emery's Alternative Parenting Plans (Child Custody Schedules)*, http://emeryondivorce.com/parenting_plans.php (last visited Mar. 24, 2017) (presenting sample parenting plans for an "angry divorce" that provide infants and nonresidential parents no more than 6.5 hours of contact per week and no overnights, and toddlers up to the age of three years only one contact period per week, with only two of these contacts in a four-week period being overnights) with ROBERT E. EMERY, *TWO HOMES, ONE CHILDHOOD: A PARENTING PLAN TO LAST A LIFETIME* (2016).

⁵¹ See Joan B. Kelly, *Risk and Protective Factors Associated with Child and Adolescent Adjustment Following Separation and Divorce: Social Science Applications*, in PARENTING PLAN EVALUATIONS, *supra* note 48, at 49; Richard A. Warshak, *Parenting by the Clock: The Best Interests of the Child Standard, Judicial Discretion, and the American Law Institute's "Approximation Rule,"* 41 U. BALT. L. REV. 83 (2011).

⁵² See, e.g., Benjamin D. Garber, *Security by Association? Mapping Attachment Theory onto Family Law Practice*, 50 FAM. CT. REV. 467 (2012). See also Kelly, *supra* note 10.

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parent opposes sharing parenting time. Such a policy contradicts the best-interest standard whose primary purpose is to ensure that the child’s welfare trumps parental entitlements.⁵³ A policy focused on children’s best interests will decrease the risks of harm to them by discouraging rather than encouraging inter-parental conflict.⁵⁴

When considering the impact of parental conflict on the most beneficial parenting plans for children, it is important to recognize the heterogeneity of the dynamics of inter-parental conflict.⁵⁵ The label *high conflict couple* implies that both parents actively engage in conflict. Although this is true in some cases, in other cases the label is a misnomer because one parent may be a victim of the other parent’s rage or attempts to marginalize the parent’s role in raising the child.⁵⁶ In some cases the amount, intensity, and type of conflict resembles the level and type of disagreements over child-rearing decisions that occur normally between married or cohabiting parents who have different opinions about what is best for the child.

B. Recommendations to Reduce Children’s Exposure to Parental Conflict

Because of the consistency of findings that children are more likely to suffer worse outcomes when their parents use them as pawns or when they consistently witness their parents’ frequent,

⁵³ Warshak, *supra* note 51, at 97

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⁵⁴ See, e.g., Sanford L. Braver, *The Costs and Pitfalls of Individualizing Decisions and Incentivizing Conflict: A Comment on AFCC’s Think Tank Report on Shared Parenting*, 52 FAM. CT REV. 175, 178 (2014) (stating: “What policy will instead deincestivize conflict? One, for example, is eliminating the blanket opportunity for one parent to unilaterally veto shared custody.”).

⁵⁵ See Joan B. Kelly, *Parents with Enduring Child Disputes: Multiple Pathways to Enduring Disputes*, 9 J. FAM. STUD. 37 (2003); Kelly, *supra* note 10.

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⁵⁶ See, e.g., Michael E. Friedman, *The So-Called High-Conflict Couple: A Closer Look*, 32 AM. J. FAM. THERAPY 107 (2004); Kelly, *supra* note 55; Kelly, *supra* note 51; Joan B. Kelly & Robert E. Emery, *Children’s Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 FAM. CT. REV. 352, 353 (2003) (noting: “[I]t is not uncommon to find one enraged or defiant parent and a second parent who no longer harbors anger, has emotionally disengaged, and attempts to avoid or mute conflict that involves the child.”); Warshak, *supra* note 43, at 70.

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intense, and ongoing conflict,⁵⁷ the Warshak Consensus Report recommended the following:⁵⁸

- When feasible, parents should be encouraged to create parenting plans through a collaborative, nonadversarial process; that increases the likelihood that both parents will be satisfied with the plan and can give it relatively unambivalent support.
- Interventions such as mediation and parenting coordination can help parents better manage conflict and reduce its negative impact on children.
- When considering the implications of conflict for custody dispositions, courts, operating under the best interest standard, can hear evidence that goes beyond identifying the presence of conflict and sheds light on the dynamics of the conflict, the contributions of each party to it, and the quality of parenting.
- Where tension and conflict accompany transfers of children from one home to the other, rather than reduce children's time with one parent as a response to concerns about parental conflict, consideration should be given to conducting transfers at neutral sites where both parents are not present at the same time.⁵⁹ For instance, the children can be dropped off at daycare by one parent and picked up by the other. This protects children from exposure to parental conflict.
- To the extent that conflict is generated by a father who opposes the mother's efforts to marginalize his participation in raising the young child, efforts should be made to educate the mother about the benefits to children of parenting plans that give more opportunities for the development and strengthening of father-child relationships and that keep fathers more involved.
- Both parents should be encouraged to understand the emotional difficulty that can attend being apart from a young child for extended time periods, difficulty that is multiplied when a parent's employment keeps him or her away from the child for most of the weekdays. Parents should be encouraged to provide regular feedback to each other about the young child's routines, behavior, and

⁵⁷ See generally HETHERINGTON & KELLY, *supra* note 4; Kelly, *supra* note 51, at 59. See also Richard A. Warshak, *Parental Alienation: Overview, Management, Intervention, and Practice Tips*, 28 J. AM. ACAD. MATRIM. LAW. 181 (2015); Richard A. Warshak, *Ten Parental Alienation Fallacies that Compromise Decisions in Court and in Therapy*, 46 PROF. PSYCHOL.: RES. & PRAC. 235, 241-43 (2015).

⁵⁸ Warshak, *supra* note 14, at 57.

⁵⁹ Mary Main, Erik Hesse, & Siegfried Hesse, *Attachment Theory and Research: Overview with Suggested Applications to Child Custody*, 49 FAM. CT. REV. 426, 447 (2011).

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health, and to the extent possible assuage each other's concerns about the child's development when in the care of the other parent.

V. International Expert Consensus Recommendations

The endorsers of the Warshak Consensus Report, all accomplished researchers or practitioners, agree that the current state of the scientific literature supports the following conclusions and recommendations.⁶⁰ This statement should provide strong direction for policy guidelines and decision-making.

1. Just as we encourage parents in intact families to share care of their children, we believe that the social science evidence on the development of healthy parent-child relationships, and the long-term benefits of healthy parent-child relationships, supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children. We recognize that some parents and situations are unsuitable for shared parenting, such as those mentioned in point #7 below.
2. Young children's interests benefit when two adequate parents follow a parenting plan that provides their children with balanced and meaningful contact with each parent while avoiding a template that calls for a specific division of time imposed on all families.
3. In general the results of the studies reviewed in this document are favorable to parenting plans that more evenly balance young children's time between two homes. Child developmental theory and data show that babies normally form attachments to both parents and that a parent's absence for long periods of time jeopardizes the security of these attachments. Evidence regarding the amount of parenting time in intact families and regarding the impact of daycare demonstrates that spending half time with infants and toddlers is more than sufficient to support children's needs. Thus, to maximize children's chances of having good and secure relationships with each parent, we encourage both parents to maximize the time they spend with their children. Parents have no reason to worry if they share parenting time up to 50/50 when this is compatible with the logistics of each parent's schedule.
4. Research on children's overnights with fathers favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home. We find the theoretical and practical considerations favoring overnights for most

⁶⁰ Warshak, *supra* note 14, at 58-60.

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young children to be more compelling than concerns that overnights might jeopardize children's development. Practical considerations are relevant to consider when tailoring a parenting plan for young children to the circumstances of the parents.

Overnights create potential benefits related to the logistics of sharing parenting time. Parents of young children are more likely than parents of older children to be at an early stage in their career or employment at which they have less flexibility and control over their work schedules. Parenting schedules that offer the father and child two-hour blocks of time together, two or three times per week, can unduly stress their contacts. Overnights help to reduce the tension associated with rushing to return the child, and thus potentially improve the quality and satisfaction of the contact both for the parent and child. Overnights allow the child to settle in to the father's home, which would be more familiar to the child who regularly spends the night in the home compared with one who has only one-hour segments in the home (allowing for transportation and preparation for the return trip). Spending the night allows the father to participate in a wider range of bonding activities, such as engaging in bedtime rituals and comforting the child in the event of nighttime awakenings. An additional advantage of overnights is that in the morning the father can return the child to the daycare; this avoids exposing the child to tensions associated with the parents' direct contact with each other.

Nonetheless, because of the relatively few studies currently available, the limitations of these studies, and the predominance of results that indicate no direct benefit or drawback for overnights per se outside the context of other factors, we stop short of concluding that the current state of evidence supports a blanket policy or legal presumption regarding overnights. Because of the well-documented vulnerability of father-child relationships among never-married and divorced parents, and the studies that identify overnights as a protective factor associated with increased father commitment to child rearing and reduced incidence of father drop-out, and because no study demonstrates any net risk of overnights, decision makers should recognize that depriving young children of overnights with their fathers could compromise the quality of their developing relationship.

5. Parenting plans that provide children with contact no more than six days per month with a parent, and require the children to wait more than a week between contacts, tax the parent-child relationships. This type of limited access schedule risks compromising the foundation of the parent-child bond. It deprives children of the type of relationship and contact that most children want with both parents. The research supports the growing trend of statutory law and case law that encourages maximizing children's time with both parents. This may be even more important for young children in

order to lay a strong foundation for their relationships with their fathers and to foster security in those relationships.

6. There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. Maintaining children's attachment relationships with each parent is an important consideration when developing parenting plans. The likelihood of maintaining these relationships is maximized by reducing the lengths of separations between children and each parent and by providing adequate parenting time for each parent. Such arrangements allow each parent to learn about the child's individual needs and to hone parenting skills most appropriate for each developmental period. The optimal frequency and duration of children's time with each parent will differ among children, depending on several factors such as their age and their parents' circumstances, motivations, and abilities to care for the children. Other important considerations include children's unique relationship histories with each parent and their experience of each parent's care and involvement. In each case where it is desirable to foster the parent-child relationship, the parenting plan needs to be sensitive to the child's needs, titrating the frequency, duration, and structure of contact.
7. Our recommendations apply in normal circumstances, for most children with most parents. The fact that some parents are negligent, abusive, or grossly deficient in their parenting—parents whose children would need protection from them even in intact families—should not be used to deprive the majority of children who were being raised by two loving parents from continuing to have that care after their parents separate. Also, our recommendations apply to children who have relationships with both parents. If a child has a relationship with one parent and no prior relationship with the other parent, or a peripheral, at best, relationship, different plans will serve the goal of building the relationship versus strengthening and maintaining an existing relationship.

VI. Aftermath of the Warshak Consensus Report

The list of endorsers and their stature and accomplishments reflect the field's general acceptance of the Warshak Consensus Report's findings as rooted in settled science from more than four decades of research directly relevant to this topic, including seminal studies by many of the endorsers. This research "provides a growing and sophisticated fund of knowledge about the needs of young children, the circumstances that best promote

their optimal development, and the individual differences among children regarding their adaptability to different circumstances, stress, and change.”⁶¹ The endorsements reflect agreement that the report’s conclusions and recommendations are well grounded, generally accepted in the field, and expressed in measured language that is useful to decision makers.

A. *Recent Studies*

After the Warshak Consensus Report was published, three new studies lent additional weight to the report’s conclusions. Reanalyzing the data set used by Tornello et al., Karina Sokol examined the correlation between the absolute number of overnights with father and the incidence of insecure attachments to mother. In her preliminary findings, Sokol found no correlation and concluded that overnights with father do not harm the mother-child relationship.⁶²

The second study is Nielsen’s analysis of joint physical custody studies discussed earlier.⁶³ This analysis affirms the value of shared parenting even when one parent opposes the arrangement and the parents sustain high conflict.⁶⁴

The third recent study is a peer-reviewed study of 116 college students, which found better outcomes for those who, in the first three years of life, spent overnights with their fathers after their parents separated.⁶⁵ The more overnights that infants and

⁶¹ Warshak, *supra* note 14, at 46.

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⁶² Sokol, *supra* note 38. Sokol’s study was presented at a professional conference and the results have not yet appeared in a peer-reviewed journal article. In using the absolute number of overnights, rather than categories of overnight frequency, Sokol avoided potential problems in Tornello et al.’s methodology, which grouped together infants who spent one overnight per week with their fathers with those who lived primarily with their fathers (up to five nights per week). Tornello’s group analyses apparently obscured differences in mother-custody versus father-custody families that affect the results. Note that the composition of the sample and the problems with the attachment measure reported by Tornello et al. (discussed *supra* in text at notes 24, 35-40) equally limit the conclusions that can be drawn from Sokol’s study and its relevance to most separating parents.

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⁶³ Nielsen, *supra* note 49, and accompanying text.

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⁶⁴ *Id.*

⁶⁵ William V. Fabricius & Go Woon Suh, *Should Infants and Toddlers Have Frequent Overnight Parenting Time With Fathers? The Policy Debate and New Data*, 23 PSYCHOL., PUB. POL’Y. & L. 68 (2017).

toddlers spent with their fathers, up to half of all overnights, the higher the quality and the more secure were their long-term relationships with fathers *and* mothers. The young adults who had more overnights in infancy felt closer to both parents and were more certain that they were important to their parents. Overnights away from mothers did not harm mother-child relationships.⁶⁶ But having more daytime visits in mid-childhood did not compensate for fewer overnights in early childhood. The data failed to support the hypothesis that joint physical custody kids did better because their parents were better educated, had less conflict, and agreed on the parenting plan. The study concluded, “Even when parents present with high conflict, intractable disagreement about overnights, and a child under 1 year old, both parent-child relationships are likely to benefit in the long term from overnight parenting time up to and including equally-shared overnights at both parents’ homes.”⁶⁷ Instead of discouraging frequent overnights for litigating parents, this study supports encouraging more overnights to overcome the potential harmful impact of parent conflict on father-child relationships.⁶⁸

⁶⁶ Given the exhaustion parents experience before their infant regularly sleeps through the night, having the father share in nighttime caregiving may be expected to benefit the mother in ways that also benefit the infant. This common sense proposition is supported by a study reporting that when fathers were more involved in daytime and nighttime caregiving for three-month-old infants, both mothers and infants were more likely to sleep through the night at six months. Liat Tikotzky et al., *Infant Sleep Development from 3 to 6 Months Postpartum: Links with Maternal Sleep and Paternal Involvement*, 80 *MONOGRAPHS SOC’Y RES. CHILD DEV.* 107 (2015).

⁶⁷ Fabricius & Suh, *supra* note 65, at 80-81. Because the study relied on recollections of parents and children regarding the number of overnights that took place in the past, the possibility of biased recall must be considered. Regarding this possibility, the study’s authors point to the high correlation between the reports of mothers and fathers regarding parenting time during infancy and childhood and between the reports of parents and their young adult children regarding parenting time during childhood and adolescence. Also, this study does not report about child adjustment in the earlier years. For instance, it is possible that overnight separations stressed the mother-child relationship in earlier years, but this effect was temporary and did not extend into later years.

⁶⁸ *Id.* (emphasis added) (noting: “[T]he finding that the association between overnights and parent-child relationships was the same for parents with low versus high conflict replicates Fabricius and Luecken’s (2007) findings for father-child relationships when parents separated before children were 16 years old. Both studies suggest that *more parenting time is needed to overcome the*

B. *Reactions to the Warshak Consensus Report*

In addition to the 110 researchers and practitioners who endorsed the Warshak Consensus Report, prominent social scientists, such as Joan Kelly, cited the report favorably in their presentations and literature reviews.⁶⁹ The paper has been translated into at least eighteen languages and has informed legislative deliberations throughout the United States and parliamentary deliberations in several countries including the United Kingdom, Canada, Israel, Finland, Romania, Croatia, and Sweden. Nearly four years after its publication the Warshak Consensus Report continues to be one of the most downloaded papers from the journal’s website.

Michael Lamb’s 2016 summary of his understanding of the relevant literature is fully consistent with the conclusions reached by Warshak and the endorsers of the consensus report: “When both parents have established significant attachments and both have been actively involved in the child’s care, research suggests that overnight visits will consolidate attachments and child adjustment, not work against them.”⁷⁰

Similarly, in her work after the consensus report and previous to it Kelly offered recommendations consistent with the consensus report. Kelly argued against reducing the child’s time with the father or reducing the father’s caregiving for the child at bedtime, when the child awakes during the night, and in the morning. Rather than conclude that parental conflict should trump

harmful effects of parent conflict on father-child relationships, as illustrated in Figure 5A (e.g., in low-conflict families a father-child relationship score of .80 was achieved at ‘3 to 5’ overnights [every two weeks], but in high conflict families it took ‘6 to 7’ overnights to achieve that score).”).

⁶⁹ Kelly, *supra* note 10, at 11 (referring to the consensus report’s “in-depth analysis of 16 shared parenting studies.”) Dr. Kelly, a prominent authority on divorce, also coauthored an earlier article on overnights with McIntosh. It is noteworthy that Kelly’s analysis of the literature, *supra*, at 9, agreed with Warshak, *supra* note 14, on the important issue of whether young children develop an attachment hierarchy in which mothers are predominant: “Consistent with other recent studies, there was no support for the primacy of the mother as an attachment figure in predicting future outcomes. Nor was there support for the belief that infants and toddlers have a gender bias in attachment formation or develop an attachment hierarchy in which mothers are consistently preferred.”

⁷⁰ Lamb, *supra* note 39, at 180.

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joint physical custody, Kelly instead promoted other solutions that reduce the child’s exposure to conflict.⁷¹

Along the same lines, in 2016 Marsha Kline Pruett et al. concluded that parental conflict should contraindicate frequent overnights *only if* the conflict interferes with the child’s care.⁷² These six authors are among the scholars who agree with the consensus report’s conclusion that the mere presence of conflict between parents over how to share care of their child (i.e., a dispute over custody) is insufficient reason to be cautious about overnights. Instead, decision makers should attend to the nexus between the expressions of conflict and their impact on the child.

The Warshak Consensus Report anticipated that some colleagues would disagree with its opinions and recommendations. **But in the nearly four years since its publication, no article, including the only critique of the consensus report, by McIntosh et al., has explicitly identified any errors in the report or disputed any of its conclusions and recommendations.** Confronted with the consensus report’s critiques of their studies, one might expect researchers either to show where the consensus report and other scholars’ critiques are mistaken or to modify their previous inter-

⁷¹ See, e.g., Kelly, *supra* note 10, at 15 (stating: “Rather than restricting appropriate father-child relationships, other interventions and remedies designed to reduce high conflict should be universally available and provided soon after separation.”). For a similar view, see Nicole E. Mahrer, Irwin N. Sandler, Sharlene A. Wolchik, Emily B. Winslow, John A. Moran, & David Weinstock, *How Do Parenting Time and Interparental Conflict Affect the Relations of Quality of Parenting and Child Well-Being Following Divorce?*, in PARENTING PLAN EVALUATIONS (2D ED.), *supra* note 28, at 63, 70, who, based on their understanding of the literature and on Sandler, Wheeler, & Braver’s study, *supra* note 48, state that “although high quality parenting does not negate the pathological effects of interparental conflict on children’s well-being, high quality parenting by either parent can be a protective factor when parents have moderate or greater levels of contact.” Mahrer et al. conclude, *supra* at 63, “Recommendations should not decrement parenting time of parents with good quality relationships or the potential for good quality relationships with their children because of a high level of interpersonal conflict between the parents.”

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⁷² Pruett et al., *supra* note 35, at 97 (second emphasis added) (concluding: “The small group of relevant studies to date substantiates caution about *high-frequency* overnight time schedules in the 0– to 3–year period when the child’s relationship with a parent is not established (e.g., parents never lived together and nonresidential parent spent little to no time with the baby), or when parents cannot agree on how to share care of the child *and their conflict interferes with the child’s care.*”).

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pretations of their data and communicate their amended conclusions to colleagues and the general public.

Neither McIntosh et al. nor Tornello et al. have acknowledged the validity of the major concerns raised about their studies and about the way their results have been reported and interpreted. McIntosh et al. did concede that their three-item visual monitoring scale has “relatively low” reliability and is a “weak link” in their study.⁷³ This concession is, itself, weak given the problems with this measure and its interpretation, the authors’ failure to address the critiques of their other three untrustworthy measures, and their failure to retract most of the conclusions and recommendations emanating from the faulty measures.

Instead, McIntosh et al. have continued to report that the infants in their study with weekly overnights had “higher levels of emotionally dysregulated behaviors”⁷⁴ and showed “a greater cluster of stress regulation problems compared with infants with fewer overnight stays,” and that “regardless of the context of their parents’ separation, more frequent overnight stays might be more challenging for emotional regulation processes in young children under 4 years of age than for children aged 4 years and over.”⁷⁵ These continued assertions of McIntosh et al. are the equivalent of reporting a baby’s weight on a broken scale while concealing the fact that the scale is faulty.

In response to the consensus report and other critiques, McIntosh et al. have tried to bolster confidence in the “veracity and reliability” of their study’s findings, by repeatedly claiming that Tornello et al. replicated their study.⁷⁶ This is incorrect. Tornello

⁷³ McIntosh et al., *supra* note 30, at 116.

⁷⁴ Smyth et al., *supra* note 28, at 153.

⁷⁵ McIntosh et al., *supra* note 30, at 113.

⁷⁶ *Id.* (“One standard approach to assessing the veracity and reliability of findings is in their replication. Recently, Tornello and colleagues conducted an investigation similar to ours, using a large U.S. sample of children. They replicated many of the Australian findings. Specifically, they found: . . . (b) ‘frequent infant overnights were significantly related to attachment insecurity assessed at age 3’ . . .” (citations omitted)). Yet McIntosh et al., *id.*, at 112, state clearly that their study did not measure attachment (“Our study, however, was not a study of attachment.” And, “We did not, and could not examine attachment, simply because attachment data were not part of the longitudinal dataset we employed, namely the Longitudinal Study of Australian Children.”) *See also* Mar-

et al. used different measures with a different population in their study. Further, as previously noted, Sokol’s preliminary analysis of the data in Tornello et al. found no correlation between overnights and insecure attachments in infants.⁷⁷ In one regard, however, McIntosh et al. made a significant concession by acknowledging that their findings “do not substantiate cautions against *any* overnight care in healthy family circumstances.”⁷⁸

Although the Warshak Consensus Report has clarified the social science relevant to parenting plans, it has not put an end to calls for blanket restrictions. In 2016 Robert Emery, writing with six coauthors for a professional audience, stated: “Four studies constitute an inadequate body of research upon which to speculate about policy implications.”⁷⁹ But the same year Emery, writing on his own for a general audience, continued to assert that his study with Tornello linked frequent overnights with more insecure mother-infant attachments and supported recommendations and guidelines for blanket restrictions. Stating that his was the world’s “biggest and best” study relevant to overnights, Emery wrote: “So, including my work, three of four studies raise concerns about babies spending too many overnights away from the primary caregiver in the first year to eighteen months of life.”⁸⁰

McIntosh also continues to support blanket restrictions. On her website she posted a chart and profile to guide parents and professionals making overnight decisions.⁸¹ Although not in-

sha Kline Pruett, Jennifer E. McIntosh, & Joan B. Kelly, *Parental Separation and Overnight Care of Young Children, Part I: Consensus Through Theoretical and Empirical Integration*, 52 FAM. CT. REV. 240, 249 (2014) (acknowledging with respect to five studies, including McIntosh et al. and Tornello et al.: “Each used different samples and different data sources, asked different questions about how outcomes are related to overnight time schedules for infants, and explored different schedules and amounts of overnight time.”). See also Smyth et al., *supra* note 28, at 153 (referring to findings from McIntosh et al., *supra* note 18, and Tornello et al., *supra* note 19, as “replicated findings for infants” thus repeating the error of identifying outcomes from the two studies as “replicated findings” when in fact they are not.).

⁷⁷ Sokol, *supra* note 38.

⁷⁸ McIntosh et al., *supra* note 30, at 118.

⁷⁹ Robert E. Emery et al., “*Bending*” Evidence for a Cause: *Scholar-Advocacy Bias in Family Law*, 54 FAM. CT. REV. 134, 144 (2016).

⁸⁰ EMERY, *supra* note 50.

⁸¹ CODIT, *supra* note 46. Also, Pruett, during her tenure as AFCC president, has given a series of AFCC-sponsored presentations (e.g., <http://afccmn>

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tended for use as a diagnostic instrument or as the sole basis for decisions the CODIT (for Charting Overnight Decisions for Infants and Toddlers) asserts, “Even when all parenting conditions are met, high numbers of overnights (more than weekly) are not generally indicated for young infants 0-18 months subject to family law disputes.”⁸² This guideline proposes a rebuttable presumption against more than one overnight per week for children younger than eighteen months, even when the parents consistently and sensitively meet the children’s needs. By contrast, in their commentary about the CODIT, the authors of a recent study on the long-term impact of overnights noted that their data led to a conclusion that directly opposes the CODIT recommendations: “The findings also indicate that normal parent conflict, disagreements about overnights, and children under 1 year of age are not circumstances that should require caution; on the contrary, more overnight parenting time appears to be needed in those cases.”⁸³

Although lacking a scientific foundation, CODIT’s presumption in practice would give most mothers the power to deprive children of more than one overnight a week with their fathers for the first one-and-a-half years. To further limit the child’s interactions with the father around bedtime rituals and morning routines the mother need only register an objection, thus creating a custody dispute. The mother’s preference prevails even if her objection is capricious, even if her motives are vindictive, and even if the father demonstrates superior parenting.

The CODIT is a subjectively rated checklist with no known reliability or validity. For instance, child adjustment is assessed by non-quantified criteria such as “excessive clinging on separation,” “frequent crying,” “aggressive behavior,” and “low persis-

.org/index.php/events/item/113-feb15hdc) in which she presents and advocates the use of the CODIT. Unfortunately some attendees at Pruett’s presentations, including judges and mediators, developed the false impression that the CODIT, and the articles by three authors from which it is said to be adapted, represent a consensus position of an AFCC 32-member Think Tank or AFCC policy. This is incorrect. The CODIT represents the positions of its authors and not a larger group consensus. For an example of such misunderstanding, see the State of Oregon Judicial Department website: <http://www.courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/Birth-Through-Three.aspx>.

⁸² *Id.* at 4.

⁸³ Fabricius & Suh, *supra* note 65, at 80.

tence in play & learning” with no anchors to distinguish between troubling behavior within normal limits and atypical behavior. Listing behaviors such as these in a tool to guide decisions about overnight parenting plans assumes that troubling behaviors in an infant or toddler that persist more than two weeks are associated with too much overnights and can be eliminated by restricting overnights. The CODIT includes multiple factors that allow gatekeeping parents to use this tool to restrict their children’s overnights with the other parent.

C. *Misunderstandings of the Warshak Consensus Report*

Since its publication nearly four years ago, the Warshak Consensus Report has at times been misunderstood and misreported. For example, Pruett et al.’s position concurred with the position of the consensus report about the importance of the coparenting relationship when considering decisions about shared parenting. Yet Pruett et al. left the impression that the consensus report failed to consider the coparenting relationship:

Warshak (2014) argues that children benefit from a more evenly balanced amount of time between parents, and that this should be protected regardless of the co-parenting dynamic, since reducing one parent’s time in the face of conflict favors the parent with more access as that parent can perpetuate conflict as an excuse not to share parenting. This may be true, but it ignores the needs of the infant or toddler from a child-centric perspective, if the shared parenting results in the child’s consistent exposure to conflict.⁸⁴

The Warshak Consensus Report offered no such generalization or rationale for shared parenting. And as explained earlier, reducing a child’s time with a parent when the parents are in conflict is hardly “child-centric.”⁸⁵ A blanket policy provides an incentive to a parent to escalate and involve children in conflict if the parent believes that initiating and sustaining conflict is a path to winning sole physical custody.⁸⁶ In many cases there are better ways to protect a child from frequent exposure to conflict than to

⁸⁴ Pruett et al., *supra* note 35, at 96.

⁸⁵ See *supra* notes 46-57 and accompanying text.

⁸⁶ Braver, *supra* note 54, at 178.

disproportionately deprive the child of important time with a parent.⁸⁷

Contrary to Pruett et al.’s assertion, the Warshak Consensus Report explicitly identified coparenting dynamics as one among several factors to consider in reaching a custody decision, a position that Warshak has consistently held in his publications during the past twenty-five years.⁸⁸ Naturally, shared parenting and overnighting are not for all families. On this point the consensus report is clear:

Some circumstances depart significantly from the norm and do not lend themselves to the same general recommendations that apply to the majority of parenting plan decisions. These circumstances include a history of intimate partner violence, a history or credible risk of neglect, physical abuse, sexual abuse, or psychological abuse toward a child, manifestations of restrictive gatekeeping such as persistent and unwarranted interference with parenting time (Austin, Fieldstone, & Pruett, 2013; Pruett, Arthur, & Ebling, 2007; Pruett et al., 2012; Warshak et al., 2003), a history of child abduction, a child’s special needs (e.g., cystic fibrosis or autism), and a significant geographical separation between the parents.⁸⁹

Note that in stressing the importance of coparenting dynamics, the Warshak Consensus Report cited three of Pruett’s articles. The report unambiguously and repeatedly acknowledged the importance of the coparenting relationship and specifically recommended that courts not only identify the presence of conflict, but also consider evidence that “sheds light on the *dynamics*

⁸⁷ See, e.g., Kelly, *supra* note 10, at 15 (stating: “Rather than restricting appropriate father-child relationships, other interventions and remedies designed to reduce high conflict should be universally available and provided soon after separation.”). Also see *supra* text accompanying note 58.

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⁸⁸ See, e.g., Warshak, *supra* note 51 (supporting a multi-factored best-interest standard). See also Warshak, *Parental Alienation*, *supra* note 57, at 218-222 (describing the rationale for courts to find it in children’s best interests to reduce their time with a parent who denigrates the other parent to the child, encourages the child to reject the other parent, interferes with the court-ordering parenting plan, and in other ways acts as a restrictive gatekeeper). This position is consistent with Pruett’s position on gatekeeping: William G. Austin, Linda Fieldstone, & Marsha Kline Pruett, *Bench Book for Assessing Parental Gatekeeping in Parenting Disputes: Understanding the Dynamics of Gate Closing and Opening for the Best Interests of Children*, 10 J. CHILD CUSTODY 1, 12 (2013) (“Limiting time with the parent exerting unjustified RG [restrictive gatekeeping] may be a consideration, especially when all else fails.”).

⁸⁹ Warshak, *supra* note 14, at 58.

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of the conflict, the contributions of each party to it, and the quality of parenting.”⁹⁰

Pruett et al. also misunderstood why the Warshak Consensus Report opposed a blanket policy of allowing one parent to veto joint physical custody merely by claiming a conflicted relationship with the other parent. The report’s opposition to such a policy has nothing to do with a concern that it rewards the parent who has more contact with the children. The report proposes that conflict between parents should not automatically eliminate the possibility that children can benefit from shared parenting. The Warshak Consensus Report’s viewpoint is child-centric in protecting children by reducing a parent’s motivation to initiate, sustain, and escalate conflict. Moreover, by statute a majority of states instruct courts to consider coparenting behavior (using various labels for the concept) as one factor in determining the custody arrangement that serves the children’s best interests.⁹¹ The parent who perpetuates conflict may find that such behavior, rather than reducing the other parent’s time with the children, has the opposite outcome.⁹² Sanford Braver and his colleagues found that the public favors a policy that would reduce parenting time for the parent who is identified as the primary instigator of conflict.⁹³

VII. Meaning and Value of the Warshak Consensus Report Endorsements

McIntosh et al. tried to diminish and distract from the meaning and value of the 110 endorsements of the Warshak Consensus Report. McIntosh et al. asserted that the accomplished scholars and practitioners who endorsed the report put their reputations and integrity on the line by signing a document based solely on

⁹⁰ *Id.* at 57 (emphasis added).

⁹¹ Milfred D. Dale, Cooperative & Friendly Parent Statutes (Jan. 2017) (unpublished manuscript available from Milfred Dale, Email: drbuddale@outlook.com) (listing 30 states with “friendly parent” statutes).

⁹² See, e.g., Austin et al., *supra* note 88, at 12.

⁹³ Sanford L. Braver, Ira M. Ellman, Ashley M. Votruba, & William V. Fabricius, *Lay Judgments About Child Custody After Divorce*, 17 PSYCHOL., PUB. POL’Y. & L. 212 (2011). See also Braver, *supra* note 54, at 178 (noting that such a policy would decrease incentives to promote conflict and instead “would make it worthwhile for the angry parent to bury the hatchet.”).

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“sentiment” and not science, and that the endorsers did not necessarily agree with the evidence for the conclusions and recommendations that they endorsed.⁹⁴ This is incorrect.⁹⁵ The

⁹⁴ McIntosh et al., *supra* note 30, at 111, 117.

⁹⁵ See *supra* text accompanying notes 58 and 60, for the full text of the consensus report’s conclusions and recommendations. Note that these consensus opinions include multiple references to the evidence discussed in the report and to the accuracy and validity of the literature review that preceded the section titled “Conclusions and Recommendations.” Following are some excerpts of such references in the statement endorsed by the 110 researchers and practitioners (all emphases added to highlight references to the research and to the evidence): “*Research allays such concerns. . . . The research reviewed earlier on parenting time in intact families shows Combined with the daycare studies, this research should put to rest the idea that children are inevitably harmed by extended separations from their mothers. . . . The results of the 16 studies relevant to parenting plans generally support rather than oppose shared parenting and overnights for young children. But predominantly the studies show little direct impact of overnights in the short run. The three studies that often are cited as evidence for the harmful effects of greater father involvement with young children actually found mixed or ambiguous results perhaps because the measures used were inadequate by scientific standards. . . . The research on children being raised by parents who live apart from each other, in the larger context of scientific knowledge about the factors that foster optimal child development and the formation and maintenance of healthy parent–child relationships, offers guidelines that should inform decision makers and those who assist them, such as parents, mediators, child custody experts, lawyers, and judges.*” Warshak, *supra* note 14, at 58. And, “To the extent that policy and custody decisions seek to express scientific knowledge about child development, *the analyses in this article should receive significant weight by legislators and decision makers. . . . [W]e believe that the social science evidence on the development of healthy parent–child relationships, and the long-term benefits of healthy parent–child relationships, supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children. . . . In general the results of the studies reviewed in this document are favorable to parenting plans that more evenly balance young children’s time between two homes. Child developmental theory and data show that babies normally form attachments to both parents and that a parent’s absence for long periods of time jeopardizes the security of these attachments. Evidence regarding the amount of parenting time in intact families and regarding the impact of daycare demonstrates that spending half time with infants and toddlers is more than sufficient to support children’s needs. Thus, to maximize children’s chances of having a good and secure relationship with each parent, we encourage both parents to maximize the time they spend with their children. . . . Research on children’s overnights with fathers favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home.*” *Id.* at 59. And, “*The research supports the growing trend of statutory law and case law*

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endorsers received and read the whole paper. As would be expected, none would have endorsed the paper if they agreed with the conclusions but disagreed with the evidence that supported the conclusions. In fact, the conclusions referred explicitly and extensively to the evidence reviewed and analyzed throughout the paper. Rather than enumerate the significant contributions of the endorsers to the scientific knowledge that informed the consensus report, the reader is encouraged to note the names of the scholars and their credentials listed at the end of the consensus report. The qualifications of the endorsers to vet the literature reviews and analyses and to judge the conclusions and recommendations that flow from those analyses are beyond dispute.

Some have questioned the value of publishing a paper with scientists' endorsements.⁹⁶ But such papers are not unprecedented. An example is the 1997 article co-signed by 18 experts that clarified implications of social science evidence for custody arrangements.⁹⁷ Some of the 18 co-signers subsequently joined a group of 28 researchers and practitioners who, concerned about the possibility of biased summaries of research, recommended:

The best safeguard against this possibility is a summary that has the consensual endorsement of a large number of experienced and respected social science researchers, as well as enlightened consumers or practitioners of this literature, in this case mental health professionals, such as custody evaluators, mediators, etc. who work with divorcing and divorced families.⁹⁸

that encourages maximizing children's time with both parents. This may be even more important for young children in order to lay a strong foundation for their relationships with their fathers and to foster security in those relationships *There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. . . . Rather it is our conviction that our analyses meet the test of scientific validity and reliability, and thus are trustworthy in the legal sphere.*" *Id.* at 60.

⁹⁶ Emery et al., *supra* note 79, at 140.

⁹⁷ Lamb et al., *supra* note 5.

⁹⁸ Brief of Richard A. Warshak et al. as Amici Curiae on behalf of LaMusga Children, *In re Marriage of LaMusga*, 88 P.3d 81 (Cal. 2004) (No. S107355), <http://www.warshak.com/publications/articles-comp.html>. The 27 co-signers are: Constance R. Ahrons, William G. Austin, Sanford L. Braver, James H. Bray, Sidney J. Brown, David Demo, Robert Emery, William Fabricius, James R. Flens, Michael A. Fraga, Michael Gottlieb, Lyn R. Greenberg, Neil S. Grossman, John Guidubaldi, Leslye Hunter, Joan B. Kelly, Michael Lamb, Jay Lebow, Patrick McKenry, Eva Baranoff McKenzie, Nancy Williams Olesen,

The Warshak Consensus Report, with its 110 cosigners, clarified the social science relevant to parenting plans for young children and implemented the above recommendation by issuing the report with consensual endorsement.

Having the paper reviewed by the endorsers of the Warshak report brought two benefits. The first was the benefit of feedback and vetting from this group on the consensus report's analysis of the bodies of literature on attachment, daycare, parenting plans, and divorce. The endorsers included prominent international authorities in attachment, principal investigators for the celebrated NICHD Study of Early Child Care and Youth Development, and leading researchers who have studied the impact of divorce since the mid-1970s. The second benefit was that this large, blue-ribbon panel of signatories—with their outstanding careers and statuses as social scientists—brings attention to decision makers for the report's conclusions and recommendations.

In sum, the consensus report does not maintain that its conclusions are scientific merely because a large number of well-qualified researchers and practitioners endorse the conclusions—science is not settled at the ballot box. Rather, the consensus report reflects that 110 highly accomplished professionals, based on their understanding of the literature and on their professional experiences, accept the report's research-based conclusions.

VIII. Conclusion

Warshak, with the review and endorsement of 110 researchers and practitioners, analyzed more than four decades of research and issued a peer-reviewed consensus report on parenting

Kay Pasley, Marsha Kline Pruett, Isolina Ricci, Gary R. Rick, John W. Santrock, and Jan Tyler. *See also* Donald N. Bersoff, *APA's Amicus Briefs: Informing Public Policy Through the Courts*, 44 *MONITOR ON PSYCHOL.* 5 (2013). In this article a past president of the American Psychological Association (APA) explained the purpose of amicus briefs submitted by the APA: "Amicus briefs are a visible and effective means for educating legal decision-makers about social science data relevant to the issues of our time." *See also* Bruce Sales, *Editorial*, 1 *PSYCHOL., PUB. POL'Y. & L.* 243, 245 (1995) (explaining the significance of a cosigned amicus brief: "It had instant scientific credibility, not only because of its authors' credentials and reputations, but also because it was cosigned by 43 other scholars.").

plans for young children.⁹⁹ As intended, the report stemmed a tide of misinformation that threatened to resurrect long-discarded myths about child development and enshrine them in professional practice and family law. An Australian investigative journalist found that the report “changed the way courts across the world now deal with such custody matters.”¹⁰⁰ The list of endorsers and their professional accomplishments reflect the widespread acceptance of the consensus report’s findings that favor shared parenting and overnighting for young children under normal circumstances. Nearly four years after its publication, the conclusions and recommendations of the Warshak Consensus Report remain supported by science.

⁹⁹ Warshak, *supra* note 14.

¹⁰⁰ Bettina Arndt, *Are Dads Still Being McIntoshed?*, PRAWN OF THE PATRIARCHY (May 16, 2017), <https://www.fighting4fair.com/uncategorized/are-dads-still-being-mackintoshed/>.

Re-examining the Research on Parental Conflict, Coparenting, and Custody Arrangements

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This article addresses 4 questions: First, how much weight should be given to parental conflict and the quality of the coparenting relationship in determining parenting time—specifically with respect to children’s living at least 35% time with each parent in joint physical custody? Second, to what extent are low conflict and cooperative coparenting connected to better outcomes for children? Third, to what degree are children’s outcomes linked to whether their parents take their custody disputes to court or have high legal conflict? Fourth, is joint physical custody associated with worse outcomes than sole physical custody for children whose parents have a conflicted, uncooperative coparenting relationship? Recent research does not support the idea that conflict—including high legal conflict—should rule out joint physical custody as the arrangement that best serves children’s interests. Parents with joint physical custody do not generally have significantly less conflict or more cooperative relationships than parents with sole physical custody. Conflict and poor coparenting are not linked to worse outcomes for children in joint physical custody than in sole physical custody. The quality of the parent–child relationship is a better predictor than conflict of children’s outcomes, with the exception of the most extreme forms of conflict to which some children are exposed. While continuing our efforts to improve parents’ relationships with one another, we should become more invested in helping both parents maintain and strengthen their relationships with their children.

Keywords: coparenting, divorce conflict, custody conflict

Parental conflict and the quality of the coparenting relationship generally play pivotal roles in child custody evaluations and court decisions, especially with regard to children’s living with each parent at least 35% of the time in joint physical custody (JPC). When separated parents have considerable conflict and get along poorly as coparents, it is often assumed that their children cannot benefit from JPC and may, in fact, have worse outcomes than if they lived in sole physical custody (SPC) with one parent. In addressing this issue, this paper focuses on four questions: First, to what extent do low conflict and a cooperative coparenting relationship benefit children? Second, do children whose parents are in high legal conflict or who take their custody disputes to court have worse outcomes than children whose parents reach a custody agreement without high legal conflict? Third, if children live with each parent at least 35% of the time in JPC, are the outcomes significantly better if their parents have little to no conflict and work closely together as a friendly coparenting team? That is, are conflict and poor coparenting more strongly associated with worse outcomes for children in JPC than in SPC families? Fourth, do JPC parents have significantly less conflict and more communicative, cooperative coparenting relationships? If we base our answers to these

questions on outdated, flawed, misrepresented, or incomplete data, then we are allowing the conflict and coparenting “tail” to wag the custody “dog.”

Have You Been Woozled?

Professionals involved in custody issues are too often bamboozled or “woozled” by research in ways that can lead them astray (Cashmore & Parkinson, 2014; Johnston, 2007; Ramsey & Kelly, 2006). Woozling is the process by which faulty, partial, or misinterpreted research is repeated and misrepresented so often that it becomes widely accepted as true. The idea or the belief that becomes widely accepted, even though it is not firmly grounded in the research, is called a woozle. The process of woozling and its influence on child custody decisions have been extensively described elsewhere (Nielsen, 2014a, 2015a). The present paper illustrates four of the ways that the research on conflict and coparenting has been woozled. First, only those studies that support one point of view are repeated and publicized, overlooking or underplaying studies that support the opposite view. Second, findings from particular studies are exaggerated and sensationalized. Data are presented out of context. Serious flaws go unmentioned. Sweeping and unsubstantiated generalizations are offered about the importance of selected findings. Third, a study’s findings can be reported incorrectly, sometimes making claims that are the exact opposite of the data or making claims based on data that were not even included in the study. Fourth, a few prestigious or influential people repeatedly promote one point of view, especially in the media, as being representative of the research on the topic.

Some of the data reported in this article were previously reported in Nielsen’s articles that have been cited in this paper.

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Woozle Prevention: Recognizing the Limitations of the Research

To reduce the likelihood of woozling the data, five limitations should be kept in mind in regard to the research studies discussed in this paper. First, because all of the studies are correlational, no study can prove that conflict, or the coparenting relationship, or the quality of the parent–child relationship causes better or worse outcomes for children. Nevertheless, correlational studies are valuable because they show us the strength of the relationship between variables and help us make more accurate predictions. More sophisticated correlational techniques, such as those used in many of the studies in the present paper, calculate the correlations after accounting for other factors that might otherwise influence the strength of the correlation. Correlations can also be presented as path analyses which are especially valuable because they assess the strength of the direct and of the indirect relationships between multiple factors. In regard to correlation and causality, when the present paper discusses the “impact” or the “effects” in a study, this refers to the statistical significance of findings and does not imply causality between the variables.

Second, the studies measure conflict and the quality of the coparenting relationship in different ways. Some measure conflict separately from the coparenting relationship, whereas others include conflict as one of several aspects of the overall coparenting relationship. Some use standardized scales that have been specifically designed to assess conflict or the coparenting relationship between separated parents. Other researchers create their own set of questions.

More important still, for the few studies that have specifically asked about conflict that is “violent,” no distinctions were made between the various kinds of physical aggression or violent behavior. Most of these studies simply ask the parents, most often only the mother, whether there was any “physical violence” or “domestic violence” before the separation. This limitation is important because there are two distinct categories of physical aggression which should never be considered comparable, especially not in regard to child custody decisions (Hardesty et al., 2015). The most uncommon, but most damaging, physical conflict is referred to as coercive controlling violence, intimate partner terrorism, or battering. This longstanding pattern of emotionally and physically dominating, intimidating and abusing one’s partner is typically linked to the abuser’s psychological disorders, substance abuse, or both. In contrast, the more common and least damaging physical conflict is referred to as “situational couple aggression” or “separation instigated violence.” In these situations the physical anger is not characteristic of the relationship and often only occurs at the time of separation. These forms of physical aggression are not linked to negative outcomes for children and rarely continue after the parents separate (Kelly & Johnson, 2008). Extensive discussions of the various kinds of violence and custody issues are available elsewhere (Kelly & Johnson, 2008; Rossi, Holtzworth-Munroe, & Rudd, 2016).

Third, the studies differ in quality in regard to sample size, representative sampling, design, and sophistication of the statistical analyses. A major limitation is that the data about the children’s well-being, the level of conflict between the parents, and the quality of the coparenting relationship only come from the mothers

in most studies. Studies that collect data from both parents are relatively rare and merit special attention.

Fourth, some studies do not specify what “joint physical custody” means in terms of the specific amount of time the children are actually living with each parent. Especially in studies that were conducted several decades ago, the term “joint custody” typically did not distinguish between physical custody and legal custody. Legal custody refers to the decision making responsibilities of each parent in regard to education, health care, religion, and other legal issues regarding the children’s care. In contrast, physical custody refers to how much time the children spend either living with each parent or “visiting” with a nonresidential parent. In the present paper the term “joint physical custody” (JPC) is only used for those studies that specified that the children were actually living with each parent at least 35% of the time.

Fifth, most of the conflict studies categorize the parents into low, moderate or high conflict groups—largely based on only the mothers’ answers to the particular scale the researchers have used. Far fewer studies actually measure the extent to which the children are exposed to or involved in the conflicts. This is important because it is the frequent exposure to or ongoing involvement in the conflict, not the level of conflict per se, that is linked to worse outcomes for children (Cummings & Davies, 2010). For example, it is possible that in a low conflict family the children are exposed to more conflict than in higher conflict families. For this reason, the few studies that measured the extent to which the children felt caught in the middle of the conflict are given special attention in the present paper.

Though not a limitation of the studies in this paper, another concern is whether findings that are statistically significant have an effect size that is too small to have any practical, “real-world” value. Effect sizes can be measured by correlations between one or more variables, by the strength of the differences between group means (Cohen’s *d*), or by odds/risk ratios (Cohen, 1988). Many people may not realize, however, that effect sizes in social science and in medical studies are often relatively small, yet they can have important implications for large numbers of people (Ferguson, 2009). In fact many public health policies and treatment protocols are based on research findings with correlations in the range of only .15 to .30, which are considered weak to moderate (Meyer et al., 2001).

This information is important because some social scientists incorrectly report studies with small effect sizes as showing “no relationship” between the variables. For example, one influential meta-analysis that assessed the correlation between children’s well-being and the frequency of contact with their nonresidential fathers (Amato & Gilbreth, 1999) has been reported (Emery, 2014) as finding that: “father contact made *zero* difference” (p. 87). But, as Amato and Gilbreth emphasized in their paper, despite the small effect sizes, their findings do have practical significance in respect to the importance of father’s contact and children’s well-being:

Although child support, feeling close and active parenting are significantly associated with child outcomes, readers may be concerned about the relatively small effect sizes in Table 2. It is worth remembering, however, that even small effects sizes can have substantively important consequences. Consider a hypothetical sample of 100 children with the following characteristics: (a) Half the children have an authoritative father and half do not and (b) 30% of children without authoritative fathers experience a particular behavior problem com-

pared with 20% of those with authoritative fathers. This would mean that authoritative fathering is associated with a one third decline in the probability of experiencing the problem (or a 42% decline in the odds of experiencing the problem). Most observers would probably agree that this is a substantively important effect. Yet this example would yield a correlation of $-.115$, a value comparable in magnitude with many reported in this meta-analysis.

Further explaining their data in context, Amato concludes: “Contact is a necessary condition for a high-quality relationship to develop and be maintained. And the more recent studies showed a positive link between contact and child wellbeing” (P. Amato, personal communication, April 20, 2016).

Understanding why small effect sizes should not be discounted is also important because the effect sizes for the links between conflict and children’s well-being are often in the small to moderate range (Cummings & Davies, 2010). For example, in a meta-analysis of 71 studies, the correlation between children’s blaming themselves for their parents’ conflicts, feeling threatened by the conflict and having internalizing problems was a moderate effect size (Rhoades, 2008). But the effect size became small for the link to externalizing problems; and it disappeared altogether for girls under the age of 10 after the researchers factored in age and gender. Similarly, in another meta-analysis of 68 studies, the effect size for the link between how frequently the parents argued and children’s adjustment problems was weak (Buehler et al., 1997). But when aggressive conflict was analyzed separately, the effect size rose to midway between weak and moderate. When parental education was factored, the effect size for aggressive conflict and worse outcomes for children rose to “strong” for parents without a high school degree, but remained in the weak to moderate range for college educated parents. The point is that effect sizes should be viewed with the understanding that they can vary dramatically depending on which aspects of children’s well-being are measured and which factors are considered in the analysis.

This is not to say that small or moderate effect sizes should carry as much weight as larger ones. It is evident that larger effect sizes tell us which factors are the most closely correlated with one another or which group means are the most different from one another. But it will be rare in the present paper, as in most social science papers, to find “strong” effect sizes. In short, when effect sizes are reported in this paper as weak or moderate, they should not be discounted as unimportant.

Putting Conflict in Perspective: The Tail That Wags the Dog?

Keeping these limitations in mind, this paper reviews the empirical data that address the four questions about parental conflict listed at the outset of this paper. To be clear, the question addressed in this paper is not whether chronic, poorly managed conflict that frequently and directly involves the children is linked to worse outcomes for children. The question is how much weight the conflict and cooperation in the parents’ relationship with one another should be given in determining which parenting plans are the most likely to benefit the children. More specifically, when parents have a conflictual, uncooperative relationship, are children’s outcomes linked to worse outcomes in joint physical custody than in sole physical custody families—or linked to worse outcomes for SPC children who see their father more frequently?

Selection of the Studies

To identify relevant studies, computer searches were conducted of three databases—Psych-Info, Social Science Citation Index and ProQuest Social Science. The keywords used in the search were: divorce conflict impact on children, high conflict divorce, joint custody conflict, shared parenting conflict, custody conflict, coparenting, and coparental relationships. The search was limited to English language academic journal articles and to nationally representative government sponsored surveys. Eight journals likely to publish articles on these topics were also searched by keyword searches at each journal’s website: *Journal of Family Psychology*, *Child Development*, *Journal of Marriage and Family*, *Child Custody*, *Family Court Review*, *Family Relations*, *Journal of Divorce and Remarriage* and *Psychology*, *Public Policy*, and *Law*. Articles were then selected on the basis of whether they had statistically analyzed quantitative data that addressed any of the five questions presented at the outset of this paper. All 44 studies identified through this search were included. In addition, the three published papers where a group of experts have made recommendations regarding JPC and SPC in situations where the parents had conflictual, uncooperative relationships were included.

Empirical Basis for the Conflict Hypothesis

The assumption that, unless parents have a low conflict, cooperative relationship, the children will fare more poorly if they have frequent contact with their father or if they live in a JPC family seems to have originated from five studies in the 1980s. Twenty-five to 30 years ago when these studies were conducted, it was generally assumed that children benefitted most from maximum mothering time while their parents lived together, as well as after they separated. From this perspective, restricting the children’s time with their father would have a less negative impact than exposing them to the parental conflict. The assumption was that, unless the parents had a friendly, low conflict relationship, the more time fathers and children spent together, the more conflict would likely arise. These beliefs are reflected in custody laws which have historically restricted children’s time with their fathers to every other weekend and occasional vacation time (DiFonzo, 2014).

The earliest of the five studies (Johnston, Kline, & Tschann, 1989) garnered nationwide attention when cited in Wallerstein’s bestselling book on divorce (Wallerstein, Lewis, & Blakeslee, 2000) to support the view that,

Joint custody arrangements that involve the child in going back and forth at frequent intervals are particularly harmful to children in a high conflict family. Children who are ordered to traverse a battleground between warring parents show serious symptoms that affect their physical and mental health. The research findings on how seriously troubled these children are and how quickly their adjustment deteriorates are very powerful. (Wallerstein et al., 2000, p. 215)

Wallerstein’s books received national media attention for well more than a decade (Kirn, 2012). Prioritizing conflict and recommending against JPC or frequent “visitation” unless conflict was low gained further momentum in books written for family court and mental health professionals (Garrity & Baris, 1997; Hodges, 1991; Johnston & Campbell, 1988; Stahl, 1999).

