Abstract

Based on a multifactorial exploration of various factors that may influence strained parent-child relationships, we introduce a new trauma-informed practice approach. In this brief note, we highlight the need to consider trauma histories and unresolved trauma experiences when assessing and intervening in cases of strained parent-child relationships. The purpose of considering trauma is not to replace existing approaches for working with children who resist or refuse a parent post separation, but rather to enhance our understanding of the various factors that may be influencing the strain.

Introduction

Due to the complexity of resist and refusal dynamics, working with strained family relationships is perhaps one of the most challenging populations to engage in services (Saini, Johnston, Fidler & Bala, 2016). In response to these highly volatile situations, several interventions have been developed to mitigate the negative impact of resist and refusal cases (Baker, Burkhard & Albertson-Kelly, 2012; Gardner, 2001; Kumar, 2003; Reay, 2007; Sullivan, Ward, & Deutsch, 2010; Toren, Bregman, Zohar-Reich, Ben-Amitay, Wolmer & Laor, 2013; Warshak, 2010).

There are many reasons why a child may resist or refuse contact with a parent, including: developmental factors such as separation anxiety.

Night Shifts: Revisiting Restrictions on Children’s Overnights with Separated Parents

by Richard A. Warshak, Ph.D.

A divorcing couple consulted two experts about a parenting plan for their young child. One expert, prioritizing continuity of care, advised that the child who is accustomed to both parents’ daily care, and has a relationship with both parents, should continue seeing both parents frequently, including overnights. The other expert believed that the more time the baby is away from the mother, the greater the risk to the child’s development. Thus, the father should reduce the frequency and amount of his

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for younger children; alignments with a parent; gender preferences or affinity for a parent; a child reacting to parental conflict and/or exposure to intimate partner violence; or a child refusing or resisting contact with a parent due to the parent’s conduct (Fidler, Bala & Saini, 2013). Each of these strained parent-child problems can also be influenced by a complex interaction of other factors that overlap and contribute to the strained relationships.

Trauma provides another lens for considering the complexity of strained parent-child relationships (Drozd, Saini & Vellucci-Cook, in press). Exploring the potential impact of trauma for resist and refusal cases should be considered as an enhancement model to current approaches. Careful screening and assessment of trauma provides one of the multiple hypotheses that should be considered when investigating the various pathways that lead to or influence strained parent-child relationships.

Not all individuals who experience a traumatic event will continue to experience symptoms of trauma. Several protective factors have been found to buffer the negative effects of trauma, including a positive support system and stable mental health status prior to the traumatic event (Carlson, Palmieri, Dalenberg, Macia & Spain, 2016).

Both children and parents can be impacted by unresolved trauma (Lieberman, Ghosh Ippen, Van Horn, 2005). Parents with their own histories of childhood trauma can feel less competent in their parenting and can experience parenting as more stressful (Ruscio, 2001). In addition, studies have suggested that child trauma exposure can cause parental post-traumatic distress, even when parents were not directly exposed to the event (Schwartz, Dohrenwend, Levav, 1994).

When parents have also experienced interpersonal trauma, their ability to establish and maintain an empathic relationship with the child may be impaired. They may also have a decreased capacity to recognize danger or stress and, in some cases, the child may take on the role of caregiver (Groves, 2002). In these situations, the parent’s ability to listen to the child’s distress may be limited due to the need to protect him/herself from feelings of vulnerability and trauma (Groves, 2002).

Given the high rate of trauma exposure in the general population, and that separation and divorce can be considered adverse experiences, it is important for family law professionals to understand the history of trauma as a mental health concern and to consider best methods to integrate evidence-informed interventions to best meet the needs of children and families experiencing unresolved traumas (Drozd, et al., in press).

Trauma Screening

The need to screen for intimate partner violence (IPV) in every case has been well established (see AFCC IPV Guidelines, 2016), but less attention has been given to screen for trauma, which typically consists of determining whether a traumatic event has occurred and whether there remains unresolved trauma-related symptoms (Drozd, et al., in press). The most important domains to screen among children and parents with trauma histories include: trauma-related symptoms; depressive or dissociative symptoms; sleep disturbances, and intrusive

A Trauma-Informed Approach to Assess and Intervene in Resist/Refusal Cases

The attention to traumatic experiences has been amplified in recent decades with increased attention to the long-term health and mental health consequences of adverse childhood experiences (ACEs), such as multiple types of maltreatment and neglect; violence between parents; household dysfunctions such as alcohol, substance abuse and high conflict separation and divorce; and peer and community violence (Brown, Anda, Tiemeier, Felitti & Edwards, 2009; Felitti, Anda, Nordenberg, Williamson, Spitz, Edwards, Koss, & Marks, 1998). Felitti and colleagues (1998) have found that lifetime effects of ACEs include: neurological developmental delays; suicide, increased risk of heart disease; cancer; strokes; chronic bronchitis; respiratory problems; diabetes; increased fractures and hepatitis.