Johnston et al. (1989) was a pioneering study that for many years was misinterpreted and cited as evidence that joint physical custody was only suitable for parents with little to no conflict. Given its longstanding influence and the fact that its author (Johnston, 1995) has expressed regret about how the study has been, and continues to be (e.g., Shaffer, 2007) misunderstood and misused, it merits careful attention. Thirty-five years ago, Johnston and her colleagues collected data from 100 lower middle income families (62% white) in the San Francisco Bay area. All of these high conflict, litigating parents had been referred by the courts because they had been unable to resolve their custody issues in the four years since separating, even with help from lawyers and mediators. Given the high levels of physical and verbal aggression and physical violence in this particular sample, the researchers warned: "This study helps to remind us that it is important not to make custody and visitation decisions or to frame social policy and laws based on studies on studies from unrepresentative populations" (Johnston, et al., p. 590). Of the 100 children, 28 were living in JPC families where they had a "split week, alternate week or weekday/weekend schedule," spending an average of 12 nights a month with their nonresidential mother or father (p. 581). In contrast, the SPC children saw their nonresidential parent an average of only 4 days a month, sometimes without overnight visits. At the 2 1/2 year follow up, the female children in SPC who had "more frequent" contact with their father were more emotionally and behaviorally disturbed and their parents were more verbally and physically aggressive. In contrast, the SPC boys who saw their fathers more frequently were more well-adjusted than the SPC boys who saw their fathers less frequently. Importantly, the researchers assessed whether or not the children were caught in the middle of the conflicts in addition to the overall level of conflict.

Aggression between parents had no direct effect on the children and had only a very weak indirect effect but if the child was caught in the middle and used in the conflict, the connection was stronger. The degree to which children were caught and used in the dispute predicted child disturbances more than the overall level of conflict. (p. 587)

"There was no evidence that clinically disturbed children [16 of the 100 children] were more likely to be in joint than in sole custody" (p. 583). "Patterns of access [frequency of contact with nonresidential parents] and parental conflict explained less than one fifth of the variance in the children's behavior" (p. 590). "In the present study, as a group, these children of chronic custody disputes are not distinguishable from a normal population" (p. 590). Johnston (1995) warned that her study should not be used to argue against JPC or against frequent time with the nonresidential parent: "The findings from these studies should not be used to discourage parents from trying to work out shared parenting arrangements" (p. 422). For high conflict parents, "A clearly specified, regular visitation plan is crucial and the need for shared decision making and direct communication should be kept to a minimum" (p. 423). Because parents are more likely to have conflicts when the children are being exchanged from one parent to the other, Johnston recommended that "Frequent transitions for visitation purposes are also to be avoided in these [high conflict] cases" (Johnston, p. 423).

Two other studies may have contributed to the belief that JPC is linked to worse outcomes for children when their parents are in

conflict. Both studies were conducted in the late 1970s and early 1980s in the San Francisco Bay area. In one study, all 32 children had been living 35% to 50% time with each parent and two thirds had been living in this arrangement for four or more years (Steinman, 1981). Importantly, data came from both parents and from the children. In most of these JPC families the differences in child rearing styles were not major. "But where the parents were in conflict over childrearing values or had major philosophical differences that involved the children, the children were greatly troubled by it" (p. 409). In the other study (Brotsky, Steinman, & Zimmelman, 1988) 67 children were assessed one year after their parents had completed a voluntary counseling program to resolve their ongoing custody issues. Forty of the 48 families had JPC plans, but the researchers did not specify whether the children actually lived 35% time with each parent. At the end of the year, 16 of the 67 children were "seriously at risk" for major emotional problems or had serious developmental delays. These children's parents had the most hostile, conflicted relationships. Both studies might have misled people to believe that when parents are in conflict, JPC is linked to worse outcomes for children, even though neither study could have reached that conclusion since the researchers did not compare JPC to SPC children.

The fourth study is a well-known and often-cited longitudinal study conducted in Virginia (Hetherington, 1989; Hetherington & Kelly, 2002). The researchers assessed white, middle class children and parents from 72 divorced and 72 intact families two years after divorce. Additional families were added to the original sample for the six and 11 year assessments, bringing the total to 150 divorced families. Two years after divorce, only 18 of the 72 fathers were "frequently" seeing their children which meant at least once a week. Eleven years after divorce, 50% of the fathers had not seen their children in the past year and only 20% saw their children weekly. Importantly, this study assessed whether the children were caught up in the conflicts. In high conflict families when children were placed in the middle of the conflicts or in lower conflict families where the father was an "incompetent or antisocial" parent, the boys—but not the girls—had more behavioral problems, lower self-esteem, and lower school achievement when they saw their father weekly than when they saw him less frequently. Even though these data came from fewer than 20 fathers, and even though there were no significant findings for the girls, the study might have been misinterpreted more broadly to mean that, unless conflict was low, boys and girls with competent, attentive fathers would be better off having infrequent contact.

At about this same time, a larger nationally representative study arrived at similar results (Amato & Rezac, 1994). In this 1986 sample, 725 children whose parents had been married before separating were compared with 560 children whose parents had not been married. All of the children were living with their mothers who provided all of the information about conflict, contact with the father, and children's behavioral problems. It is important to note that "contact" was broadly defined as anything from phone calls and letters to actual time spent with the father. The children with divorced parents had more contact with their fathers than children with never-married parents, and the divorced mothers reported more parental conflict. Both the divorced and the never married mothers reported more conflict when the fathers "stayed in contact" with the children. Conflict was not significantly linked to behavior problems for the 13- to 18-year-old boys or girls. But

conflict was linked to more behavior behavioral problems for the 5 to 13 year-old boys, though not the girls. Unlike conflict, being “in contact” with their father was not significantly linked to behavioral problems for boys or girls in either age group. “Overall the results do not appear to support the hypothesis of an interaction between parental conflict and contact in relation to children’s behavior” (p. 199). But in the high conflict group, when the researchers analyzed the data separately for the married and the never married parents, the 42 boys (average sample size) with divorced parents who had the most contact with their fathers had more behavioral problem than boys with less contact with their fathers. The boys had fewer behavioral problems when father contact was high and parent conflict was low. There were no significant links between conflict and father contact for the girls or for children whose parents had not been married before separating. The researchers also pointed out that “It is possible that residential parents [mothers] who are distressed by high levels of conflict and contact with the ex-spouse may exaggerate the number of behavior problems exhibited by their [male] children” (Amato & Rezac, 1994, p. 204).

The most recent data that have been cited to support the hypothesis that high conflict is linked to worse outcomes for children in JPC families came from a government sponsored Australian study (McIntosh, Smyth, Kelaher, & Wells, 2010). McIntosh and Smyth report their study as evidence that JPC exposes children to more conflict (Smyth, McIntosh, Emery, & Howarth, 2016). As reported in the original study (McIntosh et al., 2010), four years after the parents had separated, the 45 teenagers in JPC reported higher levels of parental conflict than the 44 teenagers in SPC. The 2016 publication, however, did not report that the JPC adolescents were not more upset or more distressed than the SPC adolescents by their parents’ conflicts, an important finding that was acknowledged in their original report: “At the four year mark, the groups [of teenagers] did not differ significantly [in distress or adjustment] from each other” (McIntosh et al., 2010, p. 44). In their original report (McIntosh et al., 2010) the researchers had also acknowledged that many SPC fathers had dropped out of their children’s lives which, the researchers speculated, probably explained why the SPC parents had less conflict than the JPC parents four years after separating.

In sum, these studies seem to have contributed to the hypothesis that, unless parental conflict is low and the parents get along relatively well as coparents, having frequent contact with the nonresidential parent or living in a JPC family is linked to worse outcomes for children.

How Prevalent Is the Conflict Hypothesis?

The view that sharing physical custody or perhaps even sharing legal (decision making) custody is inappropriate for high conflict or uncooperative parents is still prevalent (DiFonzo, 2015): “Most courts and commentators agree with the oft-quoted dictum that joint custody is encouraged primarily as a voluntary alternative for relatively stable, amicable parents behaving in mature civilized fashion” (p. 216). When parents are unable to communicate face-to-face and when there is a level of distrust between them, even joint decision making (joint legal custody) is often not considered to be in the child’s best interests. “This principle is abundantly established in case law” (DiFonzo, 2015, p. 218). Another “well-

established principle” in family law is that “joint custody is not appropriate where the parties are antagonistic toward each other and have demonstrated an inability to cooperate in matters concerning the child, even if the parties have agreed to the joint custody arrangement.” A court-ordered shared custody arrangement imposed on embattled and embittered parents, “can only enhance familial chaos” (DiFonzo, 2015, p. 220).

Among social scientists, these opinions about conflict and JPC have also been voiced. For example, Emery (2014) believes that: “The *best* research supports this conclusion . . . In high conflict divorces children do worse in joint physical custody than in other arrangements” (p. 1) [Italicized by Emery]. “Conflict is more damaging to children in divorce than having only a limited relationship with your other parent” (Emery, 2016b, p. 51). Similarly, McIntosh and Smyth (2012) believe that there are “over two decades of research in the U.S.” that is “demonstrating a poor fit between the many demands of shared time parenting arrangements and ongoing high levels of conflict between parents” (p. 174). A majority of the 32 social scientists and family law professionals in one think tank also concur that JPC is not in children’s best interests when the parents have high conflict or a “non-collaborative” coparenting relationship (Pruett & DiFonzo, 2014).

Parental conflict is also accorded high priority in many custody evaluations and in books written for custody evaluators. For example, 57% of 213 custody evaluators with doctorates who had been in practice at least five years ranked cooperation, low conflict and communication among the most important variables influencing their recommendations for or against JPC (Ackerman & Pritzl, 2011). Only 13% of these custody evaluators considered “maintaining or maximizing the parent-child relationship” a high priority in making custody recommendations. Similarly in a recent book on conducting child custody evaluations, the author places a high priority on past and present parental conflict when JPC is under consideration (Hynan, 2015) Reducing conflict has also been the primary or the exclusive focus of educational programs for separated parents—with very few programs aimed at improving each parent’s skills as a parent or strengthening their relationship with their children (Goodman, Bonds, Sandler, & Braver, 2004). This is not to say that conflict is the sole determining factor in most custody evaluations or in most judges’ decisions. Still, it is clear that conflict carries considerable weight.

In sum, several assumptions underlie the belief that low conflict and cooperative coparenting are essential in order for JPC to benefit children. First, it is assumed that children are more likely to be caught in the middle of disagreements, pressured into loyalty conflicts, or forced to align with one parent against the other in JPC than in SPC families. Unless conflict is low, there is a supposedly a greater risk of children being stressed, depressed or otherwise troubled in JPC—or perhaps even when they have frequent contact (that falls short of living together 35% of the time) with their noncustodial parent in SPC arrangements. Second, presumably JPC parents have to communicate far more often and must work much more closely together than SPC parents. Unless conflict is low and communication is good, the outcomes for the children will likely be worse in JPC. Third, supposedly JPC parents have very little conflict from the outset, mutually and voluntarily agreeing to the arrangement with little to no pressure or interference from others. In short, low conflict and collaborative coparenting at the time of separation and in subsequent years are

the bedrock of JPC arrangements. If these assumptions are correct, then whatever positive outcomes for children might be linked to JPC may in fact be linked to the low conflict and cooperation, not to living with each parent at least 35% of the time.

The More Recent Hypothesis on Conflict

The alternative and more recent perspective is that conflict and the quality of the coparenting relationship should not be such pivotal issues, especially when the children have—or would be able to develop—supportive, loving relationships with their parents (Kelly, 2014; Lamb, 2016; Warshak, 2014). According to this view, the concept of conflict in and of itself is problematic—in part because it is difficult to define or to assess reliably and in part because parents sometimes exaggerate or provoke conflict to “win” sole custody. Then too, conflict generally subsides within the first two years after separation, meaning that high conflict at the time of separation is not a reliable way to predict future conflict (Hetherington & Kelly, 2002). Similarly conflict often stems from a sincere desire by competent, loving parents to remain actively involved in their children’s lives by maximizing their parenting time in the custody agreement (Friedman, 2004) or stems from parents’ different opinions on child rearing and different parenting styles—the kinds of conflict that are common in married families (Cowan & Cowan, 1999). Moreover, there are ways to reduce conflict without restricting the children’s time with one of their parents and without eliminating the possibility of JPC. For example, in a meta-analysis of studies on court affiliated parenting programs, the parents who attended were 50% more likely to reduce their conflicts than parents who did not attend (Fackrell, Hawkins, & Kay, 2011). To simply allow parents to report and/or to feign that they cannot cooperate or communicate and therefore that joint parallel parenting will not work is far too simplistic (Birnbaum & Fidler, 2010). Absent domestic violence, the quality of the parents’ relationship with the children is more closely linked to children’s well-being than the quality of the parents’ relationship with one another. Reducing children’s time with one parent is likely to weaken their bond, but is not likely to reduce the parents’ conflict or to protect the children from it (Braver, 2014). In that vein, JPC may offer a protective buffer that helps children cope better with their parents’ conflicts. In short, we should be asking which policies will reduce conflict rather than assuming that JPC is not an option for high conflict parents (Braver, 2014).

Although both views—that conflict and the quality of the coparenting relationship should or should not play a major role in deciding whether JPC is in children’s best interests—appear logical to their proponents, the question is: How strongly does the research support the assumptions underlying each perspective?

Considerations Regarding Parental Conflict

Before examining the research on the links between conflict, coparenting, and children’s well-being, several findings can help put the data into perspective. First, parents who have a child with chronic emotional, behavioral or medical problems are more likely to have high, ongoing conflict, to be more critical of one another’s parenting, and to have higher divorce rates (Kerns & Prinz, 2016). After separating, their conflicts may remain high given the ongoing stress in parenting their troubled or special needs child. Yet

these are the very children who might benefit most from JPC where the additional parenting burdens are more equally shared and each parent has “time off” to relax and recuperate.

Second, the literature has long acknowledged that the impact of parental conflict on children depends on many factors—and that its impact is sometimes overstated and oversimplified (Cummings & Davies, 2010). Conflict’s impact should not be exaggerated and should be considered in the context of factors such as the child’s resilience and temperament and the quality of the parent–child relationship. This point is reiterated in the *Diagnostic and Statistical Manual of Mental Disorders*, fifth edition, where a new condition named “child affected by parental relationship distress” (CAPRD) is described (Bernet, Wamboldt, & Narrow, 2016). The parents’ distressing behaviors include high levels of disparagement, ongoing animosity, abusive language, threatening language, coercive interactions, or physical violence. These children may develop behavioral problems, loyalty conflicts, anger, anxiety, depressed mood, and psychosomatic problems. “On the other hand, children who are unusually resilient—because of innate hardiness, support from extended family, community resources, or other situational factors—may experience parental relationship distress and manifest no psychological symptoms at all” (Bernet et al., 2016, p. 571).

Conflict is also closely linked to a parent’s depression, substance abuse, mental disorders and negligent or abusive parenting, each of which can have a worse effect on children than the conflict itself. In some cases, after the parents separate, the negative outcomes correlated with high conflict could result from too little fathering time, since fathers generally spend less time with their children when conflict with their mother is high (Fabricius et al., 2012). Finally, and perhaps most important, when conflict is found to be correlated with worse outcomes for children, this does not mean that conflict caused or contributed to the problem. For example, as a child’s behavioral or emotional problems get worse, parent conflict may be likely to increase. Conversely, if the child’s problems start to decline, the parents’ conflicts may also be likely to decline. In short, the link between parental conflict and children’s well-being is complex.

Third, the link between conflict and children’s well-being is often closely linked to the child’s gender, with girls having more problems than boys when parental conflict is high in most studies. In an American study, four years after the parents’ divorce, adolescent girls felt more caught in the middle of their divorced parents’ arguments that did boys (Buchanan, Maccoby, & Dornbusch, 1996). In a study with 207 Canadian college students, daughters’ relationships with their fathers were more damaged than sons’ when parental conflict was high regardless of whether the parents were married or divorced (Frank, 2007). Similarly, in a nationally representative sample of 750 Swedish teenagers with separated parents, girls were more stressed than boys in high conflict families (Turunen, 2014). In a study of almost 200,000 children from divorced families in 36 countries, daughters were two times more likely than sons to have a hard time talking to their fathers about things that were worrying them (Bjarnason & Arnarrson, 2011). Similarly in a Swedish national survey of 8,840 ninth graders from intact and separated families, the adolescents who turned to their parents for help with their problems were less depressed, less afraid, and had fewer stress related health problems. But the girls had more of these problems than the boys

(Låftman, Bergstrom, Modin, & Ostberg, 2014). Both Swedish studies suggest that when conflict is high, daughters may be less likely than sons to reduce their stress by talking to their fathers about their concerns. These findings may help to explain why daughters' relationships with their fathers are generally more damaged than sons' after their parents separate (Nielsen, 2011).

High conflict and poor parenting often go hand in hand. This makes it difficult to determine whether it is the conflict or the poor parenting or the combination of the two that is most closely linked to worse outcomes for children. For example, in a meta-analysis of 39 studies, high conflict was closely linked to poor parenting (Krishnakumar & Buehler, 2000). But the conflict was not as closely linked to bad outcomes for boys, preschoolers, and children whose parents had not attended college. Moreover, the link between high conflict, poor parenting and children's problems was two thirds stronger in married than in separated families. Emphasizing the importance of this finding, the researchers stated:

There has been a trend in the literature to believe that the hostility associated with conflict is primarily an issue for divorced families. This is not the case . . . hostility and aggression are more strongly associated with parenting quality in married families. (p. 30)

Physical Conflict and Violence

As previously emphasized, this paper's discussion of conflict does not apply to the 10%-12% of parents with a history of ongoing violence and severe emotional and physical abuse that has traditionally been referred to as "domestic violence" or "battering." And as already explained, one of the limitations of the research on "violence" or "physical abuse" in the literature on custody is that the studies do not differentiate between the various types of physical conflict. Keeping this in mind, it is important to understand that even when parents are violent toward each other while they live together, this does not necessarily allow us to draw conclusions about what parenting plans are likely to be most beneficial for the children after the parents separate. For example, in a nationally representative Australian sample of 6,485 families with sole custody and 1,235 with JPC one to two years after separation (Kaspiew et al., 2009): "While a history of family violence and highly conflictual inter-parental relationships appear to be quite damaging for children, there was no evidence to suggest that this negative effect is any greater for children with shared care (JPC) time" (p. 16). Although the study did not use a validated scale to measure the children's well-being and did not distinguish between the various kinds of physical aggression, Kaspiew's findings support the conclusion that Lamb (2016) reached after reviewing the research on domestic violence and child custody:

Minor or isolated instances of domestic violence should not affect custody decisions. The conflict that hurts kids is repeated incidents of violence between parents who have substantial psychiatric problems and personality disorders. . . . Significant numbers of children have warm and supportive relationships with parents who have highly conflicted or violent relationships with one another. (p.185)

In other words, it is a mistake to assume that JPC will be more harmful than SPC for children whose parents were physically abusive toward one another when they lived together.

High Legal Conflict and Custody Hearings

Some people believe that parents with high legal conflict, especially those who take their disputes to court, have substantially more damaging conflict than parents who settle their conflicts out of court with less legal wrangling. This belief supports the opinion that JPC cannot benefit children whose parents take a custody dispute to court or who have protracted legal battles. For example, Emery (2014) stated that JPC is "all but certain to be the worst arrangement when parents end up in court because the parents, by definition, aren't working together. . . . Wise judges already know it's a lousy compromise for children in high conflict divorces" (Emery, 2014). Similarly McIntosh has stated that, according to the research: "families involved in repeat court involvement display more conflict and maladjustment" (McIntosh, 2015). To support her statement, McIntosh cited only one study—a study with 18 divorced parents, only 4 of whom had any court involvement in their custody case (Bing, Nelson, & Wesolowski, 2008). None of the four were repeat cases and they did not have higher scores on conflict or maladjustment than the 14 parents with no court involvement. Similarly, Jaffe (2014) has opined: "Parents who enter the justice system to litigate about child custody or access have passed the point where shared parenting should be presumed or even encouraged" (p. 187). This view is also promulgated in the legal community. For example, in a paper presented at an American Bar Association conference, the author (Treneff, 2014) claimed that the impact of "high conflict custody cases" was "significant and long lasting" for children (p. 2). Similarly, one widely read book for custody evaluators (Ackerman, 2006) recommends that: "When a custody dispute occurs, 50-50 placement should rarely be recommended" (p. 251). How strongly do empirical data support these opinions?

Only two quantitative studies have explored the link between children's well-being and their parents having or not having had a contested custody case. The more recent study included 94 divorced couples who were randomly selected from court records in one Arizona county (Goodman et al., 2004). The children were four to 12 years old. Four to six months after the divorce, high interpersonal conflict (arguing, physical aggression, badmouthing) was linked to the children's having more social and behavioral problems. But high legal conflict was not linked to children's problems.

The earlier study was longitudinal and collected extensive information from parents, teachers, clinicians and the children (Wolman & Taylor, 1991). This study compared 12 children whose parents settled their custody issues without hiring attorneys, filing court petitions, or having any court hearings to 19 children whose parents had legal disputes. The sample came from an ethnically and socioeconomically diverse area in Massachusetts; and the two groups were matched on demographic variables. Both of the parents and the children were interviewed at 3 month intervals during the first year and then at 18 months. At the end of 18 months, the 19 children in contested cases had better outcomes on almost all measures of well-being than the 12 children in uncontested cases, even though the two groups' scores were not significantly different at the outset on most variables. The contested children felt significantly more in control of events in their lives (internal locus of control) and felt less anger, less hostility, less rejection, and less self-blame. At the outset, the contested children had more negative

feelings about their families and felt more acute separation anxiety. But 18 months later they had more positive feelings and less separation anxiety than the uncontested children. The researchers concluded that,

It is conceivable that the benefits of involvement (as the valued subject/object of a contest), the increase in open discussion of family conflict which often occurs in the context of custody litigation, increased opportunities for catharsis, and pressures to resist parental lobbying (to “think for oneself”) may actually provide contested children with vehicles for development of adaptive coping mechanisms (e.g. reality testing) and a stronger sense of personal influence on events. (Wolman & Taylor, p. 409)

Naturally we cannot draw conclusions from only two studies. But at the very least, we should be aware that no quantitative data yet exist to support the assumption that children whose parents contest custody have significantly worse outcomes than children whose parents agree at the outset on the custody arrangements.

As for why some parents have higher legal disputes than others, we might wonder: what are most of these parents arguing about? The most extensive exploration of this question was a study with 950 SPC couples and 150 JPC (referred to as “dual residence” in the study) couples who were randomly selected from divorce records in 1984 in two counties in the San Francisco Bay area (Maccoby & Mnookin, 1992). Nearly 25% of the JPC couples had substantial legal conflict, 4% of which involved custody hearings. Four major findings emerged. First, most of the conflict was about parenting time, with 82% of the mothers not wanting to share physical custody. Second, there was more legal conflict when the children were under the age of three. Third, the parents who went to court were not wealthier, making it unlikely that their legal conflict was driven by having substantially more money than other divorcing couples to spend on legal battles. Fourth, and most surprising to the researchers, the parents’ hostility toward each other was not closely linked to high legal conflict. “There were many intensely hostile parents who did not express their anger through legal conflicts—and some of the parents who did engage in legal conflict were not intensely angry” (Maccoby & Mnookin, p. 144).

Overall, high legal conflict or custody hearings have not been found to be reliable measures of how much conflict exists between the parents, how damaging the conflict is to the children, or whether the children could benefit from JPC. This is an important finding because negative assumptions about parents with high legal conflict could lead to custody decisions that restrict children’s time with one of their parents, or that deny them the possible benefits of JPC.

Sole Physical Custody Families: Conflict and Communication After Separation

Before exploring whether JPC parents have much less conflict than SPC parents, we should ask: How common is low conflict and cooperative coparenting for couples with SPC arrangements? The research from the past several decades is robust and consistent: most SPC parents do not have low conflict, cooperative relationships. In one of the earliest studies with white, middle class families in Virginia, only 18 of the 72 couples had low conflict, cooperative relationships six years after their divorce (Hethering-

ton & Kelly, 2002). The other 25% were in high conflict, whereas the majority (50%) were civil but rarely communicated or coparented. In a similar study, 98 couples were randomly selected from Wisconsin court records and both parents provided information (Ahrons, 1994). One year after separation, only 10% of the parents frequently communicated and cooperatively coparented, 40% were civil but rarely communicated, and 50% were angry and hostile. Five years later, nearly one fourth of the formerly “civil” relationships had turned “angry” which the researchers attributed to remarriages and financial issues.

Studies published during the past decade are consistent with the older findings on conflict and coparenting. In a nationally representative survey of 356 divorced mothers, low conflict and cooperative coparenting was not the norm (Sobolewski & King, 2005). Only one third of the parents talked with one another even once a month or made child rearing decisions together. In yet another nationally representative survey of 1,247 parents, only 29% had a low conflict, cooperative relationship; 35% had moderate conflict and cooperation, and the remainder had no conflict or coparenting because the fathers were not in contact with the children or the mother (Amato et al., 2011). For another 270 parents in a court ordered parenting program, only one third had a low conflict relationship where they communicated frequently; 45% communicated but with moderate to high conflict; and 25% had no conflict because they had stopped communicating altogether (Beckmeyer, Coleman, & Ganong, 2014). In short, low conflict, amicable coparenting is relatively rare for couples with SPC arrangements.

JPC Versus SPC Parents: Conflict at the Time of Separation

Do JPC parents have significantly less conflict and significantly more collaborative coparenting relationships than SPC parents at the time of separation or in subsequent years? Some contend that this is the case and that this largely explains why JPC children generally have better outcomes. For example, Smyth et al. (2016) assert that:

Most shared time arrangements are made by separated parents who respect each other as parents, who cooperate, and who can avoid or contain conflict when they communicate. . . . The positive reports [about JPC] likely reflect characteristics that predate shared time [JPC] and lead families to choose a shared-care time arrangement. (p. 123)

How strongly do the empirical data support these assumptions?

Knowing whether JPC couples work much more closely together as a low conflict, collaborative team than SPC couples is important for several reasons. First, if this is the case, then it might explain why JPC is linked to better outcomes for children in the 42 studies that have compared the children in the two types of families. (For summaries of these studies see Nielsen, 2011, 2014b, 2014c.) It may be that it is the parents’ low conflict, cooperative teamwork, not shared physical custody, that is linked to the JPC children’s better outcomes. Second, if JPC couples have significantly less conflicted and more collaborative relationships, then there might be grounds for discouraging the vast majority of parents from trying JPC because, as we have just seen, most separated parents do not get along well as coparents.

Looking first at the incidence of conflict over the parenting plan for JPC couples at the time of separation, four studies have explored how many of these parents agreed at the outset to share physical custody. The percentage who were initially in conflict over sharing, but who eventually compromised and agreed to JPC arrangements, ranged from 40% for 64 couples (Pearson & Thoennes, 1990), to 50% for 51 couples, (Brotsky et al., 1988; Luepnitz, 1986), to 82% for 110 couples (Maccoby & Mnookin, 1992). As Brotsky et al. (1988) noted:

The most interesting findings concerned the stressed [higher conflict] group. They had been able to reach [a JPC] agreement only with considerable professional help and still had unresolved difficulties. However, 18 months later they now looked substantially the same as the parents who had mutually agreed on joint custody at the outset. (Brotsky et al., 1988, p. 174)

These four studies did not report how many of the parents agreed to JPC without considerable conflict and without the involvement of lawyers, mediators, or therapists. It would be woofling these studies, therefore, to claim that the JPC parents reached their custody agreement with less conflict than SPC parents. Despite the parents' initial conflict over custody, in these four studies the JPC children had better outcomes than the SPC children. (For detailed summaries of these studies see Nielsen, 2014b, 2015b). In a similar vein, conflict was not linked to whether parents had

shared or sole legal (not physical) custody for 254 parents who were randomly selected from court records in one Arizona county (Gunnoe & Braver, 2001). In fact from a list of 71 possible factors that might influence custody decisions, the couples only chose 20—and conflict at the time of separation or conflict two years later was not one of them.

Nine studies have compared the conflict levels at the time of separation for JPC and SPC parents, as Table 1 illustrates. In two studies the JPC parents had significantly less conflict than the SPC parents. The first was based on a 1984 sample of parents who were involved in mediation or counseling programs in Denver and San Francisco (Pearson & Thoennes, 1990). The 63 JPC mothers reported significantly less conflict at the time of the divorce than the 363 SPC mothers. Unlike SPC mothers, none of the JPC mothers reported any history of physical violence or physical abuse. The second study was based on a sample randomly chosen from 37 schools in Flanders (Spruijt & Duindam, 2010). The 125 JPC couples had “quarreled” significantly less than the 350 SPC couples before they separated. But one to seven years later, the JPC couples no longer had substantially less conflict than SPC couples.

In six of the nine studies there were no significant differences in JPC and SPC conflict at the time of separation. In two of these studies the researchers specified that the samples included couples

Table 1
Is There More Conflict Between Sole Physical Custody Than Joint Physical Custody parents?

Researcher	No difference in conflict JPC vs. SPC couples	Sample size & type	Location
Barumadaza	After separation – unspecified years	453, from 37 schools	One region France
Beck	At separation	463, mediated cases statewide	Arizona
Buchannan	After separation – 4 years	365, random court records	3 CA counties
Fabricius	At separation	152, volunteer college students	Arizona
Juby	After separation 1–4 years	758, national survey	Canada
Johnston	After separation 4 years	100, counseling center volunteers	3 CA counties
Kline	After separation 4 years	93, community volunteers	1 CA county
Lodge	After separation 2 years	503, national sample	Australia
Maccoby	At separation	1,100, court records	California
Putz	At separation	205, mediation clinics	Indiana
Shiller	At separation no difference	40, convenience sample	Connecticut
Sodermans	After separation 1–6 yrs. less in JPC At separation JPC not less 1995–2010 At separation JPC less 1971–1994 Less conflict in JPC	2, 207, all divorces 1971–2010	Belgium
Spruijt	At separation – less After separation 1–7 years - not less	455, random from 37 schools	the Netherlands
Luepnitz	After separation 1–2 years	43, convenience sample	Pennsylvania
Pearson	At separation After separation 3 years Mixed results	426, mediation & counseling	Denver & San Francisco
McIntosh	After separation 1–5 years Not less parents of 1–3 year olds Less parents of 4- to 5-year-olds	National sample 587 1,215	Australia
Cashmore	After separation 4–5 years	1,026 (597 moms, 429 dads) National Survey	Australia
	Less JPC conflict according to dads No difference according to moms More conflict in JPC		
Lee	After separation 4 years	59, convenience sample	Ohio
Kaspiew	At separation & 1–2 years after separation	7,720, national sample	Australia
Melli	After separation 3 years	1,180, court records	Wisconsin

Note. JPC = Joint physical custody.

who had a history of domestic violence, though the exact percentage was not provided. In the statewide random sample from court records of 205 couples who had been in mediation in Indiana (Putz, Ballard, Arany, Applegate, & Holtzworth-Munroe, 2012) and in the sample of 463 families in Arizona (Beck, Walsh, & Weston, 2009), SPC was not significantly more likely when there had been a history of “intimate partner violence.” In the other three studies, SPC and JPC couples had similar levels of conflict at separation. The earliest was a convenience sample of 40 couples in Connecticut (Shiller, 1986). The next was a much larger, more representative study with 950 SPC and 150 JPC California couples, randomly chosen randomly from court records (Maccoby & Mnookin, 1992). The largest study illustrates a weakening link between conflict and custody arrangements in Belgium (Sodermans, Matthijs, & Swicegood, 2013). The study included all 2,207 couples who divorced in this region of the Netherlands between 1971 and 2010. Parents who divorced before 2005 were more likely to have JPC if they had low conflict. But after 2005 when custody laws became more supportive of JPC, there was no longer a significant link between low conflict and JPC. The researchers speculated that, as custody laws become more supportive of JPC, the link between low conflict and JPC may become weaker. In the most recent study of college students in Arizona whose parents had separated when the children were under the age of four, the 15 JPC couples did not have significantly less conflict when they separated than the 103 JPC couples (Fabricius & Suh, 2017).

In contrast, in one study the 1,234 JPC (shared care) parents from a nationally representative Australian sample had more family violence prior to separating than the 6,485 SPC parents (Kaspiew et al., 2009). “Both the mothers and fathers with shared care (JPC) time were more likely to report having experienced some form of family violence prior to separation” (p. 10). “Families where violence had occurred were no less likely to have shared care (JPC) time than those where violence had not occurred” (p. 164). “While a history of family violence and highly conflictual inter-parental relationships appear to be quite damaging for children, there was no evidence to suggest that this negative effect is any greater for children with shared care time” (p. 16).

In sum, seven of the nine studies fail to support the belief that JPC couples have significantly less conflict than SPC couples at the time they are separating. In two studies, however, the JPC couples did have less conflict than SPC couples. Overall then, conflict is not closely linked to whether the parents have a JPC or a SPC arrangement.

JPC Versus SPC Parents: Conflict After Separation

In the years following their separation, do JPC couples have significantly less conflict than SPC couples? Thirteen studies have addressed this question, as Table 1 illustrates.

In three of the 13 studies the JPC parents had significantly less conflict than SPC couples one to six years after separation. The first was based on a 1984 sample of parents who were involved in mediation or counseling programs in Denver and San Francisco (Pearson & Thoennes, 1990). The 63 JPC mothers reported significantly less conflict three years after separation than the 363 SPC mothers, as they had at the time of separation. The second was a convenience sample from Pennsylvania where the 11 JPC couples had less conflict than the 16 couples with sole father

custody and the 16 couples with sole mother custody (Luepnitz, 1986). The third was a convenience sample from Connecticut where the 20 JPC mothers reported less conflict 1 to 6 years after separating than the 20 SPC mothers, although there were no significant differences between the two groups at the time the parents separated (Shiller, 1986).

In two of the 13 studies the JPC couples had more conflict than SPC couples after separating. In a convenience sample of 59 couples from Ohio, the JPC mothers reported more verbal and physical aggression than the SPC mothers four years after separation (Lee, 2002). In a representative sample from Wisconsin the 590 JPC couples reported more conflict over child rearing issues than the 590 SPC couples (Melli & Brown, 2008). The researchers attributed this to the fact that many of the fathers in SPC had disengaged from parenting or had dropped out of their children’s lives altogether.

In 10 of the 13 studies, JPC and SPC conflict was not significantly different in the years following their separation. In the earliest study with 150 JPC and 900 SPC couples in California four years after divorce, given the similar levels of conflict in the two groups of parents and given that the dual residence [JPC] children had better outcomes, the researchers (Buchanan et al., 1996) concluded: “Parents can share the residential time even though they are not talking to each other or trying to coordinate the child rearing environments of their two households” (p. 292). For 93 high conflict families from three California counties who were receiving free counseling services to help resolve their problems, conflict was not lower in the JPC than in the SPC families four years after separation (Johnston, Kline, & Tschann, 1989). This was also the case in a sample of 93 well educated, white parents in California recruited through community outreach (Kline, Tschann, Johnston, & Wallerstein, 1989).

A large, representative study from Wisconsin is particularly instructive (Melli & Brown, 2008). Importantly, the data came from both parents (408 fathers and 402 mothers with JPC and 283 fathers and 391 mothers with SPC) and the large sample was randomly chosen from statewide court records. According to both parents’ reports, roughly 15% in both types of families had a hostile, high conflict relationship. About 40% of fathers and 50% of mothers with JPC and 46% fathers and 38% mothers with SPC described the relationship as friendly. The researchers concluded that,

parents with shared time (JPC) and those with traditional mother custody (SPC) do not differ greatly. . . . This study shows that, if you take a group of ordinary divorced parents, the majority of them are managing to overcome their dislike and distrust of their former spouse in the interest of working out ways to raise their children. (Melli & Brown, p. 260)

Data from the three Australian studies are consistent with the American results. Even though they did not undergo anonymous peer review, these government commissioned Australian studies are reported here because they have the benefit of large nationally representative samples and of feedback from both parents. In a survey of 1,026 parents, the mothers with JPC and SPC reported no significant differences in conflict, but the fathers in JPC reported less conflict (Cashmore & Parkinson, 2010). In another sample with 105 JPC and 398 SPC couples, in both groups only 30% said they had a friendly, low conflict relationship; only 30%

only communicated every 1 to 3 months and 16% never communicated at all (Lodge & Alexander, 2010). Similarly, for 1,800 Australian couples 1 to 5 years after separation, the JPC and SPC mothers reported similar levels of conflict in families with 1- to 3-year-old children—but no significant differences in conflict in families with 4- to 5-year-old children (McIntosh et al., 2010).

Two other international studies further illustrate the similarities between JPC and SPC couples' levels of conflict. In a nationally representative sample from the Netherlands of 1,045 children in SPC and 395 children in JPC, there were no significant differences in conflict eight years after separation (Sodermans et al., 2013). And in a French sample of 1,561 children from intact families, 328 children in maternal custody, 34 in paternal custody and 91 in JPC, according to the children's reports, there were no significant differences among the four types of families in how frequently their parents argued or how often the children felt caught in the middle (Barumandzadah, Martin-Lebrun, Barumandzadeh, & Poussin, 2016).

In contrast to these 12 studies, in one Australian study the 1,235 JPC mothers and fathers were more likely than 6,485 SCP parents to report having been physically violent when they lived together (Kaspiew et al., 2009). After separation the JPC mothers reported the coparenting relationship as more "fearful" (5%–8%) than SPC mothers (3.8%–4%) and as more "distant" (17%–18%) than SPC mothers (11%–14%).

Four other studies are worth mentioning because, although the researchers did not directly measure parental conflict, they did measure the quality of the coparenting relationship which included questions about conflict. In a Toronto study the 100 JPC parents were more likely to describe their relationship as "friendly" (55%) than the 292 SPC couples (44%; Irving & Benjamin, 1991). The researchers pointed out, however, that "friendly" generally meant the parents limited their communication to child rearing issues; and that those JPC couples who were dissatisfied with their coparenting relationship still maintained the JPC arrangement. In contrast, when SPC parents were dissatisfied with their relationship, the fathers were likely to reduce the time they were initially spending with the children. Along similar lines, in a larger and more nationally representative Canadian study, even though the 182 JPC mothers were more likely to be "dissatisfied" (20%) with the coparenting relationship than the 578 SPC mothers (14%), the JPC arrangement continued (Juby, Burdais, & Gratton, 2005). And in a small study of 20 white, college-educated American mothers whose children had been living in JPC for three years, only four mothers said the coparenting relationship had been "amicable" since the time of separation. Seven said it had "improved" over the years; but nine said it remained "continually contentious" (Markham & Coleman, 2012). In that vein, in a study with 111 JPC and 543 SPC families from four different states, most of whom had been in counseling or mediation for custody related problems, conflict increased by 25% in the SPC families, but only increased by 10% in the JPC families (Pearson & Thoennes, 1990).

Overall then, couples with JPC do not have substantially less conflict than SPC couples at the time they are separating or in subsequent years. As noted, in two studies the JPC parents had more conflict than SPC couples did over child rearing issues in the years following their separation—a situation that the researchers attributed to the fact that more of the SPC fathers had disengaged

from the parenting or had withdrawn altogether from their children's lives. Still, most JPC couples did not arrive at their custody plan because they were getting along so much better than SPC couples at the time they were separating. Nor are JPC parents a "special" atypical group who have a low conflict, collaborative relationship in the years following their separation.

JPC Versus SPC Families: Children's Outcomes After Accounting for Conflict

Given that the majority of both JPC and SPC parents do not have low conflict, friendly, communicative coparenting relationships, are children any better off in one type of family than in the other? That is, given the conflict and poor communication, is JPC linked to any better or worse outcomes for children than SPC?

As Table 2 illustrates, 17 studies have taken account of parental conflict in comparing the well-being of children in JPC and SPC families. In some studies there were no significant differences in conflict between the two groups of parents, meaning that conflict could not account for any differences in the outcomes for these two groups of children. In other studies the researchers eliminated the influence of conflict on the outcomes by including parental conflict in the statistical analysis as a moderating variable.

In only one of the 17 studies was JPC linked to any worse outcomes for the JPC children (McIntosh et al., 2010). There were no significant differences between JPC and SPC children on the six measures of well-being for the four- and five-year-olds or on four of the six measures for the two- to three-year-olds. The 59 toddlers in JPC had lower scores on "persistence at tasks" and displayed more "difficult behavior" with their mother (whining, sometimes refusing to eat, clinging to her). Their "difficult behavior" scores were not significantly different, however, from the scores of the majority of toddlers from intact families in the national survey. In contrast to the other 16 studies, this government sponsored study (republished in a 2013 journal article, McIntosh et al., 2013) has been widely criticized for its limitations—above all for using measures with no established validity or reliability, which means the data cannot be interpreted with any confidence since there is no way of knowing what was actually being assessed (Cashmore & Parkinson, 2011; Lamb, 2016; Ludolph & Dale, 2012; Nielsen, 2014a; Warshak, 2014).

In 16 of the 17 studies, after accounting for parental conflict, the children in JPC families had better outcomes on most measures than the children in SPC families. A brief, general overview of these 16 studies is presented in Table 2. The specific outcomes and detailed descriptions of these studies are available elsewhere (Nielsen, 2013a, 2013b, 2014c). In all nine studies that assessed children's relationships with their fathers and/or their stress-related health problems, the JPC children had better outcomes. In the nine studies that measured behavioral problems (aggression, delinquency, hyperactivity, or drug and alcohol use) JPC children had better outcomes in six studies and equal outcomes in three studies. In the 12 studies that assessed social and emotional problems (depression, anxiety, low self-esteem, overall dissatisfaction with life), JPC children had better outcomes in eight studies and equal outcomes in four studies. The fewest differences were in grades and cognitive skills, where the JPC children were only better off than SPC children in two of the five studies and equal in the other three.

Table 2

Is Joint Physical Custody Linked to Better, Worse, or Equal Outcomes Than Sole Physical Custody After Controlling for Parental Conflict?

Lead researcher	Number of children		Ages	Grades cognitive skills	Depressed anxious dissatisfied low self esteem	Aggression drugs-alcohol misbehavior hyperactive	Physical health & stress illnesses	Father-child relationship
	Joint	Sole						
Barumandzadah	91	328 mom 34 dad	11–12		Better			
Buchanan	51	355 mom 100 dad	13–16	Better	Better	Better	Better	Better
Cashmore ^b	84	473	0–17	Better	Better	Better		
Cashmore ^b	90	411	0–17		Better	Better		
Cashmore ^b	26	110	13–17		Equal			Better
Fabricius	75	188	College				Better	Better
Fabricius	30	122	College				Better	Better
Fransson	391	654	10–18		Better			
Kaspiew ^b	947	3,513	0–17	Better, dad report; Equal, mom report	Better, dad report; Equal, mom report			
Johnston	35	65	4–12		Equal	Equal		
Lee	20	39	6–12			Better		
Lodge	105	398	12–18	Equal		Equal		Better
McIntosh ^b	14–71	589–1161*	2–5			Mixed ^d	Better	
Melli	597	595	1–16		Equal		Better	Better
Shiller	20	20	12–14			Better		
Spruijt	135	250	10–16	Equal				
Vanassche	395	1,045	12–19		Boys better, girls worse			Better

^a Researchers used measures with no established validity or reliability. ^b Government commissioned report not subjected to blind peer review. ^c Samples sizes varied widely for the six measures and child's age.

* Means sample sizes varied depending on variable measured.

Of these 16 studies, only one has examined the long term association between conflict at time of separation, the custody plan, and children's relationships as young adults with each parent (Fabricius & Suh, 2017). The 30 JPC couples did not have significantly less conflict or less disagreement over the parenting plan when they separated than the 122 SPC couples. But as young adults, the children who had custody plans where they frequently overnights with their fathers, including JPC, between the ages of one and four had better relationships with both parents than those who less frequently or never overnights.

Even when parents present with high conflict, intractable disagreement about overnights, and a child under 1 year old, both parent-child relationships are likely to benefit in the long term from overnight parenting time up to and including equally-shared overnights at both parents' homes. (Fabricius & Suh, 2017)

In sum, after accounting for parental conflict, in 16 of the 17 studies JPC was linked to better outcomes for the children on most measures and was not linked to worse outcomes on any measure. To be clear, these studies did not conclude that high, ongoing conflict had no impact on children or that JPC erased the negative impact of intense conflict involving the children. What these researchers did find is that, even after accounting for conflict, children in the JPC families had better outcomes on almost all measures. These findings are extremely important because they refute the claim that JPC cannot be linked to better outcomes for children unless the parents have a low conflict, amicable, collaborative relationship.

Low Conflict, Cooperative Coparenting: How Beneficial Is It?

Why is JPC linked to better outcomes for children even after parental conflict is taken into account? If a low conflict, collaborative relationship is supposedly linked to more benefits for children, then why did the JPC children have better outcomes even when the conflict was not low? First, as Amato and his colleagues have noted, very few studies have actually tested the assumption that cooperative coparenting is closely linked to children's well-being (Amato, Kane, & James, 2011). Moreover, there is very little quantitative empirical evidence to support the belief that coparenting matters more than the quality of parenting or the quality of the parent-child relationship (Sigal, Sandler, Wolchik, & Braver, 2011). Moreover, based on his reviews of the literature, Lamb (2014) concludes: "Parents who collaborate in child rearing tend to have better adjusted children . . . although some children thrive even when their parents do not collaborate . . . even when those parents are in open conflict" (Lamb, 2014).

What do the data reveal about the links and the interactions between children's well-being, conflict, coparenting, and the quality of the parent-child relationship? In the most robust study in terms of size and methodology, researchers analyzed data from a nationally representative sample of 1,247 children from separated families and 3,055 from intact families over a 10 year period (Amato et al., 2011). The researchers used standardized measures to assess parental conflict and cooperation and the children's well-being as adolescents and then again as young adults. The

parents fell into three clusters in regard to whether they had a “good divorce”: 30% “cooperative coparenting” (high coparenting/modest conflict), 35% categorized by the researchers as “parallel parenting” (very little coparenting/moderate conflict), and 35% “single parenting” (no coparenting or conflict because the parents were not in touch with each other). There was no statistically significant difference between adolescent children with modest conflict/high coparenting parents and those with higher conflict/low coparenting parents with regard to their grades, self-esteem, substance use, or liking school and feeling that life was going well. There was a weak link between modest conflict/high coparenting and adolescents’ behavioral problems. But as young adults, these children were not significantly less likely to have had sex before the age of 16, to have married early or cohabited, or to have used drugs than children from the modest conflict or no conflict families. The low conflict/high coparenting was, however, strongly linked to closer relationships between the young adult children and their fathers. It may be that when the parents got along better with one another, the fathers spent more time with their children which, in turn, strengthened their bond—a speculation that is consistent with the findings from other studies (e.g., Fabricius & Leucken, 2007; Pruett et al., 2004). Overall then, the researchers concluded that their results “are not consistent with the hypothesis that children who experience a good divorce have the most positive outcomes” (p. 519).

In a smaller study with 270 parents, there were modest links between conflict, coparenting and children’s outcomes (Beckmeyer et al., 2014). The parents were recruited from a court-ordered parenting education program. The study controlled for family income, time since separation, and gender and age of parents and children. Conflict was moderately linked to children’s externalizing problems and weakly linked to internalizing problems and social skills. Coparenting communication was only weakly linked to internalizing behavior. The parents’ relationships fell into one of three categories: 31% had the most cooperation/least conflict, 45% had moderate cooperation/moderate conflict, and 24% had least cooperation/highest conflict. When the 13- to 18-year-old children from these three groups were compared, there were no significant differences in their internalizing or externalizing problems or social skills. “Our results support the notion that divorcing parents can effectively rear children even when coparenting is limited or conflictual” (p. 533). Given their findings, these researchers recommended that less emphasis be placed on reducing conflict and improving the coparenting relationship and more emphasis be placed on teaching parents how to strengthen their relationships with their children and how to improve their parenting skills.

Two other studies are noteworthy for using large representative samples from the longitudinal National Survey of Families and Households. The first wave of the study included 1,172 children ages five to eighteen living with their mothers who had a father living elsewhere (King & Heard, 1999). Since only 8% of the mothers reported a “great deal” of conflict, the researchers categorized the groups as either “no” conflict or “some or a great deal” of conflict. The presence or absence of conflict did not make a significant difference in the children’s overall adjustment, global well-being or behavioral problems. In 10% of the families the children were worse off on all three measures. In these families the mothers were dissatisfied either with the amount of time the father was spending with the children or with the coparenting relation-

ship. As in the families where the children were not troubled, the absence or presence of conflict was not linked to the children’s problems in these families. But the mother’s dissatisfaction was linked to children’s problems. The most dissatisfied mothers were the women who had been married before the separation, as opposed to cohabiting, and whose ex-husbands were visiting the children, but were not engaged with the mother in coparenting. The researchers speculated that the formerly married mothers were more dissatisfied because they expected more from the fathers than the mothers who had been cohabiting. Four years later in the second wave of the study with 354 mothers and their adolescent children, the connections between cooperative coparenting, conflict and the quality of the father-child relationship were assessed (Sobolewski & King, 2005). The mothers rated the coparenting according to how often the fathers helped in raising the children, discussed the children, and influenced child rearing decisions. The mothers rated conflict in regard to three specific issues: child rearing, where the children lived, and money. Cooperative coparenting was far more strongly linked than conflict to the quality of the father-child relationship and to responsive fathering. In other words, even when the parents had conflict, when the mothers were satisfied with the fathers’ coparenting, the children had better relationships with their fathers and the fathers were more responsive.

Findings from a smaller, more in-depth study are instructive in explaining both the indirect and the direct ways that conflict is linked to different aspects of children’s well-being (Pruett, Ebling, & Insabella, 2004; Pruett, Williams, Insabella, & Little, 2003). These formerly married or formerly cohabiting white, middle class parents in Connecticut had voluntarily enrolled in a parenting program. Fifteen to 18 months after enrolling, 110 mothers and 102 fathers provided data about their children who were two to six years old. Even though higher conflict was not directly linked to the children’s emotional or behavioral problems, it was directly linked to other aspects of the family which, in turn, were directly linked to certain types of problems for the children. Conflict was moderately linked to father involvement which, in turn, was only weakly linked to the children’s adaptive behavior. Conflict was not linked to negative changes in the mother’s relationship with the child, but was directly linked to negative changes in the father’s relationship with the child, which was then moderately linked to children’s externalizing and internalizing problems. Mothers’ reports of conflict were moderately linked to children’s sleep problems and weakly linked to somatic complaints. Fathers’ reports of conflict were moderately linked to children’s internalizing behaviors and to their destructive behavior. In contrast, negative changes in the father’s or the mother’s relationship with the child were directly and moderately linked to children’s externalizing and internalizing problems. But consistent with studies already discussed, the quality of the parent-child relationship was more closely linked than parental conflict to the children’s outcomes.

Conflict may also play a different role depending on whether the mother has remarried, as was the case for 54 fifth graders in one school district in Vermont (Bronstein, Stoll, Clauson, Abrams, & Briones, 1994). After controlling for family income, there were no significant connections between cooperative coparenting (which included an assessment of conflict) and the children’s self-concepts, psychological problems, grades, or classroom behavior when the mother had not remarried. The only significant correla-

tion was a moderate link between coparenting and peer popularity. But in the 23 families where the mother had remarried, there were strong correlations between conflict/coparenting and children's self-concept, psychological problems, grade point averages, and classroom behavior. These findings suggest that conflict and coparenting may be more closely linked to children's well-being after a stepfather enters the family network.

On the other hand, in a larger longitudinal study in Wisconsin where most of the parents had remarried, there were no significant differences in the quality of the young adults' relationships with their fathers according to how much conflict there had been between their parents one, three or five years after divorce (Ahrons & Tanner, 2003). Based on the data from these 84 daughters and 89 sons, the researchers concluded: "We were surprised to find no significant differences in coparental relationship quality between those children who reported that their relationships with their fathers got better, stayed the same, or got worse in the 20 years following their parents' divorce" (p. 346).

Along similar lines, even in an extremely high conflict group of litigating families who were unable to resolve their differences despite the help of court mediators, conflict and coparenting communication were only weakly connected to the children's emotional or behavioral problems (Johnston et al., 1989). In the first phase of the study, the 100 children ranged from age 1 to age 13 and a third of them lived in JPC families. These lower middle class SES parents had been separated, on average, for four years. In these very high conflict families, children who were caught in the middle of the conflicts had significantly more behavior problems. But in the SPC or the JPC families, parental conflict or being caught in the middle explained less than one fifth of the difference in the outcomes. With regard to communication, how well the parents "verbally reasoned" with each other at the outset and at the two year follow-up was "unrelated either directly or indirectly to the measures of child adjustment" (p. 586).

In sum, there is not strong support for the belief that high conflict and poor coparenting are closely associated with worse outcomes for children. This is not to say that being dragged into or exposed to ongoing, frequent, high conflict will not be linked to worse outcomes for children when they have close relationships with their parents. But the bulk of the research does not support the belief that the level of conflict is more strongly linked to the outcomes than is the quality of the parent-child relationship. Nor do the data support the generalization that JPC should only be considered appropriate for parents who have low conflict, cooperative relationships or only for parents who resolve their custody disputes without high legal involvement or custody hearings. Further, as we will now see, parental conflict is not more closely linked to children's outcomes than the quality of the parent-child relationship.

Children's Well-Being: Conflict, Coparenting, and the Parent-Child Relationship

Why have these studies not found strong links between conflict, coparenting, and children's well-being? One possibility is that attentive, authoritative parenting and close parent-child relationships weaken the link between negative outcomes, parental conflict and poor coparenting relationships. This is not to say that having good relationships with their parents will "cause" children

to have better outcomes even when they are repeatedly dragged into or frequently exposed to high conflict. But as the following studies illustrate, the quality of the parents' relationship with the children mediates the association between conflict and children's well-being. Keep in mind, however, that in these studies "high" conflict is not referring to couples with a history of physical violence and battering.

In one of the earliest studies with 62 children in Virginia six years after their parents' divorce, conflict was less strongly connected to worse outcomes when the children had close relationships with both parents (Hetherington, 1989). Similarly, in a study in Georgia with 51 eleven- to 14-year-olds whose parents had divorced within the past year and 46 children from intact families, the quality of the mother-child relationship was more closely associated with children's outcomes than was conflict (Fauber, Forehand, Thomas, & Wierson, 1990). In the divorced families children's externalizing problems and internalizing problems were strongly connected to having a withdrawn, rejecting mother but only weakly connected to parental conflict. In stark contrast, in intact families conflict and externalizing problems were strongly connected to one another. Moreover, since the connection between high conflict and the mother's being rejecting or withdrawn was significantly stronger in divorced families, high conflict might have a more damaging effect on the quality of the mother-child relationship for separated parents.

How closely is high conflict linked to the quality of the parent-child relationship? In an Australian study with 80 adolescents, conflict was not connected to how close the children felt to their parents; but overnight fathering time was. Even in the high conflict families, the teenagers who were spending more than 30 nights a year with their father felt closer to him than those who spent the same total amount of time with their father, but had much less or no overnight time. The researchers hypothesized that the negative effect of conflict was reduced because the children maintained close relationships with their fathers by spending ample overnight time together which allowed for more natural, more relaxed, more meaningful interactions (Cashmore, Parkinson, & Taylor, 2008).

Newer studies by Sandler and his colleagues in Arizona are consistent with the older studies. In the first study with 182 children aged four to 12, when parent conflict was high and the children did not have a warm relationship with either parent, the children had more internalizing problems (Sandler, Miles, Cookston, & Braver, 2008). When parental conflict was low and they had warm relationships with both parents, children had the fewest internalizing problems. In contrast, children with high conflict parents had no more externalizing problems than those with low conflict parents, but again children with good relationships with both parents had fewer problems. In their second study where all 141 children came from high conflict families, the children only had elevated mental health problems when they had a poor relationship with both parents (Sandler, Wheeler, & Braver, 2013). Even when they were only receiving positive parenting from one parent, children's mental health problems were not elevated in high conflict families. Sandler et al. refer to this as a "compensation effect" where positive parenting by one parent can compensate for poor parenting from the other parent even when conflict is high. But a third factor also came into play—the amount of overnight time spent with their fathers. Even when the children had good relationships with their fathers, they only had fewer behavior or fewer mental health

problems when they were spending at least 11 nights a month together. The researchers suggested that spending a minimum of 30% overnights is necessary for a father's positive parenting to benefit children.

In their more extensive longitudinal study, these researchers assessed 240 children in sole maternal physical custody when they were 9 to 12 years old, then six years later as adolescents, and then again nine years when they were 24 to 29 years old (Elam, Sandler, Wolchik, & Tein, 2016; Modecki, Hagan, Sandler, & Wolchik, 2015). This study merits careful attention since it is longitudinal and since it has been reported in the media as finding that "Young people whose fathers were very involved but fought frequently [with the mothers] were no better off than those whose dads were uninvolved" (Emery, 2016a), and reported at conferences as finding that "the kids in joint physical custody had worse psychosocial outcomes" (Emery & Pruett, 2015) and that "fathers' support and frequent contact do not outweigh the negative impact of conflict on youth outcomes in the long run" (McIntosh, 2015).

Three limitations of this longitudinal study should be kept in mind. First, "father contact" included phone conversations and letters as well as actual time together. Second, the parents divorced nearly a quarter of a century ago (1992–1993) when fathers in our society were less involved with their children during marriage and after separation than they are today. As the researchers noted, the "high contact" group had very little fathering time compared with what would be considered "high contact" today. Third, the first assessments of conflict took place six to eight years after the parents separated. This means that the "high" conflict had been ongoing for many years, which is not typical for the vast majority of divorced parents.

Father "support/involvement" meant how much advice, positive feedback, participation in leisure activities, or help the children felt they had received in the past month. "Conflict" meant how much conflict the children felt their parents had in the past year. The children's internalizing and externalizing problems were reported by the mothers and by the children. Three patterns emerged: high conflict/high contact and support (44%), moderate conflict/low contact and support (20%), and low conflict/moderate contact and support (36%).

When the children were 9 to 12 years old, those who reported high conflict between their parents had more internalizing and externalizing problems regardless of the amount of father contact and support (Elam et al., 2016). But when they were 15 to 19 years old, a different pattern emerged. The adolescents who reported higher parental conflict, but had the most father contact and support, had fewer internalizing problems than those who had lower conflict parents but less father contact and support. Nine years later, when the children were 25 to 29 years old, the situation had changed again (Modecki et al., 2015). Negatively, the young adults with the high conflict/high contact/high father involvement had not achieved as high a level of education as those with low conflict/moderate contact fathers. Positively, the high conflict/high involvement group did not have more externalizing or internalizing problems than the lower conflict, moderate involvement group.

What do these studies tell us? As Sandler states:

The findings are complicated and don't give us a clear and simple understanding of the relationship between high conflict and child adjustment. . . . The larger point we are making in each of our papers

is that you can't look at conflict as a single variable out of context with other aspects of the post-divorce family. It may very well be that conflict in the earlier post-divorce environment has a different impact than conflict that persists over six years. (I. Sandler, personal communication, Feb. 2, 2016)

Sandler and his colleagues (Mahrer et al., 2016) clarify the implications of their findings for custody decisions: "Although high quality parenting does not negate the pathological effects of interparental conflict on children's well-being, high quality parenting by either parent can be a protective factor when parents have moderate or greater levels of conflict" (p. 70). "Recommendations should not decrement parenting time of parents with good quality relationships or the potential for good quality relationships with their children because of a high level of interpersonal conflict between the parents" (Mahrer et al., 2016, p. 63). Sandler and Modecki's study (2015) drew no conclusions about children's psychosocial outcomes in JPC versus SPC families because all of the children were in SPC with their mothers. Because carefully designed, longitudinal studies like these are relatively rare in the literature on conflict and custody, it is especially important that these data be reported accurately and not be bent by advocates to serve their own agendas regarding custody.

Findings from studies by Fabricius and his colleagues' are consistent with Sandler et al.'s findings. In an Arizona sample of 136 college students from SPC families and 78 from JPC families, even when conflict was high, the more time the children had spent with their father during adolescence, the better their relationships were as young adults (Fabricius & Luecken, 2007). The young adults with high conflict parents were not as close to their fathers as those with low conflict parents. But the high conflict did not mediate the positive link between spending time together and the quality of the father-child relationship. A second study involved 337 college students from JPC families and 871 students from SPC families (Fabricius, Diaz, & Braver, 2012). Regardless of how much parental conflict the children felt there had been before, during and up to five years after the divorce, the more time they had spent living with their fathers the better their relationships were as young adults.

In sum, these studies concur that conflict and coparenting interact with the quality of the parent-child relationships. The data do not support the assertion that "Conflict is more damaging to children in divorce than having only a limited relationship with your other parent" (Emery, 2016b, p. 51). Conflict and coparenting should be considered in the context of the children's relationships with their parents. In that regard, it is worth reiterating three points established earlier in this paper: First, children in JPC families have closer relationships with their fathers than children in SPC families. Second, overall JPC parents do not have significantly less conflict or better coparenting relationships than SPC parents. Third, even after levels of conflict are accounted for, JPC is linked to better outcomes for children than SPC.

JPC Versus SPC: Children Caught in the Middle of Conflict

The complicated links between conflict and the quality of children's relationships with their parents is also related to whether the children are caught in the middle of the conflicts. Perhaps all three

variables interact: the overall level of conflict, being caught in the middle, and the quality of the parent–child relationship.

The California study discussed earlier was the first to compare the interaction of these three variables in JPC and SPC families (Buchanan et al., 1996). Four years after the parents' divorce, 51 adolescents living in JPC families (also referred to as "dual residence" families in the study) were compared with 100 adolescents living with their fathers and 355 living with their mothers. Importantly, this is one of the few studies to assess the extent to which the children felt they were caught in the middle of the conflicts. The researchers created a four question index asking the adolescents to rate how frequently they (a) felt caught in the middle of their parents, (b) were asked to carry messages between parents, (c) were asked questions about the other parent's home that they wish the parent would not ask, or (d) felt hesitant to talk about things concerning one parent when the other parent was around. The answers were combined to create an overall score reflecting the degree to which the adolescents felt caught.

The JPC adolescents had better outcomes than the SPC adolescents in terms of behavioral and emotional issues and the quality of their relationships with their parents. With regard to conflict, the one finding that often gets reported out of context by people who advocate against JPC in high conflict families is this: In the high conflict families the JPC children were more likely than SPC children to feel caught in the middle. This statement can easily lead to the belief that children cannot benefit from JPC if their parents are in high conflict. In fact that is not what the researchers found. First, when they were close to their parents, adolescents who felt caught in the middle in JPC or in SPC families were not more depressed, more stressed, or more involved in delinquent activities in high conflict than in low conflict families. Second, the JPC teenagers were more likely to have close relationships with both parents than SPC teenagers. Even though JPC children were more likely to be caught in the middle if the conflict was high, the fact that they had closer relationships with their parents mediated the link between high conflict and bad outcomes. Third, the JPC were no more likely than the SPC parents to have high conflict, which means JPC children were not more likely to be caught in the middle. "We did not find that dual-resident [JPC] adolescents were especially prone to adjustment difficulties under situations of high interparental conflict" (p. 258). "Interparental conflict had a much smaller direct relationship to adolescent adjustment than we had expected" (p. 257). Even in the high conflict families, the JPC adolescents "did not appear to be paying a price in terms of loyalty conflicts" (Buchanan et al., 1996, p. 265).

Which was more closely connected to bad outcomes for these adolescents: feeling caught in the middle or not feeling close to both parents? It appears they were equally damaging. Adolescents who did not feel close to either parent were just as likely as those who felt caught in the middle to be stressed, depressed or involved in delinquent behavior.

The effects of the coparenting relationship on adolescent adjustment were completely accounted for by its relation to feeling caught between parents. . . . To our surprise, there were no direct associations between coparenting and outcomes. . . . These results indicate that parental conflict need not affect children negatively. (Buchanan et al., 1996, p. 106)

Buchanan et al.'s study merits careful scrutiny because it is still mistakenly being cited as evidence that when conflict is high children fare worse in JPC than in SPC families. For example, the study has been reported as finding that: "Shared time arrangements (JPC) . . . work badly for children exposed to bitter and chronic tension between parents, who are drawn into their parents' conflict, align with one or both parents, or take on the role of parent" (Smyth et al., 2016, p.121) and as finding that: "Children in conflicted shared parenting are exposed to higher levels of conflict between their parents. . . . There is elevated risk of poor mental health outcomes for children who sustain shared care in a climate of ongoing parental acrimony" (McIntosh et al., 2010, p. 104). In fact, however, there were no significant differences in conflict between JPC and SPC parents and in the high conflict families the JPC children did not have worse outcomes than the SPC children even when they were caught in the middle. Even in the high conflict SPC families, "We found no evidence that adolescents who visited the nonresidential parent frequently were more likely to suffer negative consequences of conflict" (Buchanan et al., 1996, p. 258).

Even for young adult children, the quality of their relationship with their parents can mediate the link between being caught in the middle and feeling stressed or dissatisfied. In a sample of 129 young adults with divorced parents who were caught up in the conflicts, those who felt loved and affirmed by their parents were less stressed and more satisfied with their lives (Schrodt & Ledbetter, 2012). These young adults felt more stressed when their mothers were verbally aggressive than when their fathers were verbally aggressive toward one another (Shimkowski & Schrodt, 2012). The researchers speculated that the way mothers behaved during the conflicts has the greater influence on the children.

Is There Any Consensus on Conflict and Child Custody Among the Experts?

Have any groups of experts ever reached any agreement on the role that conflict should play in custody issues? On three occasions, they have. Group reports such as these merit special attention for several reasons. As a former President of the American Psychological Association (APA) explained (Bersoff, 2013), recommendations based on reviews of the research in amicus briefs by a group of scholars,

show the courts what psychology knows by presenting information in a neutral, objective coherent way so it can resolve a problem on an empirical basis rather than on a common sense approach or on the basis of precedent that may be grounded in false beliefs. (p. 1)

Similarly, a former editor of APA's *Psychology, Public Policy, and Law* (Sales, 1995), in emphasizing the significance of a cosigned amicus brief, stated: "the paper has instant scientific credibility, not only because of its authors' credential and reputations, but also because it was cosigned by 43 other scholars" (p. 245). Another group of 28 social scientists (Warshak, 2003) also concurred that papers endorsed by a large number of experts were especially important:

We are concerned because of the possibility that any given purported summary can be incomplete, selective, idiosyncratic or even deliberately biased. This is possible even for the most distinguished writers, and regardless of how well intentioned. The best safeguard against

this possibility is a summary that has the consensual endorsement of a large number of experienced and respected social science researchers. (p. 2)

The first group convened more than two decades ago in 1994 under the sponsorship of the National Institute of Child Health and Human Development (Lamb, Sternberg, & Thompson, 1997). The 18 participants were experts from developmental and clinical psychology, sociology and social welfare who recommended that parenting time be distributed so that it would “ensure the involvement of both parents in important aspects of their children’s everyday lives and routines—including bedtime and waking rituals, transition to and from school, extracurricular and recreational activities” (p. 400). As for conflict, these experts agreed that there was too little research to reach any conclusions about which custody arrangements would be more beneficial for high conflict families.

The second group was sponsored by the Association of Family and Conciliatory Courts (AFCC) and its report was published in the organization’s journal (Pruett & DiFonzo, 2014). Nineteen of the 32 participants were social scientists or mental health practitioners. The other 12 were judges, lawyers or law school professors. The majority agreed that: “There is enough research to conclude that children in families where parents have moderate to low conflict and can make cooperative, developmentally informed decisions about the children would clearly benefit from JPC arrangements” (p. 162). But the majority felt that high conflict parents and parents who did not have a “collaborative” relationship should not have JPC. How many of the participants agreed with these opinions and how many of them were social scientists was not reported.

The two critiques of the AFCC report were both critical of the conclusions and recommendations. Braver deemed the report and its recommendations “disappointing” because it failed to give proper weight to the empirical data (Braver, 2014). Similarly, Lamb criticized the report for exaggerating the impact of conflict and for inflating its importance as a factor working against JPC (Lamb, 2014).

The third group of experts was unique in several ways (Warshak, 2014). This group consisted of 111 international experts all of whom were social scientists or mental health practitioners. None were lawyers, judges, or law school professors. Most members of this group had held prestigious academic positions, had edited journals and had long histories of publishing books and peer reviewed articles on issues germane to child custody. Among this preeminent group of scholars and researchers were 11 people who had held major office in professional associations, 2 former Presidents of the American Psychological Association (APA), 5 university Vice Presidents, Provosts, or Deans, 17 department chairs, 61 full professors, 8 endowed chairs, 2 former presidents of the American Association of Family Therapy, a former president of the American Counseling Association, and a former president of APA’s Division for Family Psychology. These 110 experts endorsed the conclusions and recommendations in a paper written by Richard Warshak and published in an APA journal. The group concluded that shared physical custody [JPC]

should be the norm for parenting plans for children of all ages, including very young children. . . . The court should rely on evidence that goes beyond the issue of how much conflict exists—such as the quality of parenting from both parents. (p. 59)

“Denying joint physical custody when the parents are labeled high conflict brings additional drawbacks to children by denying them the protective buffer of two nurturing relationships” (Warshak, 2014, p. 57).

The only critique of Warshak’s paper was written by three Australian researchers (McIntosh, Smyth, & Kelaher, 2015) whose own JPC study (McIntosh et al., 2010) was heavily criticized in the consensus paper. Their major complaints were that the 110 scholars who endorsed the paper did not constitute a “consensus group” and that the consensus paper was overly critical of their study—a study that recommended against JPC for young children and for high conflict families (McIntosh et al., 2010).

In sum, the first group of experts reached no conclusions about conflict because there was too little research available at the time. The second placed a great deal of emphasis on conflict and coparenting; and the third placed far more emphasis on the quality of the parent–child relationship than on conflict or coparenting.

Conclusion

This paper has reexamined the research on conflict, coparenting and custody by addressing the questions: To what extent should conflict and the quality of the parents’ relationship with one another influence custody arrangements? Have we exaggerated their impact and placed too little emphasis on strong parent–child relationships and joint physical custody? If so, then we need a new framework which puts the parents’ conflicts and their coparenting relationship into a more balanced perspective. Based on the studies reviewed in this paper, that new framework might begin with these essential questions: Do the children have a loving, supportive relationship with both parents—or is there the potential to create a close relationship with ample parenting time? Do the parents’ conflicts largely revolve around the allocation of parenting time, their different parenting styles, the logistics of exchanging the children, or parenting a child with chronic behavioral, emotional, psychological or medical problems? Could a parallel parenting plan or an educational program possibly reduce some of the conflict? If the conflict was ever physical, was it limited to isolated incidents as the relationship was ending or during the divorce or custody process? Does the concern about the potential damage of ongoing high conflict arise from the fact that the parents had a court hearing or had protracted legal negotiations to resolve their issues? If the answer to a number of these questions is yes, then conflict and troubled coparenting relationships should not be allowed to “wag the custody dog.”

It would be woozling the research presented in this paper to make exaggerated claims about the links between conflict, coparenting, joint physical custody plans, and children’s well-being. These studies did not conclude that frequently being exposed to or dragged into the middle of intense, ongoing, frightening, or physically aggressive conflict will have little to no impact on children. Nor did these studies conclude that strong parent–child relationships, attentive and authoritative parenting, or JPC will eradicate the negative impact that intense conflict will have on children.

Six salient messages, however, do emerge from these studies. First, the level of conflict and the quality of the coparenting relationship are often not as closely correlated with children’s well-being as the quality of the parent–child relationship. Second, the connection between conflict and children’s well-being is me-

diated by the quality of the children's relationships with their parents. Third, parents' settling their custody disputes in court or through protracted legal negotiations has not been linked to worse outcomes for children. Fourth, JPC is associated with better outcomes for children than SPC even when their parents do not initially both agree to the parenting plan and even when the conflict at the time of separation or in subsequent years is not low. Fifth, most JPC parents do not have substantially less conflict or more collaborative coparenting relationships than SPC parents. And sixth, limiting the time that children spend with one of their parents through SPC is not correlated with better outcomes for children, even when there is considerable conflict and a poor coparenting relationship.

In sum, the best research currently available suggests that the quality of the parent-child relationship is more closely linked than parental conflict or the quality of the coparenting relationship to children's outcomes, with the exception of the most extreme forms of conflict to which some children are exposed. Conflict, coparenting, and the quality of the children's relationships with each parent are all connected to children's well-being. This is not an "either-or" issue that ignores the role that parental conflict or coparenting play in children's lives. Still, the data strongly support the idea that the quality of the parent-child relationship is the best predictor of future outcomes for the children. In other words, the role of conflict has too often been exaggerated and should not be the determining factor in child custody decisions or in regard to JPC arrangements except in those situations where the children need protection from an abusive or negligent parent. While continuing our efforts to reduce parent conflict and to improve the coparenting relationship, we should be equally—or perhaps even more—invested in helping both parents strengthen their relationships with their children and improve their parenting skills.

Given these findings, we can fine tune our "woozle alert" systems so we are less likely to be misled by data that have been cherry-picked, misrepresented, exaggerated, or only partially reported to support only one position on conflict, coparenting, and custody plans. With a more finely tuned alert system, we can better serve the interests of the millions of children whose parents are no longer living together.

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REGULAR ARTICLE

Preschool children living in joint physical custody arrangements show less psychological symptoms than those living mostly or only with one parent

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ABSTRACT

Aim: Joint physical custody (JPC), where children spend about equal time in both parent's homes after parental separation, is increasing. The suitability of this practice for preschool children, with a need for predictability and continuity, has been questioned.

Methods: In this cross-sectional study, we used data on 3656 Swedish children aged three to five years living in intact families, JPC, mostly with one parent or single care. Linear regression analyses were conducted with the Strengths and Difficulties Questionnaire, completed by parents and preschool teachers, as the outcome measure.

Results: Children in JPC showed less psychological problems than those living mostly (adjusted B 1.81; 95% CI [0.66 to 2.95]) or only with one parent (adjusted B 1.94; 95% CI [0.75 to 3.13]), in parental reports. In preschool teacher reports, the adjusted Betas were 1.27, 95% CI [0.14 to 2.40] and 1.41, 95% CI [0.24 to 2.58], respectively. In parental reports, children in JPC and those in intact families had similar outcomes, while teachers reported lower unadjusted symptom scores for children in intact families.

Conclusion: Joint physical custody arrangements were not associated with more psychological symptoms in children aged 3–5, but longitudinal studies are needed to account for potential pre-separation differences.

BACKGROUND

Shared parenting, or joint physical custody (JPC), refers to a practice where children with noncohabiting parents live alternatively and about equally with both parents, for example, one week with one parent and the next week with the other parent (1). This practice is increasing among divorcing and separating parents throughout the Western world, for example in Australia, Belgium and the USA (2).

International comparisons have shown that the practice of JPC is particularly common in Sweden, followed by Norway and Denmark (3–5), with data showing that around 10% of all Swedish school children live in JPC arrangements (3–6). The numbers are lower for preschool children, who are up to six years of age in Sweden, mostly because a higher percentage of parents are still married or cohabiting. Yet the large majority of preschool children with separated or divorced parents live with both parents, either in an equal (27%) or unequal (60%) arrangement (3). This tendency to share parenting when parents split up and live apart may be the result of the long-term policy commitment to involve fathers in Nordic family policies (3). In Sweden, for example, fathers are encouraged to take parental leave in early parenthood, and three of the 13 publicly financed months of leave are devoted to each

parent, and they can decide how to share the other seven between them (7).

It is well known that the health and well-being of children are at risk when parents split up (8). The higher risks of emotional problems and social maladjustment for children with separated parents, compared to those with cohabiting parents, may be related to children's loss of social, economic and human capital after a divorce (9). Also, pre-separation characteristics, such as lower parental relationship satisfaction and higher conflict levels, may

Key notes

- The suitability of joint physical custody, where children spend about equal amounts of time in the parent's respective homes after a separation, has been questioned for preschool children.
- We studied psychological symptoms in 3656 Swedish children aged three to five years in different living arrangements.
- Children living in JPC experienced similar levels of psychological symptoms to those in intact families and less psychological problems than those living mostly or only with one parent.

contribute to explaining the lower well-being in these children (9).

However, a growing body of research has shown that children's well-being after divorce is related to how children live and keep in contact with their parents after the separation (10). Living alternately with both parents after a family separation increases the likelihood of children receiving support from their fathers, which in turn has a positive impact on children's well-being (10). As in a review by Nielsen (11), many studies have, in fact, shown that school-aged children and adolescents living in JPC settings fare better with regard to a number of outcomes compared with those in single care arrangements. These include a review. However, there are also studies that have reported no differences between children in JPC and single care settings (12). Socioeconomic factors, levels of conflict between parents, the quality of parent-child relationships and children's personalities are important factors that contribute to, but cannot fully explain, the relation between different living arrangements and children's well-being (11,12).

Despite the intense debate on the suitability of JPC for children of preschool age, research on this age group is scarce (13–15). Theoretically, the concerns about this practice derive from attachment theory. According to this theory, young children need stability and predictability in their relationships with carers since their first attachment relationships are still developing (16). In particular, the assumed risks of separation from the mother, who is often regarded as the primary attachment figure, have fuelled the debate (13–15). However, in contrast to the research on older children, only a handful of studies have investigated the situation with regard to JPC for infants and preschool children. Moreover, due to the scarcity of children in equal JPC in existing studies, overnight stays with the second parent, rather than equal JPC, have been the focus of investigations. Also, the quality of some of these studies has been questioned, and the interpretations of the results have been intensely debated (13–15). However, these studies have had a number of limitations, including the predominant use of maternal reports of children's health and well-being (17,18) and the use of nonvalidated outcomes, such as illness in wheezing to indicate stress in children (17). Another study had limited generalisability because half of the fathers and 10% of the mothers were in prison during the children's first five years (18).

We only found three studies with validated outcome measures for children who were three to five years of age (17–19), and these were conducted in the US and Australia. Pruett et al. (19) collected data on psychological problems from both parents of children aged two to six years, and these were measured with the Child Behaviour Checklist (20). Their study comprised 58 children who stayed overnight with one parent more than once a week, 41 children with just one overnight stay per week and 33 children with no overnight stays. They found that overnight stays by the girls were associated with advantages in social functioning and less psychological problems in terms of internalising

problems and aggression when compared to girls with no overnight stays. McIntosh et al. (17) found lower persistence among the two- to three-year-olds who spent 35% or more time with their second parent, mostly the father. However, when the same study looked at 1215 children aged four to five years old in different contact arrangements, they found no differences in psychological problems according to the Strengths and Difficulties Questionnaire and after controlling for socioeconomic family factors (21). Tornello et al. (18) found higher proportions of insecure attachment among infants with overnight stays but no relation between psychological problems at the age of three years and custody arrangements in families with a strained social and economic situation, using the Child Behaviour Checklist (20). However, less problems were reported among five-year-old children who had JPC arrangements at the age of three compared to those who only lived with one parent at three years of age.

In conclusion, existing studies on preschool children in equal JPC are scarce (17–19). As a consequence of the lack of unequivocal empirical evidence, policies and recommendations regarding preschool children's living arrangements have relied mainly on clinical observations and interpretations of developmental psychology and, in particular, attachment theory (16).

The aim of this study was to compare psychological symptoms, reported by parents and preschool teachers, between groups of children aged three to five years of age. These were based on four patterns of living arrangements: intact families, JPC, living mostly with one parent and living exclusively with one parent.

METHODS

Data source

Data were obtained from the Swedish population-based Children and Parents in Focus study, which aimed to evaluate parenting programmes offered to parents of preschool children in Uppsala. Details of this study have previously been published (22). As part of the yearly health check-up at Swedish child health centres, the legal guardians of all children aged three to five, most frequently the mother and father, were invited to fill out one questionnaire each regarding the child's behaviours and symptoms as well as questions on sociodemographic background. In addition, another questionnaire was sent to the parents to give to their child's preschool teacher. For this study, we used data from children with complete data on variables of interest from at least one parent and also from the preschool teacher. If there was information available from both parents, a parent questionnaire was chosen at random. The analytical sample comprised 3656 children aged three to five years old. All participants gave their informed consent prior to their inclusion in the study. The study was approved by the Regional Ethical Review Board in Uppsala (dn 2012/437), and thus, all procedures contributing to this work complied with the original Declaration of Helsinki and its later amendments.

Variables

The parents were asked to report on the child's residence or living arrangements, by checking one of the seven options: with both parents, alternating between parents about equally, alternating between parents but mostly with me, alternating between parents and mostly with the other parent, only with me, only with the other parent or another option that they were asked to describe. For the purpose of this study, we used four groups: original family (living with both parents), JPC (alternating between parents, about equally), mostly with one (alternating between parents, mostly with me/alternating between parents, mostly with the other parent) and only with one (only with me/only with the other parent). We excluded eight children who were not living with either parent as they were living with grandparents or were in foster care.

The other child variables that we used were the child's gender (girl or boy) and age (three, four or five). The other family variables used in the study were the responding parent's gender (female, male), age (continuous), educational level (less than high school, high school or university), country of birth (Sweden or other) and relationship status (married/cohabiting, single or other).

The survey included the Swedish version of the Strengths and Difficulties Questionnaire (SDQ) (21,23), which is designed to be completed by parents or teachers. The SDQ is a widely used screening tool for child emotional and behavioural problems. The four symptom subscales measure emotional symptoms, conduct problems, hyperactivity/inattention and peer relationship problems. Each item is scored on a three-point scale from zero to two. The main outcome measure in this study was the total sum of the scores from the four symptom subscales

(the SDQ Total Difficulties), with a range from zero to 40. One score was calculated for parental reports and one for teacher reports.

Statistical analyses

Sociodemographic characteristics are presented as means and standard deviations or as numbers and percentages. Mean values and standard deviations were calculated for the total scores for the teacher and parental reports of the SDQ, respectively. Pearson correlations were computed to examine the relations between parental and teacher reports of the SDQ for each of the four custody groups. Multiple linear regressions were used to analyse the relations between the child's living arrangement, namely intact family, JPC, mostly with one parent and only with one parent, and the teacher and parent total SDQ scores, respectively. The analyses were carried out in two steps. The first model was only adjusted for the child's gender, child's age and parent's gender, and the second model was also adjusted for the parental characteristics, including education, country of birth and age as a continuous variable.

RESULTS

Background characteristics

Of the 3656 children, 136 (3.7%) were living in a JPC arrangement, 3369 (92.1%) in intact families, 79 (2.2%) mostly with one parent and 72 children (2.0%) only with one parent. As shown in Table 1, parents with JPC were more likely to be born in Sweden than parents in families where the children lived mostly with one parent or only with one parent after the separation. Boys and girls were

Table 1 Sociodemographic characteristics of children and parents in different living arrangements (n = 3656)

Sociodemographic variables	Children's living arrangements							
	Intact family		Joint physical custody		Mostly with one parent		Only with one parent	
	n	%	n	%	n	%	n	%
Child gender								
Girl	1639	48.6	62	45.6	30	38.0	37	51.4
Boy	1730	51.4	74	54.4	49	62.0	35	48.6
Child age								
3	1007	29.9	28	20.6	25	31.6	15	20.8
4	1043	31.0	48	35.3	18	22.8	29	40.3
5	1319	39.2	60	44.1	36	45.6	28	38.9
Parent gender								
Female (mother)	1817	53.9	80	58.8	57	72.2	68	94.4
Male (father)	1552	46.1	56	41.2	22	27.8	4	5.6
Parental highest level of education								
Less than high school	76	2.3	4	2.9	6	7.6	7	9.7
High school	998	29.6	65	47.8	39	49.4	30	41.7
University	2295	68.1	67	49.3	34	43.0	35	48.6
Parent country of birth								
Sweden	2973	88.2	124	91.2	68	86.1	61	84.7
Other	396	11.8	12	8.8	11	13.9	11	15.3
Parent age (mean, SD)	37.2	5.4	35.9	5.7	36.2	6.9	35.9	6.5

more evenly distributed in intact families than in separated families.

Psychological symptoms in relation to background characteristics

The preschool teachers consistently rated children's psychological problems as less severe than the parents (Table 2). According to both parents and teachers, boys were rated as having more psychological problems than girls, as were younger children, the children of younger parents and of parents with lower educational levels, children with single parents and those with parents born outside Sweden. Correlations between parental and teacher reports, based on the SDQ Total Difficulties and divided by each custody group, were as follows: intact family 0.32 ($p < 0.001$), JPC 0.27 ($p = 0.002$), mostly with one parent 0.47 ($p < 0.001$) and only with one parent 0.34 ($p = 0.002$). These correlations were not significantly different, except for the correlations between JPC (0.27) and mostly with one parent (0.47; $z = 1.65$; one-tailed $p = 0.049$).

Parents and teachers rated children who lived mostly or only with one parent as having more psychological problems than those in JPC arrangements, even after controlling for socioeconomic factors (Tables 3 and 4). Children in intact families had the same levels of psychological symptoms as those living in JPC settings, according to the parents. According to the preschool teachers, children living in JPC settings suffered from more psychological symptoms than those in intact families. However, this difference did not remain statistically significant after controlling for parental factors in the second model (Table 4).

DISCUSSION

In this cross-sectional study of 3656 preschool children aged three to five, parental and preschool teacher reports showed that children living in JPC settings suffered from less psychological problems, as measured by the SDQ, than those living mostly or only with one parent, before and after adjusting for sociodemographic variables. Parents reported

Table 2 Mean values, standard deviations and proportion of children in the 90th percentile of the SDQ in relation to sociodemographic variables ($n = 3656$)

Sociodemographic variables	Parent SDQ			Teacher SDQ		
	Mean	SD	90th percentile	Mean	SD	90th percentile
Living arrangement						
Intact family	5.89	4.22	12	3.55	4.04	9
Joint physical custody	5.98	4.11	12	4.32	4.93	12
Living mostly with one parent	7.97	5.74	16	5.82	5.98	15
Living only with one parent	7.86	5.30	16	5.76	5.46	15
Child gender						
Girl	5.51	3.93	11	3.03	3.60	8
Boy	6.41	4.57	13	4.27	4.58	10
Child age						
3	6.71	4.27	12	4.18	4.16	10
4	6.19	4.32	12	3.94	4.34	9
5	5.25	4.19	11	3.09	3.99	8
Parent gender						
Female (mother)	5.80	4.31	11	3.72	4.30	9
Male (father)	6.19	4.28	12	3.62	4.03	9
Parental highest level of education						
Less than high school	8.84	5.02	16	4.80	4.26	12
High school	6.52	4.65	12	4.15	4.41	10
University	5.61	4.02	11	3.41	4.04	9
Parent country of birth						
Sweden	5.85	4.24	12	3.62	4.16	9
Other	6.92	4.58	14	4.09	4.32	10
Parent age						
20–29	7.70	4.84	15	4.75	5.03	11
30–39	6.04	4.28	12	3.61	4.08	9
40–49	5.47	4.06	11	3.46	4.02	9
≥50	5.05	4.17	11	4.62	5.19	11
Marital status						
Married/cohabiting	5.92	4.23	12	3.59	4.08	9
Single	6.52	4.57	13	4.96	4.91	12
Other	8.26	6.59	17	4.84	6.90	16

similar results for children in intact families and children in JPC, while teachers reported somewhat higher unadjusted levels that were slightly attenuated by adjustment for sociodemographic confounders.

Including assessments from preschool teachers as well as the nuanced categorisation of children's living arrangements and the inclusion of a relatively large group of children living in about equal JPC in this study adds to the previously scarce scientific understanding of psychological symptoms in preschool children in different living arrangements (17–19). Furthermore, the results were in accordance with studies on JPC in school-aged children, where children living in JPC settings reported better health outcomes than those living mostly or only with one parent (6,24,25).

The similarity in the pattern of psychological symptoms in relation to living arrangements among preschool children to that among older children and adolescents is interesting as JPC has been particularly questioned for young children. An important reason for favouring single care residence for young children in the debate has been their assumed need of stability and predictability in their parental relationships (13,14,16). The results of this study indicate that JPC arrangements were *per se* not associated with more psychological symptoms in children. There might be several reasons for this. Possibly, the child's access to two involved parents may instead be more important for children's psychological well-being than the problems associated with moving between homes. Having an involved father has been shown, in numerous studies, to be especially

important for children's mental health and development (10,26). In addition, both parents might experience less parenting stress by being able to better balance work and parenting duties and recuperate, due to being child-free every other week (27). Less stress along with more designated child time could lead to better parenting practices and more engagement in activities with the child, promoting the child's development and well-being.

However, it is also possible that parents who agreed on, and were able to manage, JPC had less conflict or were more involved parents prior to the separation and therefore provided a better environment for their child's mental health development. Our cross-sectional study design had limited possibilities to control for such factors. We adjusted for parental educational level and country of origin, but did not have access to factors such as the parents' conflict level or ability to coparent. On the whole, we believe that the lack of increased psychological symptoms among preschool children living in JPC settings most likely had to do with the compensatory functions of involved parenting, whereas children living mostly with one parent, or only with one parent, may have had less access to this protective factor and may also have been more exposed to predivorce risk factors with higher levels of toxic stress.

Strengths and limitations

One strength of this study was how we categorised postseparation living arrangements. Previous studies have mainly focused on overnight stays or included children

Table 3 Linear regression models of parental reports of the SDQ Total Difficulties by living arrangement and sociodemographic variables (n = 3656)

	Model 1		Model 2	
	B	95% CI	B	95% CI
Living arrangement				
Joint physical custody	Ref		Ref	
Intact family	−0.20	−0.92 to 0.52	0.04	−0.67 to 0.75
Living mostly with one parent	1.92***	0.75 to 3.09	1.81**	0.66 to 2.95
Living only with one parent	2.06***	0.85 to 3.27	1.94***	0.75 to 3.13
Child gender				
Girl	Ref		Ref	
Boy	0.87***	0.60 to 1.14	0.88***	0.61 to 1.15
Child age	−0.73***	−0.90 to −0.56	−0.59***	−0.75 to −0.42
Parent gender				
Female (mother)	Ref		Ref	
Male (father)	0.49***	0.22 to 0.77	0.71***	0.43 to 0.99
Parental highest level of education				
Less than high school			Ref	
High school			−1.91***	−2.78 to −1.03
University			−2.52***	−3.38 to −1.65
Parent country of birth				
Sweden			Ref	
Other			1.05***	0.64 to 1.47
Parent age			−0.10***	−0.13 to −0.08

Model 1 was adjusted for child's age (as a continuous variable), child's gender and the responding parent's gender. Model 2 was also adjusted for the parents' educational level, country of birth and age (as a continuous variable).

p < 0.01; *p < 0.001.

Table 4 Linear regression models of teacher reports of the SDQ Total Difficulties by living arrangement and sociodemographic variables (n = 3656)

	Model 1		Model 2	
	B	95% CI	B	95% CI
Living arrangement				
Joint physical custody	Ref		Ref	
Intact family	−0.81*	−1.51 to −0.11	−0.69	−1.40 to 0.01
Living mostly with one parent	1.36*	0.23 to 2.50	1.27*	0.14 to 2.40
Living only with one parent	1.49*	0.32 to 2.67	1.41*	0.24 to 2.58
Child gender				
Girl	Ref		Ref	
Boy	1.20***	0.93 to 1.46	1.20***	0.93 to 1.46
Child age	−0.56***	−0.72 to −0.40	−0.55***	−0.71 to −0.39
Parent gender				
Female (mother)	Ref		Ref	
Male (father)	0.02	−0.25 to 0.29	−0.05	−0.33 to 0.23
Parental highest level of education				
Less than high school			Ref	
High school			−0.36	−1.22 to 0.51
University			−1.03*	−1.89 to −0.18
Parent country of birth				
Sweden			Ref	
Other			0.45*	0.04 to 0.86
Parent age			0.01	−0.02 to 0.03

*p < 0.05; ***p < 0.001.

Model 1 was adjusted for child's age (as a continuous variable), child's gender and the responding parent's gender. Model 2 was also adjusted for parents' educational level, country of birth and age (as a continuous variable).

living with one parent for up to 30% of the time (17–19). In this study, JPC was defined as children spending about an equal amount of time living with both parents. Furthermore, the inclusion of the living mostly with one parent category implies that children of parents who chose the JPC category actually spent about 50% of their time in each parent's home. A further, and particular, strength was the parallel parental and teacher reports on the child's behaviour. Many studies on this age group mainly rely on maternal reports and the inclusion of paternal reports, and in particular those of preschool teachers, possibly provided more objective reports on child mental health (17–19). Furthermore, our sample size was relatively large compared to earlier studies on this topic.

The main limitation of this study was its cross-sectional design. Although we adjusted the analysis for some sociodemographic confounders, it seems probable that substantial residual confounding existed with regard to other familial risk factors. It also seems likely that there was a positive selection of parents into the JPC category, with regard to communication between the separated parents, and a negative selection into the living mostly or only with one parent, with regard to parents who had a range of social problems. Another limitation was the possible selection bias of fathers who choose to complete the outcome measure in the current study. A study by Bastaitis et al. (28) indicated that fathers who were more involved with their children were also more likely to participate in surveys about their children. Fathers of children in JPC settings tend to be more

involved, so it is not surprising that, in the current study, children in JPC settings were more likely to be represented by their fathers compared to children living mostly or only with one parent. We conducted all the analyses controlling for parent's gender, but the extent to which our results were explained by these selection biases can only be evaluated in longitudinal studies with information on the child's and parents' mental health before and after separation. Therefore, further studies with a longitudinal design are much needed to inform policy and advice regarding living arrangements for young children when parents separate.

Despite the comparatively large population-based sample of preschool children in this study, the low rate of JPC at this age somewhat limited the conclusions we could draw. The limited number of children living in JPC arrangements also prevented us from studying the subscales of the SDQ. Both externalising and internalising problems can result from poor child–parent relationships (29,30), and this is why studies with larger populations of children living in JPC settings are needed to better understand the nature of the psychological problems experienced.

CONCLUSION

Preschool children who spent about equal time in both of their parent's respective homes after a separation showed less psychological problems than those living mostly or only with one parent. The design of the current study did not allow us to determine whether this difference was due to

preparation factors, but our results showed that JPC arrangements were not *per se* associated with more psychological symptoms. Longitudinal studies are needed to further inform policy makers and families.

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CONFLICT OF INTEREST

The authors have no conflict of interests to declare.

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Children's and Parents' Well-Being in Joint Physical Custody: A Literature Review

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Joint physical custody (JPC), a parental care arrangement in which a child lives with each parent for at least 25–50% of the time after separation or divorce, is increasingly common in many Western societies. This is a major shift from the standard of sole physical custody, with mostly mothers providing primary childcare after a parental separation or divorce. The increasing share of separated or divorced parents who practice JPC, which in some countries, U.S. states, and regions reaches 30% and more, results from increasing gender equality due to mothers participating considerably in the labor force and fathers being actively involved in their children's daily lives. This review focuses on the effects of JPC on children's and parents' well-being, based on 40 studies from North America, Australia, and Europe published between 2007 and 2018. In sum, there is empirical evidence from different countries that suggests that JPC arrangements can have positive effects on the well-being of children and of parents. However, the existing studies are conceptually, methodologically, and contextually very heterogeneous. In addition, self-selected highly educated parents with a high socioeconomic status, a low conflict level, and children between the ages of 6 and 15 practicing JPC dominate the samples. Thus, the risks and benefits of JPC are not clear yet and are heavily debated by advocates and academics. The review concludes with suggestions for future research.

Keywords: Children's well-being; Child custody; Custody; Divorce; Divorce and custody; Joint physical custody; Parents' well-being; Separation; Shared parenting; Shared residence; Bienestar de los niños; Tenencia de los niños; Divorcio; Tenencia compartida; Bienestar de los padres; Crianza compartida

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INTRODUCTION

A care arrangement after parental separation or divorce, increasingly common in a growing number of Western countries, is the *joint physical custody* plan (also *shared parenting* or *shared residence*), in which a child spends at least 25–50% of the time with each parent (Smyth, 2017, p. 494). Although there are only relatively few robust empirical results on how joint physical custody arrangements affect the well-being of children and parents, the topic is heavily debated by, for example, social scientists, family law professionals, mental health practitioners, counselors, and policy makers. These debates are in part highly ideological (e.g., Harris-Short, 2010; Kruk, 2012). The central question of the discussion is which custody plan meets juridical requirements focused on “the best interests of the child” after a parental breakup. The children's interests, however, are sometimes inseparable from the subjective interests of the parents, which are often not

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explicitly stated, but should also be taken into account. Thus, the debate revolves around the problem of whether joint physical custody should be mandated by judges even against the will of one of the parents, or whether shared parenting can be recommended only if both parents come out in favor.

Given the great attention on the topic by family scholars, practitioners, and law professionals, it is not surprising that several meta-analyses and reviews about joint physical custody or shared parenting have been published in recent years. The majority focused, for good reasons, on the well-being of children (meta-analysis: Baude, Pearson, & Drapeau, 2016; reviews: Fehlberg, Smyth, MacClean, & Roberts, 2011b; Gilmore, 2006; Kelly, 2007; Nielsen, 2014, 2017; Smyth, 2009; review of Swedish studies: Fransson, Hjiern, & Bergström, 2018), but two of them also concentrated on parental adjustment (meta-analysis: Bauserman, 2012; review: Nielsen, 2011). So what does this particular review add to the existing literature? First, it is a review of the most recent empirical studies (2007–2018). (For an overview of the 40 studies included [e.g., sample, sample size, methods, key results], see Table S1 under “supporting information” on the *Family Process* webpage.) Thus, it includes new studies not already considered in other reviews. These new empirical studies are of particular interest because they capture research from European countries, where JPC has just started to receive public and scientific attention. Second, and most importantly, this paper summarizes the arguments and empirical results regarding the effects of joint physical custody on both children’s and parents’ well-being. Accordingly, the present review provides a comprehensive overview of the state of the discussion and the empirical evidence on joint physical custody, for children and for parents, taking recently published studies from North America, Australia, and Europe into account.

METHOD: LITERATURE SEARCH

The review is based on an extensive and systematic literature search. First, the search-platforms Web of Science/Social Science Citation Index (SSCI), International Bibliography of the Social Sciences (IBSS), JSTORE, Scopus, and Google Scholar were used to find all books and papers on joint physical custody, independent of the year of publication, the country of observation, the scientific research area, the particular subject, or the applied method. The following keywords were used for the search: joint physical custody, physical custody, custody, child custody, shared parenting, shared residence, shared-time parenting, dual residence, residence arrangement, co-parenting, and parenting plan. Second, the reference lists of all of the publications were scoured systematically to avoid overlooking books or papers which were not listed in the electronic databases. The literature search was restricted to publications in English.

In total, 163 journal articles, book chapters, and working papers on joint physical custody were identified. They included not only empirical studies, but also meta-analyses, reviews, and discussions of certain aspects such as legal decision-making about parenting plans. The publication dates reached from 1986 to 2018. For this review, the decision was made to focus exclusively on recent *empirical studies* (2007–2018). Altogether, 40 empirical studies were included (see Table S1 in the online appendix–supporting information). Even though the literature search was not focused on results from only a specific region, all of the publications were from Western countries in North America, Australia, and Europe.

In addition, the majority of the studies published in the last 11 years are from a few key countries, states, and regions in which joint physical custody has already been widely practiced for many years, such as Wisconsin (USA), Sweden, Australia, or Flanders (Belgium). This is not only because the number of families with joint physical custody arrangements is high enough to conduct research, but also due to a few active and successful

research groups dedicated to the topic (Bergström and her colleagues, e.g., from Sweden). Accordingly, the question arises as to whether these results are also valid for other countries or regions where the phenomenon is still relatively new. However, extensive research on joint physical custody began recently, and it seems appropriate to include every single existing study to see if there is a general trend in the results or not, even if particular countries are overrepresented. After this first important step, the second step, of international comparisons focusing on country-specific context variables that might influence the children's and parents' well-being, should be set up.

JOINT PHYSICAL CUSTODY: DEFINITION, LEGAL CONTEXT, AND PREVALENCE

The term *joint physical custody* (also *shared parenting* or *shared residence*) refers to a child's residential placement after a parental separation or divorce. Generally, joint *physical* custody (shared parenting time) corresponds with *legal* custody (shared decision-making), but it is not a prerequisite. Unfortunately, there is no precise definition of JPC yet, but rather an ongoing debate of scientists, practitioners, policy makers, and others about how much time with each parent would be required to fulfill the criteria of "joint" or "shared." The common denominator, however, seems to be the supposition that the child is alternating between the households of its parents and, thus, resides with each of them for a *substantial* time. Most empirical studies and jurisdictions are using the threshold of 30–50% with each parent to distinguish joint physical custody from sole physical custody, where the child lives primarily or exclusively with only one parent. An exception is the state of Wisconsin, USA, which defines JPC as living with each parent at least 25% of the time (Smyth, 2017, p. 498). However, only spending 50% of the time with both parents would meet the criteria of equal sharing, so that a child would not have a "primary" and a "secondary" home or a "resident" and a "non-resident" parent. In all other cases, it would be joint physical custody with the mother or father as primary (25–49%) (Meyer, Cancian, & Cook, 2017, p. 502).

Not only the amount of time the child spends with its parents, but also the cycles of care (i.e., the time between changeovers) can vary, depending on the wishes and needs of the family members (Masardo, 2009). Some children change between the homes of their parents every week, others every second week, or even every month. Interestingly enough, cultural differences in ideas about the psychological well-being of children exist, which, in consequence, lead to certain common care cycles in different countries, with either longer or shorter blocks of time. In a qualitative study, using semi-structured in-depth interviews with 20 British and 15 French fathers who had at least one biological child under the age of 18 in a joint physical custody arrangement, Masardo (2009, p. 202) was able to show that British fathers prefer shorter cycles of residence than do French fathers.

Due to the fact that fathers' involvement in their children's daily lives has overall strongly increased during recent years (Westphal, Poortman, & Van der Lippe, 2014), and that the number of working mothers who divide parenting responsibilities with the father has also increased (Hook, 2006), the desire to share parenting after a separation or divorce has forced legislative changes regarding custody arrangements accordingly (Juby, Le Bourdais, & Marcil-Gratton, 2005). Furthermore, fathers' rights movements have campaigned for more equal childcare responsibilities after parental separation or divorce (Spruijt & Duindam, 2009).

Thus, in several Western countries, states, and regions, custody laws were revised in the last couple of years that underline the importance of ongoing co-parental involvement (e.g., *Australia*: Smyth & Chisholm, 2017; *Belgium*: Vanassche, Sodermans, Declerck, & Matthijs, 2017; *Catalonia, Spain*: Solsona & Spijker, 2016; *Italy*: De Blasio & Vuri, 2013; *Sweden*: Singer, 2008; *The Netherlands*: Poortman & van Gaalen, 2017; *UK*: Nikolina,

2015; *Wisconsin, USA*: Meyer et al., 2017). Interestingly, none of the jurisdictions in those countries legislated with a 50/50 share in mind. “Several countries, however, now require judicial officers and family law system professionals to consider a shared-time arrangement as a starting point but to do so within the broader consideration of children’s best interest and the safety of the family members” (Smyth, 2017, p. 497). Thus, joint physical custody as a placement schedule that allows the child to have regular and meaningful periods of time with each parent is recognized in the family law of those countries as a legitimate option, challenging previous postseparation family practices by explicitly questioning the default sole physical custody (or primary care model), which is a huge legal shift. It seems necessary to point out, however, that none of the new legal regulations regarding residence arrangements is mandating JPC, but oblige courts to seriously consider this arrangement, if one or both parents request it (see Nikolina, 2015, for detailed information on legal aspects of residential co-parenting in England, the Netherlands, and Belgium).

The different legal situations—which might be reflected in more open attitudes and social norms—has also had an effect on the prevalence of joint physical custody in different countries and U.S. states: In Wisconsin, it is reported that the proportion of divorced parents who had a shared parenting plan increased from about 12% in 1989 to about 50% in 2010 (Meyer et al., 2017, p. 505). Also in other countries, the prevalence of joint physical custody arrangements in separated or divorced families has increased in the last couple of years. They make up to about 40% in Belgium (Vanassche et al., 2017, p. 549) and Sweden (Bergström et al., 2015; p. 769), about 30% in Norway (Kitterød & Wiik, 2017, p. 561), about 20% in Denmark (Spruijt & Duindam, 2009, p. 66), 5% (Ontario) to 40% (Quebec) in Canada (Bala et al., 2017, p. 520), 16% in Australia (Smyth & Chisholm, 2017; p. 594), 22% in the Netherlands (Poortman & van Gaalen, 2017, p. 533), 15% in Spain—again with large variations between different regions (Solsona & Spijker, 2016, p. 302), and 12% in the UK (Harris-Short, 2010, p. 258). Although JPC arrangements have increased during recent decades in all of these countries, it seems that they have now plateaued in some of them (e.g., Wisconsin, Australia, and the Netherlands). Furthermore, the question arises as to why only a minority of separated or divorced parents are choosing a JPC arrangement, even if it has been strongly advocated for many years in some of the countries, states, and regions.

JOINT PHYSICAL CUSTODY: EFFECTS ON CHILDREN’S AND PARENTS’ WELL-BEING

Countless studies have shown that separation or divorce is associated with lower levels of well-being for children and for parents (e.g., Amato, 2010; Härkönen, Bernardi, & Boertien, 2017). One of the most important factors identified by empirical studies that accounts for the maladaptation is the lack of resources resulting from sole physical custody, which means that the child lives with only one of the parents, in most cases with the mother. In short, children suffer from the loss of the relationship with the nonresident father and his emotional and financial resources; fathers also suffer from the loss of the relationship and the parental role, and mothers are overworked and stressed with the burden of daily child-care and labor force participation. With the growing number of joint physical custody arrangements, however, a question has arisen about whether the child’s spending substantial time in the mother’s and the father’s home might result in even worse outcomes or, in contrast, can maybe buffer detrimental effects caused by separation and divorce for both children and parents.

The empirical findings of existing studies on joint physical custody are very difficult to compare because of different samples, sample sizes, methods, societal contexts, outcomes,

and control variables. Some of the studies, for example, included separated parents, while others concentrated exclusively on the divorced. In addition, the age of the children concerned ranged from 0 to 25, and the definition of joint physical custody varied from 25% to 50% of time per parent. Many more factors could be listed here, but it is not possible to describe every study in detail in a literature overview. However, where it seems helpful for understanding and grouping the results, more information on methodological issues is given.