A traumatic event is, “...a natural emotional reaction to terrible experiences that involve actual or threatened serious harm to oneself or others,” (CAMH, 2012). Examples of such experiences can be, but are not limited to, rape, torture, exposure to intimate partner violence, being held captive, fighting and/or living in a war zone, car accident, and natural disasters. The event is generally considered to be well beyond basic human experience; therefore, it has the tendency to cause extensive distress to most individuals (Khalily, Wota, & Hallahan, 2012).

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experiences; past and present mental disorders, severity or characteristics of a specific trauma type; substance abuse; social support and coping styles; availability of resources; risks for self-harm, suicide, and violence and overall health screening (Center for Behavioral Health Statistics and Quality, 2015).

Trauma screening tools should be used to quickly determine whether a child has experienced trauma, displays symptoms related to trauma exposure, and/or should be referred for a comprehensive trauma-informed mental health assessment. Some examples of trauma screening tools for children and adolescents include: 1) Juvenile Victimization Questionnaire (JVQ: Finkelhor, Ormrod, Turner & Hamby, 2005); 2) Traumatic Events Screening Inventory (TESI: Ford, Racusin, Ellis, Daviss, Reiser, Fleischer, et al. 2000); and 3) Trauma Symptom Checklist for Children (TSCC: Briere, Johnson, Bissada, Samon, Crouch, Gil, Hanson, & Ernst, 2011).

Assessment of Children’s Resistance and Rejection

When a child has been screened to have experienced a potential traumatic event, history or the experience of trauma symptoms, the next step should be to complete a comprehensive trauma assessment to determine and define presenting struggles and to determine the best treatment approach (Drozd, Saini & Vellucci-Cook, in press). Unlike trauma screening that considers only the potential presence of trauma, a comprehensive trauma assessment determines the nature and extent of the trauma and its potential impact on coping, parent-child relationships and parenting plan considerations. Trauma assessment should only be completed by mental health professionals with qualifications and experiences to assess the nature and severity of trauma related symptoms and to develop treatment plans targeted to treat the trauma symptoms (Drozd, et al., in press). Qualifications for conducting trauma assessments typically include advanced degrees, licensing or certification, and special training in administration, scoring, and interpretation of specific assessment instruments and interviews (Center for Substance Abuse Treatment, 2014).

A trauma assessment typically delves into a client’s past and current experiences, psychosocial and cultural history, and assets and resources (Center for Substance Abuse Treatment, 2014). Assessment protocols typically involve more than a single session to complete, and usually use multiple data sources to obtain the necessary clinical information, including self-assessment tools, past and present clinical and medical records, structured clinical interviews, assessment measures, and collateral information from significant others, other behavioral health professionals, and agencies (Drozd, et al., in press).

The comprehensive assessment should also include an analysis of the various factors that may impede or facilitate trauma recovery, including any parent-child contact problems.

To consider all potential factors that may be influencing a strained parent-child relationship (including the potential of trauma related factors), it is best to use a decision tree (e.g. Drozd & Olesen, 2004; Drozd, Olesen, & Saini, 2013) for brainstorming the potential presence of factors and the potential relationship among them (see Figure 1).

![Figure 1: Resist-Refuse Decision Tree (Drozd, Olesen & Saini, 2013)](image-url)
Considerations for Treatment

It is critical to differentiate between stressful situations and responses to stress and a trauma response that will require different interventions and/or timing of procedures (Drozd, Saini & Vellucci-Cook, in press). Post-traumatic stress requires intervention as early as possible, as such symptoms, if not treated, could have a devastating impact on the present and future lives of children (Keyser, Seelau, & Kahn, 2000). This is particularly true for children who lack social support in their natural environment. Parents play an important role in helping children cope with fears and anxiety, but they do not always recognize the children’s symptoms or are unable to listen to their fears, sometimes because they too are traumatized (Marans, 2005) and/or they are too caught up in their own conflicts.