Another major issue is selectivity. As several studies have pointed out, parents who practice joint physical custody differ from parents in other postseparation care arrangements in their demographic and socioeconomic characteristics. They are, for example, more likely to have a higher level of education, a higher income, a lower level of conflict, a higher level of active paternal parenting prior to separation or divorce, and closer residence to each other (e.g., Cancian, Meyer, Brown, & Cook, 2014; Cashmore et al., 2010; Juby et al., 2005; Kitterød & Lyngstad, 2012; Masardo, 2009; Sodermans, Matthijs, & Swicegood, 2013a). Even in countries, states, and regions where the prevalence of joint physical custody arrangements of separated or divorced parents is about 30%, parents are socioeconomically better off in comparison to those who practice sole physical custody (Bakker & Mulder, 2013; Fransson, Läftman, Östberg, Hjern, & Bergström, 2017; Melli & Brown, 2008). Consequently, the question is inevitable as to whether joint physical custody is an arrangement chosen by a positively selected group of parents who are able to provide a certain kind of childcare, which in general induces more positive outcomes, independently of the parenting plan.

Before presenting recent empirical results on the impact of joint physical custody arrangements on the well-being of children and parents, it seems necessary to give an overview of the arguments brought into the debate from two sides—advocates, on one hand, and others who are more cautious about embracing the practice, on the other hand. A consideration of their rationales is essential for assessing what is being considered as “empirical evidence,” in order to conclude which assumptions have been proven by empirical results and where there are still lacunas which need more research attention in the future.

Effects of Joint Physical Custody on Children’s Well-Being

Arguments linking JPC with children’s well-being

There is largely consensus among researchers, practitioners, and law professionals that joint physical custody arrangements after parental separation or divorce benefit most children if parents cooperate and have low levels of conflict. Under these circumstances, children usually profit from maintaining close relationships with both their mother and their father. This is not only because child development research suggests that the better the parent–child relationships, the better the child’s adjustment, but also because it increases the possibility of the child’s getting access to the (psychological, social, and economic) resources of both parents.

However, disagreement exists regarding the effect of joint physical custody for children if parents do not cooperate or have ongoing conflicts. On one hand, advocates argue that joint physical custody is always in the best interest of the child (Kruk, 2012; Warshak, 2014). Even if the separated or divorced parents have ongoing conflicts, the contact with the father is still worth it. It would be worse for the child to lose the relationship with the father than to see the parents quarrel. In advocates’ opinion, the positive impact of joint physical custody for the child outweighs the stress by far. On the other hand, others have argued that ongoing parental conflict is extremely harmful for the child, and that under such circumstances, sole physical custody would be the better arrangement (Emery, 2016;

McIntosh, Pruett, & Kelly, 2014; Pruett, McIntosh, & Kelly, 2014). This is because conflict frightens children, makes them feel torn between their parents, exposes them to inconsistent parenting, and sometimes leads to an active undermining of one parent by the other. Thus, in high-conflict relationships, the parents cannot meet the needs of the child, and the arrangement is detrimental for the child's welfare (Kalmijn, 2016; Vanassche, Sodermans, Matthijs, & Swicegood, 2013).

There are at least two other intertwined issues without expert agreement: first, whether joint physical custody is suitable for children of any age; second, what the best care cycle is, depending on the child's age. Some people argue that it is too stressful for infants and toddlers to alternate between two parental homes and that it interferes with the development of secure bonding (Tornello et al., 2013). Others hold the opinion that even infants and toddlers can live in joint physical custody arrangements, if their separation tolerance is respected (Millar & Kruk, 2014). Thus, appropriate age-related arrangements are a very important factor: Preschool children may tolerate 3–4 days; at age eight, 5- to 7-day cycles seem possible (Kelly & Lamb, 2000). Even if ensuring continuity is very important for younger children, flexibility is more important when they grow: Adolescents, for example, tend to find joint physical custody arrangements more inconvenient, even if that type of plan worked for them earlier for an extended period of time, because it often interferes with children's social lives as they get older.

Empirical results on the effects of JPC on children

To begin with, the results of various empirical studies showed that joint physical custody after parental separation or divorce has a neutral to positive impact on children's well-being. A neutral effect means that the well-being of children in JPC arrangements is comparable with the well-being of children in sole physical custody arrangements, thus, that they are neither worse nor better off. However, there are studies showing that children in joint physical custody fare better than children in sole physical custody depending on measurement outcomes (see Table S1 on the *Family Process* website under supporting information).

Several large-scale Swedish studies and one from Norway, defining joint physical custody as equal shared-time arrangements, focusing on mental health as measure of child's well-being (using, e.g., the Strength and Difficulties Questionnaire, SDQ) showed that children in nuclear families scored lower than children with separated or divorced parents, but that children in joint physical arrangements scored lower than children in sole physical custody arrangements (Bergström, Fransson, Hjern, Köhler, & Wallby, 2014; Bergström, Fransson, Wells, Köhler, & Hjern, 2018; Bergström et al., 2015; Fransson, Turunen, Hjern, Östberg, & Bergström, 2016; Hagquist, 2016; Jablonska & Lindberg, 2007; Nilsen, Breivik, Wold, & Bøe, 2017).

Another nationally representative Swedish study (ULF) found evidence for a markedly lower likelihood of subjective stress for children living in joint physical custody when compared with children living in sole custody (Turunen, 2016). This result was supported by a study of adolescents from two compulsory schools in Stockholm, Sweden ($n = 75$), which showed that living arrangements were not associated with higher cortisol measures or recurrent pain (Fransson, Folkesson, Bergström, Östberg, & Lindfors, 2014). The Swedish ULF-study also revealed that children in single care reported lower self-esteem than children in other care arrangements (Turunen, Fransson, & Bergström, 2017). The differences did not disappear under the control of socioeconomic factors.

Another focus of two Swedish studies was risk behavior—like the use of alcohol or illicit drugs and smoking—of adolescents in different family forms (Carlsund, Eriksson, Löfstedt, & Sellström, 2013; Jablonska & Lindberg, 2007). Both studies came to the result that adolescents living in joint physical custody had no or only slightly higher rates of risk

behavior compared with adolescents from nuclear families, but significantly lower rates than their counterparts from single-parent families. However, the differences were no longer significant for children living with single mothers after controlling for possible confounders like number of close friends or school satisfaction (Jablonska & Lindberg, 2007).

A study by Bergström et al. (2013) brings several of the already-mentioned results regarding the well-being of children and adolescents in joint physical custody arrangements together. Again, situated in Sweden, they used representative data from a classroom study and analyzed 10 dimensions of the KIDSCREEN-52 and KIDSCREEN-10 indices. The results of this study showed that children from nuclear families have, in general, higher levels of well-being in comparison to children with separated and divorced parents. However, children in joint physical custody reported better well-being than children in sole custody. Since the 15-year-olds felt better than the 12-year-olds, Bergström et al. (2013, p. 7) conclude that JPC may have different effects for children of different ages. In addition to age, the gender of the child may also be an influencing factor, but results are mixed so far (e.g., Bergström et al., 2015; Spruijt & Duindam, 2009).

Two studies comparing children in joint physical custody arrangements with children in other family forms in 36 Western countries (Health Behaviour in School-ages Children Study, HBSC) found that they have equal or fewer problems communicating with their parents, as well as equal or higher levels of life satisfaction than children in single or step-families (Bjarnason & Arnarsson, 2011; Bjarnason et al., 2012). Two studies from Belgium, using nationally representative data (LAGO, Divorce in Flanders), taking not only the environment (custody arrangement) into account but also the moderating effects of personality (Sodermans & Matthijs, 2014), parental conflict, the quality of the parent-child relationship, and the complexity of family configurations (Vanassche et al., 2013), revealed that although there was no effect of the custody type on several measures of subjective well-being itself, joint physical custody was less beneficial to child's well-being (compared with sole mother residency) in case of high parental conflict, and when the relationship quality with the father is poor.

Several studies from different countries found evidence that joint physical custody is associated with stronger and more enduring bonds between fathers and children (Cashmore et al., 2010; Melli & Brown, 2008; Sodermans, Botterman, Havermans, & Matthijs, 2015; Spruijt & Duindam, 2009). The strength of the bonding was measured by, for example, paternal involvement in child rearing, joint leisure time, and emotional closeness. Since one of the most important reasons for the lower level of well-being of children with separated or divorced parents is the absence of and, therefore, the reduced closeness to the father (including the loss of support, financial resources, and engagement) (Bastaitis, Ponnet, & Mortelmans, 2012; King & Sobolewski, 2006), this is truly a remarkable result. Hence, joint physical custody with the possibility of regular and meaningful contact with both parents, instead of traditional sole physical (mother's) custody, was affirmative for the relationships between children and their fathers. However, the causality of the effect should, again, be discussed because active fathers have much higher odds of practicing joint physical custody after separation or divorce.

Moreover, a study using a representative sample of Dutch separated and divorced parents with children between the ages of 4 and 17 showed that the association between father-child contact and child well-being depends heavily on paternal involvement in child rearing before parental breakup (Poortman, 2018). This also holds true for shared parenting arrangements: If the father's predivorce involvement was low, joint physical custody did not have any advantage for the well-being of children when compared to mother-only residence. Only if fathers' predivorce involvement was medium or high did children benefit from regular contact with their fathers. Or as Poortman (2018, p. 11) stated in her discussion: "it is not so much the frequency of contact per se that benefits children but,

rather, the extent to which postdivorce residence arrangements reflect predivorce parenting arrangements.”

The controversy regarding whether joint physical custody is under all circumstances—including those in high-conflict couples—the best custody arrangement or not is reflected in contradictory empirical results, too. Some studies revealed no or only a minimal additional negative effect of conflict (assessed by the Perception of Interparental Conflict Scale, CPIC) on the outcomes of children in joint physical custody arrangements (Spruijt & Duindam, 2009), and others found that conflict increases the likelihood of negative outcomes for children (Cashmore et al., 2010; McIntosh, 2009; Vanassche et al., 2013). Similar to the latter result, Sobolewski and Amato (2007) showed with longitudinal data from the United States that adult children who were raised in high-conflict or divorced families did not have a higher subjective well-being when they had close relationships with both parents in comparison to those who had only a positive relationship with one parent (see also Kalmijn, 2016, and Vanassche et al., 2013, for the Dutch case). Thus, the benefit of having two close parent–child relationships in high-conflict families may even be outweighed by the emotional cost of stress. Several other studies confirmed that it is not the total amount of time spent with the child that is related to better outcomes, but the quality of the parenting (Hagquist, 2016; Sandler, Wheeler, & Braver, 2013; Spruijt, de Goede, & Vandervalk, 2004).

The age of the child is debated as another major concern. Experts discuss whether joint physical custody is risky for infants and toddlers, because children at a very young age need a stable care basis for healthy social and emotional development, especially regarding the formation of secure attachment relationships (Kelly & Lamb, 2000). A related question is, accordingly, which care cycle would be appropriate for which age, that is, how many days and nights an infant or toddler may be separated from an attachment figure without being harmed. However, there are not yet any published empirical studies on the impact of different care cycles on children’s well-being.

Regarding children’s age, the controversy is ongoing. Advocates argue that the infant–father attachment is as important for the child as the infant–mother attachment. Thus, they emphasize the high significance of continuity in both relationships for the child’s social, emotional, personal, and cognitive development (Kelly & Lamb, 2000; Kruk, 2005; Warshak, 2014). In the advocates’ opinion, attachment theory suggests that regular interaction with important caretakers fosters and maintains attachment, which is why a longer separation from either parent should be avoided unconditionally. The idea that children can have only one attachment figure has traditionally been held, but modern research suggests that children can develop and maintain meaningful relationships with multiple caretakers (Kelly & Lamb, 2000). However, a certain competency in childcare, as well as emotionally supportive behavior, is undoubtedly necessary to care for a very young child.

Some academics caution against the implicit confidence that “spending regular and frequent overnights with both parents is beneficial to early development, and should occur at any age” (McIntosh, Smyth, & Kelaher, 2015, p. 111; see for the same argument: Pruett, Ebling, & Insabella, 2004; Tornello et al., 2013). The results of two empirical studies on the impact of frequent overnights with both parents on the attachment and well-being of children under the age of five revealed some evidence that frequent overnights of very young children in two homes are associated with attachment insecurity and less regulated behaviors (McIntosh, Smyth, & Kelaher, 2013; Tornello et al., 2013). The methodological procedures, in particular, the conclusions drawn from the results of these studies, are seriously debated between the JPC-supporters (Millar & Kruk, 2014; Warshak, 2014) and researchers who ask for caution (Emery & Tornello, 2014; McIntosh et al., 2015).

Unfortunately, only three studies from Europe consider the moderating effects of step-family formation on the impact of joint physical custody on child outcomes (Nilsen et al.,

2017; Spruijt & Duindam, 2009; Vanassche et al., 2013), although stepparents may have an important influence on children's adjustment after divorce (e.g., Amato, King, & Thorssen, 2016). With an increasing share of joint physical custody arrangements, the proportion of children with residential stepparents will also increase (Sodermans, Matthijs, & Vanassche, 2013b) because both biological parents are then considered as residential. Even if the child lives with the new partner of the mother and the new partner of the father only part-time, the impact of stepparents changes dramatically if there is not one stepparent in the primary home and another one in the secondary home, but both stepparents play a full-time parenting role up to half the time. This is especially true for stepmothers, who can become much more important in the future because they will spend time with their stepchildren on a regular basis (Spruijt & Duindam, 2009).

Besides the many quantitative studies, several *qualitative studies* have been conducted in recent years. None of them compared children in joint physical custody arrangements with children in sole physical custody arrangements or with children in nuclear families. However, using small samples but in-depth interviews, they revealed a deeper understanding of how family members in joint physical custody arrangements are redoing family relationships (Berman, 2015; Markham & Coleman, 2012; Masardo, 2009). In other words, they examined how parents and children interact and negotiate with each other in joint physical custody arrangements (Berman, 2015), identified different types and dynamics of co-parenting relationships (Markham & Coleman, 2012), and acknowledged the challenges that parents have in establishing such care models (Masardo, 2009). Furthermore, they investigated how the children themselves see the situation (Berman, 2015; Campo, Fehlberg, Millward, & Carson, 2012; Haugen, 2010; Neoh & Mellor, 2010; Sadowski & McIntosh, 2016), and how the social networks of children are influenced (Prazen, Wolfinger, Cahill, & Kowaleski-Jones, 2011; Zartler & Grillenberger, 2017). In sum, the studies concluded that there is no "one-size-fits-all" arrangement after parental separation or divorce.

Effects of Joint Physical Custody on Parents

In comparison to the impact of joint physical custody on children, the effects of joint physical custody for the separated or divorced parents are discussed less frequently, although it is not less important (Amato, 2000). First, separated or divorced parents are in general somewhat more likely than others to experience maladjustment in different areas of life (Amato, 2000; Braver, Shapiro, & Goodman, 2006). Joint physical custody can serve as a buffer against these negative outcomes for parents. Second, the well-being of parents has both a direct and indirect impact on the child's well-being (Harris-Short, 2010). Consequently, studies on the impact of joint physical custody on the outcomes of children should also focus on the parents' well-being.

Arguments linking JPC with parents' well-being

Just as there are contradictory arguments on how joint custody affects children, there is a lack of consensus on how joint physical custody can affect parents. Advocates argue that parental conflict can be substantially reduced in joint physical custody arrangements because mothers and fathers get equal status regarding their parental rights and duty to spend time with the child. Thus, there are no reasons for fights anymore (Bauserman, 2012). Others disagree and state that this is not the reality. Instead, they state that high-conflict parents would continue to fight, finding other issues of contention, such as, for example, care cycles or parenting practices (Harris-Short, 2010). In addition, if conflict is not reduced, it can be very damaging for parents' health to have a joint physical custody arrangement (Harris-Short, 2010), because there is no way to avoid friction.

Other advantages of joint physical custody for parents, advocates have suggested, are better financial resources, better health, greater freedom, and a reduction in the parent's general workload and stress (Breivik & Olweus, 2006). Furthermore, the parent who is the nonresident parent in sole custody arrangements—typically the father—might benefit from an ongoing relationship with the child, not only because of the additional interpersonal resources but also because it reduces confusion as to how to continue fulfilling the parental role (Bauserman, 2012). In contrast, mothers, typically the resident parent in sole custody arrangements, benefit from joint physical custody because they are often overstrained by having full care responsibilities for the children almost every day. With the shared responsibility for childcare, mothers can establish and maintain social contacts more easily (Botterman, Sodermans, & Matthijs, 2015), which even increases their chances of repartnering (Schnor, Pasteels, & Van Bavel, 2017).

Others, however, argue that joint physical custody might be very stressful because parents have to constantly plan and coordinate childcare tasks (Bauserman, 2012). The permanent consultation and negotiation can be a burden that may outweigh the reduction in childcare demands (Van der Heijden, Poortman, & Van der Lippe, 2016). In addition, the financial costs are much higher because children need to have duplicate sets of clothes, school supplies, etc., in each home. Moreover, parents have to live relatively close to each other, in order to manage the transportation when the child is alternating between their homes, and this becomes even more relevant when the child reaches school age.

Empirical results on effects of JPC on parents

There are few results regarding the consequences of joint physical custody for parents. This is surprising because there are a large number of studies on the consequences of divorce for adults, showing that the divorced are worse off than the married in many ways (Amato, 2000). Consequently, questions arise as to what the advantages and disadvantages are for parents who practice joint physical custody arrangements and whether there are differences between mothers and fathers.

Research converges on the finding that most separated or divorced parents express satisfaction with their joint physical arrangement. They are, as a nationally representative study from Sweden ($n = 1,297$) (Bergström et al., 2014) and a parents' survey from Australia ($n = 1,028$) (Cashmore et al., 2010) show, more satisfied than parents with sole responsibility for their child's care. However, fathers are more likely to be satisfied than mothers (Cashmore et al., 2010). Mothers' satisfaction varies according to the circumstances and declines with high conflict, safety concerns, and court-imposed arrangements as two quantitative Australian studies (Cashmore et al., 2010; Kaspiew et al., 2009) and two qualitative studies using in-depth interviews, one from Australia ($n = 32$) (Fehlberg, Millward, & Campo, 2011a) and one from the United States ($n = 20$) (Markham & Coleman, 2012), point out. In contrast, fathers express satisfaction with joint physical custody even with ongoing high conflict, as a quantitative Australian study (McIntosh, Smyth, Kelaher, Wells, & Long, 2010) reveals. As a matter of completeness, it has to be added that children are, in general, less satisfied with the situation than their parents are (Cashmore et al., 2010; McIntosh et al., 2010; Neoh & Mellor, 2010).

A Dutch study "New Families in the Netherlands" (NFN) (2012–13) on the association between physical custody arrangements and feelings of time pressure, using a representative sample of parents who got divorced or dissolved their cohabitation in 2010 ($n = 4,460$), revealed that mothers with sole physical custody experienced higher levels of time pressure than nonresident mothers and mothers practicing joint physical custody (Van der Heijden et al., 2016). Interestingly, the results did not significantly differ between nonresident and joint physical custody mothers. However, fathers practicing joint physical custody experienced higher levels of time pressure than nonresident fathers did.

In addition, the findings of the study suggested that the child's residence is most important because visitations (as there often might be) of nonresident parents are not as demanding regarding childcare tasks and responsibilities as living with a child. Thus, an increasing share of joint physical custody arrangements after parental separation or divorce may be of advantage for mothers in particular because it substantially reduces their time pressure. This again, is suggested as being beneficial to their participation in the labor force and thus, their economic independence.

Besides being favorable for the work–family balance of mothers after a separation or divorce, Botterman et al. (2015) found in a study of divorced parents in Belgium, using data from the Divorce in Flanders survey ($n = 1,506$), that joint physical custody arrangements are also of advantage for mothers regarding their options to participate in outdoor home leisure activities and to maintain social contacts (see also Sodermans et al., 2015). Another study from the Netherlands, drawing on 18 in-depth interviews conducted in 2008 and 2009 with separated parents sampled through the Netherlands Kinship Panel Study (NKPS), came to the same result, showing that mothers in joint physical custody arrangements experience less constraints in combining work, care, and leisure in daily life than single mothers do (Bakker & Karsten, 2013). In general, parents with joint physical custody seem better equipped to balance their postseparation or postdivorce commitments successfully.

Given the fact that parents practicing joint physical custody are more satisfied with their situation, feel less time pressure, and have more time for both leisure time activities and labor force participation, it is not surprising that a study from the state of Wisconsin, USA, based on a random sample of 590 divorced mothers and fathers who shared the physical care of their children and 590 who had traditional custody by the mother, found that JPC parents are also better off regarding their physical and emotional health than parents practicing sole physical custody (Melli & Brown, 2008). However, another study from Belgium using the Divorce in Flanders survey ($n = 1,506$) did not find a direct association between custody status and parental subjective well-being (Sodermans et al., 2015). They did, however, find small gender-specific indirect effects: While more parenting time was positively associated with subjective well-being of mothers because of more open communication with their children, it was negatively associated with the subjective well-being of fathers because of more problems in communication with their children. Thus, communicating with their children presumably indirectly influenced the mothers' and fathers' well-being. The very few existing results regarding the consequences of joint physical custody for parents suggested different costs and rewards for mothers and fathers.

CONCLUSION

To begin with, the empirical results of many studies show that children in joint physical custody arrangements are often equal (not worse) and sometimes slightly better off in their welfare than children living in sole physical custody (e.g., Bergström et al., 2015; Fransson et al., 2016; Hagquist, 2016; Spruijt & Duindam, 2009; Turunen et al., 2017). Thus, the first important answer to the question of the effect of joint physical custody is, indeed, that children are not generally harmed, as was often discussed when the pattern of equal parental care after separation or divorce emerged in several Western countries. In addition, there is also empirical evidence that joint physical custody arrangements have certain benefits for parents, including better health, greater freedom, and a more equitable share of the burdens of childcare (e.g., Bergström et al., 2014; Cashmore et al., 2010; Melli & Brown, 2008; Van der Heijden et al., 2016).

Overall, there are several relational and structural conditions which appear conducive to beneficial joint physical custody arrangements (Gilmore, 2006, p. 26): (1) geographical

proximity, (2) the ability of parents to cooperate without (high) conflict, and at a minimum, to maintain a business-like relationship, (3) a certain degree of paternal competence, (4) family-friendly working hours, (5) a certain degree of financial independence, (6) flexibility, and (7) a high degree of responsiveness to the needs of the children, including willingness to alter the arrangements to meet the children's changing needs when they get older (e.g., Cashmore et al., 2010; Fehlberg et al., 2011b; Gilmore, 2006; Skjærten & Barlundhaug, 2007).

However, studies have also raised a number of important concerns. First, parents who practice joint physical custody differ in several significant ways from the majority of separated or divorced parents whose children live almost exclusively with their mothers. They are, for example, better educated, have a higher income, and quite low conflict levels (e.g., Cancian et al., 2014; Juby et al., 2005; Sodermans et al., 2013a). This positive self-selected group was the focus of most of the existing studies. Thus, an unanswered question is how joint custody will affect children and parents when the arrangement is not voluntarily practiced by privileged parents, when the total numbers increase and the characteristics of the parents change to a more representative sample. This leads to the second concern, the impact of conflict in joint physical custody arrangements. There is some evidence that the degree of conflict between the parents is a significant factor that negatively influences the child's and the mother's adjustment in a joint physical custody arrangement (e.g., Cashmore et al., 2010; Vanassche et al., 2013). More research is urgently needed. Third, experts have articulated strong concerns about the use of joint physical custody arrangements for very young children. They argue that it disrupts the child's development of a secure attachment to a primary caretaker. The very few existing empirical findings support this assumption (McIntosh et al., 2015; Tornello et al., 2013), but very little is yet known. Thus, the next step must be to conduct more and better studies to examine the impact of conflicts and care cycles as well as the effects of joint physical custody for children under the age of four, not only from a sociological or legal, but also a psychological angle.

Another so far nearly neglected aspect would be to include not only divorced but also separated parents because separation is very common in most Western countries (Ganong & Coleman, 2017). Some couples never get married or even do not cohabitate, and thus are excluded from analyses if only the divorced are considered. The same holds true for married couples who split up but never get divorced.

As is so often the case, longitudinal studies are required that measure the situation before and after separation or divorce as well as consider changes in the physical custody arrangements. However, not only custody arrangements, but also family member constellations can change. Stepparents, half- or step-siblings, and step-grandparents have been largely neglected so far. The same holds true for the effect of joint physical custody on relationships with other members of the family such as siblings and grandparents (Jappens & Van Bavel, 2016). Finally, yet importantly, migrant families have not generally been the focus of research on separation or divorce (but see Jensen & Pace, 2016; Steinbach, 2013), particularly not concerning custody models and residence schedules.

Joint physical custody, evidence thus suggests, is a promising arrangement for fathers, mothers, and children that meets the needs of modern families where parents share work, household, and childcare. For decades, decisions about parenting plans after separation or divorce were strongly connected to traditional beliefs and visitation guidelines, which saw the mother as the best primary caretaker for children. This is certainly not an adequate perspective anymore because societal changes, such as increasing labor force participation of mothers as well as fathers who participate in caring for their children, challenge these traditional ideas. However, joint physical custody seems to have both positive and negative effects, which need to be explored by better-suited studies. Future research must put

more effort into identifying the circumstances in which joint physical custody works, even under the condition of ongoing conflicts between the parents, to serve the best interest of all family members.

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SUPPORTING INFORMATION

Additional supporting information may be found online in the Supporting Information section at the end of the article.

Table S1 Overview of Empirical Studies on Joint Physical Custody (JPC) (2007–2018).

Table S1: Overview of Empirical Studies on Joint Physical Custody (JPC) (2007-2018)

Study	Country	Def. JPC	No. of JPC	Children's Age	Interview Partner	Focus on	Sample/Data	Focus of the Study	Results
Bakker and Karsten (2013)	The Netherlands	40%	8	0-18	One Parent	Parents	Qualitative Sample from NKPS (2008/09)	Balancing paid work, care and leisure	Shared>Sole
Bergström et al. (2013)	Sweden	50%	17.350	12 & 15	Children	Children	Representative sample (2009)	Well-being (KIDSCREEN)	Nuclear>Shared>Sole
Bergström et al. (2014)	Sweden	50%	129	4-18	One Parent	Children	Representative sample (2011)	Mental health problems (SDQ)	Nuclear<Shared<Sole
Bergström et al. (2015)	Sweden	50%	15.633	12 & 15	Children	Children	Representative sample (2009)	Psychosomatic problems	Nuclear<Shared<Sole
Bergström et al. (2018)	Nordic Countries	40%	152	2-9	Mother or Father	Children	Representative sample, NordChild (2011)	Strengths and Difficulties Questionnaire (SDQ)	Nuclear<Shared<Sole
Berman (2015)	Sweden	50%	19	9-17	Children	Children	Qualitative Study (2012-14)	Re-doing family relationships after separation	Shared>Sole: Children get more attention & time with each parent
Bjarnason and Arnarsson (2011)	36 Western countries	50%	2.206	11, 13 & 15	Children	Children	Representative sample, HBSC (2005/6)	Communication problems with parents	Shared=<Nuclear<Sole
Bjarnason et al. (2012)	36 Western countries	50%	?	11, 13 & 15	Children	Children	Representative sample, HBSC (2005/6)	Life satisfaction	Nuclear>Shared>Sole
Botterman et al. (2015)	Belgium	33%	480	0-18	Parents	Parents	Divorce in Flanders (2009/10)	Outdoor home activities, social contacts	Shared>Sole (Mothers) Shared=Sole (Fathers)
Campo et al. (2012)	Australia	30%	22	10-18	Children	Children	Qualitative Study (2009-2011)	Descriptions and views of parenting arrangements	Positive & negative experiences depending on distance & conflicts
Carlsund et al. (2013)	Sweden	50%	270	15	Children	Children	Representative sample, HBSC (2005/6 & 2009/10)	Risk behavior	Nuclear<Shared<Sole
Cashmore et al. (2010)	Australia	35%	Several studies	Several studies	Children Parents	Children	Several data sources	Well-being of children & parents	Circumstances under which shared care arrangements work, and do not work
Fehlberg, Millward, et al. (2011)	Australia	30%	32	2-16	One Parent	Parents	Qualitative Study (2009, 2010, 2011)	Pathways and outcomes for parents	Differences between mothers' and fathers' experiences and perceptions of shared care
Fransson et al. (2014)	Sweden	50%	75	14-16	Children	Children	School study in Stockholm (year?)	HPA-axis activity and recurrent pain	Nuclear=Shared

Study	Country	Def. JPC	No. of JPC	Children's Age	Interview Partner	Focus on	Sample/Data	Focus of the Study	Results
Fransson et al. (2016)	Sweden	50%	391	10-18	Children One Parent	Children	Representative sample, ULF & Child-ULF, (2007-11)	Psychological complaints	Nuclear=Shared>Sole
Fransson et al. (2017)	Sweden	50%	497	10-18	Children One Parent	Children	Representative sample, ULF & Child-ULF, (2007-11)	Living conditions (resources, health, safety, leisure time activities)	Nuclear=>Shared>Sole
Hagquist (2016)	Sweden	50%	8.725 8.669	12 15	Children	Children	Representative sample Statistics Sweden (2009)	Psychosomatic Problems (PSP)	Nuclear>Shared>Sole Child-parent relation = mediating variable
Haugen (2010)	Norway	50%	15	9-18	Children One Parent	Children	Qualitative Study (2012-14)	Everyday experiences of shared residence: time, agency, and emotions	Shared residence can work as both a pleasure and a burden
Jablonska and Lindberg (2007)	Sweden	50%	443	14-16	Children	Children	School study in Stockholm (year?)	Risk behaviors, victimization & mental distress	Nuclear=Shared>Sole
Markham and Coleman (2012)	USA	33%	20	0-12	Mothers	Mothers	Qualitative Study (year?)	mothers' experiences of joint physical custody & coparenting types	shared physical custody relations are dynamic and can vary greatly
Masardo (2009)	Britain France	30%	20 15	0-19	Father	Children	Qualitative Study (2005/06)	Experiences of negotiating and managing shared residence	Practice of shared residence is different in different families
McIntosh (2009)	Australia	35%	142	School-aged	Parents Child	Children	Qualitative Study (year?), three points of measurement	Impacts of two distinct mediation interventions on parent, child and family relationship functioning	Ongoing conflicts are harmful
McIntosh et al. (2013)	Australia	35%	63 26 71	0-1 2-3 4-5	Parents	Children	Longitudinal Study of Australian Children (LSAC) (year?)	Child's psycho-somatic health, emotion regulation	Shared<Sole Shared<Sole Shared=Sole
Melli and Brown (2008)	Wisconsin, USA	30%	408 402	0-16	Fathers Mothers	Children	Random sample from WCRD (2001 & 2004)	Physical health parents & children	Shared>Sole
Neoh and Mellor (2010)	Australia	40%	27 31	8-15	Children Parents	Children	Qualitative Study (year?)	Children's adjustment (SDQ)	Nuclear>Shared=Sole
Nilsen et al. (2017)	Norway	50%?	398	16-19	Children	Children	youth@hordaland study (2012)	Mental Health (SDQ)	Nuclear=Shared<Sole
Poortman (2018)	The Netherlands	50%	836	4-17	Parents	Children	Representative sample, NFN (2012/13)	Strengths and Difficulties Questionnaire (SDQ)	Shared>Sole
Prazen et al. (2011)	USA	50%	17 13	5-11	Children Parents	Children	Qualitative Study (year?)	Children's neighborhood friendships	JPC does not imperil children's neighborhood friendships

Study	Country	Def. JPC	No. of JPC	Children's Age	Interview Partner	Focus on	Sample/Data	Focus of the Study	Results
Sadowski and McIntosh (2016)	Australia	35%	16	8-12	Children	Children	Qualitative Study (year?)	Security and contentment In shared time parenting	Shared time does not itself produce security for the child
Sandler et al. (2013)	USA	40%?	?	9-18	Children	Children	Pre-test interviews (year?)	Mental health	In high conflict families: Shared<Sole
Skjørten and Barlindhaug (2007)	Norway	50%	527	0-18	Parent	Children	Quasi-Representative sample, (year?)	Impact child's age and gender on decision on placement	The older the more impact, gender & education of parents played a role
Sodermans and Matthijs (2014)	Belgium	33%	104	14-21	Children	Children	Representative sample, DiF, (2009/10)	Subjective well-being	Shared=Sole
Sodermans et al. (2015)	Belgium	?	242 238	0-18	Fathers Mothers	Parents	Divorce in Flanders (2009/10)	Subjective well-being	Shared=Sole
Spruijt and Duindam (2009)	The Netherlands	40%?	113	10-16	Children	Children	Representative sample (2006-2008)	Well-being	Nuclear=>Shared=Sole
Tornello et al. (2013)	USA	35%	71 103	1 3	Mother	Children	Representative sample, Fragile Families (1998-2000)	Attachment Security	Shared<Sole
Turunen (2016)	Sweden	50%	234	10-18	Children One Parent	Children	Representative sample, ULF & Child-ULF (2001-03)	Stress	Shared<Sole
Turunen et al. (2017)	Sweden	50%	387	10-18	Children One Parent	Children	Representative sample, ULF & Child-ULF, (2007-11)	Self-esteem	Nuclear=Shared=Sole
Van der Heijden et al. (2016)	The Netherlands	50%	1.202	0-18	Parents	Parents	Representative sample, NFN (2012-13)	Time pressure	Shared<sole (mothers) Shared>non-resident (fathers)
Vanassche et al. (2013)	Belgium	33%?	385	12-18	Children	Children	Representative sample, LAGO (year?)	Well-being	Shared=<Sole
Zartler and Grillenberger (2017)	Austria	50%	14	10-14	Children	Children	Qualitative Study	Social network	Close relations are not multiplied; children's networks at both homes = limited connections



Joint versus sole physical custody: Outcomes for children independent of family income or parental conflict

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ABSTRACT

Is joint physical custody (JPC) linked to any better or worse outcomes for children than sole physical custody (SPC) after considering family income and parental conflict? In the 60 studies published in English in academic journals or in government reports, 34 studies found that JPC children had better outcomes on all of the measures of behavioral, emotional, physical, and academic well-being and relationships with parents and grandparents. In 14 studies, JPC children had equal outcomes on some measures and better outcomes on others compared to SPC children. In 6 studies JPC and SPC children were equal on all measures. In 6 studies, JPC children were worse on one of the measures than SPC children, but equal or better on all other measures. In the 25 studies that considered family income, JPC children had better outcomes on all measures in 18 studies, equal to better outcomes in 4 studies, equal outcomes in 1 study, and worse outcomes on one measure but equal or better outcomes on other measures in 2 studies. In the 19 studies that included parental conflict, JPC children had better outcomes on all measures in 9 studies, equal to better outcomes in 5 studies, equal outcomes in 2 studies, and worse outcomes on one measure but equal or better outcomes on other measures in 3 studies. In sum, independent of family income or parental conflict, JPC is generally linked to better outcomes for children.

KEYWORDS

Joint custody; joint physical custody; physical custody; shared parenting

Sole physical custody (SPC) arrangements where children live primarily or exclusively with their mother and spend varying amounts of time with their father after their parents separate are becoming less common as joint physical custody (JPC) families where children live more than 35% of the time with each parent are on the rise. The increasing popularity of JPC is seen, for example, in Wisconsin where JPC increased from 5% to more than 35% from 1986 to 2012 (D. Meyer, Cancian, & Cook, 2017). As far back as 2008, in Washington state 46% of the parents had JPC plans (George, 2008) as did 30% in Arizona (Venohr & Kaunelis, 2008). Internationally rates have risen to nearly 50% in Sweden (Bergstrom et al., 2017); 30% in Norway (Kitterod & Wiik, 2017) and in the Netherlands (Poortman & Gaalen, 2017); 37% in

Belgium (Vanassche, Soderman, DeClerck & Matthijs, 2017); 26% in Quebec providence and 40% in British Columbia, Canada (Bala et al., 2017); and 40% in the Catalonia region of Spain (Flaquer, 2017). At least 20 states in the United States are considering revising their custody laws to be more supportive of shared physical custody (Jones, 2015).

Nevertheless, two questions regarding JPC custody arrangements continue to stir debate. First, are the outcomes for children significantly better or worse in JPC than in SPC families? Second, if JPC children do have better outcomes, can this largely be attributed to their parents having significantly higher incomes or significantly less conflict than SPC parents? Put differently, do children benefit from JPC if their parents have a poor coparenting relationship or high levels of conflict or when the plan was “forced” on one of the parents as a result of a custody hearing or prolonged, conflicted negotiations with lawyers? Is it true, as some social scientists have claimed (e.g., Smyth, McIntosh, Emery, & Howarth, 2016), that if JPC children have better outcomes than SPC children, it is probably because JPC parents have far more money and far less conflict? The present article briefly summarizes the 60 studies that have compared JPC and SPC children’s outcomes. Unlike any previous articles on this topic, this article addresses the question: How do the outcomes of JPC and SPC children differ after family income and parental conflict are considered?

Previous summaries of children’s outcomes in JPC and SPC families

There are presently only two meta-analyses that have compared children’s outcomes in JPC and SPC families (Baude, Pearson & Drapeau, 2016; Bauserman, 2002). Neither addressed the question of family income or the level of parental conflict. More importantly, neither analysis included more than a portion of the existing 60 studies. Baude et al. included only 17 of the 51 studies published in English that existed at the time. In all 17 studies, children were living with each parent at least 35% of the time. JPC children had better outcomes than SPC children, though the overall effect sizes were small. Notably, however, the benefits of JPC were much larger for children who lived 50% time with each parent than for JPC children who lived less than 50% time with each parent. Similarly Bauserman found better outcomes for JPC (defined as 25% time with each parent) children in all 10 studies that had been published in academic journals between 1988 and 1999, though again the effect sizes were small, which Bauserman attributed to the small samples sizes in the existing studies.

In addition to the two meta-analyses, several authors have summarized a portion of the quantitative studies that were available at the time they wrote their reviews. When Fehlberg, Smyth, Maclean, and Roberts (2011) and Trinder (2010) wrote their summaries of the research, there were 39

quantitative studies that had compared JPC and SPC children's outcomes (Nielsen, 2011). Fehlberg and Trinder included only 5 of the 39 studies, while purporting to be presenting a "research review." Similarly, in "detailing the current body of literature", McIntosh and Smyth (2012, p. 156) included only 5 of the 40 available studies at the time (Nielsen, 2011). More recently, Smyth et al. (2016) included only 17 of the 42 existing studies published in peer reviewed journals. These summaries of the research share four things in common: (a) claiming to be reviews of the available literature; (b) excluding the majority of studies where JPC children had better outcomes than SPC children; (c) reporting data incorrectly from several studies in ways that support the claim that JPC children have worse outcomes than SPC children; and (d) concluding that, based on the empirical data, JPC poses more risks and harm for children than SPC.

The most recent of the review articles serves to illustrate how data can be misrepresented when comparing JPC and SPC children's outcomes (Smyth et al., 2016). These authors reported that Buchanan, Maccoby, and Dornbusch (1996) found that JPC: "works badly for children exposed to bitter and chronic tension" (Smyth et al., 2016, p. 121). This is not correct. Buchanan et al. concluded: "We did not find that dual residence (JPC) adolescents were especially prone to adjustment difficulties under situations of high interparental conflict" (p. 257). "*When the conflict was high and hostile they were not more stressed or depressed or worse on any measures of well-being*" (Buchanan et al., 1996, p. 265, emphasis added). Similarly the authors cited Bauserman's meta-analysis (2002) as finding that JPC "may prolong or intensify children's exposure to parental conflict, neglect, violence, abuse or psychopathology" (Smyth et al., 2016, p. 120) In fact, Bauserman reached the opposite conclusion: "The research reviewed here *does not support claims by critics of joint custody* that joint custody children are likely to be exposed to more conflict or to be at greater risk of adjustment problems due to having to adjust to two households or feeling torn between parents" (Bauserman, 2002, p. 99, emphasis added).

Eliminating most of the available studies from summaries of the literature or inaccurately reporting the results in ways that support only one viewpoint is not a matter of small consequence. For example, in a book aimed at mental health and family court professionals involved in custody decisions, based on 17 of the 42 studies available at the time, Smyth et al. (2016) concluded that: "Put simply, the international literature looks to comprise—at best—a disparate collection of partially overlapping investigations with little convergence among the various lines of inquiry" (Smyth et al., 2016, p. 135). Similarly Smyth's co-author, Robert Emery, following the controversial veto of a shared parenting bill by Florida's Governor, was quoted in a Florida newspaper as saying that "the problems with joint custody outweigh the benefits" and "children suffer in joint custody arrangements (Presson, 2016).

In order to avoid the kind of distortions or bias that have been referred to as “scholar advocacy” (Emery et al., 2016) or as “woozling” the data (Nielsen, 2014b), authors who summarize the research must take great care to report the findings accurately and to include the results of all studies, not just those that support their particular point of view.

In addition to the 60 quantitative studies that are presently available, there are ten other studies where 466 JPC and SPC children from six different countries were interviewed about their experiences and feelings (Birnbaum & Saini, 2015). In these ten studies, children who had good relationships with both parents and who had some flexibility in the parenting schedule were the most satisfied in JPC families. The children’s experiences in the two types of families were varied and mixed, even for children in the same family. The weakness of these studies is that there were no objective, quantitative measures of children’s well-being, in contrast to the comparisons in the 60 quantitative studies.

The most comprehensive summaries of the quantitative studies comparing JPC and SPC children’s outcomes included all 40 studies that existed at the time (Nielsen, 2014a; Nielsen, 2015). The present article updates these previous summaries with an additional 20 studies. Due to space limitations, only these 20 additional studies are included in the references. The other 40 references are listed in Nielsen’s two review articles (2014a, 2015). The major focus of this article, however, is to address the question of how JPC and SPC children’s outcomes differ after family income and parental conflict are taken into account. This information brings us closer to determining whether higher income and lower parental conflict are the likely causes of JPC children’s better outcomes. This important question has not been explored in any of the former summaries of these studies or in either of the two meta-analyses.

Selection of the 60 JPC vs. SPC outcome studies

To identify relevant studies, three data bases were searched: Psych-Info, Social Science Citation Index and ProQuest Social Science. The key search words were: joint physical custody, shared parenting, shared care, custody and income, parenting plans and income, income, and children’s well-being. Six journals likely to publish articles on these topics were also searched at each journal’s website: *Journal of Family Psychology*, *Child Development*, *Journal of Marriage and Family*, *Child Custody*, *Family Court Review*, *Family Relations*, *Journal of Divorce and Remarriage* and *Psychology, Public Policy and Law*. Articles were selected on the basis of whether they had statistically analyzed quantitative data that addressed the questions presented at the outset of this article. All 60 studies were included. These searches do not capture studies that have not been published in English.

In the 60 studies children ranged in age from infants to young adults. Studies were conducted in ten different countries, with one study having a sample from 26 countries (Bjaranson & Arnarrson, 2011). Sample sizes ranged from 21 to 51,802. Data came from a variety of sources: court records, mediation and counseling centers, public schools, convenience samples, college students, and parents who were recommended to researchers by lawyers and mediators. Seven studies were commissioned and published by the Australian government rather than being published in academic journals (designated by “a” in Table 1). Even though these studies did not have the benefit of blind peer review, they are included because they were based on large, nationally representative samples and were conducted by research institute teams. Eight studies specified that the sample included parents in litigation or parents whose JPC plan was the result of a custody hearing (designated by C+ in Table 1). In 19 studies parental conflict was factored in before comparing the children’s outcomes (designated with “C”). In 25 studies parents’ incomes were factored in (designated with “\$”). Two studies (McIntosh et al., 2011; Tornello et al., 2013) are designated with an “X” in the table because the researchers used measures that had no established validity or reliability, meaning that it is not clear what was actually being measured or how we can interpret the results.

In order to provide a simplified, brief overview of the 60 studies, data were grouped into five broad categories of child well-being which are similar to the categories used by Bauserman (2002) and Baude et al. (2016) in their meta-analyses (a) academic or cognitive outcomes which includes grade point averages and scores on tests of cognitive development; (b) emotional or psychological outcomes which includes feeling depressed, anxious or dissatisfied with their lives or having low self-esteem; (c) behavioral problems which include misbehaving at home or school, hyperactivity, and teenage drug, nicotine or alcohol use; (d) overall physical health or psychosomatic illnesses; and (e) the quality of parent–child relationships that includes how well they communicate and how close they feel to one another.

Positive outcomes for JPC children

As Table 1 illustrates, 60 studies compared children’s outcomes in SPC and JPC families. In 34 studies, JPC children had better outcomes on all measures of well-being. In 14 studies they had better outcomes on some measures and equal outcomes on others. In 6 studies, there were no significant differences between the two groups on any measures. In 6 studies, JPC children had worse outcomes on one measure, but equal or better outcomes on all other measures.

JPC and SPC children had the most equal outcomes in regard to school achievement and cognitive skills. This suggests that custody arrangements

Table 1. Outcomes for Joint Physical Custody vs. Sole Physical Custody Children in 60 Studies Studies Children.

JPC better on all measures than SPC 34 studies	# of Children Physical custody		Ages	Academic & Cognitive development	Depression, anxiety overall satisfaction, self esteem	Peer Behavior Substance use Hyperactivity	Health & psycho somatic problems	Parent-child or other Family relationships
	Factors Included in Study	Joint JPC						
Buchanan	= C = \$	51	355 mom 100 dad	13-16	better	Better	better	Better
Brotsky	C+	45	10	1-10	Better	Better		
Breivik	\$*	41	483	12-16	Better			
Banumazadeh	C*	91	328 mom 34 dad	11-12	better	better		
Bergstrom (2014)	\$*	129	176	4-18	better	better		
Bergstrom (2017)	\$*	136	151	3-5	better	better		
Bjarnason		2,206	25,578	11-15	Better life satisfaction			
Bjarnason		2,206	25,578	11-15				
Carlsund (2013)	\$*	888	2,019	11-15	Better	Better	better	Better
Carlsund (2012)	\$*	270	801	11-15		better		Better
Cashmore (gov)	=C+	84	473	0-17	Better	better		
Cashmore (gov)	=C+ = \$	90	411	0-17	better	better		
Campana		207	272	10-18	better	Better		
Dissing	\$*	3,222	3,032	11-12	better			
Fabricius (2012)	C*	152	871	College				better
Fabricius (2003)		80	739	College				Better
Fabricius (2007)		75	136	College				Better
Fabricius (2016)	=C = \$	13	103	College				Better
Fransson (2016)	\$*	391	543 mom 111 dad	10-18	Better			
Frank		16	90	College				better
Hagquest	\$*	17,754	30,400	12-15				better
Irving	=C = \$	108	294	1-11	better			
Jablonska		443	2,920	14-15		better behavior equal drinking		better

Janning Jappens	= \$	5 176	17 707	College 10-25		Better Better with grand parents Better
Laftman Lee	\$*	1,573 20	1,584 39	15-16 6-12	Better	better
Nilsen	C* = \$	398	1,223	16-19	better	Better
Pearson	\$*	62	459	9-12	Better	better
Shiller	= C	20	20	6-11	Better	Better
Turunen	\$*	387	758	10-18	better	
Turunen		240	567	10-18	better	
Wadsby		324	736	17-18	Better	
Westphal	\$*	1,076	2,767	10-18	Better	Better Better with grand parents
JPC equal or better outcomes than SPC 14 studies						
Bergstrom (2013)		17,350	43,452	12-15	Better	Better
Bergstrom(2015)	\$*	15,633	29,468	12 & 15	Equal	better
Bastait(2016)		138	238	10-18	Better self esteem Equal life satisfaction	Better
Drapeau	= C \$ *	37	75	8-12	Equal to better	Equal affection
Donnelly	= C	12	88	6-18	Equal	Better boundaries Better
Fransson		497	854	10-18	Equal psychological Better stress	better Equal drinking Better smoking Better bullying
Havermans		224	446	11-19	Equal	Better
Kaspiew (gov)	= C	947	3,513	Moms say equal dads say better	Moms say equal Dads say better	Grand parents better
Luepnitz	= \$	22	30	8-13	Equal	Better

(Continued)

Table 1. Continued.

JPC better on all measures than SPC 34 studies	# of Children Physical custody				Ages	Academic & Cognitive development	Depression, anxiety overall satisfaction, self esteem	Peer Behavior Substance use Hyperactivity	Health & psycho somatic problems	Parent-child or other Family relationships
	Factors Included in Study	Joint JPC	Sole SPC							
Melli		597	595		1-16		Equal		Better	Better
Neoh		27	40		8-15		Equal	Better	better	
Qu (2010) (gov)	= C	1,000	4,320		1-17	Moms say equal Dads say better				
Qu (2014) (gov)	= C	720	2,354		4-17		Equal	equal	equal	Better dad & stepmom
Spruijt	= \$	135	400		10-16	Equal	Equal	Equal		
Equal outcomes 6 studies										
Bastaitis (2014)		139	227		Teenage		Equal			
Cashmore		26	110		2-19		equal			
Faust		34	35		9-15		equal	equal		
Johnston	= C+ = \$	28	69		4-12		Equal	equal		
Kline	= C+	35	65		9-12		equal	Equal		
Pearson		9	83				Equal	equal		
JPC worseoutcome on 1 measure 6 studies										
Lodge(gov)	= C	105	398 mom 120 dad		12-18	Equal		better - girls worse - boys		Better -parents grand parents & stepparents Mixed
Sandler	C+	67	74		12-14			Mixed		
Sodermans	\$*	104	330 mom 70dad		14-21		Mixed: depression Equal: life satisfaction			
Vanassche	= C+	395	1,045		12-19					Better with dad

McIntosh (gov) X	C* \$*	20 60	ages 2-3 ages 4-5	232 870	2-5					
Tomello X	C \$	174	1,880	0-5						

C* conflict was controlled by statistically JPC & SPC differences into the analysis
= C conflict was controlled because there were no significant differences between JPC & SPC conflict
\$* income was controlled by statistically factoring it in to the analysis
= \$ income was controlled because there were no significant differences between JPC & SPC parents
C+ researchers specified that very high conflict parents in litigation over custody were in this study
gov government published study (Australia), not peer reviewed academic journal
Mixed differences between JPC & SPC outcomes depended on factors like gender, personality, or age
X some measures used to gather data were not validated.

Girls worse
boys better
Mixed for toddlers
Equal for preschoolers
Equal

Better social development

Equal to Better all ages

equal

Mixed infant attachment

Equal with mom

may have less impact on children's cognitive skills or school performance than on the many other areas of their lives that were assessed in the 60 studies. Notably, JPC was linked to children having better relationships with their parents, stepparents, and grandparents in 24 of the 25 studies that assessed family relationships. It should be noted that one measure in the Tornello et al. study (2013) is listed in the "family relationships" column, although the study did not assess the quality of children's relationships with their parents. The study assessed how impoverished, single parent, inner city, minority mothers felt their toddlers interacted with them, with the results being "mixed" based on the child's age.

In all 4 studies that compared JPC and SPC children's relationships with their grandparents, JPC children had the better relationships (Jappens & Bavel, 2016; Kaspiew et al., 2009; Lodge & Alexander, 2010; Westphal, Poortman, & Van der Lippe, 2015) As Table 1 indicates, these studies included large numbers of children ranging in age from 2 to 25. These findings are noteworthy because children who have close relationships with their grandparents after their parents separate are better adjusted emotionally and behaviorally than children without these close relationships (for a review see Jappens, 2018, in press) . In these regards, then, JPC children again have an advantage over SPC children.

Negative outcomes for JPC children

Despite the more positive outcomes overall for JPC children, in 6 of the 60 studies JPC children had worse outcomes than SPC children on one, but not on all, measures of well-being. These 6 studies are listed at the end of Table 1. Because people are especially concerned about any negative outcomes for children who live in JPC families, these six studies are described in detail below.

In an Australian study commissioned by the government, toddlers (ages 2–3) had worse outcomes in JPC on two of the six measures of well-being (McIntosh et al., 2011). Because this one study has so often been misrepresented in the media and in academic circles (Nielsen, 2014b; Warshak, 2014), it merits more careful attention than the other 59 studies. The 19 JPC toddlers scored lower on a 3 question test of "persistence at tasks" and lower on 3 questions asking how often they tried to get their mother's attention and how often they looked at her. Neither of these two measures had any established validity or reliability, in contrast to the instruments used to measure children's outcomes in the other 59 studies. Nevertheless, on the basis of these two invalid measures, these researchers concluded that JPC toddlers were less securely attached to their mothers and less persistent at tasks than SPC toddlers. The 22 JPC toddlers also scored more poorly than 191 SPC toddlers on a validated "problem behavior" scale (refusing to eat,

clinging to the mother when she tried to leave, hitting the mother). Again, these researchers interpreted this finding as a negative outcome of JPC. In fact, however, JPC toddlers' scores were well within the normal range and were not significantly different from the scores of 50% of the toddlers with married and with separated parents in the general population. On the other four validated measures of well-being, JPC and SPC children were not significantly different.

In the second study, also Australian, there were 105 JPC adolescents (ages 12–18), 120 in JPC with their father and 398 in SPC with their mother chosen from a nationally representative data base (Lodge & Alexander, 2010). Eight (16%) of the 50 JPC boys reported that they “*sometimes* didn't get along with peers,” compared to 32 (8%) of JPC boys living with their mothers (italics added). In contrast, JPC girls were four times less likely than SPC girls to “*sometimes* not get along” with peers.