In cases where a child has been assessed with trauma symptoms, most interventions include both children and parents (e.g. joint, parallel, sequential) (Drozd, Saini & Vellucci-Cook, in press). The accumulated evidence suggests that it is important to include parents in the treatment for trauma for children, especially due to the connections of intergenerational traumas. Deblinger, Mannarino, Cohen, Runyon and Steer (2011) found that treating parents resulted in decreased behavioral and depressive symptoms in children. Cohen and Mannarino (1996) found that parents’ emotional reaction to trauma was the second strongest predictor of treatment outcome, after treatment type.

The National Child Traumatic Stress Network (NCTSN) provides a list of evidence-based treatments, including the treatment developer, the intended age group, the level of evidence, and a brief description of the focus and design of the intervention.

Shipman and Taussig (2009) note that evidence-based trauma treatment protocols are preferred modalities because these are empirically grounded based on well-designed randomized control trials using outcomes that are connected to the specific treatment outcomes. Many of these approaches use specific strategies such as trauma narratives, cognitive reframing, and emotion regulation skills. In addition, trauma-specific treatments often require the active participation of parents.

In cases where trauma has been found to be impacting and/or influencing the strained parent-child relationship, early intervention to first address the trauma related symptoms should be initiated before implementing a plan to restore the parent-child relationship. Early intervention is critical so that the child and the parent may be better informed about the influence of trauma on their parent-child relationship. Early intervention is also critical to prevent prolonged exposure to the trauma symptoms.

While contracting with children and parents about the treatment plan, it is important to make clear expectations about the frequency of meetings, the timeframes for achieving short and long term goals and the expectations for family members to participate in the various parts of therapy (trauma treatment, psychoeducation, reunification, individual coping skills, etc). Setting a pace of therapy (e.g. weekly meetings) early in the process can help prepare the family members for the expectations required of them to engage in the various therapy components (Saini, 2017). In cases of strained parent-child relationships, it is typical that family members do not initially agree with the pace of the proposed treatment plan (e.g. a parent who wants daily contact with the therapist to improve the relationship with their child; a parent who would rather engage in treatment minimally or not at all, because he/she does not see the value of the child having a relationship with the other parent; a child who wants to attend sessions with the therapist but not in the presence of the parents). Conflicts about the pace and process of therapy are better addressed at the onset to create and maintain clear expectations for the time and commitment required by each family member.

Treatment should include building coping skills (Greenberg and Gould, 2001; Greenberg, Gould, Gould-Saltman, & Stahl, 2003; Greenberg, Fidler & Saini, in press) to address: desensitization and empowerment; emotional regulation; stress tolerance (hyper vs. hypo arousal); fight or flight responses; accurate informational processing; perceptions, interpretations, attributions; social skills and competence including accurate reading of social cues; effect of trauma on memory and perceptions; reframing and reclaiming; integrating parent and child (intensive structured family work/play).

As Garber (2015) points out, the child may have developed an anxious and phobic-like response to the rejected parent when trauma histories remain unresolved. Like treating most phobias, using systematic desensitization and cognitive behavioral therapy may assist to repair strained parent-child relationships.
The Structure and Support of the Courts

AFCC Guidelines for Court-Involved Therapy (2010), notes that therapists working with families involved in child custody disputes should avoid serving simultaneously in multiple roles, particularly if these create a conflict of interest. For example, the therapist should not serve simultaneously as the therapist to assist with the strained parent-child relationship while also in the role of forensic evaluator, mediator, arbitrator, etc. to make recommendations and/or decisions about parenting plan issues (e.g. determinations about access).

Working with children and parents in the context of unresolved trauma and strained parent-child relationships will require a team approach (e.g. trauma therapist, reunification therapist, the Court, etc.) working in collaboration. Developing a comprehensive treatment plan to address the various components of treatment allows for each member of the team to work within professional boundaries and assigned roles.

When step-up parenting plans are part of the plan (see Pruett, Deutsch & Drozd), it would be contrary to the AFCC Guidelines for Court-Involved Therapy (2010) for the therapist to determine the parenting time. Doing so would involve the therapist assuming a dual role and can compromise therapy. In these cases, it is critical to have the structure of the Court (or arbitration) to stipulate the parenting plan and for the therapist to work within the parameters set by the Court (or arbitrator) to re-establish parent-child relationships.