In the third study highly “conscientious” adolescents with a great need to plan ahead and to be very organized were more anxious and depressed in JPC than in SPC families. However, the least conscientious adolescents who were less anxious and less depressed in JPC (Sodermans & Matthijs, 2014). For 400 adolescents in SPC (70 were living with their fathers) and 104 in JPC, the high and the low conscientiousness adolescents were equally “satisfied with their lives” in JPC as in SPC. Since the researchers did not report how many of the 104 JPC children were in the “highly conscientious” group, we cannot know how widespread a problem this was. It appears, however, that there were very few “highly conscientious” adolescents, since the researchers concluded that: “We observe very few changes in the effect sizes of the control variable by entering the personality variables” (Sodermans & Matthijs, 2014, p. 350).

The fourth study compared adolescents from 545 mother custody, 92 father custody and 385 JPC families (Vanassche, Sodermans, Matthijs, & Swicegood, 2013). JPC teenagers were more depressed and more dissatisfied with their lives than SPC teenagers when they had bad relationships with their fathers. In those families where conflict still remained high eight years after divorce, girls were more depressed in JPC than in SPC. On the other hand, in these families with years of unending conflict, boys were less depressed in JPC than in SPC. Overall the quality of the relationship with both parents mattered more than the custody arrangement or parental conflict.

In the fifth study with an Arizona sample of 74 SPC and 68 JPC adolescents in high conflict families, children's outcomes again depended on the quality of their relationships with their fathers. All of the JPC and SPC parents had been designated high conflict by a judge and were in litigation over custody issues. The adolescents who had bad relationships with their fathers had more behavioral problems in JPC than in SPC (Sandler, Wheeler, & Braver, 2013). On other hand, JPC children did not have worse outcomes than SPC children

when they had good relationships with their fathers. This again suggests that it is not the level of parental conflict that matters most, but the quality of children's relationships with their parents.

The sixth study stands apart from the other 59 studies in two ways that make it difficult to generalize or to interpret the results. First, all of the children (ages 0 to 5) were living in impoverished, inner city, minority families where only 20% of the parents had been married or had lived together and where mothers' and fathers' rates of incarceration, substance abuse, addiction, violence and mental health problems were extremely high (Tornello et al., 2013). Second, one third of the children lived primarily with their fathers, which means the mothers' reports on a test of "secure attachment" were not actually assessing the link between JPC and SPC and this measure. Only 1 of 14 correlations between frequency of overnighting and child adjustment measures were significant. The one negative finding was that the 22 babies who spent anywhere from 52 to 256 nights away from their mother each year had more insecure attachment scores than the 124 babies who spent fewer than 52 nights a year away from her. For the three year olds, the 22 JPC children had more insecure scores than the 137 SPC toddlers. On the other 13 measures of well-being, there were no significant differences linked to how often the children overnighted with their father. On one measure, the five-year-old JPC children had better outcomes in terms of having better social behavior than the SPC children.

Overall, these six studies caution against JPC for adolescents who have bad relationships with their fathers, for girls whose parents have high, ongoing conflict many years after separating, and for adolescents who are highly conscientious.

JPC versus SPC parents: Conflict and coparenting

Although the 60 studies show that JPC is generally more beneficial for children than SPC, the central question for the present article is: Are these benefits largely due to JPC parents having significantly higher incomes or having significantly less conflict than SPC parents? If this is true, then this would likely account for the better outcomes of JPC children.

Do JPC parents have substantially less conflict and more cooperative coparenting relationships than SPC parents? In 14 of the 19 studies that addressed this question, JPC couples did not have significantly less conflict or more cooperative, communicative coparenting relationships than SPC couples (see Nielsen, 2017, for citations to the 19 studies). Compared to SPC couples, in 3 studies JPC couples had less conflict; in one study they had more, and in one study the conflict differences depended on the age of the children. In short, cooperation and low conflict are not likely to account for JPC's children's better outcomes.

Another aspect of conflict is how much disagreement the parents had over their parenting plan at the outset. Are JPC parents a unique group who, unlike SPC parents, agree to their plan “voluntarily” and without being “forced” to agree to share? According to the 7 studies that have specifically addressed this question, the answer is “no” (Nielsen, 2017). The percentage of couples who were initially opposed to JPC at the outset ranged from 30% to 80% of the parents. In each of these studies, however, JPC children had better outcomes than SPC children despite the fact that many of their parents had not agreed to the plan at the time they were separating.

Not only do JPC parents generally not have significantly less conflict or more cooperative coparenting relationships than SPC parents, JPC children have better outcomes than SPC children even after family conflict is taken into account. As designated in the “conflict” column on [Table 1](#), 19 of the 60 studies considered parental conflict before comparing children’s outcomes. In some studies, parental conflict was not significantly different between SPC and SPC parents, and in other studies, the researchers added conflict into the statistical analyses before comparing the children’s outcomes. In the 19 studies that considered parental conflict, JPC children had better outcomes on all measures in 9 studies, equal to better outcomes in 5 studies, equal outcomes in 2 studies, and worse outcomes on one measure but equal or better outcomes on other measures in 3 studies.

In sum, there is not compelling evidence that low conflict or cooperative coparenting account for JPC children having better outcomes than SPC children. The two groups of parents are more similar than they are different in regard to conflict and coparenting. More importantly, JPC children generally had better outcomes even after parental conflict was taken into account.

JPC and SPC outcomes independent of family income

The second question is whether JPC children have better outcomes because their parents are wealthier than SPC parents. There are studies—especially older studies—showing that JPC parents are wealthier and better educated than SPC parents. However, studies that merely compare JPC and SPC parents’ incomes, without comparing the children’s outcomes, cannot address the question: Does income account for the better outcomes for JPC children?

Twenty-five of the 60 studies that compared children’s outcomes controlled for family income, as indicated with “\$” on [Table 1](#). Income was taken into consideration either because JPC and SPC incomes were not significantly different to begin with or because the researchers added income into the statistical analysis before comparing the children’s outcomes. In the 25 studies that considered family income, JPC children had better outcomes on all

measures in 18 studies, equal to better outcomes in 4 studies, equal outcomes in 1 study, and worse outcomes on one measure but equal or better outcomes on other measures in 2 studies.

Why were JPC children's outcomes better than SPC children's outcomes, even after family income was factored in? A thorough examination of this question is beyond the scope of this article and is available elsewhere (Nielsen, 2018, in press). Two studies are offered here merely to illustrate that higher family income may, in fact, be disadvantageous to children and that other factors, such as the quality of the parent—child relationship, may matter more than income.

In a Swedish study with 391 JPC families and 654 SPC families, the 10 to 18 year-olds with the wealthier and most well-educated parents were more stressed and more anxious than children with less wealth, less educated parents (Fransson, Turunen, Hjern, Östberg, & Bergström, 2016). Moreover, having a parent with a graduate degree was more closely linked to children's stress and anxiety than was the physical custody plan. The researchers speculated that highly educated, higher income parents might put more academic and social demands on their children, which, in turn, increases children's stress and anxiety.

Similarly, in a French study with 91 children living in JPC, 34 living with their fathers and 328 with their mothers and 1,449 living in intact families, wealthier children were no less likely than less wealthy children to be caught in the middle of their parents' arguments (Barumandzadah, Lebrun, Barumandzadah, & Poussin, 2016). SPC children were also just as likely as JPC children to be caught in the middle of their parents' arguments. Money did not buy happiness in the sense that wealthier children were not more protected from their parents' conflicts.

As Table 1 shows, only a few of the studies controlled for both conflict and income. These are the studies where income and conflict were either equal to begin with (designated with “=” on the Table) or where the difference in income and conflict was factored into the statistical analysis (designated with “*” on the Table). A close analysis of these studies is presented elsewhere, with special attention to those studies that also considered the quality of the children's relationship with both parents (Nielsen, 2018, in press). One of these studies by Buchanan et al. is detailed here to illustrate that neither conflict nor income can be held accountable in any simplistic way for the better outcomes of JPC children.

In Buchanan et al.'s study (1996) conflict, income and quality of the parent—child relationship all came into play in explaining JPC children's better outcomes. In 80% of JPC families, one parent was initially opposed to the plan. Despite their parents' initial conflict over the JPC plan, JPC children still had better outcomes than SPC children on measures of emotional and behavioral problems four years after the divorce, even in the

highest conflict families. The one exception was that the small group of children who did not feel close to either of their parents and whose parents were still in high conflict four years after separating. These children were more likely to be caught in the middle of their high conflict parents' arguments in JPC than in SPC families. As for income, there were no significant differences in the incomes of the JPC and SPC families. However, in SPC families, the children with higher income parents had more behavioral problems and used drugs or alcohol more often than SPC children with lower income parents. This was not the case in JPC families.

In sum, neither family income nor parental conflict can account for JPC children having better outcomes than SPC children. This might largely be explained by the fact that the quality of children's relationships with each parent often effects how well children fare in JPC or in SPC (for a review of these studies, see Mahrer, O'Hara, Sandler, & Wolchik, 2018, in press). Further analyses of the JPC and SPC studies show that children's outcomes are effected not only by the quality of their relationships with their parents, but by the child's gender (Nielsen, 2018, in press). In other words, the reason why JPC children have better outcomes independent of family income and parental conflict may be because they have better relationships with each parent, which, in turn, may override the importance of family income and the amount of conflict or cooperation between the parents.

Limitations of the studies

Several limitations should be kept in mind in regard to the studies comparing children's outcomes in JPC and SPC families. First and foremost, the studies are correlational, which means none can prove that family income, or parental conflict, or the custody arrangement caused better or worse outcomes for children. Fortunately, a number of studies analyzed several different factors simultaneously, showing which factors were the most closely linked to the outcomes. Other studies included factors such as income, conflict, age of the children or parents' educational levels to eliminate the possibility that those factors were influencing the outcomes. These more sophisticated statistical techniques in some of the more recent studies bring us closer to understanding which factors might be the cause of children's better or worse outcomes. When the present article discusses the "impact" or "effects" of JPC or family income or parental conflict, this refers to the statistical significance of findings and does not imply causality.

Second, the studies are not all of equal quality. Some are superior to others in regard to sample size, representativeness of the sample, validity and reliability of the measures, and sophistication of the statistical analyses. Moreover, roughly half of the studies did not take account of parental conflict or family income before comparing the children's outcomes. This leaves open

the possibility that in those particular studies, low conflict or high income were more closely linked to children's well-being than was the JPC plan.

Although Smyth et al. (2016) have criticized JPC studies for using different measures and having different types of samples, this is in fact a strength in social science studies, not a weakness. When studies use different samples, different measures and different approaches to explore the same question, and when they arrive at the same general conclusions, this is a desirable situation referred to as "convergent validity" (Shadish, Cook, & Campbell, 2001). Convergent validity adds to the confidence and the trustworthiness of the findings.

Third, even though differences between JPC and SPC children's outcomes are statistically significant, the effect sizes are generally small to moderate. It should be remembered, however, that small effect sizes are also common in studies of the links between children's well-being and factors such as parental conflict, poverty, and domestic violence. Effect sizes in social science and in medical studies are often relatively small, yet they have important implications for large numbers of people (Ferguson, 2009). In fact many public health policies and treatment protocols are based on research findings with correlations in the range of only .15 to .30 which are considered weak to moderate (G. Meyer, 2001). More specific to the issue of the small effect sizes in the JPC and SPC studies, Amato and Rezac (1994) point out that even the small effect sizes in their famous meta-analysis of the frequency of nonresidential fathers' contacts with their children meant significantly better outcomes for very large numbers of children.

Fourth, almost all of the data regarding children's well-being and about the level of conflict between the parents comes only from the mothers. Without the fathers' input, especially in the JPC families where children are living with each parent at least 35% of the time, we cannot know how accurate the mothers' reports are. Likewise, relying only on the mothers' reports of conflict between the parents may be yielding an inaccurate or skewed view.

Conclusion

As the studies summarized in this article demonstrate, JPC is linked to better outcomes than SPC for children, independent of family income or the level of conflict between parents. This is not to say that children do not benefit in any way from living in higher income families or from having parents with low conflict, cooperative coparenting relationships. What these studies do mean is that the better outcomes for JPC children should not be attributed to higher family incomes or to low conflict between their parents. Moreover, all 30 studies that assessed children's relationships with their parents and other

relatives found better outcomes for the JPC children. Given this, it is highly likely that family income and parental conflict are less closely linked to children's well-being than the quality of their relationships with their parents, stepparents, and grandparents. As researchers continue to explore the factors that might explain children's better outcomes in JPC families, it is clear that shared parenting families are on the rise and that children are benefitting from this new family form.

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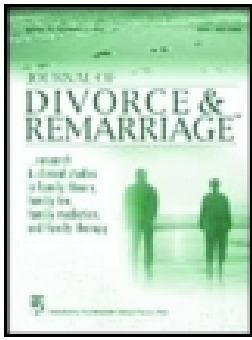
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What Can We Say Regarding Shared Parenting Arrangements for Swedish Children?

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ABSTRACT

Joint physical custody (JPC) refers to children living alternately and about equally with both parents after a parental separation or divorce. The practice has been debated in relation to child well-being because of the frequent moves imposed on children and the potential stress from living in 2 homes. This study describes the background to the high frequency of Swedish children in JPC and the results from research on Swedish children's well-being in this living arrangement. Children in JPC report better well-being and mental health than children who live mostly or only with 1 parent. No Swedish studies have found children's health to be worse in JPC than in sole parental care from child age of 3 years and beyond. The existing literature cannot, however, inform us about the mechanisms behind the findings. The risks of selection effects into living arrangements are plausible. For this purpose, longitudinal studies are warranted.

When parents separate, many wonder what solution is best for their children. Do they benefit most from living in sole physical custody (SPC) with one parent or from living about half the time with each parent in a joint physical custody (JPC) or shared parenting arrangement? In the debate over custody arrangements, JPC has been framed as coupled with potential health risks, such as the stress of living in two homes and in two different family cultures (Gilmore, 2006; McIntosh, Smyth, Kelaher, Wells, & Long, 2011), and difficulties in maintaining friendships when moving between two neighborhoods (Prazen, Wolfinger, Cahill, & Kowaleski-Jones, 2011). For the very youngest children, the debate has mostly regarded the potential risk of being separated from the mother (McIntosh et al., 2011). In contrast, others have emphasized the importance of JPC for the continued involvement of both parents on an everyday basis (Lamb & Kelly, 2010; Nielsen, 2013a; Warshak, 2014). Sweden provides a unique situation for addressing these questions because Swedish parents are much more likely than parents in other advanced nations to share physical custody of their children after they separate.

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In Sweden, JPC has become as common as living mostly with the mother after parents separate. The proportion of Swedish children in JPC was about 1% of children with separated parents in the mid-1980s, but is now between 35% and 40%. Of all children between 12 and 15 years of age, 1 in 10 are in JPC (Bergström et al., 2013; Swedish Government Official Report, 2011). Indeed, for 3-year-old children, JPC is nearly twice as common as SPC, at least among Swedish-born and well-educated parents (Bergström et al., 2018). When Swedish parents separate, they also tend to live in nearby neighborhoods so that the distance between their homes is relatively short (Turunen, 2017).

Sweden and the presumptions for joint physical custody

The share of children in JPC is around 30% in parts of the United States (Cancian, Meyer, Brown, & Cook, 2014; Melli & Brown, 2008), 25% in Norway and Denmark (Kitterod & Wiik, 2017; Ottosen et al., 2014), and under 20% in the United Kingdom (Peacey & Hunt, 2008). A large part of the reason why JPC is so much more common in Sweden lies in the attitudes and policies about shared parenting for married and for separated parents. Swedish family policy has had a gender-neutral focus since the early 1970s. When gender-neutral parental leave was launched in Sweden in 1974, the advertisements showed fathers interacting with their infants, and the policy was promoted as “involved fatherhood” (Barclay & Lupton, 1999; Draper, 2003).

Most of Sweden’s political parties have parental equality as a stated goal in their policy programs (Wells & Bergnehr, 2014), encouraging both parents to engage in paid work as well as in household work and child care (Daly, 2011). By 1974 Sweden offered both mothers and fathers paid parental leave, and since the early 2000s, parents have been encouraged to share the parental leave equally (Daly, 2011; Klinth, 2008). In 2012, fathers used 24% of the Swedish parental leave (Swedish Social Insurance Agency, 2013). Of children born in 2010, about 13% had parents who shared the parental leave days equally for the first 2 years of their child’s life (Swedish Social Insurance Agency, 2013).

Sweden’s goals for gender equality in parenting are also expressed in other policies applied equally to mothers and fathers. For example, both parents have the same number of days with pay to stay home with a sick child up until the age of 12. The government also provides subsidized child care for children 1 to 5 years old and 84% of these children participate. In line with these policies, Sweden has the largest proportion of women in the labor force among the Organization for Economic Co-operation and Development (OECD) countries, at 80.7% in 2013 (OECD, 2014). Furthermore, Swedish family policies generally support the dual earner model, aiming at financial self-reliance for both mothers and fathers. Also, when parents separate, there are fewer financial disputes involving custody (Haas, 1996). After they

separate or divorce, most Swedish parents share the legal custody of their children (Swedish Government Official Report, 2011). Most also mutually agree on living arrangements without any professional or judicial involvement (Swedish Government Official Report, 2011). An estimated 14% of separating parents seek advice about how to tackle their disagreements over physical custody arrangements (Swedish Board of Health and Welfare, 2011). About 9% of parents resolve their custody disputes in court (Swedish Government Official Report (2017), which is comparable to the number in the United Kingdom (Rešetar & Emery, 2008).

Swedish studies on joint physical custody

Shared parenting for young children

In a series of studies known as the Elvis Project (from the Swedish word *växelvis*, which means *alternate*), we have been investigating the situation for JPC families. In a first study we interviewed Swedish parents regarding their experiences of shared parenting for children under 4 years of age (Bergström, Sarkadi, Hjern, & Fransson, *in press*; Fransson, Sarkadi, Hjern, & Bergström, 2016). Telephone interviews were conducted with 18 fathers and 28 mothers whose 50 children were, on average, 21 months old when the parents separated. Most participants had mutually agreed to share the parenting, but 24% of the parents agreed to JPC after mediation or had JPC as a result of a court decision (Fransson et al., 2016). Even parents who reported having been hesitant about JPC at the start most often found ways to make JPC work. Some parents did not trust the other parent's abilities to take care of the young child. A majority of these parents, however, found individual solutions and resolved their concerns. They ended up being satisfied with JPC and feeling that their young children benefited from the arrangement. In many cases, schedules were changed either to let the child live longer periods with each parent (e.g., a whole week at a time) or to move more frequently between the homes so the children would not miss the other parent. Parents reported "tricks" to make the children's adjustment easier. For example, they would leave the child's toys in the same place where they were before going to the other parent's home or they would have specific routines the first night together after having been apart. In sum, shared parenting worked well for these families with children ages 1 to 4.

Three epidemiological studies on mental health in children in the youngest age groups have been conducted in the Elvis Project. The Strengths and Difficulties Questionnaire (SDQ) was used to measure the well-being of children in intact, JPC, and SPC families. One study was published in September 2017 (Bergström et al., 2018) and the subsequent two studies will be finalized during late 2017 or early 2018. In the recently published

study, we investigated psychological symptoms for 136 children in JPC, 3,369 children in intact families, 79 children living “mostly” with one parent, and 72 children living only with one parent (Bergström et al., 2018). The preschool teachers and the parents reported that children living mostly or only with one parent had more emotional and behavioral problems than those living in JPC or in intact families. According to the parents’ reports, there were no significant differences between children in intact families and JPC children. The preschool teachers, however, reported fewer problems for children in intact than in JPC families.

In the second Elvis Project study, the SDQ scores of children from five Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden) were compared according to family types. There were 152 children in JPC, 303 in SPC, and 3,207 in intact families (Bergström, Fransson, Wells, Köhler, & Hjern, 2018). The children were all between the ages of 2 and 9. As with the first study, the children in SPC had more psychological and behavioral problems than those in JPC and those in intact families had the fewest problems.

In the most recent study, we are gathering data on more than 6,000 Swedish 3-year-olds. More than 200 live in a JPC arrangement. In this study we are exploring how the quality of the coparenting relationship is linked to the children’s outcomes in the various types of families. We suspect that coparenting quality might be one explanatory factor behind the better health reported in children with JPC.

Epidemiological studies on children’s health in school-age children

As is true in the studies with preschoolers, the Swedish studies on school-age children and adolescents also show that children in JPC have better mental health and fewer behavioral problems than children in SPC families, who most often live in sole mother care, as well as children who live mostly with one parent (Bergström, 2012; Bergström et al., 2015; Bergström et al., 2013; Brolin Låftman, Bergström, Modin, & Östberg, 2014; Brolin Låftman, Fransson, Modin, & Östberg, 2017; Fransson, Brolin Låftman, Östberg, Hjern, & Bergström, 2017; Fransson, Turunen, Hjern, Östberg, & Bergström, 2015; Turunen, Fransson, & Bergström, 2017). Regarding health-related behaviors, two Swedish studies from other research groups show that adolescents in JPC are more likely to smoke or drink alcohol than those in intact families, but the JPC adolescents’ risk was lower (Carlsund, Eriksson, Lofstedt, & Sellstrom, 2012) or similar (Jablonska & Lindberg, 2007) to that of their counterparts in SPC families. Reviews of the research from other countries also show equal or better physical health in JPC than in SPC (Nielsen, 2013a, 2013b, 2014; Vanassche, Sodermans, Matthijs, & Swicegood, 2013; Westphal & Monden, 2015).

In many Swedish studies, children in intact families reported better health than those with separated parents (Bergström, Fransson, Hjern, Köhler, & Wallby, 2014; Bergström et al., 2015; Bergström et al., 2013; Brolin Låftman et al., 2014; Carlsund, Eriksson, & Sellström, 2013). These results might not be surprising, as the parental separation can be difficult for children (Ängarne-Lindberg & Wadsby, 2009; Bjarnason et al., 2012). More surprising results from several Swedish studies are that there are no differences between children in JPC and nuclear families in regard to emotional or behavioral outcomes (Bergström, 2012; Fransson, Folkesson, Bergström, Östberg, & Lindfors, 2014; Fransson et al., 2017; Fransson et al., 2015; Turunen et al., 2017; Wadsby, Priebe, & Svedin, 2014).

Discussion

Since the 1970s Swedish family policies have encouraged fathers to be involved in their children's lives from infancy onward. Given this, it is not surprising that Swedish parents generally consider JPC to be the most desirable option after they separate, even for very young children. Swedish studies on health and well-being in younger children and adolescents have shown that those in JPC report better well-being and mental health than children who live mostly or only with one parent after a separation or divorce. In regard to the controversial issue of shared parenting for very young children, no studies on children from 3 years of age and older have found children's health to be worse in JPC than in single care. Sometimes the children's health has been reported to be similar in in JPC arrangements and nuclear families.

The better outcomes for JPC children might be partly explained by socio-economic differences between sole and shared custody families. However, in the international literature, even after the parents' incomes and conflict were considered, children in the JPC studies still had better outcomes (Nielsen, 2017, this issue). Moreover, most of the Swedish studies have adjusted for economic factors. Even if conflict and income cannot fully explain the differences between JPC and SPC children's health and well-being, these two factors might still be influential. An additional explanation could be that JPC children benefit more than SPC children from support and a close relationship with both parents, which might resemble the parenting in an intact family. Involved fathering has been shown to be important for children's school achievements, health, and general development, and JPC gives fathers the opportunity to stay involved (Sarkadi, Kristiansson, Oberklaid, & Bremberg, 2008).

The Swedish studies described in this article have all had a cross-sectional design, which means that child health or well-being is measured at one point in time. This design does not allow us to draw conclusions about whether JPC is the "cause" of the children's better outcomes. It is possible that factors existing before the parents' separation can directly influence the choice of

living arrangements, thus causing important selection bias. Poor health or stress in both the custodial and noncustodial parent in SPC families might also contribute negatively to the well-being of the child. Furthermore, it seems likely that parental conflict and paternal engagement before the separation influence the choice of living arrangements, and thus influence the well-being of the child both before and after the separation. For instance, if one parent suffers from mental or physical problems or from drug or alcohol addictions, this would decrease the likelihood of JPC. Also children with physical, behavioral or emotional problems might be less likely to be in JPC families. Differences in well-being between children in JPC and SPC arrangements could hence be related to family factors unaccounted for in the studies. A longitudinal study design with repeated measurement before and after separation would be the most desirable design for future studies.

Factors that benefit or hinder children from thriving in JPC, such as being caught in the middle of high ongoing conflict, family violence, and families with child and parental psychiatric morbidity, have not been sufficiently studied. The Swedish family law, in accordance with the UN Declaration of the Rights of the Child, states that children have the right to know and be cared for by their parents. At the same time, though, a child also has the right to be protected against all forms of neglect, cruelty, and exploitation. Few studies have explored situations or family factors that indicate that JPC is unsuitable. For example, a recent doctoral thesis showed that children who were victimized by domestic violence by an abusive father did not fare well under the imposed visitations or in a JPC arrangement (Forssell, 2016). When the father–child relationship was positive, children were, however, eager to keep the close relationship with their father despite the experiences of violence between the parents. In line with this, a review of international studies shows that even in high-conflict families, the quality of the parent–child relationship is more closely correlated with child well-being than conflict or the quality of the coparenting relationship (Nielsen, 2017). The same review, as well as a recent longitudinal study (Fabricius & Suh, 2017) states that JPC is linked to stronger parent–child relationships, which helps to mitigate the negative impact of conflict. More studies are needed, though, to determine those circumstances where children should be protected from an abusive parent by not living in a JPC family.

Other factors that are insufficiently studied in relation to JPC are child temperament, the well-being of children 0 to 2 years old, and children with special needs. Another area that needs more attention is what type of parenting plans are most suitable for children in different ages. Especially for infants, toddlers, and preschoolers, such guidance should be welcome. In the international literature on young children in JPC, the authors have stressed that sensitive parenting and flexible schedules seem more important for children's well-being than the amount of overnights, but how such

flexibility and sensitivity should be executed concretely remains to be described (Pruett, McIntosh, & Kelly, 2014). Moreover, the assumption that young children need frequent transitions between their parents' homes due to their immature perception of time and limited memory capacity has not been empirically tested. In one of the Elvis Project studies, however, some parents felt that the frequent moves ruined the young child's sense of stability. Longer periods of time in each home worked better for some young children, whereas shorter intervals of time worked better for others (Fransson et al., 2016).

The increase in JPC arrangements is one of the most important societal changes that has occurred in the last 20 years. It is thus important that high-quality studies are prioritized to fill the knowledge gaps and provide sound guidance for separating and divorcing parents as well as for policymakers.

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Equal Parenting Time: The Case for a Legal Presumption

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Abstract and Keywords

This chapter reviews several sources of evidence bearing on the question of whether equal parenting time with both parents is in the best interests of children of divorce. First, the scientific evidence consists of correlational findings that meet four conditions necessary for a causal role of parenting time: A legal context that constrains the possibility of self-selection; a “dose-response” association between parenting time and father-child relationships; positive outcomes when parents disagree and courts impose more parenting time; and negative outcomes when relocations separate fathers and children. Second, the cultural evidence is that norms about parenting roles have changed in the last generation, and this is reflected in public endorsement of equal parenting time. Third, test-case evidence comes from the 2013 equal parenting law in Arizona, which has been evaluated positively by the state’s family law professionals. Finally, examples from recent Canadian case law show courts responding to the new cultural norms by crafting individualized equal parenting time orders over one parent’s objections even in cases of high parent conflict, accompanied by well-reasoned judicial opinions about how that is in children’s best interests. The chapter concludes that the overall pattern of evidence indicates that legal presumptions of equal parenting time would help protect children’s emotional security with each of their divorced parents, and consequently would have a positive effect on public health in the form of reduced long-term stress-related mental and physical health problems among children of divorce.

Keywords: equal parenting time, parent conflict, divorced fathers, parent-child relationships, legal presumptions

At the heart of the current science and policy debates about children’s living arrangements after parental divorce or separation is the question of whether it is in children’s best interests to live equal amounts of time with each of their parents. My colleagues and I have theorized and reviewed evidence that parenting time is an important source of children’s emotional security about parent-child relationships, and that secure parent-child relationships, in turn, are an important source of protection from stress-related

mental and physical health problems.¹ In this chapter, I discuss the theoretical mechanisms by which parent conflict also affects children's emotional security; review the previous correlational evidence regarding parenting time, parent conflict, and children's well-being; and conclude that the correlational evidence supports equal parenting time. The science is now entering a "second generation," in which opportunities are becoming available for stronger tests of whether equal parenting time causes benefits in parent-child relationships, while the cultural norms for parenting roles after parental separation have already evolved in the direction of equal parenting time, both of which I discuss next. Lastly, I review findings of an initial evaluation of Arizona's implementation of an equal-parenting-time presumption, the status of custody law in other states regarding presumptions of equal parenting time, and recent Canadian case law under the statutory *maximum contact principle*. I conclude that the evidence to date from all these sources converges to indicate that a legal presumption of equal parenting time is in children's best interests, because such a presumption is likely to strengthen the emotional security of children of divorced and separated parents and thereby have a widespread positive impact on public health.

In our research, we measure the amount of yearly parenting time children have with their fathers in order to test whether more parenting time, up to and including equal parenting time with both parents, is associated with increasing benefits to children. In the older literature, and still to some extent today, researchers have instead measured frequency of visits, using scales with response options such as "2 to 6 times a year," "1 to 3 times a month," and "2 to 5 times a week." It has since been discovered that the number of days of parenting time cannot be reliably calculated from such response categories; thus, these scales are of limited use in answering modern policy questions about equal parenting time.² More recently, one encounters the term "shared parenting" in discussions of policy, and it is important to first consider how viable that concept is as a foundation for policy.

1. How Useful Is the Term "Shared Parenting" for Policy?

"Shared parenting" is like a "handful of pennies." At no point does adding another penny make them a handful; furthermore, a handful depends on the size of the hand. The concept of a handful is inherently vague, as is the concept of shared parenting. At no one point does increasing the number of days and nights that the child spends at the father's home become shared parenting, and what one child experiences as shared parenting, as well as any benefits that derive from it, might be different for another child. When "shared parenting" is used as a technical term in policy discussions, the vagueness is removed by arbitrarily defining it as ranging from some minimum proportion of parenting time with fathers (e.g., 35 percent), up to and including equal parenting time with both parents.

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There are currently no United States child custody statutes with a presumption for shared parenting defined as some minimum proportion of parenting time with fathers, although some have been proposed. Several problems would arise with such a statute. The first is that the lower bound of the definition is likely to be insufficient for many children, but it is also likely to be the compromise target that attorneys, mediators, and courts will encourage parents to agree to when the father wants equal parenting time and the mother objects. For example, 35 percent parenting time might seem enough to support strong father-child relationships. However, when we move from intuition to consider what 35 percent parenting time (128 days) actually looks like in a parenting plan, the view becomes less sanguine. There are 36 weeks of school, and 16 weeks total of school vacations and holidays; thus, if the child spends half of school vacations and holidays with the father (56 days), that leaves 72 days of parenting time during the 36 school weeks, or an average of two days per school week. Half of those will be weekends, leaving an average of one school day and night per week with the father. That makes it difficult for the father to be much of a presence in the child's school life, and makes it difficult for the child to see the father as a parent who knows about all the different aspects of the child's life. Two days per school week also means that there will be long periods of time before the child returns to dad's home, up to seven days if the parenting plan is Wednesday and Thursday with dad one week, and Friday and Saturday the next week. That makes it difficult for the father to establish consistent parenting routines, and difficult for the child to adjust before it is time to leave again.

The second problem is that a presumption for "shared parenting" does not tell courts and parents what amount of parenting time is sufficient. When such bills are proposed, they typically include language to the effect that children should have at least the minimum proportion of parenting time with fathers, and that they should have more, up to 50 percent, based on the individual circumstances of the family. Minimum requirements, as in "minimum daily requirements" of vitamins and minerals, usually specify the amount that is sufficient, but the above language specifies a minimum amount of parenting time that is necessary but not sufficient. Parents will rightly be uncertain about how much parenting time courts will deem to be sufficient under such a standard. Incoherence in a legal standard promotes confusion and conflict between the parties, and heterogeneity among courts in how to interpret and apply that standard.

The final problem is that a definition of shared parenting prescribes an amount of parenting time for all families, albeit as a minimum starting point, and thus it imposes a constraint on judicial discretion, which in some cases might not be in children's best interests. Thus, basing child custody statutes on a definition of shared parenting produces the worst case of both constraints and heterogeneity in judicial decision-making.

The alternative presumption is that the child should have as close to equal proportions of parenting time with both parents as is possible for that family, on a schedule that is individualized for each family. As we will see below, this approach is more in line with what

we know about the effects associated with different amounts of parenting time. It is also coherent and preserves judicial discretion.

2. The Correlational Evidence and Policy Implications

2.1. The Meaning of Parenting Time

Comprehensive reviews of the research on the various dimensions of non-resident father involvement began in 1999 with a review of the sixty-three extant studies by Amato and Gilbreth.³ They concluded that the evidence showed that the *quantity* of parenting time was less important than the *quality* of the father's parenting behaviors for children's school success and mental health. Fabricius et al. have discussed the problems with that conclusion.⁴ One problem is that most of the studies available to Amato and Gilbreth at the time used the frequency-of-visitation scales, which fail to accurately measure the quantity of parenting time (e.g., one visit per month could be a dinner or a whole month).

Another problem is that Amato and Gilbreth defined high-quality father parenting as including not only the traditionally recognized behaviors (e.g., providing emotional support, praising children's accomplishments, maintaining consistent discipline, and explaining the reasons for rules), but also other things such as helping with homework, and working on projects together. Divorced fathers who are more involved in helping with homework and working on projects together necessarily have more parenting time in which to do more of those things. That means that divorced fathers who scored higher on "quality of parenting behaviors" in Amato and Gilbreth's scheme also likely had greater amounts of parenting time. Thus, the combination of an unreliable measure of quantity of time (i.e., frequency of visitation), and a confounded measure of quality of time (i.e., some items assessed quality but others assessed quantity) might have inadvertently stacked the deck toward concluding that the quality of fathers' parenting behaviors was more predictive of child outcomes than the quantity of parenting time. One current review of the literature repeats these same mistakes and thereby comes to the same unwarranted conclusion; for example, these authors counted the question, "How often does father put the child to bed?" as a measure of the quality of fathers' parenting behaviors, rather than as a measure of the number of overnights children spent with fathers.⁵

Another important aspect of Amato and Gilbreth's review is that it reflected the general tendencies at the time to overlook the connection between the amount of parenting time and the security of father-child relationships, and to overlook the security of father-child relationships as an important outcome variable on a par with the more traditional outcome variables such as depression, aggression, and school performance. These shortcomings have persisted in some quarters despite increasing evidence (discussed below) to the contrary. Part of the reason, I believe, is a lack of understanding of what parenting time means to the child.

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~~The study design~~ hypothesized that spending time doing things together such as working on projects, or going to the movies, whether the parent also engages in the traditional high-quality parenting behaviors during that time or not, communicates to the child that he or she is important.⁶ We derived this hypothesis from open-ended interviews with about four hundred adolescents in both intact and non-intact families about their relationships with each of their resident and nonresident parents, in which they spontaneously talked about, among other things, whether their parents spend enough time with them.⁷ Later, using standardized measures in state-of-the-art longitudinal analyses, we confirmed that the more time each parent in two-parent households spent with the adolescent child in daily activities—we asked about playing indoor and outdoor games, going to movies and sporting events, shopping, and cooking—the more secure the child felt one to two years later that he or she mattered to that parent.⁸ For divorced fathers, this requires having enough parenting time to be able to spend enough time doing things together to protect children from doubts about how much they matter.

The findings of many studies in many Western countries now clearly show that more parenting time is related to greater divorced father-child relationship security.⁹ For example, Figure 1 shows the relation we found in a sample of 1,030 college students from divorced families.¹⁰ The horizontal axis shows parenting time with father during childhood, and the vertical axis shows emotional security with father years later in young adulthood. The vertical line divides parenting time at thirteen to fifteen days per “month” (i.e., twenty-eight days). This represents equal (50 percent) parenting time with each parent. On the left side of the vertical line, it is clear that young adults’ current emotional security with their fathers improved with each increment, from 0 percent to 50 percent, of parenting time that they had spent with their fathers during childhood. Note that there is no “plateau” short of equal parenting time that might indicate a minimum amount of parenting necessary to ensure good father-child relationships. On the right side of the vertical line, from 50 percent to 100 percent time with fathers, are the few (N = 152) father-custody families, in which the zigzags are not statistically reliable and represent random variation. Fabricius and Suh have recently found the same thing for overnight parenting with the father during infancy (zero to two years of age): Young adults’ emotional security in the father-child relationship improved with each increment of overnights with fathers during infancy from no overnights with fathers to equal overnights with each parent.¹¹ Importantly, neither of these studies show any deterioration of the mother-child relationship from 0 percent to 50 percent parenting time with fathers; in fact, Fabricius and Suh found some improvement in mother-child relationships when fathers had overnight parenting time, perhaps because it helped relieve some of the stress of being a full-time, single mother.¹²

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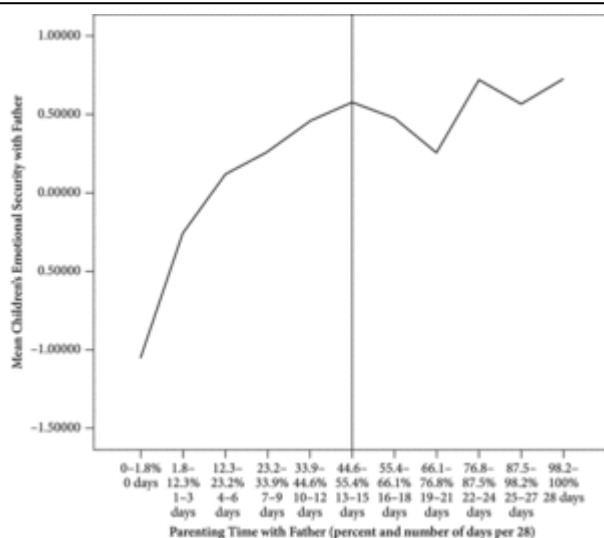


Figure 1. Relation between the amounts of parenting time per month (four weeks) students had with their fathers and the emotional security of their relationships with their fathers in young adulthood. Reprinted with permission from William V. Fabricius, Karina R. Sokol, Priscila Diaz, and Sanford L. Braver, "Parenting Time, Parenting Conflict, Parent-Child Relationships, and Children's Physical Health," in *Parenting Plan Evaluations: Applied Research for the Family Court*, ed. Kathryn Kuehnle and Leslie Drozd (New York: Oxford University Press, 2012), 188-213.

The potential public health benefits to society of improving divorced father-child relationship security could be substantial. An estimated 35 percent of children of divorce have poorer relationships with their fathers in adulthood than children from intact families, after controlling for forty divorce-predisposing factors.¹³ Amato and Gilbreth's review of studies revealed that children who were less close to their divorced fathers had worse behavioral adjustment, worse emotional adjustment, and lower school achievement.¹⁴ Evidence not only from the divorce literature, but also from the general health literature going back fifty years shows that poor relationships with either parent contribute in later life to "consequent accumulating risk for *mental health disorders, major chronic diseases, and early mortality.*"¹⁵ Weakened relationships with divorced fathers also manifest in less support given and received in the form of intergenerational transfers of time and money.¹⁶ Our latest study in this line of work found that adolescents' perceptions of how much they mattered to their fathers were actually more important than their perceptions of how much they mattered to their mothers for predicting their later mental health.¹⁷

Soon after Amato and Gilbreth, other reviews of the literature began appearing that rightly sought out studies that measured the amount of parenting time rather than the frequency of visitation.¹⁸ In contrast to the conclusion of Amato and Gilbreth, these reviews found that the quantity of parenting time was associated with a wide range of beneficial child outcomes in addition to improved father-child relationships, including academic success, mental health, behavioral adjustment, and self-esteem. However, the authors

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of these new reviews used definitions of shared parenting to determine how many studies found that children with at least a certain minimum amount of parenting time with fathers had better outcomes than children with less than that amount of parenting time. The first was Bausserman, who located 25 studies and used a minimum cutoff of 25 percent parenting time with fathers.¹⁹ Nielsen initially found 40 studies, and later found an additional 20 studies, both times using a cutoff of 35 percent time with fathers.²⁰ These definitions of shared parenting grouped together studies that differed widely in the average amounts of parenting time with fathers, and as a result, the findings do not tell us whether there are additional benefits associated with levels of parenting time above the cutoffs. Only one review (of 19 studies) compared sole physical custody to two cutoffs for joint physical custody; i.e., 30 percent to 35 percent parenting time with fathers, versus 40 percent to 50 percent.²¹ The children who had almost equal parenting time (40 percent to 50 percent) had better behavioral adjustment (e.g., less aggressiveness, fewer conduct problems) and social adjustment (e.g., better social skills, more social acceptance) than children in sole physical custody, whereas those with 30 percent to 35 percent parenting time did not. All the authors of these reviews used definitions of shared parenting to simply group studies together for comparison purposes, but these reviews inadvertently lend themselves to use by advocates calling for legal presumptions for shared parenting defined as at least 35 percent parenting time with fathers.

2.2. The Meaning of Parent Conflict

Relatively few studies of parenting time also examine levels of parent conflict. That is unfortunate because parent conflict is known to harm children, and there is long-standing concern among researchers²² and policymakers about whether more parenting time with fathers in high-conflict families would expose children to more harm from conflict.

It is important to understand how and why parent conflict works to harm children. The best theory we have is Emotional Security Theory (EST).²³ The central tenet of EST is that parent conflict, in intact as well as in divorced families, can threaten children's sense of security that their parents will be able and willing to continue to take care of them. Some children can have confidence that the conflict will be managed and regulated by the parents, or otherwise will not threaten their continued care. Other children, in response to parent conflict, experience emotional insecurity about the continued physical and emotional availability of their parents. That emotional insecurity is manifested in three ways: (a) *distress* in response to episodes of parent conflict; (b) attempts to *regulate* their exposure to the conflict in various ways such as freezing, intervening, or ingratiating themselves; and (c) negative *expectations* that the conflict will cause their parents to withdraw and will undermine family stability. Negative expectations can be revealed when children are asked to finish story stems about parents in conflict; as one child narrated, "The Mom and Dad keep blaming each other. 'You made the mess.' 'No, you did.' Then Dad leaves the house."²⁴

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In young children from divorced families, these negative expectations about parent conflict take the form of worries about the continuity of their living arrangements and the stability of their relationships with parents. Such worries are evocatively captured by the following items on the Fear of Abandonment subscale of the Children's Beliefs about Parental Divorce Scale²⁵: "I worry that my parents will want to live without me;" "It's possible that my parents will never want to see me again;" "I worry that I will be left all alone;" "I think that one day I might have to live with a friend or relative." In young adults from divorced families, lingering insecurity about parent conflict is still manifested in the same three ways identified by EST: (a) memories of the *distress* of experiencing parental conflict; (b) lingering feelings of *self-blame* in having failed to reduce the conflict and prevent the divorce; and (c) negative *expectations* that continuing conflict will undermine their parents' ability to cooperate in helping them meet the challenges of young adulthood. This insecurity about parent conflict is captured by four of the six subscales of the Painful Feelings About Divorce Scale (PFAD):²⁶ Loss and Abandonment (e.g., "I had a harder childhood than most people." "I missed not having my father around."), Self-Blame (e.g., "I wish I had tried harder to keep my parents together."), Seeing Life Through the Filter of Divorce (e.g., "I worry about big events when both my parents will have to come." "My parents' divorce still causes struggles for me."), and Acceptance of Parental Divorce (e.g., "My parents did not eventually seem happier after they separated.")

Fabricius and Luecken studied college students and found that more parent conflict around the time of the divorce predicted more insecurity about parent conflict, as measured by the PFAD, years later in young adulthood, which in turn predicted worse current stress-related physical health.²⁷ However, more parenting time with fathers *mitigated* the harm from parent conflict. Specifically, more parenting time with fathers during childhood predicted greater emotional security of father-child relationships in young adulthood, which in turn predicted *better* stress-related physical health. Both findings are consistent with EST, which holds that the child's emotional security in parent-child relationships is distinct from the child's emotional security about parent conflict, and that each contributes to the child's well-being.

Importantly, Fabricius and Luecken found no indication that more parenting time in the high-conflict families resulted in more insecurity about conflict. Mahrer, O'Hara, Sandler, and Wolchik recently reviewed the small group of studies of parenting time and parent conflict.²⁸ They concluded that the findings are mixed,²⁹ and that more research is needed to ascertain whether more parenting time with fathers in high-conflict families exposes children to more harm from parent conflict. The mixed findings might be due to older studies having too few children in high-conflict families with equal parenting time. The mixed findings might also be due to the use of analytical methods that were not designed to detect complex relations between parenting time and insecurity about parent conflict. Consequently, Reanalysis of the Fabricius and Luecken data was in order, to look for complex effects of parenting time in high conflict families.

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Fabricius and Luecken assessed parenting time with the question, “Between the time your parents got divorced and now, which of the following best describes your living arrangements with each of them?” The response options were five verbal categories (from *lived entirely with mother and saw father minimally or not at all*, to *lived equal amounts of time with each parent*) that have the following approximate yearly equivalencies of proportion of parenting time with father: 5 percent, 15 percent, 25 percent, 35 percent, and 45 percent, respectively.³⁰ Among the approximately 200 college student participants who provided complete data, the percentages in each of the categories of parenting time were 22 percent, 25 percent, 22 percent, 17 percent, and 15 percent, respectively.

Results of the reanalysis showed that, in low-conflict families, the quality of father-child relationships improved with increased parenting time, similar to Figure 1. In high-conflict families, relationships tended to be worse overall than in low-conflict families, reflecting the typical finding that more parent conflict is associated with poorer father-child relationships.³¹ Nevertheless, father-child relationships in high-conflict families also improved with increased parenting time, but only up to 25 percent time, after which they leveled off. Thus, there was no evidence that more parenting time in high-conflict families was harmful to long-term father-child relationships.

Children’s insecurity about parent conflict in low-conflict families did not increase with increased parenting time. In high-conflict families, insecurity spiked significantly from 25 percent to 35 percent parenting time, and at 35 percent it was significantly greater in high-conflict families than in low-conflict families. However, at essentially equal parenting time (45 percent), insecurity about parent conflict was not greater in high-conflict families than in low-conflict families.

The same pattern was evident for one of the two standardized measures that Fabricius and Luecken used to assess the young adults’ stress-related physical health. This was the somatic symptoms scale (e.g., headaches, dizziness, chest pains, nausea). In low-conflict families, somatic symptoms did not increase with increased parenting time. In high-conflict families, somatic symptoms spiked significantly from 25 percent to 35 percent parenting time, and at 35 percent were significantly greater in high-conflict families than in low-conflict families. However, at essentially equal parenting time (45 percent), somatic symptoms were not greater in high-conflict families than in low-conflict families. For the other measure (i.e., global health rating), the parenting time patterns were not different for high-conflict versus low-conflict families.

These new analyses revealed that, as some have feared, increasing parenting time with fathers in high-conflict families does not appear to have the same beneficial effects as it does in low-conflict families. However, the most insecurity about parent conflict, and the most somatic symptoms both occurred at 35 percent parenting time, not at equal parenting time (45 percent). EST, when applied to the context of children’s living arrangements after divorce, provides a ready explanation of these findings. The central tenet of EST, that parent conflict can threaten the child’s sense of security about the parents’ contin-

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ued support, suggests that when parenting time is low, the father's potential withdrawal in response to parent conflict threatens the child with relatively little change in circumstances because the child already spends little time with the father. At 35 percent parenting time, however, the change in circumstance would be quite substantial; furthermore, insecurity about the father's continued involvement can be heightened because there are still long periods when the child is not at the father's home. In contrast, at equal parenting time, while the change in circumstance would be greater than at 35 percent time, there is less room for insecurity about the father's commitment to continued presence because it is concretized in his provision of an equal home for the child. Thus, equal parenting time, in and of itself, likely carries meaning to protect the child against insecurity about parent conflict.

2.3. Summary and Policy Implications

The effects of divorce on children are largely due to how much the divorce threatens their emotional security. Several lines of research suggest that reduced parenting time with fathers threatens emotional security by preventing children from having sufficient daily interactions to reassure them that they matter to their fathers. The correlational findings of many studies show that more parenting time with fathers up to and including equal parenting time is associated with improved emotional security in the father-child relationship. None of these studies found that mother-child relationship security decreased with increasing parenting time with fathers. This means that the children of divorce with the best long-term relationships with both parents are those who had equal parenting time.

High levels of parent conflict pose a different threat to emotional security. Children fear that conflict will cause parents who might otherwise be supportive and responsive to become emotionally and physically unavailable, and unable to cooperate to meet their needs. The few studies are mixed regarding whether more parenting time with fathers in high-conflict families is harmful for children. New analyses designed to detect complex relations between parenting time and conflict showed that in low-conflict families, there was no indication that more parenting time was harmful. In high-conflict families, both insecurity about parent conflict and stress-related somatic symptoms spiked at 35 percent parenting time with fathers, and were higher than in low conflict families at 35 percent time but not at equal parenting time. Equal parenting time appears to protect children from insecurity about parent conflict. This evidence has only recently become available because only recently have we been able to study larger samples of high conflict families with equal parenting.

Secure parent-child relationships and security about parent conflict are both important aspects of children's well-being, and both also contribute to better stress-related physical and mental health. The policy implication seems clear in low-conflict families—namely, that equal parenting time is generally best for the children. In high-conflict families, the little evidence we have suggests that security in relationships with fathers might plateau at 25 percent parenting time, while at 35 percent parenting time children might have more distress about parent conflict and somatic symptoms. Strictly speaking then, in

high-conflict families either 25 percent or equal parenting time might seem best; however, attempting to protect children from insecurity about parent conflict by giving them equal parenting time with their parents is preferable to giving them minimal (25 percent) parenting time with their fathers. For one reason, 25 percent parenting time is equivalent to the traditional standard of every other weekend throughout the calendar year, which is no longer the norm in the current cultural climate (see below).

3. Evidence for Causality of Parenting Time

There is considerable turmoil in both the research literature and policy circles concerning the potential effects of legislation establishing a presumption in favor of equal parenting time.³² The issue that causes legitimate concern is the difficulty of drawing policy implications from the current correlational research based on families who selected into shared parenting under legal regimes without such presumptions. The worry is that better parents are selected into having more parenting time, so that the observed benefits are due to the type of parents rather than the amount of parenting time. While experimental studies on parenting time cannot be conducted, there are several reasons and lines of evidence to suggest that selection plays a minimal role in the observed benefits and consequently that parenting time plays a causal role.

The first reason is that better fathers are not able to choose to have more parenting time. In the classic Stanford Child Custody Study in California, Maccoby and Mnookin reported that about a third of fathers wanted joint physical custody, and another third wanted primary physical custody.³³ In Arizona, Fabricius and Hall found that similar proportions of college students reported that their fathers had wanted equal or nearly equal living arrangements, or to be their primary residential parent.³⁴ Yet in both studies, children's living arrangements were twice as likely to reflect the mothers' than the fathers' preferences. The amount of parenting time fathers have under current legal regimes is influenced by many factors, including the mother's preferences, the parents' perceptions of general maternal bias in the courts, advice from attorneys about likely outcomes, parents' financial resources to pursue their cases, differences in effectiveness of attorneys in arguing their clients' cases under the adversarial system, and individual biases among custody evaluators and judges.³⁵ This "funneling" process represents a different dynamic than the typical self-selection scenario in which people choose to engage or not in a certain behavior, and could in fact constitute a "natural experiment" in which better fathers end up with considerably different amounts of parenting time.³⁶

The second reason that parenting time is likely to play a causal role in benefits to the father-child relationship is that there is a "dose-response" pattern, which means that even small increases in parenting time across the range from 0 percent to 50 percent are significantly associated with increases in father-child relationship security.³⁷ Fathers are highly unlikely to have been funneled into increasing amounts of parenting time according to their increasing potential to be good fathers; thus, selection is an unlikely explanation for this dose-response pattern.

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The third reason is that the beneficial effects of shared parenting do not seem to be due to better, more cooperative parents agreeing between themselves to share parenting time. We examined the publicly available data from the Stanford Child Custody Study³⁸ and found that the great majority of parents with shared parenting had to accept it after mediation, custody evaluation, trial, or judicial imposition.³⁹ Nevertheless, those with shared parenting time had the most well-adjusted children years later. In a recent study, we asked parents to report whether they had agreed about overnight parenting time when their children were 0 to 2 years of age, or whether they disagreed (i.e., “We never came to agreement; one of us got what he or she wanted mostly because the other one gave in,” or “The final decision came out of either mediation, custody evaluation, attorney-led bargaining, or court hearing”).⁴⁰ If the children had equal overnights with each parent by the time they were two years old, it did not matter whether their parents had agreed to it or not; the two groups had equally good relationships with their fathers as well as with their mothers, and better relationships than those who had had fewer overnights. These findings could also constitute a different type of natural experiment, not one in which better fathers were distributed across different amounts of parenting time, but one in which courts imposed equal parenting over mothers’ objections; in both cases, the findings suggest that greater emotional security in parent-child relationships was due to the greater amounts of parenting time with fathers.