**Conclusion**

Treatment planning is critical for working with families with trauma histories so that clear expectations are conveyed to the family members and so that there is the opportunity to track progress in meeting both short and long terms goals. Some therapists resist detailing therapeutic plans as to not become too structured in the therapeutic process and/or so that they can follow the lead of the family members in therapy. But working with strained parent-child relationships is qualitatively different than other forms of therapy. Children and parents can be seriously damaged and may suffer long-term impairment if their therapeutic needs go unaddressed (Saini, 2017).

Children who have experienced traumatic events need to feel safe and loved. When parents do not have an understanding of the effects of trauma, they may misinterpret their child’s behavior and end up feeling frustrated or resentful. Working with children and families in the context of family law should always strive to promote safe environments for both children and parents. Strong, frequent, or prolonged activation of the physiological stress response systems can exacerbate toxic stress without the buffering protection provided by responsive, supportive relationships (Shonkoff, Garner, Siegel, Dobbins, Earls, McGuinn, et al., 2012)

Children who suffer the consequences of acute or chronic trauma need access to treatments that directly address their trauma and its impact and help them heal and build resilience. Potential treatment outcomes for post-traumatic stress in children and parents that are supported by research evidence should include negative appraisals about safety and vulnerability to future harm (Meiser-Stedman, Dalgleish, Glucksman, Yule, & Smith, 2009) and coping strategies for seeking support (Greenberg & Gould, 2011).

Trauma-specific treatments are now available that can be used in a variety of settings and that have robust evidence for their safety and effectiveness. Effective screening and assessment of trauma is critical to ensure that trauma-specific treatments are part of the reintegration approach only in cases where trauma has first been established. The purpose of considering trauma is not to replace existing interventions for strained parent-child relationships, but rather to enhance therapeutic options when trauma symptoms may be influencing resist and rejection dynamics.

**Key Considerations**

For treatment to be effective within populations struggling with family breakdown, several key considerations are needed:

First and foremost, treatment must be safe for the family members and the treatment.

An event may be experienced by one child as traumatic whereas another child exposed to the same event may not experience the same event as traumatic. The difference of how these events may be experienced can depend on the child’s temperament (including as manifested in emotional problems before age 5), the exposure to prior traumas, other elements of childhood adversity, and if the
child has a self-blaming and/or avoidant coping strategy.

It is critical to not call something “abuse” if there has been no (finding of) abuse. Therefore, a systematic and credible assessment of abuse is required prior to conducting any treatment specific to trauma. Sometimes treatment is needed prior to an assessment having been completed. In such cases, the therapy best concentrates on the development and utilization of coping strategies and the development of tools to help the child manage his or her thoughts and feelings. When children are very young, they may not be able to articulate that which they have experienced. They may not be able to articulate what they have experienced. They may not know what to call what happened. Therapy for these vulnerable children is supportive and educational to help them learn to manage emotions and cognitions and to learn that others are there to help them.

The Family systems approach works best, including important work to be done with and on the coparenting relationship, with the goal to keep the parents child-focused while establishing facilitative gatekeeping and the prevention of maladaptive restrictive gatekeeping.

An informed, systematic, transparent process is critical in both assessment and treatment of these complex cases. This includes the use of standard protocols for screening and the assessment and the use of evidence-informed treatment approaches when available.

One role per case is the rule, as boundaries are critical in these complex cases.

Professionals involved are best-suited to provide structure, measurable goals, clear rules for parent cooperation, a method of holding the parents accountable, and support.

It is best that someone other than treating professionals sets the parenting plan (e.g. the Court) so that the treating therapist is not placed in the role of coming up with and/or trying to negotiation parenting time decisions between the parents.

Early intervention is critical (e.g. the creating of narratives and/or a form of critical debriefing) to prevent prolonged exposure and the complexities that are inevitable if early interventions are not employed without remedies.

Professionals involved are best-suited to provide structure, measurable goals, clear rules for parent cooperation, a method of holding the parents accountable, and support.

The ambiance of the version of therapy called for is one in which family members are encouraged to tap into resiliency, exhibit a “can-do” attitude and an approach to challenges in which family members seek to control the things they can and to let go of the rest.

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Contact for the next few years and then gradually “step up” his overnight childcare and parenting time. The expert recommended that the father should spend two hours on Wednesday and four hours on Saturday, but rarely, if ever, have his child overnight.

Overnight decisions are high stakes issues. On the one hand, there is the concern that denying children more overnight care and contact with their fathers weakens the foundation of their relationship and may leave emotional deficits that cannot be overcome when overnights begin after age four. On the other hand, there is the concern that additional overnight care from the father away from the mother exacts a toll by undermining the security of the attachment with the mother. Rather than fostering the child’s healthy relationship with both parents, overnight shared physical custody might leave children without a single healthy attachment.

Shifts In Blanket Restrictions

Opinions about overnights have shifted over time, shifted from researcher to researcher, and sometimes shifted from one article to another by the same writer. Articles published between 2000 and 2002 challenged guidelines that restricted young children from sleeping in their father’s home (Gould & Stahl, 2001; Kelly & Lamb, 2000; Lamb & Kelly, 2001; Warshak, 2000, 2002). These articles recommended that decision makers consider the option of overnights rather than follow absolute rules favoring or prohibiting overnights. Responses to Kelly, Lamb, and Warshak emphasized the potential risks of overnights, but agreed that the literature did not contraindicate overnights.

In 2011, McIntosh advocated a renewal of overnight restrictions. Based on one government report (McIntosh et al., 2010), along with her mistaken interpretation of a study by Solomon and George (1999), McIntosh advised “caution” about children younger than three years having as little as one overnight a month. She concluded: “In early infancy, overnight stays are contraindicated, undertaken when necessary or helpful to the primary caregiver, and when the second parent is already an established source of comfort and security for the infant” (McIntosh, 2011, p. 4, emphasis added). McIntosh never explained why overnight stays, contraindicated and presumed harmful, are acceptable when they benefit the primary caregiver—a policy that makes one parent the gatekeeper of overnights.

Scholars who endorse blanket restrictions rely heavily on three studies (McIntosh et al., 2010; Solomon & George, 1999; Tornello et al., 2013) to support their recommendations. In Emery’s (2016) words, “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” (p. 101). For children younger than 18 months, Emery (n.d.) proposes schedules that range from no overnights and no more than 6 hours of contact with the father each week when parents have a “distant” or “angry” divorce, to a maximum of two overnights per month when parents have a cooperative divorce.

A House of Cards: Analytic Gaps Between Scientific Evidence and Blanket Restrictions

Critics have identified multiple and serious flaws in the three studies used to justify concerns about overnighting (Cashmore & Parkinson, 2011; Fabricius, Sokol, Diaz, & Braver, 2016; Lamb, 2016, 2018; Ludolph, 2012; Millar & Kruk, 2014; Nielsen, 2014, 2015; Warshak, 2014, 2018). The flaws include insufficiently valid measures, results derived from faulty data of those measures, and unwarranted inferences drawn from those results. For instance, three questions taken from a measure designed to assess infants’ readiness to learn language were interpreted as an index of “emotional regulation” problems (McIntosh et al., 2010): Does your child (a) sometimes or often try to get your attention? (b) look to see if you are watching her or him at play? and (c) try to get you to notice other objects? Overnighting babies had higher scores on this measure. Rather than interpret the results as indicating greater readiness to learn language, or that babies with higher scores enjoyed interacting with their mothers, McIntosh interpreted higher scores as indicating impaired mother–child relationships. Opinions that rely on such faulty studies are unreliable and not trustworthy (Warshak, 2017).

Nevertheless, the report by McIntosh et al. (2010) had a strong impact. Extensive media coverage quoted McIntosh describing dire consequences attributed to overnights (Nielsen, 2014). After AFCC publicly embraced McIntosh’s research and views on shared parenting and overnights (see Kelly, 2014; Salem & Shienvold, 2014; Warshak, 2017), mental health experts frequently and confidently cited McIntosh and her coauthors to caution against overnights. A major Australian newspaper wrote,
Shifting the Tide of Misinformation: A Consensus on Overnights

Researchers and practitioners throughout the world expressed concern about the impact of questionable research and skewed views of settled social science research (see, Arndt, 2014; Lamb, 2012; Nielsen, 2015). Misinformation had generated widespread confusion and uncertainty about whether the scientific community had shifted its position on overnights.

To address these troubling concerns and stem the tide of misinformation that had been driving custody decisions, guidelines, and expert opinions, I spent two years reviewing the relevant scientific literature. Then I vetted my analyses with an international group of prominent authorities in the fields of attachment, early child development, parent-child relations, and divorce. The APA journal, Psychology, Public Policy, and Law published a consensus report with the endorsement of 110 social scientists and edited by Michael Lamb (Warshak, 2014).

The endorsers of the consensus report agreed that, in general, a robust body of social science evidence supports shared residential arrangements, including overnights, for children under four years of age whose parents are separated. Circumstances that constitute exceptions to the general recommendations include manifestations of restrictive gatekeeping such as persistent and unwarranted interference with parenting time; a history or credible risk of neglect; physical, sexual, or psychological abuse toward a child; a history of intimate partner violence; a history of child abduction; a child’s special needs; and a significant geographical separation between the parents.