The fourth reason comes from studies of parental relocation after divorce. To the extent relocation is caused by external circumstances such as job opportunities, health, extended family factors, etc. that are not related to parenting ability, it could constitute another type of natural experiment. The research my team and I have conducted comprises the only empirical studies of relocation, and they revealed no positive outcomes associated with parental relocation.⁴¹ Instead, compared to non-relocating families, relocation of more than an hour’s drive from the original family home was associated not only with long-term harm to children’s emotional security with parents and their emotional security about parent conflict, but also with more anxiety, depression, aggression, delinquency, involvement with the juvenile justice system, associations with delinquent peers, and drug use. These associations held after controlling for parent conflict, domestic violence, and mothers’ family income.⁴² That is important because it eliminates the alternate explanation that conflict, violence, or financial strain caused both the relocation and the poor child outcomes. In addition, there were similar effects in the two most frequent cases—when the custodial mother relocated with the child away from the father’s home, and when the non-custodial father relocated without the child away from the mother’s home—which indicates that the negative outcomes were not due to the child having to adjust to a new home environment, but rather to the separation of the child from the father.⁴³ When the fathers relocated, children were older at the time of the divorce and thus spent fewer years living apart than when the mothers relocated; we controlled for those factors as well, and still found similar effects for mother- and father-relocation.⁴⁴ Our relocation studies differed in methodologies and populations sampled, but nevertheless revealed similar results. Thus, as a set of studies, they provide a strong conceptual replication of the finding that separation of the child from the father by more than an hour’s drive, and

the reduced parenting time that necessarily follows, is associated with a wide range of harmful consequences to the child.

4. Cultural Norms of Parenting Roles after Parental Separation

Custody policies are value-laden. Their moral legitimacy comes from their connection to the prevailing, underlying cultural norms about gender roles and parenting; thus, they necessarily undergo fundamental historical change more so than other laws.⁴⁵ In connection to the long-term historical trend toward gender equality and involvement of fathers in child care, there is now consistent evidence of a strong public consensus that equal parenting time is best for children. The first indication of this consensus was found by Fabricius and Hall, who asked college students, “What do you feel is the best living arrangement for children after divorce?”⁴⁶ Regardless of how the question was phrased over the course of several semesters, whether students were male or female, or from divorced or intact families, approximately 70 percent to 80 percent answered, “equal time.”⁴⁷ Subsequent surveys have found that large majorities favor equal parenting time in all the locales and among all the demographic groups in the United States and Canada in which this question has been asked, and across several variations in question format, including variations that ask respondents to consider differences in how much pre-divorce child care each parent provided, and differences in parent conflict. For example, we presented hypothetical cases to a large representative sample of Arizona adults, in which participants were asked how they would award parenting time if they were the judge.⁴⁸ Participants most commonly awarded equal parenting time even when the hypothetical case stated that one parent had provided the most child care and when there was high mutual parent conflict. There were no significant differences by gender, age, education, income, political outlook, or whether the respondents themselves were currently married, had ever divorced, had children, or had paid or received child support.

This strong cultural norm that equal parenting time is best for children would by itself provide sufficient justification that a legal presumption for equal parenting time is in children’s best interests. The reason is that in this cultural milieu, those children who received the old standard, every-other-weekend visitation would be placed in the position of comparing themselves to their peers who had equal parenting time and searching for an explanation for why they are different. As a result, many children would unnecessarily worry that their own fathers’ limited post-divorce involvement with them was due to their fathers’ deficiencies, or their fathers’ lack of caring, or their own unworthiness. A legal presumption for equal parenting time is in children’s best interest because it would protect them from this source of emotional insecurity.

5. Evaluation of a Policy for Equal Parenting Time

Lawmakers are often counseled to reject a presumption of equal parenting time, under the assumption that it would impose a one-size-fits-all rule and prevent judges from using discretion in individual cases to protect children. Fortunately, we have a test case to allow us to examine whether a presumption constrains judicial discretion and puts children at risk. Just such a law has been in operation in Arizona since 2013, and an initial statewide evaluation of the law has been completed.⁴⁹

The landmark reform of Arizona's child custody statute was a large team effort by judges, attorneys, court staff, and mental health professionals who provide mediation and evaluation services to parents, domestic violence experts, legislators, lay mothers and fathers, and one academic researcher (Fabricius). The legislative process began several years earlier with education about the new research findings on the benefits associated with shared parenting time, delivered by Fabricius at the annual workshops and training sessions sponsored by the state Bar Association and the state chapter of the Association of Family and Conciliation Courts. Surveys at the last of these sessions in 2008 and 2010 showed that judges were strongly in favor of equal parenting time for fit parents.

The new statute was carefully worded to promote equal parenting time while still requiring judges to weigh the traditional children's best interest factors, such as parental mental health, that might disqualify either parent. The statute states at § 25-103(B): "Absent evidence to the contrary, it is in a child's best interest to have substantial, frequent, meaningful and continuing parenting time with both parents;" and at (C): "A court shall apply the provisions of this title in a manner that is consistent with this section." It further states at § 25-403.02(B): "Consistent with children's best interests, the court shall adopt a parenting plan that maximizes [both parents'] respective parenting time." The traditional preference for the parent who had provided primary caretaking was removed and replaced at § 25-403(A.1) with language directing courts to consider instead "the past, present and potential future relationship between the parent and the child." Thus, without citing percentages of parenting time, the law puts the focus on providing the child with as close to equal parenting time with both parents as possible for that family.

The evaluation study⁵⁰ consisted of a survey sent to all the state conciliation court staff (response rate = 82 percent), family court judges (response rate = 40 percent), private mental health providers (response rate = 50 percent), and private attorneys (response rate = 11 percent), asking for their perceptions of how the law is working. All four groups agreed that the courts are interpreting and applying the law as a presumption for equal parenting time, and that as a result, fit fathers are highly likely to have their petitions for equal parenting time awarded. This law thus provides a strong test case of whether a parenting time presumption constrains judicial discretion or exposes children to harm.

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The findings indicate that the Arizona law does neither. On average, the four groups of family law professionals rated the law positively overall, and positively in terms of children's best interests. The survey also allowed participants to express their own ideas about what is good and bad about the law. Judges seldom said anything about their discretion to individualize parenting time being constrained by the law. On the contrary, they often said that they had to correct some parents' misunderstanding that the law was a one-size-fits-all rule. Thus, Arizonans have not encountered a trade-off between equal parenting time and judicial discretion as a result of courts being directed to try to maximize children's time with both parents.

The four groups of family law professionals reported small increases after the law in allegations of domestic violence, child abuse, and substance abuse, which indicates that the law does not dissuade parents from raising these concerns, but they reported essentially no changes in parent conflict or legal conflict leading up to the final decree. There was some reported increase in post-decree filings, most likely reflecting requests to have older decrees re-adjudicated under the new law. Finally, there were two subgroups that did not evaluate the law positively. About half of the attorneys and one-third of the mental health providers evaluated the law negatively. It is not clear why they differed from the rest of their colleagues. The mental health providers who evaluated the law negatively had practiced for fewer years than their colleagues who evaluated it positively, but they did not differ by sex. The two subgroups of attorneys did not differ by sex or number of years in practice.

6. US State Statutes Regarding Presumptions of Equal Parenting Time

In addition to Arizona, just three other states have statutes with language stating a presumption for equal or maximized parenting time in a final decree. Most recently, in 2018, Kentucky amended its statutory provision governing custody following divorce, K.R.S. Section 403.270, to provide that "there shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child." In 2007, Wisconsin enacted Code Section 767.41 (4)(a)(2), providing that courts "shall set a placement schedule that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households." However, the issue of equal parenting time in Wisconsin still seems to be unresolved because the 2018 summer legislative leadership unanimously approved a bi-partisan Legislative Council Study Committee on Child Placement and Support, the scope of which states that it "may consider alternatives to current law concerning physical placement, including a rebuttable presumption that equal placement is in the child's best interest." Since 1994, Louisiana Civil Code Article 132 has dictated that courts must award "joint custody" to divorcing parents unless they agree otherwise or unless one parent shows by clear and convincing evidence that having sole custody would be in a child's best interests, and a subsequently enacted statutory provision, LSA-R.S.

9:335(A)(2)(b), clarifies that when joint custody is ordered, “to the extent it is feasible and in the best interest of the child, physical custody of the children should be shared equally.” These Louisiana statutes preceded the modern research on shared parenting time and might have been enacted in response to earlier studies.⁵¹ One other state, Alaska, has a statutory presumption of equal parenting time, but only for temporary orders.

Five other states’ statutes include a presumption regarding parenting time but fall short of presuming equal parenting time. Nevada, in Code Sections 125C.0015 and 125C.0035, presumes “joint physical custody” at the temporary and final decrees but does not define it. Arkansas, in Code Section 9-13-101, “favors,” but does not presume, an award of “joint custody,” which is defined as reasonably equal division of time between the parents. New Mexico’s Code Section 40-4-9.1 presumes “joint physical custody” at the temporary orders stage, but states that it does *not* imply equal parenting time. The District of Columbia and Idaho both presume “joint custody” but define it as “frequent and continuing contact.”⁵²

7. Recent Canadian Case Law under the Maximum Contact Principle in Section 16(10) of the Divorce Act

Custody policy in Canada is established at the national level, and there is currently no statutory presumption for equal parenting time. There is something called the *maximum contact principle* in Section 16(10) of the Divorce Act, but it is universally considered to not be a presumption in favor of shared parenting. Nevertheless, case law in Canada has evolved toward equal parenting time. These cases are the decisions of individual trial judges and appellate courts making their own use of the maximum-contact principle and are not yet well known. The Ontario cases have been reviewed by others.⁵³ I provide a brief, selective summary below.

Equal parenting time presupposes some arrangement for parents to share in decision-making about the child’s life (sometimes called joint legal custody). Courts were traditionally reluctant to order shared decision-making in high conflict cases, but that has been changing since the Ontario Court of Appeal cases of *Kaplanis v. Kaplanis* (2005) and *Ladisa v. Ladisa* (2005) affirmed that shared decision-making could be ordered to preserve each parent’s relationship with the child. Mostly since 2005, seventy cases have used that principle to order shared decision-making despite evidence of parent conflict and failure to communicate and cooperate. For example, in *Brook v. Brook* (2006), Justice Quinn noted, “The quest for joint [legal] custody must not be restricted to those who can pass the Ozzie-and-Harriet test.” These cases are notable for the careful and nuanced consideration judges gave to the nature, extent, history, and motivation for the conflict, and for creative, individually tailored provisions to avoid future conflict over decisions about the child’s life.

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At least thirty-four cases have used the maximum contact principle to order equal parenting time. For example, the Saskatchewan Court of Appeal in *Ackerman v. Ackerman* (2014) noted that, although there was no presumption in favor of shared parenting by the maximum contact principle, “maximum contact between a child and each of his or her parents is desirable,” and upheld the trial judge’s alternating-week equal parenting time order.

In *Fraser v. Fraser* (2016), Justice McGee noted, “Ongoing relationships with each of one’s parents is a right. When a parent argues for unequal parenting time, the onus is on that parent to demonstrate why the proposed schedule is in the child’s best interests.” She found that, given the complexity of the family members’ lives with three young, active children, an alternating-week schedule would reduce the amount of transitions, maximize contact with both parents, and ensure that each parent took responsibility for homework. Each parent would also take the children to activities while in the other parent’s care to remedy the court’s concern that seven days would be too long to be away from a parent. This provided the additional benefit of dividing up transportation when the children had conflicting schedules.

In *C. (M.) v. C. (T.)* (2010), the court applied the maximum contact principle to order equal parenting time on a three-day rotating basis despite a high level of parent conflict. Justice Walsh eloquently expressed the psychological theories and research findings about emotional security that I have described above:

I do not do this in an attempt to be fair to the parents, but rather because it will allow for more meaningful interaction between the children and both parents, particularly the father. It will, in my opinion, be better for the children's mental, emotional and physical health; reduce the disruption in the children's sense of continuity; foster the love, affection and ties that exist between not only the children and parents, but the children with the paternal grandmother and with the extended families of both parents; and will provide the children with a secure environment.

In *Gibney v. Conahan* (2011), Associate Chief Justice O’Neil of the Nova Scotia Supreme Court noted the influence of parenting research reported in the media and the prevailing cultural norms about gender roles and parenting:

Much is written and appears in popular magazines, on radio and TV about the need for children to have the opportunity to bond with both parents. The litigants herein espouse this view. They do not agree on how much time Mr. Conahan requires to achieve and maintain a loving and deep relationship with the children and they with him. Ms. Gibney proposes that he parent six overnights every four weeks and five hours on four evenings over this period.

In keeping with the changing role of women in the work place and men in the household, as well as an increased acceptance of the parenting ability of men, the

law has evolved. Age-old stereotypes about the role of men and women as parents are slowly dissipating.

The court was satisfied that each parent would maximize the parenting opportunity afforded to them, and that equal parenting time would allow continuity with friends and school and time with extended family members. The court found that a weekly equal parenting time schedule with a mid-week visit for the other parent was in the children's best interests.

8. Conclusions

From all the perspectives examined, the evidence suggests that a legal presumption for equal parenting time is in children's best interests. First, the correlational research reveals that children's emotional security is enhanced at equal parenting time in both low- and high-conflict families. Second, the following lines of argument converge to suggest that more parenting time with fathers actually causes enhanced emotional security in children: Good fathers are not able to self-select into having more parenting time; the relation between parenting time and security of father-child relationships shows a dose-response pattern; benefits are found when courts impose equal parenting time; and poor child-welfare outcomes result when relocation separates fathers from children. Third, cultural norms about parenting roles have changed in the last generation, and this is reflected in public endorsement of equal parenting time. Fourth, the 2013 equal parenting law in Arizona has been evaluated positively by most of the state's family law professionals. Finally, Canadian case law, reflecting changed cultural norms rather than any national legislative change, has evolved to often order equal parenting time over one parent's objections even in cases of high parent conflict, accompanied by well-reasoned judicial opinions about how that is in children's best interests.

The problem with not having a legal presumption of equal parenting time is that many parents are likely to make parenting time decisions under the impression that the family courts are biased toward primary parenting time for mothers. This impression of maternal bias was universally held in Arizona before the law was passed.⁵⁴ The mere impression of bias encourages parents to settle out of court for less parenting time with fathers, and becomes a self-fulfilling prophecy.⁵⁵

As Joan Kelly has pointed out, the current child custody statutes were written in the absence of evidence of how well they promoted children's well-being.⁵⁶ The evidence that is now available is compelling that failure to enact presumptions of equal parenting time risks unnecessary harm to children's emotional security with their parents, and consequently unnecessary harm to public health in the form of long-term stress-related mental and physical health problems among children of divorce.

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Sleep in adolescence: Considering family structure and family complexity

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Abstract

Objectives: To investigate associations between family structure, family complexity, and sleep in adolescence.

Background: Family structure may be associated with sleep patterns and sleep problems among adolescents. Yet, research documenting this association has not captured the complexity of modern families and used crude measures of sleep.

Method: The youth@hordaland study ($N = 8833$) of adolescents aged 16–19 conducted in 2012 in Norway provided a detailed assessment of family structure, family complexity (i.e., living with half-/stepsiblings), and multiple sleep parameters. Insomnia and delayed sleep–wake phase disorder (DSWPD) were defined in alignment with diagnostic criteria. Ordinary least squares and Poisson regression analyses were used to assess associations between family structure, family complexity, and sleep outcomes.

Results: Adolescents in joint physical custody (JPC) had more similar sleep parameters as peers in nuclear families than in single- and stepparent families. Adolescents in single- and stepparent families had a higher risk of short sleep duration on weekdays, long sleep onset latency, long wake after sleep onset, oversleeping, insomnia, and DSWPD than peers in nuclear families. Family complexity was also associated with a higher risk of sleep problems, but the risk attenuated when considered jointly with family structure. Socioeconomic status and depressive symptoms partly attenuated the differences between the groups.

Conclusion: Inequalities in sleep exist by family structure and, in part, family complexity. Despite alternating between two homes and often experiencing family complexity, sleep

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among adolescents in JPC was more similar to peers in nuclear families than in single- and stepparent families.

KEYWORDS

adolescence, divorce, family complexity, family structure, joint physical custody, shared custody, sleep

Since the 1960s, rising divorce rates coupled with multipartner fertility augmented the complexity of Western family life (Pearce et al., 2018). Consequently, the share of single- and stepparent families increased in most European countries and the US (Smock & Schwartz, 2020; Steinbach et al., 2016). The past two decades have further seen a rapid increase in joint physical custody (JPC) arrangements in many countries. JPC represents a new kind of family structure where the child lives about equally with both parents after a separation, alternating between two homes (see Steinbach & Augustijn, 2021). In Norway, the prevalence of JPC in separated families rose from 8% in 2002 to 30% in 2012 (Kitterød & Wiik, 2017).

Parallel with these family developments, epidemiological studies indicate that a growing proportion of youth is sleep deprived (Keyes et al., 2015; Matricciani et al., 2012) and that as many as 85% are sleeping less than recommended (Saxvig et al., 2020). Sleep problems are associated with lower academic achievement (Hysing et al., 2016) and a higher odds of developing mental health problems during adolescence and early adulthood (Scott et al., 2021). As a result, short sleep duration and insomnia during adolescence have been stated as major public health concerns (Barnes & Drake, 2015).

By providing the physical and emotional space within which sleep occurs, the family context is important in understanding sleep patterns among youth (Dahl & El-Sheikh, 2007). Still, despite numerous studies on family structure and youth adjustment, few studies have investigated sleep as the primary outcome. The few studies that exist, have insufficiently captured the complexity of modern family life, examined broad age groups, and relied on few sleep-related outcomes (e.g., Adam et al., 2007; Schmeer et al., 2019; Troxel et al., 2014). To address these limitations, we consider sleep patterns and sleep problems, including insomnia and delayed sleep-wake phase disorder (DSWPD), among Norwegian adolescents aged 16–19 in modern family structures. We contribute to work seeking to expand our knowledge of the familial influences on sleep and to an emerging research field studying whether integrating information about half- and stepsiblings (i.e., family complexity) provides a more nuanced view of how youth adjust across modern family structures (e.g., Brown et al., 2015; Fomby et al., 2021). We find that inequalities in sleep exist by family structure and family complexity. Adolescents in single- and stepparent families had less favorable sleep patterns and a higher risk of sleep problems than youth in nuclear families, but few differences between youth in JPC and nuclear families were detected. Family complexity was also associated with poorer sleep, but to a lesser extent when considered conjointly with family structure. These patterns were mostly robust to adjustments to socioeconomic status and symptoms of depression.

BACKGROUND

In the wake of the increased complexity of the modern family, a substantial body of research has documented that children and youth in single- or stepparent families have more physical- and mental health problems than peers in nuclear families (Coles, 2015; Nilsen et al., 2020; Perales et al., 2017; Sweeney, 2010). Emerging research further suggests that children and youth in JPC are better adjusted than those residing mostly in a single- or stepparent family (Bergström et al., 2013; Nielsen, 2018; Nilsen et al., 2018; Steinbach, 2019). However, JPC

continues to be debated. Key arguments against JPC fixate on the stress that moving between two homes, exposure to parental conflicts, and different parenting may impose on children (Chisholm & McIntosh, 2008; Gilmore, 2006). On the other hand, advocates note that JPC may increase parental and economic resources, dampen custody disputes, and improve parental cooperation and parent–child relationships, thus alleviating some of the common risks associated with parental separation (Braver & Lamb, 2018).

High divorce- and separation rates have also increased the probability of living with half- or stepsiblings (i.e., experiencing family complexity; Brown et al., 2015). Through multipartner fertility, family complexity may be evident across all family structures and is thus not synonymous with stepfamilies, as a parent may have a child from a previous or newly established relationship (see Brown et al., 2015). However, this complexity is often lost, as studies seldom have information about siblings (Sanner & Jensen, 2021). Indeed, using data from the US, Brown et al. (2015) showed that children and youth in nuclear two-parent (7–14%) and single-parent families (3–12%) also experience family complexity. Existing work suggests that family complexity is associated with poorer outcomes rather independent of family structure (Fomby et al., 2016; Halpern-Meehin & Tach, 2008; Tillman, 2008). One study, however, found that family complexity was associated with notably higher odds of receipt of public assistance among children and youth in nuclear two-parent families (Brown et al., 2015). Thus, the influence of family complexity may, for some outcomes, depend on family structure. Still, this line of research is in its early stages (Sanner & Jensen, 2021).

Whether the modern family structure is associated with adolescent sleep has been largely overlooked. This is rather curious, given the profound research into the consequences of family dissolution and family structure on adolescents' adjustment and later life chances. As noted by Troxel et al. (2014), adolescence is a key developmental period of studying the relationships between family structure and sleep, as it is characterized by prominent biological determined changes in sleep in combination with increased autonomy from parents and influences from peers and other social relations.

Adolescent sleep and family structure

In adolescence, a phase delay in circadian physiology in tandem with a slower accumulation of sleep need sustains evening alertness and induces a preference for later bedtimes and waketimes (Carskadon, 2011; Crowley et al., 2018). Screen time, social media use, and bedtime autonomy further delay sleep timing (Scott et al., 2019; Tashjian et al., 2019). However, sleep need remains stable and combined with early school start, these factors create an unfavorable chain of events taxing sleep among youth (Bowers & Moyer, 2017). Attesting to these changes, research consistently finds that adolescents do not obtain the 8–10 h of sleep recommended for their age (Galland et al., 2018), and that the prevalence of sleep problems is high and potentially increasing (de Zambotti et al., 2018; Keyes et al., 2015). Drawing on the same study sample as the current investigation, a previous study found an average sleep duration of 6:25 h on weekdays, more than 1 h less than their estimated sleep need, with an overall prevalence of insomnia of 18.5% (Hysing et al., 2013).

A few studies have documented the association between family structure and adolescent sleep (Delaruelle et al., 2021; Schmeer et al., 2019; Troxel et al., 2014). Collectively, these studies suggest that later bedtimes, short sleep duration, and sleep problems may be more common among adolescents in single- or stepparent families than in nuclear families. For example, a recent study found that adolescents in single- and stepparent families had lower sleep quality (i.e., more sleep problems) than peers in nuclear families (Delaruelle et al., 2021). Two studies have also assessed sleep among children and youth in JPC. One study reported fewer sleep problems among youth in JPC and nuclear families than in single-parent families (Bergström

et al., 2015). Another study found that although children and youth in JPC reported similar levels of social jetlag, they were more likely to report later bedtimes and difficulties initiating sleep than youth in nuclear families (Turunen et al., 2021).

Besides being few, shortcomings across these studies preclude more definitive conclusions. First, various definitions of family structure have been used. This makes it difficult to provide harmonized and accurate estimates of how youth sleep in modern family structures. Second, existing work has mainly examined age groups spanning early to late adolescence and focused on few sleep outcomes. As sleep undergoes substantial changes from early to late adolescence (Dahl & Lewin, 2002), there is a need for studies on more targeted age groups. Relatedly, sleep is multifaceted, and sleep problems may take many forms (El-Sheikh & Kelly, 2017). Thus, assessing sleep patterns and multiple sleep problems may aid our understanding of the relationship between family structure and sleep. As short sleep duration is common in adolescence, there is also a need to assess sleep problems such as insomnia using more formal diagnostic criteria. Lastly, we are unaware of research documenting whether family complexity is associated with adolescent sleep.

Theoretical considerations

Studies have only recently sought to document adolescent sleep within a family context (El-Sheikh & Kelly, 2017). These scholars often start with the notion that sleep requires a sense of safeness and security, whereas heightened arousal and vigilance tax sleep (Dahl & El-Sheikh, 2007). Thus, family environments perceived as stressful or unsafe may lead to sleep disturbances. Along these lines, family stressors, including conflicts (Gregory et al., 2006; Kelly & El-Sheikh, 2011), economic hardship (El-Sheikh et al., 2020), poor family functioning (Schmeer et al., 2019), and poor parent–adolescent relationships (Haines et al., 2016) have been associated with sleep problems in adolescence. Mechanisms suggested to underlie these associations involve the lack of stable family routines, including rules regarding bed- and waketimes and use of electronic devices (see Bartel et al., 2015), and other stress-inducing internal (e.g., conflicts) and external family attributes (i.e., poor housing and unsafe neighborhood conditions) (Philbrook et al., 2020), which raise vigilance and disrupt sleep.

Bridging the above findings with theoretical and empirical contributions from the family structure literature, one could also hypothesize that sleep may vary by family composition. From a theoretical view, instability, stress, resource, and investment perspectives are often used when explaining how family structure is linked to youth adjustment (Amato, 2010; Carlson & Corcoran, 2001; Hadfield et al., 2018). In simpler terms, these perspectives focus on how family transitions may induce stress and instability in children's lives, and how family structure may impact the time, money, and other abilities that parents can invest in or transfer to their children.

To start, single-parent families are more prone to experience financial strain than other family structures. Low-income families are predisposed to lower-quality housing options and less control over external environments, which may negatively influence sleep by increased exposure to external and internal noise and lack of predictable family routines (Philbrook et al., 2020). Financial strain may also increase parental stress and mental health issues through heavy workloads or job instability, diminishing the capacity for sleep-positive parenting such as parent-set bedtimes (Short et al., 2011).

Adapting to a new family dynamic is a key challenge for youth in stepparent families. For instance, youth may struggle to accept and get along with their parent's new partner (Koster et al., 2021), reducing feelings of belongingness to the family (King et al., 2015). A stepparent may also introduce new parenting practices, leading to conflicts and unclear rules and

boundaries (Amato, 2010). In theory, this could extend to sleep-related activities such as bed-times. Thus, it is viable that stepfamily formation also may influence adolescent sleep.

JPC presents unique challenges and opportunities. The stress of constant shifts between two households and thus sleeping environments could inherently impact sleep negatively. JPC may also expose youth to inconsistent rules regarding bedtime and other sleep-disturbing activities (Turunen et al., 2021). For some, JPC may also lead to longer travel distances to school, friends, and other leisure activities, leaving less time for sleep. On a positive note, JPC may alleviate stress by easing access to both parents' resources, facilitate parent-child relationships and collaboration between parents (Braver & Lamb, 2018), and buffer against feelings of worry and missing the other parent (Berman, 2018), thus leading to fewer sleep problems than living mostly in a single- or stepparent family. This would align with findings of better adjustment for youth in JPC (Steinbach, 2019).

As evident, through the experience of family dissolution, non-nuclear family structures may share common stressors but also present unique challenges and opportunities (e.g., adapting to stepparents or dual households). Whether to expect that the sum of these shared and non-shared features should produce similar outcomes regarding sleep has not been sufficiently addressed. Research on other outcomes tends to find few differences between youth in single- and stepparent families (Amato, 2010), which has been interpreted as a sign that the potential benefits of introducing a stepparent (e.g., better family finances) are offset by the stress of establishing a new family structure (Coleman et al., 2000). JPC, on the other hand, could perhaps alleviate some of these stressors through more equal contact with both biological parents. Still, in the context of adolescent sleep, these notions are tentative.

Family complexity may also influence sleep, although we are unaware of previous studies on this relationship. Family complexity has been linked to small but consistent negative effects across measures of family functioning (e.g., parental involvement, conflicts, economic well-being) and youth adjustment (e.g., depressive symptoms) (Sanner et al., 2018), outcomes also linked to sleep problems among youth (Chang et al., 2019; Hysing et al., 2016; Khor et al., 2020). Theoretically, family complexity may induce stress by complicating the distribution of parental resources (Brown et al., 2015) and by instigating a role and boundary ambiguity, whereby obligations and commitments among adults (also nonresident parents) and children become unclear (Fomby et al., 2016). From this view, family complexity likely amplifies existing stressors in some families (e.g., in the case of stepfamilies) and may in other family structures add new stressors, such as in nuclear and single-parent families. In sum, we thus expect that family complexity is negatively associated with sleep within all family structures.

Sleep problems and mental health problems often co-occur (Alvaro et al., 2017). Coexisting mental health problems may thus possibly explain potential differences in sleep across family structures. Depression is one candidate due to its high prevalence during adolescence (Lundervold et al., 2013), the robust link between depression and insomnia (Alvaro et al., 2017), and as symptoms of depression vary among youth by family structure (Perales et al., 2017). To address this, we also investigate the relationship between family structure, family complexity, and sleep outcomes net of symptoms of depression.

Finally, it is important to note that a divorce or separation is not a random event but influenced by various selection mechanisms (e.g., childhood experiences, personality traits, educational qualifications; see Amato (2010)). Such mechanisms may also select youth into post-separation family structures (Hjern et al., 2020) and family complexity (Brown et al., 2015). For example, parents choosing JPC tend to have better family finances and higher education than those in other post-separation family structures (Hjern et al., 2020; Poortman & van Gaalen, 2017). Conversely, maternal mental health- and financial issues increase the likelihood of living with a single father (Goldscheider et al., 2015). Thus, inequalities in sleep by family structure and family complexity may stem from such selection mechanisms. Drawing on cross-sectional

data, this study is primarily descriptive. Other research designs are needed to establish a causal relationship between family structure, family complexity, and sleep among youth.

The present study

This study aimed to detail sleep patterns and sleep problems among adolescents in modern family structures. The current paper extends on the existing literature in two main ways: First, previous sleep research has insufficiently captured the heterogeneity of modern family life. This study contributes by assessing sleep across a broad range of modern family structures and the influence of half- and stepsiblings on adolescent sleep. Second, previous research on sleep within a family context has focused on few sleep-related outcomes. This study contributes by a more comprehensive assessment of sleep, including multiple sleep parameters on weekdays and weekends, and key sleep- or circadian disorders such as insomnia and DSWPD measured according to diagnostic criteria.

We address four research questions: First, how are family structure and family complexity associated with sleep patterns among adolescents? Second, how are family structure and family complexity associated with sleep problems among adolescents? Third, to what extent do socio-economic status and symptoms of depression attenuate these associations? Fourth, does the association between family structure and sleep outcomes depend on family complexity?

Based on previous theory and research, we had two main sets of hypotheses: First, we expect that inequalities in sleep patterns and sleep problems exist by family structure and hypothesize that: (1) Adolescents in JPC have similar sleep patterns to peers in nuclear families and are not at higher risk of sleep problems. (2) Adolescents in single- and stepparent families have less favorable sleep patterns on weekdays (e.g., later bedtimes, shorter sleep duration, longer sleep onset latency and wake after sleep onset), and a higher risk of sleep problems than peers in nuclear families. Second, we hypothesize that: (1) Family complexity is separately associated with less favorable sleep patterns on weekdays and a higher risk of sleep problems. (2) Family complexity is associated with a higher risk of sleep problems net of family structure, and the associated risk of sleep problems by family complexity is similar within each family structure. Lastly, we expect that any observed association would only be partially explained by variation in socioeconomic status and symptoms of depression.

METHOD

Procedures

Data stem from the population-based youth@hordaland study of adolescents in the former Hordaland County in Western Norway conducted during spring of 2012. All adolescents born between 1993 and 1995 were invited to participate ($N = 19,439$). Youth in school at the time of the study received study information and a link to participation by SMS and their school e-mail address. The schools were encouraged to allocate one school hour for them to complete the questionnaire. Adolescents not enrolled in school were sent information by postal mail to their home address. The adolescents could respond at their convenience throughout the data collection period, and alternative solutions were made for students in hospitals or institutions. Survey staff was available by telephone to answer any queries.

The questionnaire was web-based and among the topics covered was a detailed assessment of sleep, mental health, and experiences of parental divorce or separation and family structure. The adolescents consented to participate, as Norwegian law states that youth aged 16 years and older decide matters of consent on health issues. Parents or guardians received information

about the study in advance. The study has received ethical approval by the Regional Committee for Medical and Health Research Ethics in Western Norway (approval number: 2011/811). Overall, Hordaland County is considered representative of Norway regarding gender and rural/urban residence distribution, and the median household income is also similar to that of the national average (Statistics Norway, 2012).

Sample

A total of 10,257 adolescents agreed to participate, yielding a participation rate of 53% for the entire study. The mean age of participants was 17.4 years ($SD = 0.84$), with a slightly higher participation rate among girls (53%) than boys (47%). In the present study, a subsample of adolescents stating to live at home with parent(s) (i.e., who had not moved out of their parents' home, or were living in institutions or with foster/adoptive parents) was examined ($N = 8833$).

Representativeness of the sample

The grade point average of participants was about equal to national and county-level statistics (Hysing et al., 2016). However, the proportion of parents with higher education was higher than observed in official statistics, although differences in methodology do not allow for direct comparison by numbers. More psychological problems among non-participants have also been documented in previous waves of the Bergen Child Study (in which the youth@hordaland study is nested within) a finding that could also apply to the present study (Stormark et al., 2008).

The proportion of adolescents categorized as living in a nuclear family was higher (71% vs. 63%) than official country-level statistics in 2012. Of separated families, the proportions of youth in single-mother- (45% vs. 49%), single-father- (9% vs. 14%), and stepparent families (28% vs. 37%) were lower (Statistics Norway, 2021). However, the latter differences were expected, as official statistics do not capture JPC, meaning that the estimates are not directly comparable. Of note, official statistics only include youth aged <18 years, so the sample was compared to the closest possible age group (15–17-year-olds). Based on these considerations, we note that our sample was skewed toward higher socioeconomic status but representative regarding academic achievement and fairly well captured the distribution of youth in various family structures based on what could be expected from official statistics.

Measures

Sociodemographic characteristics

We obtained gender and date of birth from the adolescents' national identity number in the National Population Register. Exact age was calculated from the date of participation and date of birth. Ethnicity was based on self-reported country of origin and categorized as "Norwegian"- or "foreign"- born. Maternal and paternal education were reported separately, using the options "primary school," "high school vocational," "high school general," "college/university less than four years," "college/university four years or more," and "do not know." We combined the two high school alternatives into one category (i.e., "high school"). Perceived economic well-being was assessed by the following question: "Compared to others, how would you rate your family's economic situation?" Response options were "poorer than others," "equal to others," and "better than others." Similar questions have previously been used to determine adolescents' perceived socioeconomic status (Bøe et al., 2019; Quon & McGrath, 2014).

Family structure

Family structure was measured by self-report on five items: (1) if their biological parents lived together (“yes,” “no”), (2) if their biological parents were divorced/separated (“yes,” “no”), (3) whom they lived with most of the time (“biological mother,” “biological father,” or “both”), (4) where they presently lived (e.g., with parents, residential care, own apartment) and (5) who they presently shared a household with (including biological mother, biological father, and step-parents). Based upon these items, we constructed a vector of dummy variables classifying the adolescents into five mutually exclusive family structures based on the parental adults present in the household: Nuclear families (lives with their two biological parents who had not divorced or separated), joint physical custody (lives equally with both parents after they had divorced/separated), single-mother families (lives primarily with a divorced/separated mother), single-father families (lives primarily with a divorced/separated father), and stepparent families (lives primarily with their divorced/separated mother or father and their new partner). Note that the nuclear family structure group includes both married and cohabiting parents.

Family complexity

The adolescents reported whether they lived with biological siblings, half-siblings, and stepsiblings. We operationalized family complexity as the presence of either half-and/or stepsiblings in the household, following the definition as proposed in the seminal work by Brown et al. (2015). In this view, family complexity is considered as a dimension that may be present across all family structures. For instance, youth in nuclear families may live with a half-sibling if a parent has a child from a previous relationship. We constructed a dummy indicator that differentiated between youth who lived with at least one half- or stepsibling (coded 1), and youth who lived with only biological siblings or had no siblings (coded 0).

Sleep patterns

Sleep patterns were assessed by asking the respondents about their habitual sleeping patterns. A detailed description of the sleep inventory has been published elsewhere (Hysing et al., 2013), but in short, bedtime and rise time were reported separately for weekends and weekdays, and respondents also reported the time spent in bed before falling asleep (sleep onset latency), and time spent awake during the night (wake after sleep onset). Sleep duration was defined as time spent in bed minus sleep onset latency and wake after sleep onset, and sleep efficiency as the ratio of sleep duration to time spent in bed. Subjective sleep need was assessed by asking the respondents about how much sleep they needed to feel rested, and sleep deficit was calculated by subtracting subjective sleep need from sleep duration.

Sleep problems

We created a series of binary variables to assess indicators of sleep problems. These were short sleep duration on weekdays ($\leq 5:30$ h; 1 h less than the observed mean). Long sleep onset latency (≥ 60 min), long wake after sleep onset (≥ 30 min), frequent oversleeping (monthly or more often), and high sleep deficit on weekdays ($\geq 2:30$ h, shown in supplementary).

Insomnia was defined in close alignment with the Diagnostic and Statistical Manual of Mental Disorders criteria (5th ed.; DSM-5; American Psychiatric Association, 2013). To fulfill the DSM-5 criteria for insomnia, they had to report difficulties initiating and maintaining sleep

at least three times a week, with a duration of 3 months or more. Further, they had to report tiredness/sleepiness during daytime at least 3 days per week. This operationalization is thoroughly described in a previous publication (Hysing et al., 2013).

To approximate assessment of the International Classification of Sleep Disorders Revised (ICSD-R) criteria for Delayed sleep–wake phase disorder (DSWPD), the following criteria were used (1) minimum 1-h shift in sleep-onset AND wake times from the weekdays to the weekend, (2) complaint of frequent (≥ 3 days per week) difficulty falling asleep, (3) report of little or no (≤ 1 day per week) difficulty maintaining sleep, and (4) frequent difficulty awakening (oversleep “sometimes” or more often). A full description of all the items used in this operationalization is presented in a previous publication (Sivertsen et al., 2013).

Symptoms of depression

Symptoms of depression were measured by the short version of the Moods and Feelings Questionnaire (SMFQ; Angold et al., 1995). The SMFQ contains 13 items describing depressive tendencies rated on a Likert scale (“not true,” “sometimes true,” and “true”). The SMFQ is considered to have good psychometric properties in population-based studies (Sharp, Goodyer, & Croudace, 2006; Turner, Joinson, Peters, Wiles, & Lewis, 2014), and essential unidimensionality has been shown in a previous study on the current sample (Lundervold et al., 2013). The omega internal consistency coefficient of the SMFQ in the current study was 0.92.

Statistical analyses

To address our first research question, we used ordinary least squares (OLS) regression to examine the association between family structure, family complexity, and sleep patterns on weekdays and weekends, using the formula:

$$y_i = \alpha + \beta x_i + \beta z_i + \varepsilon_i.$$

y_i represents the sleep parameter of interest for the i th youth, α the intercept, x_i is family structure or family complexity captured by a vector of dummy coded variables, and z_i represents a vector of covariates. Age and gender were added as covariates. To obtain mean estimates of our sleep pattern variables, estimated marginal means with 95% confidence intervals (95% CI) were calculated from the above OLS model using the R-package “emmeans” (Lenth, 2020).

To address our second and third research question, we used Poisson regression analyses with a robust error variance (sandwich error term) to estimate the relative risk (RR) (see Zou, 2004) of sleep problems by family structure and family complexity. We first document the bivariate (i.e., separate) associations between family structure and family complexity and sleep problems (shown combined in the “Baseline model”). In the next model (Model 1), we entered family structure and family complexity jointly as predictors of sleep problems. This model answers our question of whether family structure was associated with sleep problems net of family complexity, and thus whether family complexity independently enhances our ability to account for variation in youth sleep problems. Model 2–3 introduced SES and symptoms of depression to answer our third research question of whether differences in sleep problems between the groups were robust net of SES and symptoms of depression. Nuclear family and “no family complexity” were reference groups in these analyses. Sensitivity checks using JPC as a reference group were also performed. The results are presented as regression coefficient plots created with the ggplot2 R-package (Wickham, 2016). The robust standard errors were obtained by the

Sandwich R-package (Zeileis, 2006). All numerical estimates from these models are provided in Table S1. We also calculated the adjusted prevalence rates of each sleep outcome by family structure from the above baseline models.

To address our final research question, we specified a set of contrasts that compared adolescents with and without family complexity present within each family structure. We estimate the adjusted prevalence rate of the given sleep outcome for each pair and the associated relative risk of the difference between the pairs. Due to the low frequency of family complexity among youth in a single-father structure ($n = 17$), severely limiting meaningful statistical inference, pairwise comparison by family complexity was not performed in this group.

Missing data due to item nonresponse was highest for the subjective sleep need (24%) and family structure (13%) variables. The other sleep variables had 3.3–7.5% missing responses after setting 293 responses to missing due to impossible values on one or more sleep variables (e.g., negative sleep duration). For parental education, we recoded the “do not know” option to missing before conducting our substantive analyses. After this procedure, parental education variables had 25–27% missing. The rest of the sociodemographic variables had <5.4% missing values. The frequency of missing cases stratified by family structure on all background variables is reported in the result section.

Having parents with low educational qualifications (compared with higher), living in a single-parent family (compared with nuclear), and having more depressive symptoms, were associated with a higher odds ratio (OR) of missing values (OR range = 1.3–1.7) across key sleep variables included in our primary analyses. Thus, missing data was assumed to be missing at random (MAR) and imputed by multiple imputation performed with the R-package “mice,” which performs multivariate imputation by chained equations (van Buuren & Groothuis-Oudshoorn, 2011). We performed 30 imputations with all variables present in our substantive analyses included in the imputation model. The estimates and standard errors were pooled into overall estimates according to Rubin’s rules (Rubin, 1987). Multiple imputation performs superior to conventional techniques (e.g., listwise deletion) unless data is missing completely at random (MCAR), an assumption that seldom holds (Schafer & Graham, 2002). Thus, we primarily report and interpret the results from analyses based on multiple imputed data. Robustness checks were performed using complete case analysis. Scripts reproducing all analyses are available on the Open Science Framework: <https://osf.io/akdwe/>.

RESULTS

In total, 71% lived in a nuclear family. Of adolescents with separated parents, 45% lived in a single-mother family, 28% in a stepparent family, 18% had JPC, and 9% lived in a single-father family. Having parents with high school or university level education and perceiving their economic well-being to be better than others was more frequent among adolescents in nuclear families and JPC than in single- and stepparent families. Overall, about 10% resided in complex families. Family complexity was most prevalent among youth in stepparent families (61%) and JPC (38%) and least in nuclear families (1.5%, see Table 1 for details).

The first research question considers how sleep patterns vary by family structure and family complexity. Across all weekday and weekend sleep parameters, adolescents in JPC had similar estimates to peers in nuclear families (all $ps > .05$). On weekdays, significantly shorter sleep duration (15–18 min) and later bedtimes (5–8 min) were observed in single- and stepparent families compared with nuclear families. Adolescents in single-mother and stepfamilies also had significantly higher sleep deficit (about 22 min) and slightly lower sleep efficiency.

On weekends, later bedtimes and rise times (about 20 min) were observed for adolescents in single- and stepparent families. Only adolescents in stepparent families had significantly lower sleep duration (9 min). Adolescents in single-mother and stepparent families, on average, spent

TABLE 1 Descriptive characteristics by family structure

	Nuclear family <i>n</i> = 5457 (70.8%)	JPC <i>n</i> = 398 (5.2%)	Single-father family <i>n</i> = 212 (2.8%)	Single-mother family <i>n</i> = 1011 (13.1%)	Stepfamily <i>n</i> = 629 (8.2%)
Age (mean [SD])	17.41 (0.84)	17.28 (0.80)	17.50 (0.86)	17.46 (0.84)	17.36 (0.82)
Missing (<i>n</i>)	11	0	2	5	1
Gender					
Female	2860 (52.4)	195 (49.0)	94 (44.3)	582 (57.6)	391 (62.2)
Male	2597 (47.6)	203 (51.0)	118 (55.7)	429 (42.4)	238 (37.8)
Ethnicity: adolescent					
Norwegian	5177 (95.7)	395 (99.5)	195 (92.9)	941 (94.1)	584 (94.2)
Foreign	233 (4.3)	2 (0.5)	15 (7.1)	59 (5.9)	36 (5.8)
Missing (<i>n</i>)	47	1	2	11	9
Ethnicity: mother					
Norwegian	4974 (91.2)	382 (96.0)	180 (85.3)	921 (91.2)	571 (90.9)
Foreign	479 (8.8)	16 (4.0)	31 (14.7)	89 (8.8)	57 (9.1)
Missing (<i>n</i>)	4	0	1	1	1
Ethnicity: father					
Norwegian	4928 (90.5)	372 (93.7)	187 (88.6)	860 (85.6)	544 (86.9)
Foreign	519 (9.5)	25 (6.3)	24 (11.4)	145 (14.4)	82 (13.1)
Missing (<i>n</i>)	10	1	1	6	3
Maternal education					
Primary school	356 (6.6)	15 (3.8)	25 (12.0)	89 (8.9)	71 (11.4)
Secondary school	1666 (30.7)	123 (31.1)	63 (30.3)	315 (31.4)	218 (34.9)
College/university (<4 years)	913 (16.8)	60 (15.2)	20 (9.6)	135 (13.4)	66 (10.6)
College/university (4+ years)	1271 (23.4)	95 (24.0)	39 (18.8)	219 (21.8)	113 (18.1)
Do not know	1225 (22.6)	103 (26.0)	61 (29.3)	246 (24.5)	157 (25.1)
Missing (<i>n</i>)	26	2	4	7	4
Paternal education					
Primary school	352 (6.5)	27 (6.8)	18 (8.6)	94 (9.4)	77 (12.4)
Secondary school	1888 (34.8)	140 (35.4)	85 (40.7)	304 (30.3)	227 (36.4)
College/university (<4 years)	580 (10.7)	40 (10.1)	13 (6.2)	83 (8.3)	41 (6.6)
College/university (4+ years)	1417 (26.1)	90 (22.8)	44 (21.1)	183 (18.3)	84 (13.5)
Do not know	1188 (21.9)	98 (24.8)	49 (23.4)	338 (33.7)	194 (31.1)
Missing (<i>n</i>)	32	3	3	9	6
Family complexity	84 (1.5)	152 (38.2)	17 (8.0)	123 (12.2)	381 (60.6)
Perceived economic well-being					
Worse than others	172 (3.2)	23 (5.8)	25 (11.8)	204 (20.5)	57 (9.2)
Like most others	3655 (68.0)	273 (69.3)	146 (69.2)	631 (63.5)	440 (70.9)
Better than others	1549 (28.8)	98 (24.9)	40 (19.0)	159 (16.0)	124 (20.0)
Missing (<i>n</i>)	81	4	1	17	8

Note: All figures are presented in *n* (%) unless otherwise specified. Missing = number of missing cases by family structure.

7–8 min longer falling asleep after going to bed (SOL), and had slightly longer awakenings during the night (WASO; 3–4 min) than peers in nuclear families ($p < .01$). No significant differences in subjective sleep need were detected across family structure (see Table 2).

Family complexity was associated with significantly shorter sleep duration (17 min), lower sleep efficiency, and higher sleep deficit among adolescents on weekdays (16 min). On weekends, family complexity was also associated with later bedtimes and rise times. On average, youth experiencing family complexity also had slightly longer SOL (8 min) and WASO (5 min) but reported a similar subjective sleep need to peers not experiencing family complexity (see Table 3).

The second research question focused more specifically on sleep problems. The Baseline model in Figure 1 shows the bivariate associations between family structure, family complexity, and sleep problems. Living in JPC was associated with a higher risk of oversleeping and DSHPD compared with nuclear family. The single- and stepparent groups had a similar and significantly higher risk across most sleep outcomes. The risk was highest for DSHPD, whereby adolescents in all post-separation family structures had about twice the risk compared with youth in nuclear families. Across the other outcomes, the relative risk for youth in single- and stepparent families was in the range of about 1.2–1.6. Translated into prevalence rates, long SOL, high sleep deficit, and frequent oversleeping were most prevalent and present among about one-third of youth in single-parent and stepparent families. For insomnia, the prevalence rates ranged from 20 to 23% among adolescents in single and stepparent families, compared with 15–15.5% for adolescents in nuclear families and JPC (see Figure 2). Sensitivity checks using JPC as a reference group yielded a similar pattern of results, though fewer significant differences (at $p < .05$) were detected (see Table S4).

Family complexity was associated with significantly higher risk of all sleep problems. The magnitude of the risk was similar as when comparing adolescents in single-parent and stepparent families to those in nuclear families. Considering family structure and family complexity jointly (Model 1), we observed two main trends; first, the estimated risk of sleep problems among youth in stepparent families was partly attenuated, whereby adolescents in stepparent families were no longer at a higher risk of long WASO and high sleep deficit than peers in nuclear families. Moreover, adolescents in JPC did not have a significantly higher risk of DSHPD after adjusting for family complexity. Second, the associated risk of sleep problems by family complexity decreased after adjusting for family structure, and family complexity was only significantly associated with a higher risk of oversleeping and insomnia.

The third research question focused on whether family SES (Model 2) and symptoms of depression (Model 3) attenuated the associations between family structure, family complexity, and sleep problems. As a general pattern, introducing these covariates to the analyses only partly reduced the associated risk of sleep problems by family structure and family complexity, suggesting that these variables explained a small part of the differences between the groups.

Our last set of models examined the research question of whether the associated risk of sleep problems by family structure depended on family complexity. Using a contrast approach, we compared the risk and prevalence of sleep problems within each family structure by family complexity. In nuclear families, family complexity was associated with a significantly higher risk of insomnia (RR = 1.66, $p < .01$), short sleep duration (RR = 1.51, $p = .03$) and frequent oversleeping (R = 1.61, $p < .01$). Although no other significant differences were detected, we note a general trend whereby the adjusted prevalence rates for most sleep outcomes were higher across family structures when family complexity was present (see Table S5).

Robustness checks were performed using complete case analyses. The overall pattern of findings was highly similar as reported above. For example, sleep pattern estimates on weekdays and weekends were all within a 2–3-min margin. Moreover, the pattern of significant results for the main sleep problems outcomes (Figure 1), was almost identical using complete

TABLE 2 Sleep patterns by family structure

	Nuclear family	JPC	Single-mother family	Single-father family	Stepfamily
Weekdays (mean [95% CI])					
Bedtime	23:17 (23:16, 23:19)	23:21 (23:15, 23:26)	23:22 (23:19, 23:26)*	23:26 (23:18, 23:34)*	23:23 (23:18, 23:28)**
Rise time	6:46 (6:45, 6:47)	6:43 (6:39, 6:47)	6:46 (6:43, 6:49)	6:46 (6:41, 6:52)	6:46 (6:43, 6:50)
Sleep duration	6:30 (6:28, 6:33)	6:27 (6:17, 6:37)	6:15 (6:09, 6:21)**	6:12 (5:58, 6:27)*	6:13 (6:05, 6:20)**
Time in bed	7:29 (7:27, 7:31)	7:23 (7:17, 7:29)	7:24 (7:20, 7:27)*	7:20 (7:11, 7:30)	7:23 (7:19, 7:28)*
Sleep efficiency (%)	86.6 (86.2, 87.1)	87.1 (85.4, 88.8)	84.2 (83.1, 85.3)**	83.8 (81.3, 86.3)	83.5 (82.0, 84.9)**
Sleep deficit	-2:06 (-2:10, -2:01)	-2:04 (-2:20, -1:49)	-2:28 (-2:38, -2:18)**	-2:28 (-2:51, -2:04)	-2:27 (-2:40, -2:14)**
Weekends (mean [95% CI])					
Bedtime	01:31 (01:29, 01:33)	01:38 (01:29, 01:47)	01:49 (01:43, 01:54)**	01:51 (01:38, 02:03)**	01:49 (01:42, 01:56)**
Rise time	11:12 (11:10, 11:14)	11:22 (11:13, 11:31)	11:35 (11:29, 11:40)**	11:30 (11:16, 11:43)*	11:32 (11:25, 11:39)**
Sleep duration	8:42 (8:30, 8:45)	8:47 (8:36, 8:59)	8:37 (8:30, 8:44)	8:31 (8:15, 8:46)	8:33 (8:23, 8:42)*
Time in bed	9:41 (9:39, 9:43)	9:43 (9:35, 9:52)	9:46 (9:41, 9:51)	9:39 (9:27, 9:50)	9:43 (9:37, 9:50)
Sleep efficiency (%)	89.8 (89.4, 90.2)	90.4 (88.9, 91.8)	87.9 (87.0, 88.8)**	87.7 (85.7, 89.8)*	87.7 (86.5, 88.8)**
Sleep deficit	0:06 (0:02, 0:11)	0:16 (0:02, 0:32)	-0:05 (-0:15, 0:05)*	-0:09 (-0:32, 0:13)	-0:07 (-0:21, 0:06)
Weekdays/weekends (mean [95% CI])					
Sleep onset latency	0:45 (0:44, 0:47)	0:45 (0:39, 0:50)	0:52 (0:49, 0:56)**	0:51 (0:43, 0:59)	0:53 (0:48, 0:57)**
Wake after sleep onset	0:13 (0:12, 0:14)	0:11 (0:08, 0:15)	0:16 (0:14, 0:19)*	0:17 (0:12, 0:23)	0:18 (0:15, 0:21)**
Subjective sleep need	8:36 (8:33, 8:39)	8:31 (8:19, 8:44)	8:42 (8:34, 8:50)	8:40 (8:22, 8:58)	8:40 (8:30, 8:50)

Note: Estimated marginal means with 95% confidence intervals, adjusted by age and gender. Results are displayed in hours and minutes unless otherwise specified. Estimates and *p*-values derived from pooled estimates from 30 multiple imputed data sets. Reference group = Nuclear family. Bold estimates are significant at *p* < .05.

p* < .05. *p* < .01.

TABLE 3 Sleep patterns by family complexity

	No family complexity	Family complexity
Weekdays (mean [95% CI])		
Bedtime	23:19 (23:17, 23:20)	23:21 (23:17, 23:25)
Rise time	6:46 (6:45, 6:47)	6:45 (6:42, 6:48)
Sleep duration	6:28 (6:26, 6:30)	6:11 (6:04, 6:18)**
Time in bed	7:28 (7:26, 7:29)	7:24 (7:19, 7:28)
Sleep efficiency (%)	86.3 (85.9, 86.7)	83.1 (81.9, 84.4)**
Sleep deficit	-2:09 (2:13, 2:06)	-2:25 (2:36, 2:14)**
Weekends (mean [95% CI])		
Bedtime	01:35 (01:33, 01:37)	01:44 (01:38, 01:50)**
Rise time	11:17 (11:15, 11:19)	11:25 (11:19, 11:31)*
Sleep duration	8:42 (8:40, 8:45)	8:28 (8:20, 8:36)**
Time in bed	9:42 (9:40, 9:44)	9:41 (9:35, 9:47)
Sleep efficiency (%)	89.5 (89.2, 89.9)	86.1 (86.1, 88.1)**
Sleep deficit	0:05 (0:02, 0:09)	-0:08 (-0:19, 0:03)*
Weekdays/weekends (mean [95% CI])		
Sleep onset latency	0:46 (0:45, 0:47)	0:54 (0:50, 0:58)**
Wake after sleep onset	0:14 (0:13, 0:15)	0:19 (0:16, 0:21)**
Subjective sleep need	8:37 (8:34, 8:40)	8:36 (8:27, 8:45)

Note: Estimated marginal means with 95% confidence intervals, adjusted by age and gender. Results are displayed in hours and minutes unless otherwise specified. Estimates and p -values derived from pooled estimates from 30 multiple imputed data sets. Bold estimates are significant at $p < .05$.

* $p < .05$. ** $p < .01$.

case analyses (see Tables S2–S3 and Figure S1 for all details when using complete case analysis).

DISCUSSION

This study examined whether inequalities in sleep among adolescents exist by family structure and family complexity. We addressed this topic by providing a detailed assessment of sleep patterns and sleep problems among youth across modern family structures and by family complexity.

We report five main findings: First, whereas adolescents in JPC had similar sleep patterns as youth in nuclear families on weekdays, adolescents in single- and stepparent families had shorter sleep duration and lower sleep efficiency. Similarly, family complexity was associated with shorter sleep duration and lower sleep efficiency. These findings were driven by slightly later bedtimes and longer SOL and WASO. Moreover, a greater shift in circadian rhythm from weekdays to weekends was observed in single- and stepparent families, with later bed- and rise-times (about 20 min) than in nuclear families. These results accord with a few studies suggesting that sleep patterns among youth may vary as a function of family structure (Schmeier et al., 2019; Troxel et al., 2014). However, previous studies have used less fine-tuned family structure and sleep measures and examined broader age groups, making it difficult to compare the results. For instance, aligned with our findings, a study found lower sleep efficiency among adolescents (aged 14–19) in single-parent than two-parent families (Troxel et al., 2014). However, that study also found significantly shorter sleep duration in single-parent families on

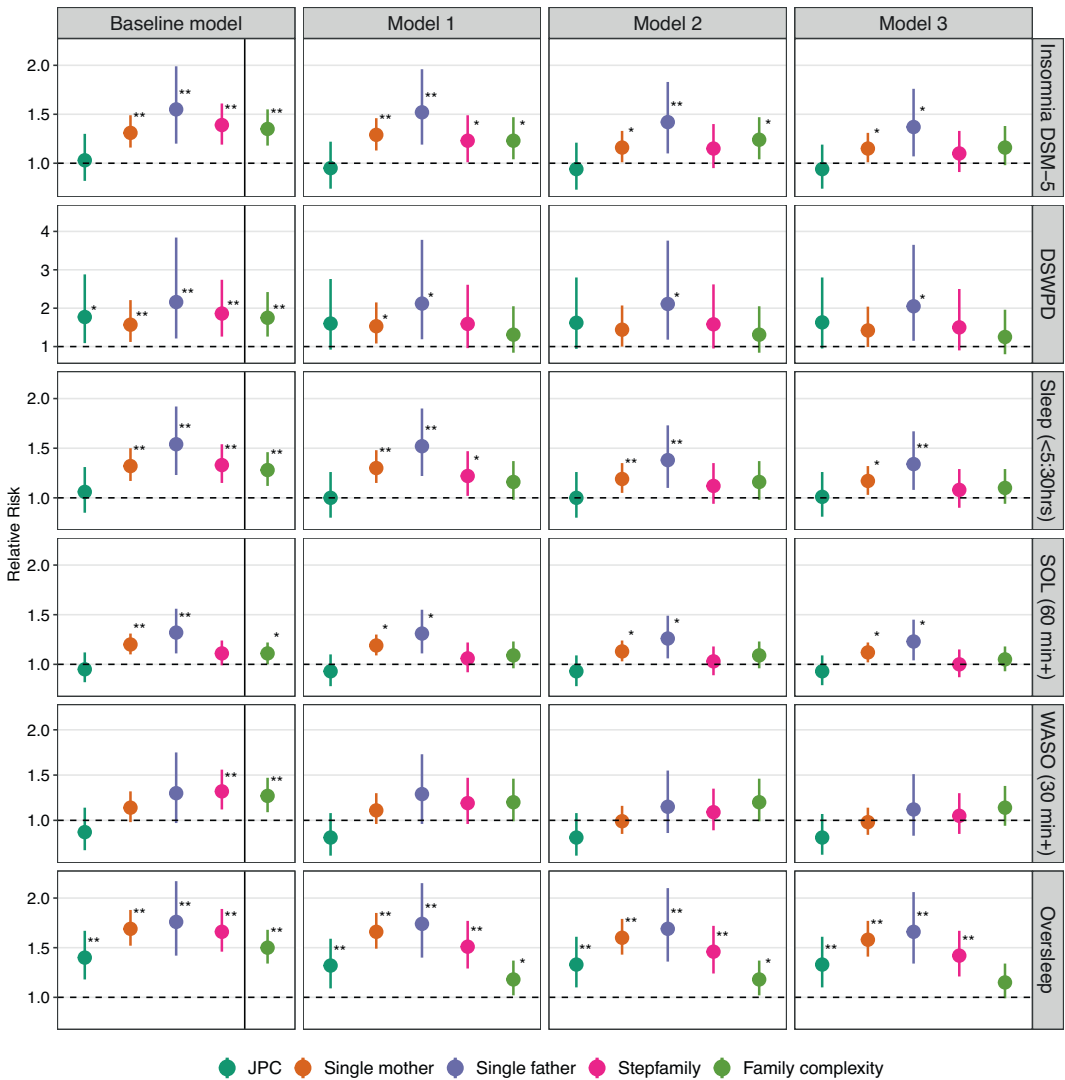


FIGURE 1 Relative risk of sleep problems by family structure and family complexity. **Baseline model:** Crude associations between family structure and family complexity and sleep outcomes, adjusted by age and gender. A solid vertical line separates the two models. The dotted horizontal line represents the reference group (i.e., nuclear family and no family complexity). **Model 1:** Family structure and family complexity entered in the same model (i.e., adjusted by each other) + age and gender. **Model 2:** Model 1 + socioeconomic measures. **Model 3:** Model 2 + symptoms of depression. DSWPD, delayed sleep–wake phase disorder; JPC, joint physical custody; SOL, sleep onset latency; Sleep, sleep duration on weekdays; WASO, wake after sleep onset. Note that the y-axis for the DSWPD panel is scaled differently than the other panels. [Color figure can be viewed at wileyonlinelibrary.com]

weekends (but not on weekdays), opposite to the pattern detected in the present study. Moreover, a recent found that adolescents (aged 11–15) in JPC had later bedtimes (reported on a five-point rating scale) on weekdays than peers in nuclear families and more sleep initiation difficulties (Turunen et al., 2021). Whether the discrepancy between their and our findings is due to differences in measurements or age groups is hard to infer.

Second, adolescents in JPC had a similar risk for most sleep problems as peers in nuclear families but had a higher risk of oversleeping and DSWPD. With these two exceptions in

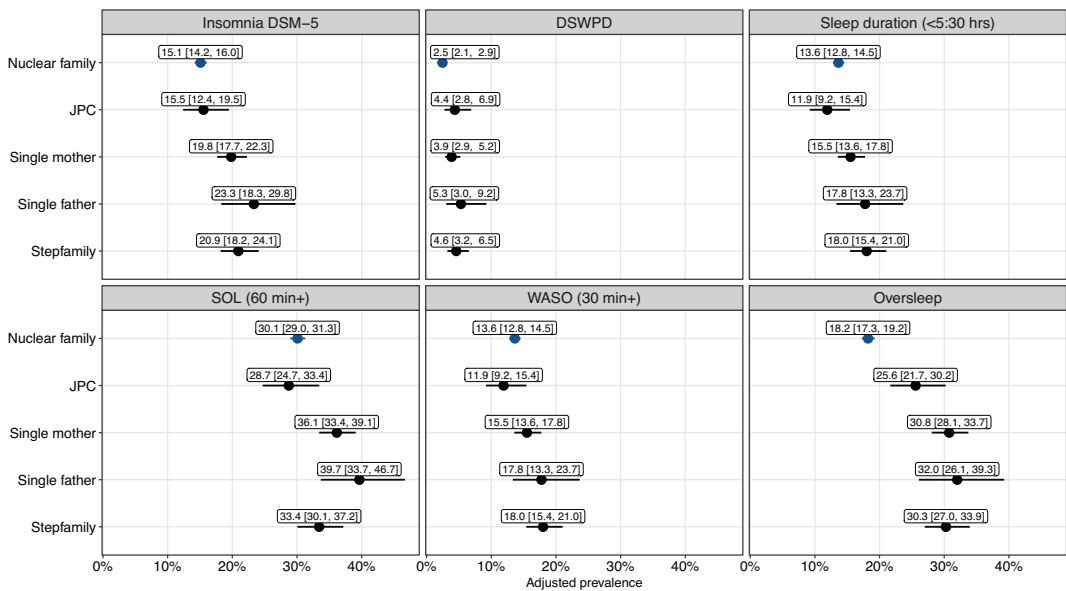


FIGURE 2 Adjusted prevalence rates of sleep problems by family structure. Adjusted prevalence rates by family structure of insomnia, delayed sleep–wake phase disorder (DSWPD), short sleep duration on weekdays (<5:30 h), long sleep onset latency (SOL 60 min+), long wake after sleep onset (WASO 30 min+), and frequent oversleeping (Oversleep). The estimates are adjusted by age and gender. Error bars represent 95% confidence intervals of the point estimate. JPC, joint physical custody. [Color figure can be viewed at wileyonlinelibrary.com]

mind, our results suggest that despite the potential stress of frequently moving between homes and thus sleeping environments (e.g., Chisholm & McIntosh, 2008), the prevalence of sleep problems among adolescents in JPC is more similar to peers in nuclear families than in single- and stepparent families. These results corroborate two studies from Sweden, generally finding fewer sleep problems among youth in JPC and nuclear families than single-parent families (Bergström et al., 2015; Turunen et al., 2021). The results also extend previous work focused on mental health-related outcomes among youth in JPC (Nielsen, 2018; Steinbach, 2019), and suggest that the positive outcomes associated with JPC also extend to sleep.

Several positive features of JPC have been proposed, such as better access to financial and parental resources, improved parental cooperation, and parent–child relationships (Steinbach, 2019). Recent studies have found that co-parenting quality and parent–child relationships explain much of the differences in adjustment problems between young children in JPC and single-parent families (Bergström et al., 2021; Hagquist, 2016; Steinbach & Augustijn, 2022). Such mechanisms may also apply to our findings, as parenting practices have also been linked to sleep problems among youth (Meijer et al., 2016). Unfortunately, such measures were not available in the present study.

The higher risk for oversleeping and DSWPD among adolescents in JPC is still noteworthy. The risks remained stable after adjustments of SES, family complexity, and symptoms of depression. It is possible that frequent shifting between two households makes it more difficult to obtain stable bedtime- and rise time routines, thus increasing the risk of frequent oversleeping and DSWPD. Future studies are needed to detail potential mechanisms underlying this finding.

Third, adolescents in single- and stepparent families had a higher risk for most sleep problems than peers in nuclear families. As shown by the adjusted prevalence rates, the absolute differences between these groups were small. Overall, these results align with a recent study

finding poorer sleep quality among youth in single- and stepparent families than in nuclear families (Delaruelle et al., 2021), and the often reported finding of similar levels of adjustment problems in single- and stepparent families (Amato, 1993; Coleman et al., 2000).

Adjustments of sociodemographic measures and symptoms of depression partly attenuated the risk of sleep problems among youth in single- and stepparent families. Still, net of these measures, single-parent families had a significantly higher risk of several outcomes, including insomnia, and all post-separation family structures had a higher risk of oversleeping. Thus, although our results support the notion of low SES as a marker of risk of sleep problems (e.g., Philbrook et al., 2020), low SES did not fully explain the higher rates of sleep problems observed in single-parent families. Moreover, the small attenuating effect of depression illustrates that the higher risk of sleep problems is not just a byproduct of coexisting depressive symptoms. Other unmeasured factors such as family dysfunction, parental monitoring, and sleep hygiene have been linked to sleep problems among youth (Billows et al., 2009; Chang et al., 2019), and may differ by family structure and family complexity. Future studies are needed to test their importance as potential mechanisms.

Fourth, family complexity was associated with a higher risk of all sleep outcomes. This result is consistent with a recent review, concluding that living with half- and stepsiblings was associated with a small but consistent higher risk of adjustment problems (Sanner et al., 2018). When considering family structure and family complexity jointly, family complexity remained significantly associated with a higher risk of insomnia and frequent oversleeping. Thus, our results suggest that family complexity has some independent associations with sleep problems net of family structure. This finding aligns with previous research suggesting that family complexity is associated with negative outcomes (e.g., behavioral and financial problems) net of family structure (Brown et al., 2015; Fomby et al., 2016). It should be noted that in the latter study, some outcome measures became insignificant (i.e., $p > .05$) when jointly considering family complexity and family structure, as in the present study.

Accounting for family complexity attenuated the associated risk of living in a stepfamily. In sensitivity analyses using JPC as the reference group, we also note that the risk for insomnia increased for single-parent families after adjustments of family complexity but attenuated for youth in stepparent families. Together with the fact that family complexity was most prevalent in stepparent families (61%) followed by JPC (38%), and much less prevalent in single-parent families (8–12%), these results suggest that on the group level, family complexity may be a risk for sleep problems among youth not only in stepparent families, but also in JPC.

Lastly, we examined whether the association between family complexity and sleep outcomes depended on family structure. In short, family complexity was only significantly associated with sleep outcomes among adolescents in nuclear families, with a higher risk for insomnia, short sleep duration, and frequent oversleeping. Children and youth with family complexity in nuclear families are also more likely to receive financial support than children in other family structures (Brown et al., 2015). These findings may suggest that children and youth in nuclear families are especially vulnerable to family complexity. Still, for most outcomes, we observed a similar but weaker pattern within each of the post-separation family structures whereby the presence of family complexity was associated with a higher risk of the given sleep outcome, although these differences were not statistically significant (at $p < .05$). This observable trend aligns with previous studies suggesting that the influence of family complexity is rather similar across family structures (Fomby et al., 2016; Halpern-Meekin & Tach, 2008). We acknowledge that the sample sizes for these subgroup analyses are small. Future studies using larger samples are needed to test for these associations more robustly.

Strengths and limitations

The strengths of the present study are the detailed assessment of sleep, family structure, and family complexity in a large sample of older adolescents. Specifically, the use of SOL and WASO to estimate sleep duration, and the ability to approximate the diagnostic criteria of insomnia and DSWPD, are key strengths. Similarly, our ability to distinguish between five modern family structures and measure family complexity is unique compared to previous research on family structure and sleep.

We note some limitations to this work. Although drawing on a large sample, the sample sizes are low for some of the family categorizations. These impacts the reliability of the point estimates. Moreover, our analyses pool youth with married or cohabiting biological parents, half- or stepsiblings, and youth in stepparent families. We also treat JPC as a single group with the unique defining feature of frequently alternating between two homes, although heterogeneity within JPC also exists (e.g., shifting between single- or stepparent households). Some may also experience “bird’s nest” arrangements, where the youth stay put in one household and the parents shift between them in living with their children. Despite these potential complexities, our findings indicate JPC as a meaningful category as sociodemographic characteristics and sleep patterns among JPC-youth resembled youth in nuclear families more than those in single- or stepfamilies. Still, our measure of family structure may miss nuances if underlying unobserved groups vary on the dependent variables.

Another limitation is the parsimonious set of covariates in our analyses. Other unobserved characteristics may influence the association between family structure, family complexity, and sleep. In particular, previous research has linked measures of family dysfunction and parental monitoring to sleep patterns among youth (Buxton et al., 2015; Chang et al., 2019). Many factors may also select youth into a given family structure, with or without family complexity, and to experiencing sleep problems. Notably, studies have documented an association between repeated changes in parental union status and child adjustment (Cavanagh & Fomby, 2019). Hence, the higher risk of sleep problems in non-nuclear families and by family complexity could be attributable to prior family instability and not family composition as measured at one point in time. The lack of longitudinal data also prevents us from drawing conclusions about the temporal order of the relationship between family structure, family complexity, and sleep, and whether these associations vary by the age of when experiencing parental divorce or separation. We also lacked data on how many siblings were present in the household, which is a limitation, as the number of siblings could also be an indicator of the economic and parental resources available.

Our study relied on self-reported measures of family structure, siblings, and sleep. It has been noted that youth may be reluctant to use labels such as half- or stepsiblings to siblings with whom they have shared their childhood with (Sanner et al., 2018), which could have introduced some noise in our findings. In addition, our measures of sleep are not based on clinical evaluation or more objective measures (e.g., actigraphy). Still, although differences between self-reported and objective measures of sleep have been detected (Lauderdale et al., 2008), self-reported sleep assessments are considered applicable when investigating sleep in clinical and population-based research (Zinkhan et al., 2014). Self-reported measures of sleep duration also show good agreement with actigraphy-measures (Kong et al., 2011).

Finally, with a response rate of 53%, attrition from the study could affect the generalizability of the results. Unfortunately, low response rates are increasingly common in epidemiological research (Morton et al., 2012). As noted, the sample was skewed toward higher socioeconomic status. Thus, the reported prevalence rates of sleep problems may be conservative estimates of the true prevalence in the population. Still, as the study captured well the distribution of adolescents in various family structures based on available official statistics and had considerable

variability across socioeconomic and sleep measures, we do not believe that a more representative sample would change the main conclusions drawn from the present study.

Despite these limitations, this study contributes by providing a detailed assessment of adolescent sleep within a modern family context. Our results suggest that although sleep problems are evident across all family constellations, inequalities in sleep exist by family structure and family complexity. Moreover, these inequalities are not fully explained by socioeconomic factors or symptoms of depression. As this study is one of the first to comprehensively assess sleep patterns and sleep problems among adolescents in modern family constellation, there is a need for future studies to corroborate these findings and explore other mechanisms that may advance our understanding of the links between family and sleep among youth. There is also a need for longitudinal studies to assess how family instability may influence sleep during adolescence. Our findings highlight that the family context, through the lens of family structure and family complexity, may provide a viable framework to further expand our knowledge of social determinants of sleep during adolescence.

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THE UNPRAGMATIC FAMILY LAW OF MARGINALIZED FAMILIES

*Mariela Olivares**

INTRODUCTION

In her excellent article *Pragmatic Family Law*,¹ Professor Clare Huntington argues that divisive issues roiling U.S. politics, law, and society — such as abortion rights, gender-affirming health care for children, and parental involvement in and control over public school curricula regarding race and identity — have put a spotlight on family law. She notes, though, that these debates need not focus on visceral disagreements but instead should coalesce around a foundational ideal in family law — that is, evidence-based decisionmaking that centers family and child well-being. Huntington offers that this “common methodological foundation . . . has implications for scholars, legal actors, and advocates”² to “advance the interests of children and families”³ and “provide direction for institutional reform.”⁴

At root, family law doctrine and the real-world experience of family court litigation do indeed strive for the best outcome — one in which parents, caregivers, and family members are heard and children are protected. In this sense, the premise of *Pragmatic Family Law* is exact. What pragmatism misses, though, is the deeply entrenched, inherent, and inextricable racism, classism, and xenophobia in the American legal system, which show up in family law courtrooms and family law systems around the country every day. To be sure, Huntington notes that pragmatism has “significant limitations, especially in addressing the root causes of racial inequity.”⁵ She notes that despite these limitations, pragmatism can “recalibrate” family law to rely on empirical evidence and families’ lived experiences.⁶

In this Response, I posit that precisely because empirical evidence and the lived experiences of marginalized families demonstrate the unique injustices that they experience in the family law system, family

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¹ Clare Huntington, *Pragmatic Family Law*, 136 HARV. L. REV. 1501 (2023).

² *Id.* at 1502.

³ *Id.* at 1509 n.37.

⁴ *Id.* at 1502.

⁵ *Id.*

⁶ *Id.*; *see id.* at 1559.

law is anything but pragmatic for them. In this sense, then, a pragmatic approach would serve those who do not experience targeted mistreatment based on race, class, immigration status, or other identity markers. Importantly, I do not question the philosophical underpinnings and relevance of pragmatism that Huntington carefully outlines. She expertly explains the doctrine and how seemingly contentious issues can be better clarified through the pragmatic approach than through polarizing debates. This is a solid, effective, and excellent argument. I assert, however, that faith in the power of pragmatism as a leveling tool in family law is misplaced because it does not incorporate the inequitable ways in which the law treats marginalized people. Therefore, the methodology is not incorrect or misapplied, but it falls short as it does not include all families. For the families it excludes, the approach is imprecise exactly because it does not value their lived experiences of racism and other forms of marginalization.

In this Response, I discuss how the law surrounding families of color, immigrant families, poor families, and families of other marginalized identities is not practically the same law that governs families who do not share those identity markers. Part I considers how the “common methodological foundation”⁷ of family law that Huntington describes — while appropriately characterizing the Family Law (capitalization intended) doctrine — does not appropriately capture the radically different experiences of marginalized families. Through discussing my past experiences as a family law litigator for families of color, immigrant families, and poor families, and, more generally, the ways in which these families experience the family court system, we see the limitations of a normative approach in reaching common ground and depoliticization. Part II continues this exploration and focuses on the ways in which deep racialized and class divisions occur in the American child welfare system. Section II.B examines the fallacy of the primacy of child well-being and the best interests of the child standard, using as a case study the U.S. government practice of forcibly removing migrant children from their fit adult caregivers. This Family Separation Policy provides a stark example of pragmatism’s limits: although it may seem that putting families and children first would be a universal paradigm, experience shows differently. Interestingly, however, the formal end of the Family Separation Policy was due in large part to bipartisan calls for its termination from seemingly divergent political and societal camps. In this limited sense, then, empathy for all children’s well-being prevailed. Finally, I comment on the intrinsic limitations in any proposed methodology that does not contend with the inherent racism that forms the foundation of our country. To this point, and in conclusion, the lessons of pragmatism may be illustrative and meaningful, even if not within practical reach.

⁷ *Id.* at 1502.

I. THE PRAGMATIC METHODOLOGY DOES NOT PORTRAY THE EXPERIENCES OF ALL FAMILIES

Soon after graduating from law school, I landed my dream job. I was a legal services lawyer at Ayuda, an immigrants' rights organization in Washington, D.C.⁸ I worked in the Family Law and Domestic Violence Division of the organization, where I was one of three lawyers. Each of us had a large client base that was exclusively from the richly diverse immigrant communities of the area — most notably immigrants from Central America and Ethiopia, but including people from all over the world.⁹ There, I represented immigrants in their family law cases — domestic violence protection order petitions, renewals, and modifications; and child custody, child support, and divorce cases. As a legal services organization, Ayuda had client eligibility requirements that included living at a certain rate below the federal poverty guidelines — which meant that our clients were among the poorest in the city. Although I was an associate at a large Washington, D.C., law firm for a short time prior to this new job, I (like most such new attorneys) had never argued a case in court.¹⁰ At the extremely busy legal services office, though, I was in D.C. Superior Court with a new client within my first three weeks.

A few years and countless court appearances later, I found my next dream job: as a teaching fellow in the Domestic Violence Clinic at Georgetown University Law Center. There, I helped law students represent domestic violence survivors in their protection order cases.¹¹ Here, too, to qualify for our free legal assistance, clients must have been living at a certain rate below the federal poverty guidelines. At the clinic, our client population was overwhelmingly Black, a disproportionate share considering the Black population of Washington, D.C., is 45.8%.¹² Thus, in my combined years in legal services prior to joining academia, my entire courtroom experience was in D.C. Superior Court, representing low-income Black, Latina/o/x, and other immigrant clients. And my clients were not anomalies in the D.C. domestic violence and

⁸ *Legal Services*, AYUDA, <https://ayuda.com/legal-services-4> [<https://perma.cc/9WVW-G8MC>].

⁹ See AM. IMMIGR. COUNCIL, IMMIGRANTS IN DISTRICT OF COLUMBIA 1 (Aug. 6, 2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_the_district_of_columbia.pdf [<https://perma.cc/QEJ7-XSKX>].

¹⁰ I represented many clients in court as a law student in the Child Advocacy Law Clinic at the University of Michigan Law School, under the supervision of our expert and excellent professors, who were practicing lawyers. That transformative experience, plus my own journey as a Spanish-speaking, Mexican American woman from South Texas, inspired me to pursue public interest law in service of vulnerable communities, especially Spanish-speaking indigent people.

¹¹ *Domestic Violence Clinic*, GEO. L., <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/domestic-violence-clinic> [<https://perma.cc/XAA3-HGRY>].

¹² *QuickFacts: District of Columbia*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/DC> [<https://perma.cc/R264-FL4A>]. Minorities comprise 62.7% of D.C.'s population. See *id.* Among other reported races and ethnicities, D.C. is 11.5% Hispanic or Latina/o/x and 4.5% Asian. *Id.*

family court dockets to which we were assigned. The existence of separate courtrooms and dockets for those less complicated divorce and custody issues was one way that the system distinguished between parties with financial resources and parties like my clients, who had little to no resources. The overwhelming majority of the families in our courtrooms, courthouse hallways, and self-help centers were Black, Latina/o/x, immigrant, and/or poor.

The same demographic and class realities ring true today — more than a decade after I left.¹³ Further, as a family law lawyer, I did not represent clients in child welfare court, in which judges decide if parents accused of child abuse or neglect will be forced to proceed through the system and ultimately determine whether a parent loses their parental rights. Data shows that Black, Latina/o/x, Indigenous, and/or poor children are overwhelmingly represented in the child welfare system, which I explore more in Part II. Disparity in court access matters. Noting that in New York State, the supreme court system (which generally serves more well-off litigants) investigates custody cases differently than does the family court system (which generally serves less well-off litigants),¹⁴ Professor Leah Hill argues:

I endorse . . . a consistent process of handling private child custody matters across supreme and family courts. Without consistency, we are left with a two-tiered system in which the cases of moneyed litigants are investigated by experts while the less well-off black and brown litigants are investigated by a public agency whose limited objective is to protect children from abuse. The obvious disparity is self-evident.¹⁵

This view into the experiences of people of color, immigrants, people living in poverty, and their lawyers offers a contrast to the benefits of the pragmatic methodology described in *Pragmatic Family Law*. Huntington skillfully explains early pragmatic philosophical thought, contemporary American approaches to pragmatism, and, indeed, how critical race and legal scholars have employed pragmatism in

¹³ Interestingly, the demographics of those seeking assistance in the D.C. domestic violence court system are no longer publicly available. Data from a 2012 D.C. domestic violence court watch report shows that Black was the perceived race of 86.3% of the petitioners (that is, those seeking help with a domestic violence case). DC SAFE, 2012 REPORT: DC DOMESTIC VIOLENCE COURT WATCH PROJECT 24 (2012), <https://courtwatchdc.files.wordpress.com/2013/08/2012courtwatchreport.pdf> [https://perma.cc/XQ7V-YL9P]. The percentage of Black people in the D.C. population in 2012 was 50.1%. JOY PHILLIPS & CARYN S. THOMAS, D.C. STATE DATA CTR., FACT SHEET 4 tbl.4 (2012), https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/2012%20DC%20Population%20Estimate_1.pdf [https://perma.cc/5T4U-ADUW]. Thus, my conclusions are drawn from personal and professional experiences and through informal conversations with practitioners and advocates over approximately twenty years in the D.C. legal community.

¹⁴ Leah A. Hill, *Do You See What I See? Reflections on How Bias Infiltrates the New York City Family Court — The Case of the Court Ordered Investigation*, 40 COLUM. J.L. & SOC. PROBS. 527, 546 (2007).

¹⁵ *Id.* at 547.

their advocacy for equality.¹⁶ Huntington describes family law pragmatism as when “decisionmakers sidestep abstract ideals and political ideology and instead focus on whether a law or policy promotes family and child well-being in specific, grounded ways . . . [a]nd legal actors learn from the lives of affected families, consult empirical evidence, and make context-specific determinations.”¹⁷ In this vein, then, the pragmatic approach results in outcomes that are examples of convergence, depolarization, and nonpartisan pluralism¹⁸ — making family law’s focus not on “abstract ideals and political ideology” but rather “on whether a doctrine or policy promotes core aspects of family and child well-being, such as a child’s need for a consistent caregiver and a family’s needs for basic resources.”¹⁹

Huntington is correct that the law prescribes and seeks just outcomes without explicit deference to or discussion of political or abstract ideologies. Thus, for example, state laws on ideal parental custodial arrangements uniformly land on some type of presumption in favor of joint custody of children when parents divorce or no longer parent together.²⁰ These state laws rely upon research that shows that children are best served by both parents being present in the children’s lives absent concerns of child abuse or neglect.²¹ In practice, courts therefore generally favor joint custody in a contested dispute between fit parents,²² but will veer toward sole or primary custody upon a review of the state-defined factors that support diverting away from joint custody.²³

To further explain the sustainability of a pragmatic methodology, *Pragmatic Family Law* discusses the depolarization of once-contentious family law issues, which eventually coalesced around legal and social consensus.²⁴ Two examples are married women’s property acts (from a

¹⁶ Huntington, *supra* note 1, at 1536–43.

¹⁷ *Id.* at 1536.

¹⁸ *Id.* at 1503–07.

¹⁹ *Id.* at 1507.

²⁰ Anna Burke et al., *Child Custody, Visitation & Termination of Parental Rights*, 21 GEO. J. GENDER & L. 201, 211 & n.52, 212 & nn.53–54 (2020) (noting that there is a general methodological presumption for joint custody in every state and citing examples).

²¹ See Kirsti Kurki-Suonio, *Joint Custody as an Interpretation of the Best Interests of the Child in Critical and Comparative Perspective*, 14 INT’L J.L. POL’Y & FAM. 183, 187–89 (2000).

²² See Milfred Dale, “Still the One”: *Defending the Individualized Best Interests of the Child Standard Against Equal Parenting Time Presumptions*, 34 J. AM. ACAD. MATRIM. LAWS. 307, 308 (2022) (“[C]onsideration of joint physical custody and shared parenting have become more common in discussions of social policy, in the private voluntary development of parenting plans by parents, and in instances where custody disputes require court adjudication.”).

²³ See, e.g., *id.* at 310–13 (describing the history of the best interests of the child standard and the benefits of its use over stark presumptions); *id.* at 311 (“The strengths of the *individualized best interests standard* lie in its ‘child-centered focus, its flexibility, its minimal a priori bias relative to the parties,’ and its ability to respond to changing social mores, values, and situations in a diverse society.” (footnote omitted) (quoting Melissa M. Wyer et al., *The Legal Context of Child Custody Evaluations*, in PSYCHOLOGY AND CHILD CUSTODY DETERMINATIONS 3, 18 (Lois A. Weithorn ed., 1987))).

²⁴ Huntington, *supra* note 1, at 1511–12, 1526.

place of women's complete nonagency to the legal ability to own property, among other rights)²⁵ and third-party parentage laws (from a place of recognizing only two biological or adoptive heterosexual parents to an expansion of the parent definition).²⁶ The article also mentions the ways in which the law has evolved around intimate partner violence, from a time when a husband had a legal right to physically abuse his wife to the current environment, where every state and Washington, D.C., have laws criminalizing domestic violence.²⁷ In 2022, Congress passed — and President Biden signed — the Bipartisan Safer Communities Act,²⁸ which contains a provision prohibiting dating partners who are convicted of domestic violence from owning guns.²⁹ The closing of the so-called “boyfriend loophole” regarding gun ownership marked a significant effort to protect victims of intimate partner violence from gun attacks even when the country was still engaged in political debate about, and remains divided over, the extent of gun rights and ownership.³⁰ In this sense, then, the new law provides an excellent example of policymakers recognizing the importance of strengthening protection measures for families based on evidence and common sense.

The discord occurs, though, when we look at people's day-to-day courtroom and courthouse experiences in seeking assistance to leave a domestic violence situation. Poor mothers of color and/or immigrant mothers who experience domestic violence and seek help run the risk of entanglement with the child welfare system. Within the domestic violence justice system itself, research shows the obstacles for women and women of color in their efforts to obtain protection. Professors Deborah Epstein and Lisa Goodman detail how women (in general) are perceived as less credible, and Black women and poor women experience even

²⁵ *Id.* at 1515.

²⁶ *Id.* at 1525–26.

²⁷ *Id.* at 1527–28.

²⁸ Pub. L. No. 117-159, 136 Stat. 1313 (codified in scattered sections of the U.S. Code).

²⁹ *Id.* § 12005, 136 Stat. at 1332–33 (codified at 18 U.S.C. § 921(a)); see Huntington, *supra* note 1, at 1528. Importantly, the new law specifies that the person can resume gun ownership after five years of a clean record unless the person has a certain type of relationship (partner, spouse, parent) with the victim. See Rachel Treisman, *The Senate Gun Bill Would Close the “Boyfriend Loophole.” Here’s What that Means*, NPR (June 23, 2022, 11:47 AM), <https://www.npr.org/2022/06/23/1106967037/boyfriend-loophole-senate-bipartisan-gun-safety-bill-domestic-abuse> [<https://perma.cc/4BXD-8ZP7>] (“The bill includes a related provision, allowing people who were convicted of misdemeanor domestic violence to have their gun rights restored if their record stays clean for five years. There are some exceptions for victims’ spouses, parents, guardians or cohabitants.”).

³⁰ See Treisman, *supra* note 29 (“It also would close the so-called ‘boyfriend loophole’ in a law that prevents people convicted of domestic abuse from owning a gun. That law currently only applies to people who are married to, living with or have a child with the victim.”). Importantly, however, the law applies only when the person has been convicted of an intimate partner crime. 18 U.S.C. § 921(a)(33). Some victims may not wish or be able to pursue criminal charges. Moreover, as with crimes generally, whether the abuser is prosecuted and convicted of a crime is in the hands of the prosecutor, judge, and jury, not the victim needing protection.

further critical challenges when they seek help.³¹ Their research reveals that Black witnesses have long been discredited in courtrooms.³² “Such discrediting can occur,” the authors explain, “based on stereotypes that African Americans are less intelligent than are whites, or that they are untrustworthy and dishonest. Based on all of the above [detailing the perceived deceitfulness of women witnesses], it stands to reason that black women risk being doubly disbelieved.”³³

Further, domestic violence victims who are poor are doubted because they are “vulnerable to stereotypes about their trustworthiness . . . [as people] who cheat the system to take what is not theirs.”³⁴ Reinforcing what I also experienced as an advocate for these women, the authors conclude that “[b]ecause so many survivors live at the intersection of all three of these identities — they are poor women of color — these stereotypes feed into each other to further undermine assumptions about their trustworthiness.”³⁵ For immigrant victims of domestic violence, their reality further encompasses anti-immigrant animus. As I wrote:

This anti-immigrant animus stems in part from racialized and gendered attitudes about immigrant communities. Immigrants of color and immigrant women particularly bear the brunt of the negative rhetoric surrounding immigration reform. Moreover, as the literal noncitizen, the immigrant outsider does not benefit from the positive attribution that derives from being a citizen.³⁶

Further, “[b]attered immigrants frequently face additional layers of isolation. Poverty, inability to secure legal representation for access to courts, language barriers, and culturally derived limitations may operate as barriers to immigrants seeking to leave abusive relationships.”³⁷ Therefore, even within the system created to protect women, poor women of color and poor immigrant women are more likely to have negative, demeaning experiences.

This results in a system that, though apparently focused on family protection, fails to properly protect all families. In fact, as is the practice

³¹ Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 435–37 (2019) (“[T]he available evidence indicates that, as a general rule, judges view women as less credible witnesses and advocates than they do men. And recent studies show that the police routinely discredit female survivors of intimate partner abuse.” *Id.* at 435 (footnote omitted)).

³² *Id.* at 436.

³³ *Id.* (footnote omitted).

³⁴ *Id.*

³⁵ *Id.* at 436–37.

³⁶ Mariela Olivares, *Battered by Law: The Political Subordination of Immigrant Women*, 64 AM. U. L. REV. 231, 263 (2014).

³⁷ *Id.* at 236. I further explained that “[l]ack of English-language skills remains a formidable barrier for immigrant domestic violence victims seeking legal assistance.” *Id.* at 237 n.16 (citing Donna Coker, *Shifting Power for Battered Women: Law, Material Resources, and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1031–32 (2000); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1249 (1991)).

in other imbalanced and unjust legal systems — the criminal justice system, for example — the law does not treat marginalized families in the normative ways that Huntington describes.³⁸ In this sense, then, the political depolarization that has expanded relief for domestic violence survivors over time has not resulted in comparable benefits for all. When the spotlight is not on the normative construct historically at the center of family law but rather on the families that have been pushed to the margins of legal protection, the injustice comes into focus. Therefore, the convergence of experiences is conceptual at most, not practical.

II. THE FUNDAMENTAL ERROR OF CONVERGENCE AS POLICY IDEAL

When I teach a seminar on domestic violence law and policy for upper-level law students at Howard University School of Law, one of the mandatory course assignments is to spend a few hours at the D.C. Superior Court in the courtrooms hearing civil or criminal cases involving domestic violence allegations. As a Historically Black College or University (HBCU), more than ninety percent of our students are Black — African American descendants of enslaved people in the United States, recent immigrants from throughout the global African diaspora or their descendants, and/or individuals identifying as multiracial. For the court visit assignment, I ask the students to reflect on a series of questions, including to comment on the racial and ethnic demographics of the people they see — litigants, judges, members of the public, courthouse staff, and lawyers. I ask them to reflect on any readily discernible class dynamics and to note what type of relief litigants are seeking. These are the same courtrooms and hallways that were my domain for the few years that I practiced family law, and I know that the answers to my questions have not changed since then. Unsurprisingly, then, my students unanimously comment that the litigants are mostly Black or Latina/o/x and sometimes require the help of an English-speaking court interpreter. They note that few people have lawyers in civil proceedings and most appear to not have significant financial resources. My students report that the petitioners seeking a protection order mostly ask for no-contact and stay-away provisions while some seek other forms of relief available to them — from return

³⁸ See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (rev. ed. 2012) (discussing how the “War on Drugs” and other so-called criminal justice campaigns led to the mass incarceration of Black people, decimating communities of color); PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017) (explaining how the law enforcement and criminal justice systems function as designed — that is, to target and imprison Black men); CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA’S OBSESSION WITH LOCKING UP IMMIGRANTS* (2019) (describing how the criminal justice system, the immigration enforcement system, and the private-prison industry work together with the aim of imprisoning immigrants, mostly people of color, in the United States).

of property to the ordering of domestic violence prevention classes to financial redress, like child support. Some find witnessing the sometimes sad and dramatic outcomes jarring and unsettling. The court visit is a remarkable teaching tool as it puts the doctrine and policy that we read into practice. After reading and discussing illuminating and forceful works by Professors Kimberlé Crenshaw and bell hooks (among others) on how the legal system treats domestic violence victims of color differently because of their identities as women, Black, immigrant, and/or poor,³⁹ my students see firsthand what the authors mean.⁴⁰

Indeed, for lawyers, advocates, and people seeking help in family court, the reality is often far-removed from a conceptual methodology. This Part explores ways in which the paradigmatic normative construct does not apply to all marginalized families, using two examples. Section A discusses the ways in which the child welfare system unjustly targets families of color. Section B examines the ways in which family law does not protect migrant children and families. Finally, section C frames the analysis in both a critical theory and a critical race theory paradigm to argue that the idealization of children and family well-being works only for families of color, migrant families, and poor families when their interests happen to converge with the normative standard. Outside of this overlapping, these families experience an inherently racist and classist family court system that works just as intended in a society founded and reliant on the continuation of such principles.

A. *The Experience of Families of Color in the Child Welfare System*

In my time as an attorney for immigrant, Black, Latina/o/x, and poor victims of domestic violence, the threat of involvement with the child welfare system was omnipresent. Even if the mothers (most of my clients and indeed most victims of domestic violence are women⁴¹) were not individually accused of child neglect and abuse, child protection laws may be interpreted such that if a parent “exposes” the child to

³⁹ See BELL HOOKS, *Violence in Intimate Relationships: A Feminist Perspective*, in TALKING BACK: THINKING FEMINIST, THINKING BLACK, 84, 84–91 (1989); Crenshaw, *supra* note 37, at 1242–45.

⁴⁰ In our seminar, we talk about the intersection of multiple types of identities while experiencing domestic violence. This principle of intersectionality explores the ways in which people with multiple identities (for example, Black, queer, woman) experience systems differently due to the unique intersection of these identities. In her pioneering 1991 article, Crenshaw writes: “Contemporary feminist and antiracist discourses have failed to consider intersectional identities such as women of color. . . . Because of their intersectional identity as both women *and* of color within discourses that are shaped to respond to one *or* the other, women of color are marginalized within both.” Crenshaw, *supra* note 37, at 1242–44.

⁴¹ To be sure, people of all genders and gender identities experience domestic violence. Still, research demonstrates that women are more likely to experience it than are men. See *Fast Facts: Preventing Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> [<https://perma.cc/JW4D-B2ZB>] (“About 1 in 3 women and [a]bout 1 in 4 men report having experienced severe physical violence from an intimate partner in their lifetime.”).

domestic abuse or does not adequately respond to another adult's abusive behavior, that parent may be found neglectful.⁴² One such Ayuda client, a Latina immigrant, found herself in child abuse and neglect proceedings in which, as a condition of reuniting with her child, she was ordered to receive a civil protection order against her abusive partner. The problem, however, is that no person can guarantee any court outcome. How could she ensure a judge would grant her an order of protection, and why was this deemed to be a condition of her reunification with her child? Professor Dorothy Roberts details a similar case:

In a family court hearing, [the New York City Administration for Children's Services (ACS)] insisted [that Angeline Montauban, a Black woman whose son was placed in the child welfare system when she sought social-service help to leave a violent partner,] file for an order of protection for her son against his father as well. Montauban disagreed, explaining to the judge that she wanted her son to maintain a relationship with his father, who had never hurt him.

A few days later, Montauban's partner took their son to family court for an appointment. ACS instructed him to leave the boy at a daycare center on the first floor of the court building. It was a setup: ACS had filed a petition to apprehend Montauban's son on the grounds that he was neglected because Montauban allegedly had allowed him to witness domestic violence and declined to file an order of protection against his father. That evening, the caseworker called Montauban to inform her that ACS had snatched her son from the family court daycare center. Her toddler was in foster care — in the custody of strangers in the Bronx.⁴³

⁴² *Nicholson v. Williams (Defending Parental Rights of Mothers Who Are Domestic Violence Victims)*, NYCLU, <https://www.nyclu.org/en/cases/nicholson-v-williams-defending-parental-rights-mothers-who-are-domestic-violence-victims> [<https://perma.cc/CC5G-EXQV>] (discussing a New York case holding on appeal that a child cannot be removed from their parent on the sole basis that the parent was unable to protect the child from witnessing domestic abuse). Other states and courts continue to consider failure to protect or failure to act as grounds for neglect and/or even criminal prosecution. See, e.g., Tim Talley, *Group Takes Aim at Oklahoma's Failure-to-Protect Law*, AP NEWS (Sept. 29, 2018), <https://apnews.com/article/45a6f24af72c4750ac141f3fe10b3bc9> [<https://perma.cc/CZ8Y-NZGH>] (discussing the Oklahoma failure-to-protect law that goes so far as to allow for prosecution of parent victims of domestic violence who do not respond to or report abuse by their abuser and noting such practices in other states); Sara Tiano, *Maryland Eyes Law to Protect Domestic Violence Survivors from "Failure to Protect" Charges*, THE IMPRINT (Feb. 14, 2023, 9:26 AM), <https://imprintnews.org/youth-services-insider/maryland-eyes-law-to-protect-domestic-violence-survivors-from-failure-to-protect-charges/238491> [<https://perma.cc/8GXG-T6XC>] (discussing what would be the first law of its kind in the nation protecting parent victims of domestic violence from claims of child neglect due to exposure to domestic violence and reporting that only fifteen state child welfare systems have policies that protect parent victims from charges of child abuse or neglect). Therefore, most states do not have codified protections for parent victims of domestic violence, leading to a broad array of policies. See, e.g., *id.* (“[Some] states have set a threshold of children being harmed or at risk of harm by their proximity to domestic violence. Under such policies, the parent experiencing the abuse can be charged with ‘failure to protect’ the children from the abusive partner.”).

⁴³ Dorothy Roberts, *How the Child Welfare System Is Silently Destroying Black Families*, IN THESE TIMES (May 24, 2022), <https://inthesetimes.com/article/systemic-inequalities-in-the-child->

For certain families, the very real threat of parents losing their children to the child welfare and foster care system hinders their ability to access needed social services while endangering their parental rights. In this context, then, even the most well-meaning and purposeful legislation and policies fail the very families that could perhaps be best served by resource and educational assistance.

Thus, although evidence-based decisionmaking in family law has resulted in gains such as the recognition of nontraditional family formation,⁴⁴ its focus on what is best for the family or child has not applied to all families. In discussing nontraditional family formation and the functional parenthood doctrine, Huntington describes how family court judges hear from the affected families, reflect on the testimony and evidence and thus “center the lived experience of children and their caregivers and eschew ideology about the primacy of nuclear families, instead ratifying the family forms they observe.”⁴⁵ Huntington concludes that, through this courtroom observance, judges provide families with individualized solutions.⁴⁶

For many families of color and poor families, however, this context-based approach may not reflect their lived experiences. So, though the law prescribes a judgment based on a child’s best interests, families from politically and socially marginalized communities may experience this aspect of family court decisionmaking differently than a white family with financial resources. Indeed, it may seem that for these families, their lives and family choices are disrespected and discounted as not fitting within the traditional normative understanding of families. Hill describes witnessing this phenomenon as a family lawyer for indigent clients in New York City, where the local family court relied on caseworkers from the city’s ACS, a child welfare agency, to conduct investigations in child custody proceedings between private parties who did not have resources to hire a private custody evaluator.⁴⁷ The result, she notes, is that ACS improperly intervened in families’ custodial decisionmaking by taking an adversarial lens to the cases in part to avoid the possibility (no matter how small or completely unsubstantiated) that a child could suffer harm.⁴⁸ New York City dispatched ACS caseworkers, even though the agency was already understaffed and

welfare-system-target-black-families [https://perma.cc/966E-DCQ7]; see also Susan Edelman, *Mom Calls Years-Long War with City Foster System “Kidnapping,”* N.Y. POST (Aug. 21, 2016, 6:00 AM), <https://nypost.com/2016/08/21/mom-calls-years-long-war-with-city-foster-system-kidnapping> [https://perma.cc/VU2F-W948] (describing the story and the class action lawsuit of which the mother was a part and providing pictures of the mother and son).

⁴⁴ See Huntington, *supra* note 1, at 1507.

⁴⁵ *Id.* at 1555.

⁴⁶ *Id.*

⁴⁷ Hill, *supra* note 14, at 532. Hill refers to a New York Family Court rule that provides for this service of the ACS. *Id.* at 539 (citing N.Y. COMP. CODES R. & REGS. tit. 22, § 205.56(a)(1) (2023)).

⁴⁸ See *id.* at 541.

overworked,⁴⁹ for purported judicial and administrative reasons.⁵⁰ But, as Hill writes:

If we couple the image of the courthouse filled with mostly poor, black and brown litigants with what we know about racial disproportionality and ACS, we see another possible explanation: in the minds of some decisionmakers, the poor families of color whose lives are impacted by these [child custody] decisions do not warrant the kind of principled risk-taking [as in a private, detailed, and neutral inquiry] necessary to defeat the officials' fear of bad publicity.⁵¹

In other words, for marginalized families, evidence-based family law does not operate in their favor.

Indeed, Huntington states that “race, racism, and deep divides about whether the United States should do more to address racial inequity are fundamental cleavages in the United States,” thus challenging the efficacy of the pragmatic method.⁵² Huntington cites the stark disparities in the child welfare system, in which “Black children are 14% of the child population but 23% of the foster care population,” as stated in a 2021 Department of Health and Human Services report.⁵³ A scholar on the ways in which families of color and low-income families experience the family law system, Huntington writes in another recent article: “Families of color and low-income families tend to be subject to far more state intervention today than other families, and state actors are more likely to override these parents’ child-rearing decisions, often based on views of child wellbeing infused with middle-class biases.”⁵⁴ Revisiting this phenomenon in *Pragmatic Family Law*, Huntington notes that pragmatism could help families of color in the child welfare system because “[i]f the government centered the experience of families, this could transform the government’s response to child abuse and neglect by focusing on the support that families themselves so often identify as welcome and

⁴⁹ See *id.* at 542.

⁵⁰ See *id.* at 541, 547.

⁵¹ *Id.* at 544; see also Dale Margolin Cecka, *Inequity in Private Child Custody Litigation*, 20 CUNY L. REV. 203, 228 (2016). Professor Cecka draws on her own experience to make the following “striking” observation:

New York City Family Court judges are often highly dissatisfied with the investigations and services that ACS provides. For Family Court judges to turn around and use ACS as a reliable and trustworthy gatherer of “facts” in a private case is ironic and further reinforces the message that Family Court litigants are not worthy of respect.

Id. (footnote omitted).

⁵² Huntington, *supra* note 1, at 1569.

⁵³ *Id.* at 1566 n.386 (citing CHILD.’S BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD WELFARE PRACTICE TO PREVENT RACIAL DISPROPORTIONALITY AND DISPARITY 2–3 (2021), https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf [<https://perma.cc/FR5X-2TM9>]).

⁵⁴ Clare Huntington & Elizabeth Scott, *The Enduring Importance of Parental Rights*, 90 FORDHAM L. REV. 2529, 2533 (2022) (footnote omitted).

needed.”⁵⁵ Huntington decries the lack of political will to attack the roots of racism.⁵⁶

Indeed, ideally a pragmatic approach would eradicate the effects of the bedrock racism and classism that undercut a fair legal system. But this ideal presupposes a “race-neutral” vacuum in which policymakers and judges would not castigate families of color, migrants, and poor families no matter the methodology employed. Certainly, the stated purpose of child welfare policies is to protect all children regardless of race or identity. The implementation, however, is inextricable from fundamentally flawed systemic injustices. In other words, even if a pragmatic approach were used for all families, the result would still be outcomes that penalize marginalized families because their lived experiences are not valued in the same way as the white, middle-class normative family experience.

The experiences of families of color and poor families in the child welfare system present perhaps the most extreme example. In a recent comprehensive empirical study jointly produced by the American Civil Liberties Union (ACLU) and Human Rights Watch, the authors conclude: “The child welfare system in the United States disproportionately investigates and removes children from over-policed, underserved communities, especially Black and Indigenous children and those living in poverty.”⁵⁷ An October 2022 article by members of the American Bar Association’s Children’s Rights Litigation Committee reports that “[i]n 2020 over 70 percent of all children, and 63 percent of Black children, removed into the U.S. foster system were taken from their families for reasons related to ‘neglect.’”⁵⁸ “Neglect,” however, is an ambiguous term that may be weaponized against poor parents, deeming poverty as equal to inability to sufficiently parent. Roberts writes: “Based on vague child neglect laws, [child welfare] investigators can interpret being poor — lack of food, insecure housing, inadequate medical care — as evidence of parental unfitness. Caseworkers search homes, subject family members to humiliating interrogation and inspect children’s bodies for evidence, sometimes strip-searching them.”⁵⁹ In the lived experiences of poor families of color pulled into the child welfare system — even absent substantiated abuse or true neglect — the

⁵⁵ Huntington, *supra* note 1, at 1571; *see also* Huntington & Scott, *supra* note 54, at 2540 (“Increasing state authority to supervise parenting can lead to a more intrusive state presence in communities of color to the detriment of the children affected.”).

⁵⁶ Huntington, *supra* note 1, at 1569–71.

⁵⁷ HUM. RTS. WATCH & ACLU, “IF I WASN’T POOR, I WOULDN’T BE UNFIT”: THE FAMILY SEPARATION CRISIS IN THE US CHILD WELFARE SYSTEM 32 (2022), https://www.hrw.org/sites/default/files/media_2022/11/us_cr1122web_3.pdf [<https://perma.cc/3TPH-HQSR>].