In 2017, two additional studies supported the consensus report’s conclusions. Fabricius & Suh (2017) studied 116 college students and found better outcomes for those who, in the first three years of life, regularly spent overnights with their fathers after their parents separated. “Even when parents present with high conflict, intractable disagreement about overnights, and a child under 1 year old,” Fabricius and Suh (2017) concluded, “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” (pp. 80–81). The second study, Bergström et al. (2018), found that children 3 to 5 years old who spent about equal time in each parent’s home after separation had fewer psychological symptoms than those who lived in other custodial arrangements.

And the Dance Continues

The instrument, Charting Overnight Decisions for Infants and Toddlers (CODIT) (McIntosh, 2015; Pruett, 2015), proposes a presumption against more than one overnight per week for children younger than 18 months if their parents are in a dispute over custody, even when parents consistently and sensitively meet the children’s needs. Simply by objecting to more frequent overnights, a mother’s preference prevails even if her objection is capricious, even if her motives are vindictive, or even if the father demonstrates superior parenting.

The CODIT assesses behaviors such as “excessive clinging,” “frequent crying,” and “aggressive behavior,” with no anchors to distinguish between typical and atypical behavior. Even if behaviors such as excessive clinging and frequent crying could be rated reliably, no studies correlate scores on the CODIT—or decisions based on these scores—with outcomes for children. The CODIT assumes, without evidence, that troubling behaviors in an infant or toddler that persist more than two weeks are caused or exacerbated by too much overnighting and can be resolved by restricting or eliminating overnights. Thus, as Austin (2018) argued, the CODIT gives gatekeeping parents a means to rationalize restricting children’s overnightings with the other parent.

The Ecology of Overnights

Many mothers work evening and night shifts, leaving fathers to deal with children’s bedtimes, middle of the night awakenings, and morning routines (Boushey, 2006; Burstein & Layzer, 2007; Fox, Han, Ruhm, & Waldfogel, 2013). Also, many couples alternate nighttime child care responsibilities. Our society regards the father’s participation in these childcare activities as normal and desirable. These parents do not report unusual problems between mother and child nor problematic behaviors for the arising from the father’s overnight care.

In some families, an infant sleeps in one house on weekdays and in another house on weekends. Young couples often leave their baby on weekends with the baby’s grandparents so that the couple can have romantic
time together. If infant sleeping arrangements like these raise no alarms when parents live together, those who propose a double standard bear the burden to justify a shift in how these arrangements are judged after parents separate.

Parenting plans need to accommodate the circumstances of the parents. For instance, parents with a typical work schedule will be unable to spend two half-days with their children every workweek. Even if fathers could keep their jobs while regularly being absent from work during the day, they are likely to suffer a loss in income, which forces a father to choose between time with his child and providing adequate financial support.

Parenting time schedules often include 2- to 3-hour contacts during evenings. These contacts are hurried and stressful for both father and child—not situations that foster sensitive and reciprocal interactions. Overnights allow the father and child the time and structure to bond in ways that more closely resemble an intact family, and to become accustomed to being in each other’s presence during the evening, at night, and in the morning.

Kelly and Lamb (2000) underscored the special importance of parental care during the evening and overnights to provide opportunities for “crucial social interactions and nurturing activities” (p. 306) that are not possible without overnights. As a result, the child’s trust in the parents is promoted, strengthened, and consolidated. Spending time with their baby helps parents provide the regular care that allows them to become attachment figures. Also, spending more time with the baby offers more opportunities for parents to hone their parenting skills through “on the job training” (Magill-Evans, Harrison, Benzies, Gierl, & Kimak, 2007) and to become more confident in their abilities to understand and respond sensitively to their child’s needs (Lucassen et al., 2011).

Some scholars recommend that overnights be phased in through a “step-up” plan based on the child’s age (Pruett, Deutsch, & Drozd, 2016). If the goal is to help the child and father acclimate to overnights, though, wouldn’t it be easier if the overnights existed since infancy? Furthermore, as Austin (2018) observed, a plan that requires periodic adjustments is likely to engender additional litigation.

Conclusion and Challenge Redux

Considerations favoring overnights for most young children are more compelling than concerns that overnights jeopardize children’s psychological development. This conclusion carries the imprimatur of a consensus of 110 researchers and practitioners who define the accepted and settled view of science (Warshak, 2014).

Nearly two decades ago (Warshak, 2000), I posed the logical challenge: If sleeping away from both parents during nap time at daycare centers does not harm young children, and napping during the day in their father’s home does not harm young children, how can spending the night in their father’s home harm them, when the majority of the time they are asleep and unaware of their surroundings? What reasons or evidence can explain a greater risk attached to nighttime care? By what logic do we deprive children after their parents’ separation of enriching bedtime and morning experiences enjoyed by children in two-parent homes? These questions remain unanswered.

Fathers take the night shift in two-parent homes. They can, and should, do so when living apart from their children’s mothers.

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In family law, when the parties cannot agree on an outcome and reach a settlement, the case typically proceeds to trial. At trial, the judicial officer is tasked with receiving testimony (evidence), and based upon what is heard, what the judicial officer knows from other sources, and the prevailing laws and criteria in the jurisdiction. The Court is tasked with reaching an understanding of the outcome suited to the best interests of the children in each case. On this basis, the court orders the child-sharing plan and other elements of child custody (such as whether therapy for the child and/or parents is indicated, whether conditions/restrictions are warranted, and other matters.) Even the most experienced and insightful judicial officer is not, after all, an expert on child custody plans, parenting, child development and other important areas that may come into play as determined by the needs of the family and of the particular case. Courts regularly rely on expert input and testimony to educate and inform the Court. Experts, through their reports and their testimony, assist the Court in acquiring a sufficient breadth and depth of information in areas in which the Court lacks expertise. Competent, clear, lucid and objective reports and testimony from experts play a valuable role in promoting the development of parenting plans to facilitate the best interests of the children.

Child custody experts are often a somewhat diverse group of professionals with varied areas of expertise and backgrounds. Child custody experts share in common the following characteristics:

- The ability to communicate expertise and opinions in a clear fashion, absent of unnecessary and distracting technical terminology (i.e., “psychobabble”)
- Specialized training in forensic assessment and forensic procedure, needed in cases when an expert has assessed the family and provided recommendations to the court with regard to the children’s best interests (commonly known as a child custody evaluation)
- A clear understanding of the limits of one’s knowledge, expertise and the extent to which one’s role in the case may limit the nature of opinions one can ethically and competently proffer

In litigated child custody matters, child custody experts typically come in one of three forms. These include the child custody evaluator, the didactic expert and the review/rebuttal expert. This article shall review the role of each of these three types of child custody experts, discuss how these experts can assist the Court in making child custody determinations, discuss the limitations of the work of these three types of experts and discuss some of the ethical issues that guide and govern the work of these three types of child custody experts. It is noted that while the discussion in this paper breaks these three roles down into separate entities, in practicality, there is a realistic partial overlap between the roles. As noted by Mnookin and Gross (2003), it is essential that roles and functions of forensic professionals be identified, but that in most cases in which forensic expert services are sought, there is inevitable overlap.

The work and role of the child custody evaluator is likely the most well known and familiar to the reader.

by Robert A. Simon, Ph.D.
this work in an ethical, responsible and helpful manner. Therefore, some attention will be given to issues that inform conducting work of this nature in a responsible, ethical and neutral fashion. This is particularly essential because these two roles have an unfortunate history of being occupied by some professionals whose work may best be characterized as “hired guns”. The taint left on these roles by practitioners whose approach to the work revealed broad bias and ethical flaws need not color the immense usefulness of these roles going forward.

What Makes a Child Custody Expert?

According to Law.com, an expert is “a person who is a specialist in a subject, often technical, who may present his/her expert opinion without having been a witness to any occurrence relating to the lawsuit or criminal case. The role of the expert is an exception to the rule against giving an opinion in trial, provided that the expert is qualified by evidence of his/her expertise, training and special knowledge. If the expertise is challenged, the attorney for the party calling the “expert” must make a showing of the necessary background through questions in court, also known as voir dire, and the trial judge has discretion to qualify the witness or rule he/she is not an expert or is an expert on limited subjects.” Expertise can be construed broadly or narrowly. A child custody expert is an individual, who by virtue of training and experience, has gained specialized knowledge or expertise that sets this individual apart from others. This does not mean, however, that all child custody experts have the same areas of expertise or are qualified to be a child custody expert in all kind of litigation. For example, an individual who qualifies as a child custody expert in child custody litigation would be someone whose expertise is specific to the needs of children when the issue before the Court is a parenting plan that is thought to support the best interests of the child. An individual with this expertise would be versed not only in child development, developmental stages, normal and abnormal developmental trajectories for children—but would also have broad expertise in family life, the impact of divorce on children, the promotion of coping and resilience in children whose parents keep separate homes, issues surrounding stepfamilies and the re-marriage of a parent among other areas. Thus, it should be clear that an individual who qualifies to be a child custody expert in one context (for example, the context of disputed custody of a child between divorced parents) may or may not qualify as an expert in other matters in which a child custody expert’s point of view is likely to be helpful to the Court (for example, in cases of child maltreatment or child sexual abuse by a family member). An individual’s true expertise is likely limited and sets this individual or individuals apart from others with expertise in associate or disparate fields.