⁵⁸ Shereen A. White & Stephanie Persson, *Racial Discrimination in Child Welfare Is a Human Rights Violation — Let’s Talk About It that Way*, AM. BAR ASS’N (Oct. 13, 2022), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2022/fall2022-racial-discrimination-in-child-welfare-is-a-human-rights-violation> [<https://perma.cc/K9GC-7N6K>].

⁵⁹ Roberts, *supra* note 43.

pragmatic approach seems to perpetuate systemic harm. Thus, although a call for political change of racist systems is valid and important, the everyday reality as shown by researchers, attorneys, advocates, and families belies reliance on a normative-based methodological approach.

B. Family Law Does Not Shield Migrant Families and Children

Huntington writes that “although policymakers and advocates will not argue against *child* well-being, when policy questions turn to adults, consensus can be harder.”⁶⁰ She explains this paradigm through excellent examples — corporal punishment laws, prekindergarten prioritization, Medicaid expansion, same-sex marriage, and others.⁶¹ In discussing the reach of the Earned Income Tax Credit (EITC) and Medicaid expansion under the 2010 Patient Protection and Affordable Care Act⁶² (ACA), Huntington explores how focus on children and healthy families won bipartisan support: “The EITC is the backbone of antipoverty relief for families, providing \$64 billion to 31 million low-income workers annually.”⁶³ Additionally, she writes that:

Medicaid expansion has improved parental access to substance abuse treatment and mental health services, two conditions linked to child abuse and neglect as well as poor family functioning more generally. Further, Medicaid expansion has improved the finances of low-income families, increased employment rates, and promoted housing stability, all of which benefit children.⁶⁴

This data is certainly instructive, and the argument is exact.

In a 2012 article, I similarly discussed the bipartisan push to reenact the State Children’s Health Insurance Program (SCHIP),⁶⁵ the precursor to the current Children’s Health Insurance Program.⁶⁶ The program as currently administered provides health insurance to eligible children who are deemed to be above the eligibility guidelines for Medicaid but still unable to procure private insurance.⁶⁷ As I explained in the earlier article and as is still relevant in the children’s health insurance program,

⁶⁰ Huntington, *supra* note 1, at 1561 (footnote omitted).

⁶¹ *Id.* at 1544–53.

⁶² Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code).

⁶³ Huntington, *supra* note 1, at 1532.

⁶⁴ *Id.* at 1523 (footnotes omitted).

⁶⁵ See generally Mariela Olivares, *The Impact of Recessionary Politics on Latino-American and Immigrant Families: SCHIP Success and DREAM Act Failure*, 55 HOW. L.J. 359 (2012) [hereinafter Olivares, *SCHIP Success*].

⁶⁶ Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, 123 Stat. 8 (codified as amended at scattered sections of the U.S. Code); see *Children’s Health Insurance Program (CHIP)*, MEDICAID.GOV, <https://www.medicaid.gov/chip/index.html> [https://perma.cc/ZKY6-NJPG].

⁶⁷ *CHIP Eligibility*, MEDICAID.GOV, <https://www.medicaid.gov/chip/eligibility/index.html> [https://perma.cc/VHV2-DTPT].

only some lawful immigrants are covered under the federal guidelines.⁶⁸ The inclusion of immigrants as any sort of beneficiaries was controversial in the early SCHIP political and legislative negotiations.⁶⁹ Similar to Huntington in *Pragmatic Family Law*, I wrote:

[A]n important component of the success of the 2009 reauthorization of SCHIP is how the legislation was labeled and lobbied. The focus by Democratic and Republican supporters alike was on the need to provide poor and modest-income children with health care coverage. Although [the reauthorization legislation] contained a strong and important provision expanding coverage to certain immigrants, supporters deflected the issue, purposefully keeping the immigrant in the shadows of the debate so as to ensure the legislation's eventual passage. This strategy that was, of course, ultimately successful was summarized perfectly by Senator Richard J. Durbin (D-Illinois) during the 2009 debate on the legislation: "The bottom line is: This is a debate about children's health coverage This is not a debate about immigration."⁷⁰

As I argued then in 2012 and have continued to argue since, though, the narrative focus on child welfare and the best interests of children does not typically embrace immigrant children and families and certainly does not protect undocumented migrants.⁷¹ Even in the SCHIP program, Medicaid, and the EITC, only lawful immigrant parents and children are eligible for participation and tax relief.⁷² This targeted exclusion of certain migrants from benefits and protection — including those living within the country as undocumented immigrants and those seeking asylum relief when arriving at a port of entry pursuant to the proper immigration processes — is perhaps most starkly demonstrated in the ongoing family separation crisis, which began in 2017.⁷³ Within

⁶⁸ See Olivares, *SCHIP Success*, *supra* note 65, at 371–77 (discussing the negotiations to include certain lawful immigrant classifications in the eligibility guidelines); *Coverage of Lawfully Present Immigrants*, HEALTHCARE.GOV, <https://www.healthcare.gov/immigrants/lawfully-present-immigrants> [<https://perma.cc/CW7B-HPDC>] (detailing which lawfully present immigrant children are eligible for CHIP coverage).

⁶⁹ See Olivares, *SCHIP Success*, *supra* note 65, at 374–77.

⁷⁰ *Id.* at 377 (footnotes omitted) (quoting Ceci Connolly, *Senate Passes Health Insurance Bill for Children; Immigrant Clause Opens Rift*, WASH. POST, Jan. 30, 2009, at A1).

⁷¹ Olivares, *SCHIP Success*, *supra* note 65, at 384–90; Mariela Olivares, *Resistance Strategies in the Immigrant Justice Movement*, 39 N. ILL. U. L. REV. 1, 20–22 (2018); see Olivares, *supra* note 36, at 282–83; Mariela Olivares, *Intersectionality at the Intersection of Profiteering & Immigration Detention*, 94 NEB. L. REV. 963, 964 (2016); Mariela Olivares, *Narrative Reform Dilemmas*, 82 MO. L. REV. 1089, 1090 (2017).

⁷² See *Health Coverage and Care of Immigrants*, KAISER FAM. FOUND. (Dec. 20, 2022), <https://www.kff.org/racial-equity-and-health-policy/fact-sheet/health-coverage-and-care-of-immigrants> [<https://perma.cc/QL75-468U>] (“Undocumented immigrants are not eligible to enroll in Medicaid or CHIP or to purchase coverage through the [Affordable Care Act] Marketplaces.”). To claim the Earned Income Tax Credit, taxpayers must have a valid Social Security Number, which undocumented immigrants do not have. For eligibility guidelines, see *Who Qualifies for the Earned Income Tax Credit (EITC)*, IRS (Jan. 25, 2023), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/who-qualifies-for-the-earned-income-tax-credit-eitc> [<https://perma.cc/BJC5-F23H>].

⁷³ Mariela Olivares, *The Rise of Zero Tolerance and the Demise of Family*, 36 GA. ST. U. L. REV. 287, 296 (2020).

this example, we see blatant disregard for family unity and children's safety, which are ostensibly bedrock family law principles.

In 2020, I discussed a news story about a Honduran mother and child who were apprehended at the U.S.-Mexico border during the Trump Administration's Zero Tolerance Prosecution Policy and Family Separation Policy, which wreaked havoc on migrant families:

After declaring to U.S. Customs and Border Protection (CBP) officials her intent to seek asylum based on being the target of violence in her home country, the mother and her eighteen-month-old son were transferred to a holding facility where they spent the night together. The mother, Mirian, recounts what happened next: "When we woke up the next morning, immigration officers brought us outside where there were two government cars waiting. They said that I would be going to one place, and my son would go to another. I asked why repeatedly, but they didn't give me a reason. The officers forced me to strap my son into a car seat. As I looked for the buckles, my hands shook, and my son started to cry. Without giving me even a moment to comfort him, the officer shut the door. I could see my son through the window, looking back at me — waiting for me to get in the car with him — but I wasn't allowed to. He was screaming as the car drove away."⁷⁴

Mirian's story is like that of thousands of migrant families in which the U.S. government forcibly separated children from their fit adult parents or caregivers, absent any showing that such separation was in the children's best interest. The Zero Tolerance Prosecution Policy and Family Separation Policy worked collaboratively to arrest arriving migrants (without regard to the viability of their pleas for lawful asylum relief), place them in detention (that is, jail), and take their children away from them.⁷⁵ The policies destroyed thousands of families until the public and political pressure was so loud that President Trump declared its formal end in 2018.⁷⁶ Indeed, the bipartisan, convergent outcry against the government ripping children away from their parents was one clear example where concerns about general child well-being superseded the political and societal attacks against migrants arriving from Central America.⁷⁷ A poll of voting Americans conducted in June 2018 — during the height of the media coverage of crying, inconsolable children who were taken from their parents — showed that two in three

⁷⁴ *Id.* at 288–89 (footnote omitted) (quoting Mirian G., *At the Border, My Son Was Taken from Me*, CNN (July 11, 2018, 1:43 PM), <https://us.cnn.com/2018/05/29/opinions/immigration-separation-mother-son-mirian/index.html> [<https://perma.cc/6APC-72XH>]).

⁷⁵ See Olivares, *supra* note 73, at 294.

⁷⁶ See Miles Parks et al., *Trump Signs Order to End Family Separations*, NPR (June 20, 2018, 11:51 AM), <https://www.npr.org/2018/06/20/621798823/speaker-ryan-plans-immigration-votes-amid-doubts-that-bills-can-pass> [<https://perma.cc/PVD9-6HFY>].

⁷⁷ See *id.*

respondents disagreed with the policy.⁷⁸ Facing opposition to his actions from even within his own party, President Trump was forced to concede.

In my 2022 update about the family separation crisis, I discussed President Biden's newly created Task Force on the Reunification of Families, which was formed to reunify the families targeted by the Family Separation Policy, report to President Biden on the progress, and recommend policies and practices to ensure that the government does not separate families again.⁷⁹ Recent Task Force reports state that the U.S. government took at least 3855 migrant children away from their parents in the name of immigration deterrence.⁸⁰ Some families remain separated.⁸¹ Others who have been reunited are living through the ongoing trauma that they experienced.⁸² What unifies their experiences is that harmful actions were done to them without any regard for the well-established and seemingly unassailable standard that law should act in children's best interest. Indeed, the class action lawsuit brought by affected families against the U.S. government persuasively argued constitutional violations and challenged various defenses, including that the defendant agencies were properly operating under their executive

⁷⁸ David Smith & Tom Phillips, *Child Separations: Trump Faces Extreme Backlash from Public and His Own Party*, THE GUARDIAN (June 19, 2018, 2:23 PM), <https://www.theguardian.com/us-news/2018/jun/19/child-separation-camps-trump-border-policy-backlash-republicans> [https://perma.cc/J89D-UQRE] (summarizing the findings of a Quinnipiac University national poll).

⁷⁹ See Mariela Olivares, *Family Detention and Family Separation: History, Struggle, and Status*, 9 BELMONT L. REV. 512, 519 (2022). I continue my research into the aftereffects of the policies in a recently published piece on child migration. See Mariela Olivares, *Perspective, The Trauma of the Family Separation Policy on Migrant Children (2017–2022)*, 12 LAWS, no. 1, 2023, at 1 [hereinafter Olivares, *The Trauma of the Family Separation Policy*]. The Task Force outlines seven broad goals of its work: (1) “[l]ocating [f]amilies and [e]xplaining [o]ptions”; (2) “[e]stablishing a [m]echanism for [f]amilies to [c]ome [f]orward”; (3) “[p]roviding [h]ome [c]ountry [s]upport”; (4) “[o]ffering [f]amilies [r]eunification [s]ervices”; (5) [s]ustaining and [i]mproving the [a]vailability of [b]ehavioral [h]ealth [s]ervices”; (6) “[i]dentifying a [l]ong-[t]erm [s]tatus [o]ption for [f]amilies”; and (7) “[i]dentifying [d]urable [f]unding [s]ources.” U.S. DEP’T OF HOMELAND SEC., INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES, INTERIM PROGRESS REPORT 1 (2021), https://www.dhs.gov/sites/default/files/publications/21_0826_s1_interim-progress-report-family-reunification-task-force.pdf [https://perma.cc/5E4H-YBWL] [hereinafter 2021 INTERIM REPORT].

⁸⁰ When the U.S. government undertook the family separation process, it did so haphazardly, carelessly, and without basic documentation. As a result, the total number of separated children may never truly be known. In the first Task Force 120-day progress report, the Task Force “identified 3,914 [separated] children . . . between July 1, 2017 and January 20, 2021 Additionally, the Task Force continue[d] to review . . . 1,723 separations involving parents who were previously determined to be out of scope.” 2021 INTERIM REPORT, *supra* note 79, at 3. The most recent Task Force report, from September 2022, states that the Task Force “has identified 3,855 children” impacted by the policy. U.S. DEP’T OF HOMELAND SEC., INTERAGENCY TASK FORCE ON THE REUNIFICATION OF FAMILIES, INTERIM PROGRESS REPORT 6 (2022), https://www.dhs.gov/sites/default/files/2022-10/22_1026_sec-frtf-interim-progress-report-september-2022-cleared.pdf [https://perma.cc/BTN2-WVSF] [hereinafter 2022 INTERIM REPORT].

⁸¹ 2022 INTERIM REPORT, *supra* note 80, at 8.

⁸² Olivares, *The Trauma of the Family Separation Policy*, *supra* note 79, at 4–6.

authority for immigration decisions.⁸³ Thus, when family law intersects with immigration enforcement, the law does not protect all children. Although the policies are driven through the federal government by executive powers and not driven by state family law, the paramount best interests of the child standard that should govern all law concerning families and children is ignored. Here, too, the pragmatic method falls short.

C. Race Is Not an Obstacle; Race Is the Foundation

In her discussion of race in the article, Huntington notes the difficulties facing families of color: “[W]hen a problem is understood to affect primarily families of color, race has trumped pragmatism.”⁸⁴ In *Social Justice and Family Court Reform*, Professors Susan Brooks and Dorothy Roberts state:

The fundamental problem with family courts is that they treat family problems according to a family’s race and class status. White middle-class and affluent families almost always come to family court voluntarily to handle private matters, even though they may be seeking a coercive resolution to a dispute. Poor and minority families, on the other hand, are disproportionately compelled to appear before family court judges against their will.⁸⁵

Through the two brief examples of the child welfare system and the targeting of migrant families and children, we see but two ways in which family law fails to treat families equally or fails to uniformly prioritize child and family well-being. In this final section, I briefly echo an important point made in critical legal scholarship, and specifically by the theorists focusing on race and ethnicity, class, and immigration status. By using the lens in which the experiences of Black, Latina/o/x, poor, and immigrant families are the center, rather than the exception, we see that family law is just another area of law in which these families’ lives and lived experiences are not valued or believed. Moreover, this is not because entrenched racism is an obstacle. This is not due to a failure of the systems. As systems founded on racism, classism, and xenophobia, the family law and justice systems operate exactly as intended. Therefore, for these families, the solution cannot only be about incorporating an evidence-based methodology — but must also include a deep investigation into and dismantling of these degraded foundations of American law.

Professor Derrick Bell explains that the eradication of racism in America is not a mere political question or endeavor because “all of our

⁸³ Olivares, *supra* note 73, at 342–43; see *Ms. L. v. U.S. Immigr. & Customs Enf’t*, 310 F. Supp. 3d 1133, 1146, 1148 (S.D. Cal. 2018).

⁸⁴ Huntington, *supra* note 1, at 1510.

⁸⁵ Susan L. Brooks & Dorothy E. Roberts, *Social Justice and Family Court Reform*, 40 FAM. CT. REV. 453, 453 (2002) (footnotes omitted) (citing Judith Areen, *Intervention Between Parent and Child: A Reappraisal of the State’s Role in Child Neglect and Abuse Cases*, 63 GEO. L.J. 887, 899 (1975)).

institutions of education and information — political and civic, religious and creative — either knowingly or unknowingly ‘provide the public rationale to justify, explain, legitimize, or tolerate racism.’”⁸⁶ Crenshaw writes that we must be wary of efforts to minimize the rootedness of racism in what she deems a “post-racial pragmatism,” in which under the banner of purported colorblindness, the “pragmatist may be agnostic about the conservative erasure of race as a contemporary phenomenon but may still march under the same premise that significant progress can be made without race consciousness.”⁸⁷ Thus, if the aim is to assist all families, attempting to advocate around or over the racist foundations of our institutions is a fruitless endeavor.

But a deep exploration of Critical Race Studies, Latina/o/x Critical Studies, and/or Critical Legal Studies is left to the distinguished scholars of those fields. The rich body of critical race and theory scholarship challenges lawyers, advocates, and teachers to reimagine the way in which we use, teach, and confront the law by acknowledging that the American legal system depends on the marginalization of certain populations to uphold the principles of white supremacy. It is in this context that I assert that a seemingly practical, evidence-based approach does not encompass marginalized families.

When marginalized families benefit from a political or legal methodology, it is often because their interests happen to align with the interests of the majority.⁸⁸ Further, even though families of color may benefit from the programs and policies described in *Pragmatic Family Law*, like the Earned Income Tax Credit, they are overrepresented because systems operate to keep such families impoverished and in the lower strata of income earners. In the recent report researched and authored by Human Rights Watch and the ACLU, the authors provide data showing that “Black children were more than three times as likely to be living in poverty as white children. The wealth gap between Black and white

⁸⁶ DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE 156 (1989) (quoting Manning Marable, *Beyond the Race-Class Dilemma*, THE NATION, Apr. 11, 1981, at 428, 431); see also Roy L. Brooks, *Critical Race Theory: A Proposed Structure and Application to Federal Pleading*, 11 HARV. BLACKLETTER L.J. 85, 90 & n.26 (1994). In her excellent historical work on Critical Race Theory, Crenshaw describes Bell’s pioneering work to discount “post-racial” legal scholarship:

Bell’s work revealed how liberal, rights-oriented scholarship had been preoccupied with the task of reconciling racial equality with competing values such as federalism, free market economics, institutional stability, and vested expectations created in the belly of white supremacy, such as seniority. Bell sought to critique the liberal constitutional frame within which race scholarship was disciplined, uncovering the ways that these investments were not separate values to be balanced against the quest for racial equity but were themselves repositories of racial power.

Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1282 (2011) (footnote omitted).

⁸⁷ Crenshaw, *supra* note 86, at 1314.

⁸⁸ See DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM 7 (1992).

families in the U.S. was the same in 2016 as it was in 1968, and . . . it has increased since the start of the Covid-19 pandemic.”⁸⁹ The authors discuss the deep research regarding how the legacy of enslavement is perpetuated by generations of “policies and practices” that “have subjected Black families to residential segregation, housing discrimination, discriminatory exclusion from employment opportunities, and limitations to social benefits and safety nets.”⁹⁰ Therefore, although such assistance programs ultimately include families of color and poor families, the deeper issues of why these families are disproportionately represented are never unearthed, exposed, or resolved.

Finally, when critically examining proposed methodologies, we must recognize that superimposing a normative ideal onto communities of color or otherwise ostracized people succeeds only when the majority allows it and/or benefits from it. As Bell explains, interest convergence theory dictates: “When whites perceive that it will be profitable or at least cost-free to serve, hire, admit, or otherwise deal with blacks on a nondiscriminatory basis, they do so. When they fear — accurately or not — that there may be a loss, inconvenience, or upset to themselves or other whites, discriminatory conduct usually follows.”⁹¹ As he observes, progress toward racial equality remains elusive precisely because of the entrenched American foundation of white supremacy.⁹²

CONCLUSION

Pragmatic Family Law adds substantially to the family law literature, discussing the reach and limits of the pragmatic approach. Huntington notes, for example, that even when such evidence-based policymaking results in important changes to the law (like health care expansion, marriage equality, and nontraditional parenthood), there are still seemingly unmovable obstacles that remain to achieving broader protections — like universal health care, acceptance of polyamorous families, or robust and expansive support for LGBTQ people.⁹³ She persuasively demonstrates how family law’s strong foundations in family and child well-being have helped and can help advocates and policymakers to further embrace a pragmatic approach that already operates in some family law spheres and helps to depolarize divisive political issues.

To be sure, the shortcoming in embracing the approach is not just that it cannot fully account for the racism inherent in family law, which

⁸⁹ HUM. RTS. WATCH & ACLU, *supra* note 57, at 38.

⁹⁰ *Id.* at 38–39.

⁹¹ BELL, *supra* note 88, at 7.

⁹² DERRICK A. BELL, JR., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (“However, the fourteenth amendment, standing alone, will not authorize a judicial remedy providing effective racial equality for blacks where the remedy sought threatens the superior societal status of middle and upper class whites.”).

⁹³ Huntington, *supra* note 1, at 1561–62.

Huntington recognizes.⁹⁴ Instead, by centering the normative family experience, we miss the cornerstone question: what about families of color, immigrant families, and poor families? Their lived experiences, rooted in a heritage of marginalization and oppression designed to preserve the American status quo, are outside of the prescriptive family experiences. As Roberts states about the child welfare system's assault on families of color and poor families: "Family destruction has historically functioned as a chief instrument of group oppression in the United States."⁹⁵ As I state about the heinous practice of stripping children away from their fit parents at the U.S. border: "Policies shifting away from family unity and towards an inhumane treatment of immigrant families are anchored in the political rhetoric that normalizes the oppression of immigrants."⁹⁶ And, as I and myriad family law practitioners experience every day in family courts around the country, the family court system continues to treat families from marginalized communities differently than the traditional normative family. Therefore, while evidence-based, individual decisionmaking is best for family and child well-being and should be operationalized, it is critical that we understand its deep limitations for many American families.

⁹⁴ In discussing certain disparate effects of law and policy on families of color, she writes: [P]ragmatism in family law should work for all families, but race, racism, and deep divides about whether the United States should do more to address racial inequity are fundamental cleavages in the United States. This makes it significantly harder to use the pragmatic method to address the root causes of racial inequity in family law.

Id. at 1569.

⁹⁵ DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES — AND HOW ABOLITION CAN BUILD A SAFER WORLD* 87 (2022).

⁹⁶ Olivares, *supra* note 73, at 287.



Shared Parenting and Family Violence

- Don Hubin, Ph.D.

Introduction: The Allegations Against Shared Parenting

Shared parenting, an arrangement in which separated parents both retain decision making responsibility for their children and significantly share parenting time, is on the rise both in the U.S. and around the world. Legislatures are increasingly promoting shared parenting, sometimes by the creation of legal presumptions that equal shared parenting, where parent time is shared in a substantially equal way, is in children's best interest. Critics allege that such presumptions put women and children at risk of abuse.

The allegations that the practice of shared parenting, including of course *equal* shared parenting, and a legal presumption in favor of it, puts parents at risk of intimate partner violence and children at risk of maltreatment are serious. They deserve to be evaluated in light of the best evidence available. This article provides that evaluation.

Domestic Violence: Forms and Prevalence

The term 'domestic violence' is often understood as a synonym for 'intimate partner violence'. I will use the term more broadly. I define 'domestic violence' as referring to violence between people having an intimate, familial, or co-residential relationship, either at the time of the violence or prior to it, where the relationship is essentially related to the violence. So understood, it includes not only intimate partner violence but child abuse by a parent or

step-parent, violence between siblings, elder abuse by a relative, and more. Here, we'll focus on intimate partner violence and child abuse and neglect by a parent or step-parent.

Child Maltreatment

Child maltreatment includes both abuse and neglect. The most reliable data we have on the prevalence of child abuse comes from the U.S. Department of Health & Human Services, Administration for Children and Families, Children's Bureau, which publishes detailed data in its annual *Child Maltreatment* report.

Child Maltreatment 2022, the most recent available, reports that 558,899 children were victims of child maltreatment in that year, approximately 7.7 per 100,000 children. The report indicates that 89% of child maltreatment is perpetrated by parents—either one parent acting alone, both parents acting together, or a parent acting with a nonparent. Approximately 20% of this maltreatment is perpetrated by two parents acting together. About 25% is perpetrated by fathers acting alone or with a nonparent and more than 40% is perpetrated by mothers acting alone or with a nonparent (Children's Bureau, 2024, p. 46, Table 3-9).

Table 3–9 Victims by Relationship to Their Perpetrators, 2022			
Perpetrator	Victims	Reported Relationships	Reported Relationships Percent
PARENT	-	-	-
Father Only	-	125,489	24.5
Father and Nonparent	-	5,397	1.1
Mother Only	-	191,450	37.4
Mother and Nonparent	-	29,204	5.7
Two Parents of known sex	-	98,538	19.2
Three Parents of known sex	-	619	0.1
Two Parents of known sex and Nonparent	-	4,019	0.8
One or more Parents of Unknown Sex	-	1,162	0.2
Total Parents	-	455,878	89.0
NONPARENT	-	-	-
Child Daycare Provider(s)	-	2,091	0.4
Foster Parent(s)	-	1,754	0.3
Friend(s) and Neighbor(s)	-	3,958	0.8
Group Home and Residential Facility Staff	-	924	0.2
Legal Guardian(s)	-	1,731	0.3
Other Professional(s)	-	1,277	0.2
Relative(s)	-	29,919	5.8
Unmarried Partner(s) of Parent	-	19,196	3.7
Other(s)	-	17,489	3.4
More Than One Nonparental Perpetrator	-	2,318	0.5
Total Nonparents	-	80,657	15.8
TOTAL UNKNOWN	-	15,633	3.1
National	512,077	552,168	107.8
<i>Based on data from 48 states.</i>			

Figure 1. HHS Data on Child Maltreatment Victims by Relationship to Their Perpetrator

The most extreme form of child abuse is the murder of a child. In 2022, HHS reports that there were 1,955 instances of child murders, roughly 2.73 per 100,000 children. Almost 82% of child murders are perpetrated by parents acting together, alone, or with a nonparent. Nearly 25% of these are cases where the parents acted together. In approximately 16% of cases, the perpetrator was the father, either acting alone or with a nonparent. And in just over 40% of the cases, the perpetrator was the mother, acting alone or with a nonparent (Children’s Bureau, 2024, p. 61, Table 4-4).

Table 4–4 Child Fatalities by Relationship to Their Perpetrators, 2022		
Perpetrator	Child Fatalities by Reported Relationships	Reported Relationships Percent
PARENT	-	-
Father Only	226	14.5
Father and Nonparent	21	1.3
Mother Only	473	30.2
Mother and Nonparent	161	10.3
Two Parents of Known Sex	363	23.2
Three Parents of Known Sex	2	0.1
Two Parents of Known Sex and Nonparent	26	1.7
One or More Parents of Unknown Sex	8	0.5
Total Parents	1,280	81.8
NONPARENT	-	-
Child Daycare Provider(s)	21	1.3
Foster Parent(s)	6	0.4
Friend(s) or Neighbor(s)	4	0.3
Group Home and Residential Facility Staff	4	0.3
Legal Guardian(s)	7	0.4
Other Professional(s)	2	0.1
Relative(s)	73	4.7
Unmarried Partner(s) of Parent	17	1.1
Other(s)	53	3.4
More Than One Nonparental Perpetrator	20	1.3
Total Nonparents	207	13.2
UNKNOWN	77	4.9
National	1,564	100.0
<i>Based on data from 43 states.</i>		

Figure 2. HHS Data on Child Fatalities by Relationship to Their Perpetrator

One inescapable conclusion from these statistics, which have proven to be stable over the years, is this: we cannot determine who is a “safe parent” from the gender of the parent. Such a determination requires a determination based on the individual case without any preconceptions about whether mothers or fathers present more significant threats to their children.

Intimate Partner Violence

Intimate partner violence (IPV) includes violence between current or former spouses, unmarried partners, and other couples involved in an intimate relationship. A common misconception about IPV is that it is primarily, or almost exclusively, perpetrated by men against women as a mechanism of coercive control. This leads to a highly gendered conception of IPV

as patriarchal domination. As two researchers put it, “[w]e use gender-specific terms ... because battering is not a gender neutral issue” (Pence & Paymar, 1993, p. 5).

While the image of a brutalizing man intimidating, assaulting, and battering a cowering woman is salient among our stereotypes, this form of IPV is not the most prevalent (see, for example, Michalski, 2005). And, the patriarchal domination conception of IPV fails to explain IPV in same-sex relationships. According to statistics from the Centers for Disease Control and Prevention (CDC), lesbian women experience all forms of IPV at higher rates than do heterosexual women and gay men experience most forms of IPV at rates higher than heterosexual women (Centers for Disease Control and Prevention, 2023). The patriarchal domination model also doesn’t explain IPV perpetrated by women against male partners. While the CDC does not currently report the sex of the perpetrator for IPV victimization, it does report that “prior findings have indicated that most female victims [97.1%] report male perpetrators, and most male victims [96.9%] report female perpetrators.” This allows us to make a reasonable estimate of the sex of perpetrators based on the sex of the victims. Combining the frequency of victimization by sex with previous data on the frequency that the perpetrator was of the opposite sex, we find that expectations of experiencing IPV from an opposite sex partner both in a person’s lifetime and in the previous 12 months is somewhat, but not significantly, higher for women than for men. By these calculations, 45.9% of women and 42.9% of men will experience IPV from an opposite sex perpetrator in their lifetime and 7.3% of women and 6.5% of men will have experienced it in the previous 12 months. These numbers are shockingly high. But they do not show the extreme gender disparity that the patriarchal domination model of IPV implies.

“[S]ituational couple violence (a) is far and away the most common form of intimate partner violence, (b) is perpetrated about equally by men and women, and (c) can be extremely

consequential” (Johnson, 2011, p. 291). Often the violence is mutual, with no primary aggressor. When it is one-sided in a heterosexual relationship, the woman is about as likely to be the perpetrator as the man. But it is important to underscore that women are more likely to be seriously injured even in instances of mutual IPV.

Shared Parenting and Child Maltreatment: The Allegation

A 2023 headline on *The Guardian*’s website read: “US child killings have risen rapidly – why are more states pushing for joint custody laws?” (Starr, 2023). A publication from the National Family Violence Law Center and the Domestic Violence Legal Empowerment and Appeals Project said: “[T]he growing body of evidence that children are being subjected to unsafe custody/visitation arrangements by family courts indicates that a presumption of 50-50 custody is likely to be harmful to the best interests of many children” (National Family Violence Law Center and Domestic Violence Legal Empowerment and Appeals Project, 2023).

In short, the allegation is that presumptions of equal parenting time when parents divorce put children at risk.

Shared Parenting and Child Maltreatment: The Evidence

Given how horrible child maltreatment—including, of course, child murder—is, this is a serious allegation and as such needs to be evaluated based on the best evidence available. Unfortunately, the allegations are supported only by anecdotes—by the retelling of truly horrible stories that are, to be sure, emotionally moving. The story on *The Guardian*’s website, for example, focuses on a heart-wrenching story of a father who was awarded equal parenting time and killed his two children. Anecdotes are, though, of little probative value. One doesn’t have to look hard to find stories of mothers who have murdered their children. (See, for example, this

collection: ABC News, 2010). Nor is it difficult to find stories of parents, separated or together, of either sex who have murdered their child in circumstances other than a shared parenting arrangement. Courts have a weighty duty to protect children from dangerous parents. As we've seen though, a parent's sex does not determine whether the parent is a safe parent. If a court fails to identify a dangerous parent, restricting the children's time with that parent to the every-other-weekend "visitation" time, which is a *de facto* and sometimes a *de jure* presumptive minimum, doesn't protect the children.

Setting anecdotes aside, what does the evidence show about presumptions of equal parenting time and child safety? Some evidence comes from a comparison of child maltreatment rates in Ohio and Kentucky. In 2018, National Parents Organization led the effort to enact into Kentucky law the nation's first explicit presumption of equal parenting time when parents divorce. Ohio has no state-wide parenting time presumption and most counties use an every-other-weekend-and-one-evening-a-week schedule. These two neighboring states had dramatically different changes in child maltreatment rates.

Consider first the number of children who received an investigation or alternative response, an intervention by Child Protective Services. In Ohio from 2018 to 2022, the latest year for which we have data, this number fell from 110,550 to 102,858, a decline of just under 7%. In the same period, the number of children who received an investigation or alternative response in Kentucky fell from 83,902 to 52,816, *a decline of over 37%! (Children's Bureau, 2024, p. 30, Table 3-1)*

Children Receiving an Investigation or Alternative Response to Allegation of Child Maltreatment, 2018-2022, Kentucky and Ohio

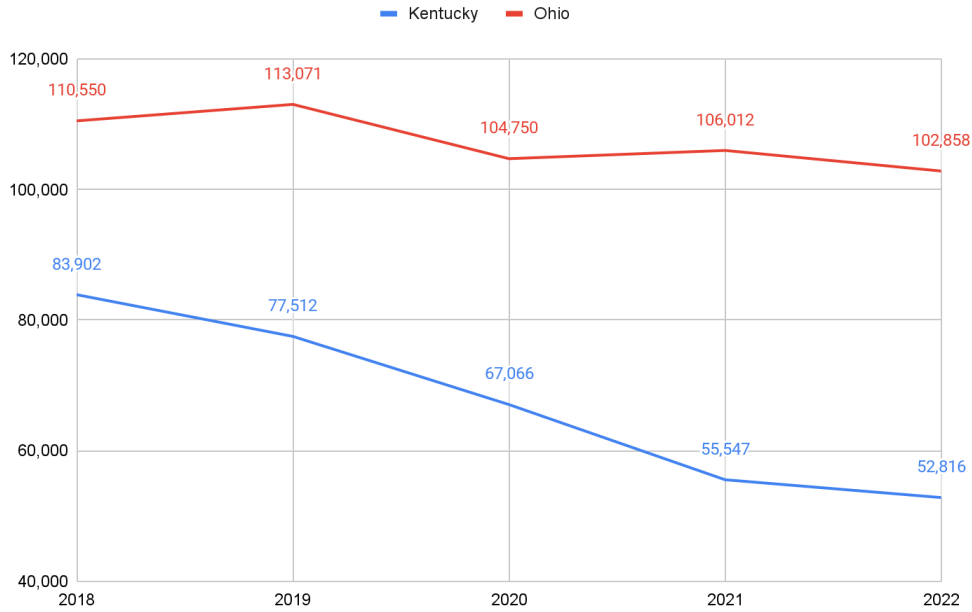


Figure 3. Children Receiving an investigation or Alternative Response
in Kentucky & Ohio, 2018-2022

State	2018	2019	2020	2021	2022	Percent Change, 2018-2022
Kentucky	83902	77512	67066	55547	52816	-37.05%
Ohio	110550	113071	104750	106012	102858	-6.96%

Table 1. Children Receiving an investigation or Alternative Response
in Kentucky & Ohio, 2018-2022

Turning from the statistics on the number of children receiving investigations or alternative responses to the number of child victims, we see a similar story. Between 2018 and 2022, the rate of child victims in Ohio fell by 10.8%. That sounds terrific until one notes that, during the same period, the rate of child victims in Kentucky fell by 48%! (Children’s Bureau, 2024, p. 34, Table 3-3)

Child Victims, 2018-2022, Kentucky and Ohio

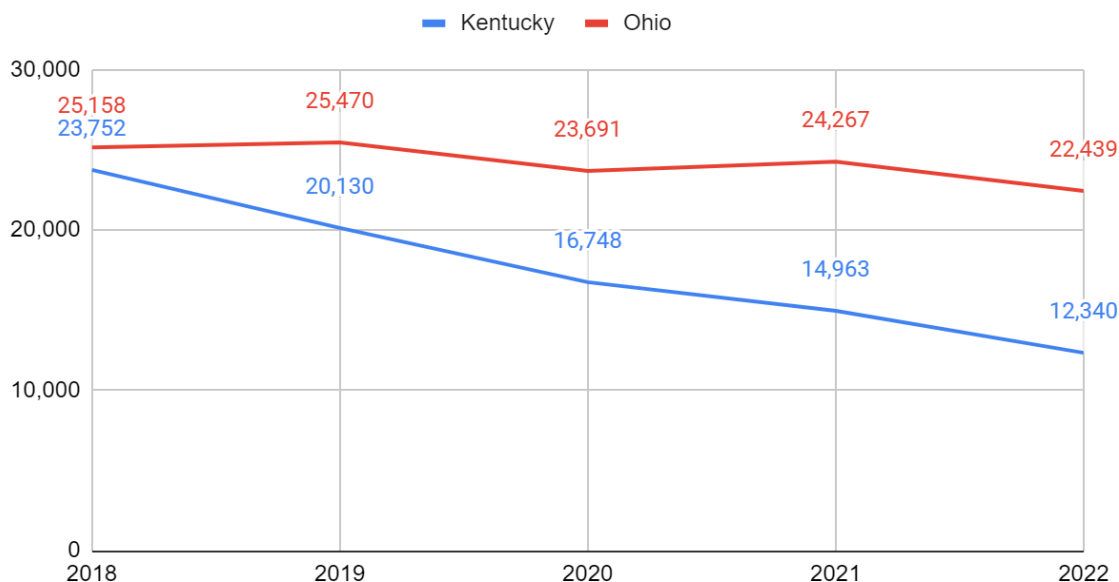


Figure 4. Child Victims in Kentucky & Ohio, 2018 - 2022

State	2018	2019	2020	2021	2022	Percent Change, 2018-2022
Kentucky	23,752	20,130	16,748	14,963	12,340	-48.05%
Ohio	25,158	25,470	23,691	24,267	22,439	-10.81%

Table 2. Child Victims in Kentucky & Ohio, 2018 - 2022

We also have evidence from within Ohio. While Ohio does not have a statewide presumption concerning parenting time, state law does require each county court to have a local parenting time rule. National Parents Organization has evaluated and graded each of Ohio’s 88 counties on their local parenting time rule, awarding ‘A’s to those that presumed equal or nearly equal parenting time and grades in the ‘D’ range for those counties that had presumptions of the every-other-weekend-and-one-evening-a-week sort. To determine the effect presumptions of equal parenting time have on child maltreatment, NPO reviewed data from the Annie E. Casey Kids Count project and correlated these data with the parenting time rules in Ohio’s counties.

What the data showed was that the counties that had adopted presumptions of equal shared parenting saw lower and declining rates of child maltreatment compared to the state’s overall rates and, even more so, compared with those counties that received ‘D’ in NPO’s evaluation.

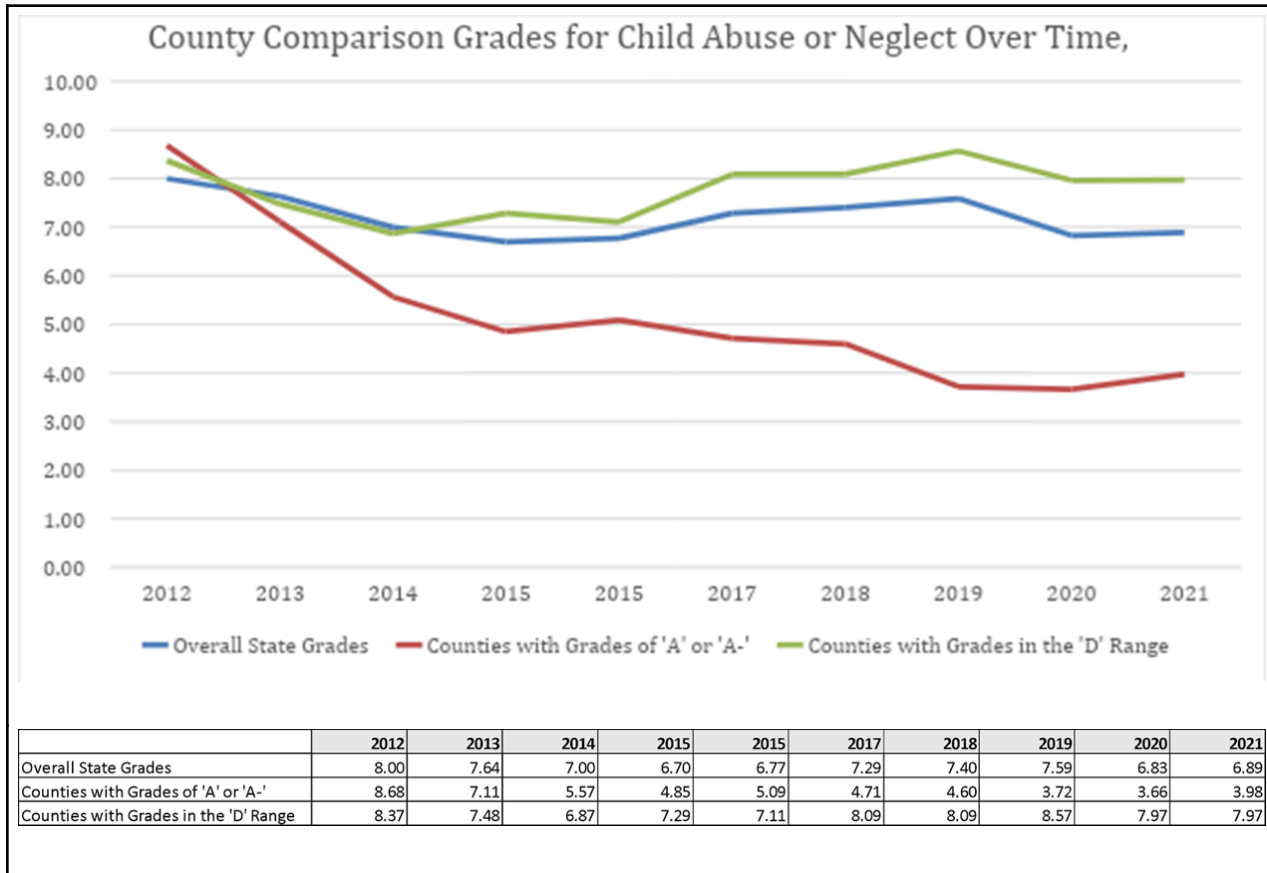


Figure 5. Child Abuse and Neglect Rates in Ohio Counties with Presumptions of Equal Parenting Time vs. Counties with Limited Parenting Time Schedules vs. Statewide Rates

At this point, we are aware of absolutely *no* statistical data indicating an increase in child maltreatment rates in regions with presumptions of equal shared parenting, either in comparison with previous rates or with similar regions without such presumptions. More research is warranted, of course. And it would be especially helpful to have a better understanding of *why* child maltreatment rates drop in those areas where there is a presumption of equal parenting. At this point, we’re left to speculate on the reasons for this. But, whatever the explanation might be,

the available evidence shows a strong correlation between presumptions of equal parenting time and *lower* incidences of child maltreatment.

Shared Parenting and Intimate Partner Violence: The Allegation

Critics of presumptions of equal parenting time also allege that such presumptions put parents at increased risk of intimate partner violence. As with the allegation concerning child murders and maltreatment, this concern is typically supported only with anecdotal evidence.

Sometimes the allegation that presumptions of joint physical custody put victims of IPV at risk rely not on anecdotal cases but on speculations. For example, The Advocates for Human Rights says: “A presumption of JPC *may* also give unfair advantage to batterer-parents in custody negotiations” (Advocates for Human Rights, 2012, emphasis added). It is equally appropriate to state, and similarly without any evidence, that a presumption of JPC *may* reduce the likelihood that a parent will become abusive. ‘May’s are cheap and difficult to refute. But, of course, what matters is not what *may* happen but what *does* happen. And the evidence tells another story about the relationship between presumptions of joint physical custody and the prevalence of IPV.

Shared Parenting and Intimate Partner Violence: The Evidence

When we turn from heartrending anecdotes and conjectures to evidence concerning IPV and presumptions of shared parenting, the story appears to be quite different. Again, some evidence comes from Kentucky. Writer Emma Johnson requested data from the Kentucky Administrative Office of the Courts cross-referencing domestic relations cases with domestic violence cases. The data, going back to 2010, shows a very significant and gratifying decline in such cases over the entire period. But the decline between 2010 and 2017 continued—and,

indeed, accelerated—in the period between 2017 and 2022 (Department of Information and Technology Services, Research and Statistics, 2023, p3).

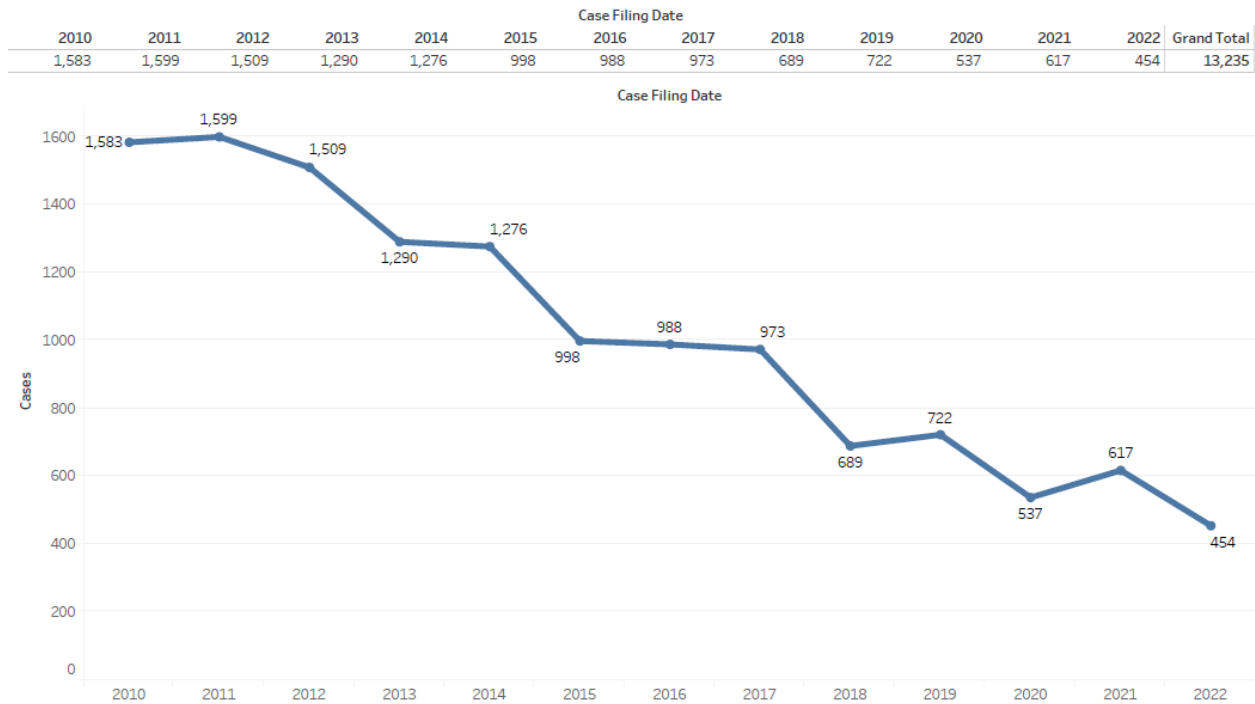


Figure 6. Kentucky Circuit Civil Domestic & Family Cases Filed 1/1/2010 - 12/31/2022
Statewide Cross Referenced With Domestic Violence Cases

There is even more compelling evidence from Spain, which provides a “natural experiment” about the connection between shared parenting and domestic violence. In Spain, between 2009 and 2011, five regions passed custody reforms that increased joint physical custody four-fold in just five years. Researchers compared the rates of intimate partner violence (IPV) in these regions before and after the change and with the rates of IPV in those regions that did not enact such reforms (Fernández-Kranz *et al.*, 2020).

The results of this “natural experiment” were stunning. The researchers found that the presumption of shared physical custody “led to a *large and significant decrease in intimate partner violence*, with the largest effects among couples in which the mother was more likely to

seek sole custody before the policy change” (p. 1, emphasis added). The policy “*significantly decreased domestic violence, with IPV falling by almost 50%*” (p. 3, emphasis added). And they also found “*evidence of a significant reduction of the number of female homicides committed by intimate partners after the joint custody reform*” (p. 3, emphasis added).

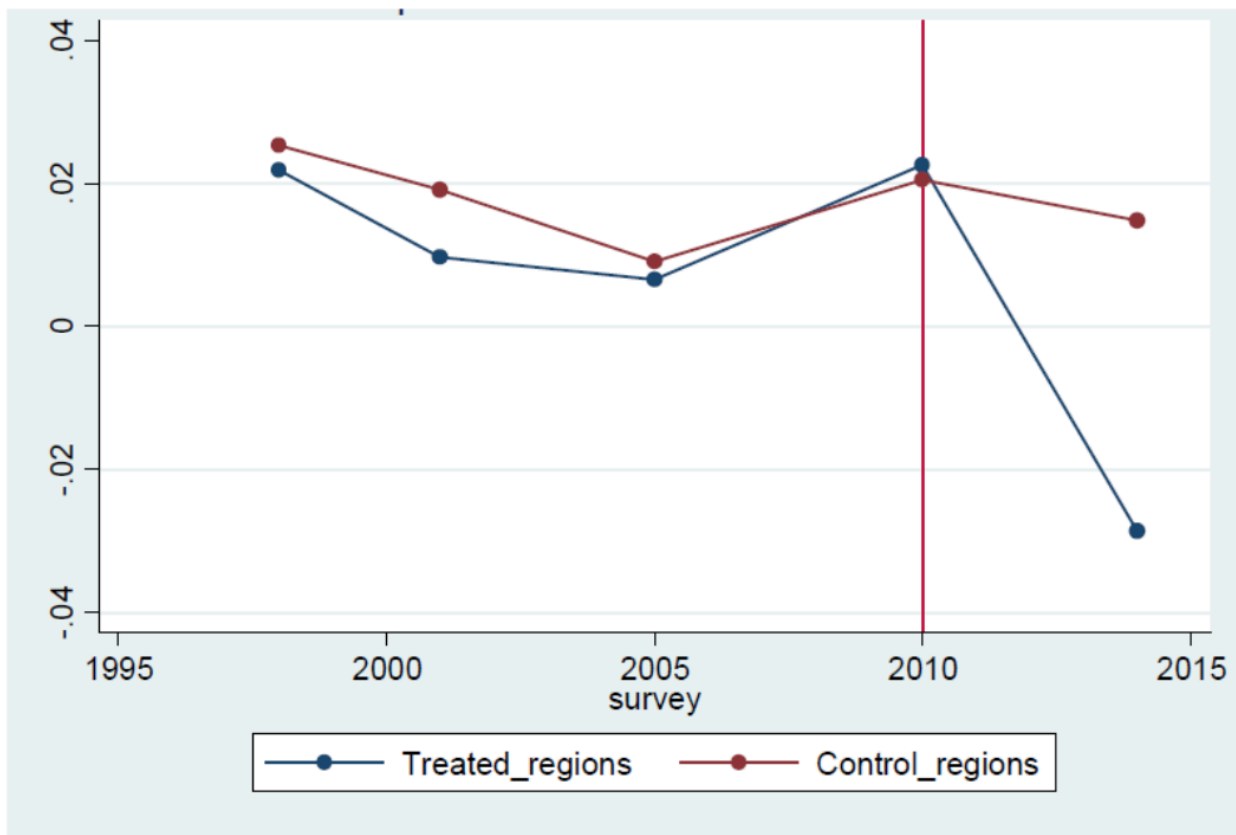


Figure 7. Difference in Non-extreme Violence when Minors are and are not Present:

Treated (Shared Parenting) versus Control (Non-shared Parenting) Regions

As with the issue of child maltreatment, it is important to emphasize that more research is desirable. But there have been no cases in which presumptions of equal parenting time have been shown to result in higher rates of IPV. The evidence we have now all points in the same direction. Presumptions of equal shared parenting when parents divorce is not part of the *problem*; it’s part of the *solution*!

Explaining the Effect of Shared Parenting Presumptions on Domestic Violence

While further research is indicated to determine the reasons that presumptions of shared physical custody are correlated with lower incidences of child maltreatment and intimate partner violence, there is a very plausible explanatory hypothesis for at least the second of the two correlations. It is given voice by Dr. Edward Kruk:

“Winner-take-all” adversarial processes and sole custody or primary residence orders are strongly associated with exacerbation or creation of parental conflict. Hawthorne and Lennings found that limiting fathers’ involvement in children’s lives via sole maternal custody judgments was correlated with their reported level of subsequent hostility toward their ex-wives. Inter-parental conflict decreases over time in shared custody arrangements, and increases in sole custody arrangements; inter-parental cooperation increases over time in shared custody arrangements, and decreases in sole custody arrangements. Fully half of first-time family violence occurs after separation, within the context of the adversarial “winner-take-all” sole custody system. This is no surprise, given the high stakes involved; when primary parent-child relationships are threatened, the risk of violence rises dramatically. When neither parent is threatened by the loss of his or her children, conflict diminishes. The culture of animosity created by the sole custody system seems tailor-made to produce the worst possible outcomes when there are two capable parents who wish to continue as primary caregivers, cannot agree on a parenting plan, and are forced to disparage each other within the adversarial system in an effort to simply maintain their role as parents. (Kruk, 2012, p. 37, citations omitted)

In 1972, in a message for the Celebration of the Day of Peace, Pope Paul VI said, “if you want peace, work for justice.” The message here is related. If we want peace between divorced and separated parents, we must work to protect the most vital interests of both of the parents: their cherished relationship with their children. But the importance of protecting these essential interests should not eclipse the most important reason for establishing rebuttable presumptions of equal shared parenting: the benefits to children. More than 40 years of research has established that the practice of shared parenting benefits most children, even when the parents are in (nonviolent) conflict (Bauserman, R., 2002; Nielsen, 2018, Vowels, *et al.*, 2023). And, recent research has shown that *the existence of a legal presumption of equal shared parenting* promotes the interests of children in the overwhelming majority of cases (Fabricius, 2019).

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