The Child Custody Evaluator

Amongst the three expert roles discussed in this paper, only the child custody evaluator is a “true neutral”. This is because the child custody evaluator is retained by the Court to serve as the Court’s own expert. Only the evaluator is tasked with directly advising the Court as to the “ultimate issue,” that is, a parenting plan that is reasoned to be in the best interests of the minor children. Only the child custody evaluator can ethically provide the Court with advisory recommendations regarding the best interests of the children. This is because, ethically, the psychologist is not permitted to offer opinions about individuals that the psychologist has not directly assessed and evaluated. Because a child custody evaluation is, in fact, a forensically informed study of a family system, the members of the system and of multiple interrelationships between family members and factors impacting the family, it is not ethically permitted for a psychologist to offer best interest recommendations without having the benefit of conducting a comprehensive whole family evaluation.

Another element setting the child custody evaluator apart from other child custody experts is that the Court, in the Court’s order, appoints the evaluator directly, and gives the scope of work undertaken by the child custody evaluator to the evaluator. In contrast, the attorney retaining didactic and review/rebuttal experts typically determines the scope of work given to those experts (and those experts are expected to disclose the specific task directions and instructions they are given). Only the child custody evaluator has direct access to the parents, to the minor children and to the range of ancilliary information provided by various kinds of medical, legal and educational records. The Child custody evaluator also has access to other individuals, known as collateral contacts, who have knowledge of the child, the family or of events/issues surrounding the family. Because only the child custody evaluator is given such broad access and because only the child custody evaluator operates under explicit instruction from the Court, only the Child custody evaluator can express opinions about the “ultimate issues” in the case, that is, the parenting plan that is thought to support the best interests of the child.
All experts offering testimony in cases where child custody is at stake should be neutral to outcome. And all experts offering testimony in cases where child custody is being litigated would, optimally, answer the questions asked at trial in the same manner no matter which side to the dispute retained and proffered the expert. Yet—the child custody evaluator is often thought as a “true neutral”. This is because the child custody evaluator is appointed by the Court or by stipulation of the parties, and is technically Court’s own expert (with the Court, of course, being neutral). The child custody evaluator is a unique type of expert in child custody litigation for several reasons. First, this expert, appointed by the Court, carries out his or her work on explicit instructions from the Court. Whereas other experts’ scope of responsibility is determined by the retaining attorney in consultation with the expert, the evaluator’s scope and range of responsibilities are specifically determined by the Court. Next, jurisdiction-specific rules and statutes, along with best practice standards and guidelines promulgated by appropriate professional organizations, govern the evaluator’s work. Finally, the child custody evaluator provides the Court with recommendations that are formulated based on the data gathered that propose a child sharing plan, custodial arrangement and other provisions (such as psychotherapy, anger management, restrictions on parental contact) that in the opinion of the child custody evaluator optimize the best interests of the subject child(ren).

Unless a child custody expert has met with all members of the family, objectively evaluated and assessed them, and has enough information upon which to base best interest recommendations, it is outside the dictates of professional ethics to provide the Court with advisory recommendations. Because only the child custody evaluator, having been tasked by the Court, is in a position to undertake such a comprehensive assessment, only the child custody evaluator offers recommendations. All other child custody experts, as valuable, experienced and wise as they may be, must stop short of offering the Court advisory recommendations.

Although the training and qualification of Child custody evaluators varies from jurisdiction to jurisdiction, the Model Standards of Practice for Child Custody Evaluations, promulgated by the Association of Family and Conciliation Courts, sets forth best practice guidelines for the training of Child custody evaluators as well as the ways in which these forensically informed investigative studies are best carried out.

The Didactic Expert

Not all cases of disputed custody require the extensive process that is a child custody evaluation. In many cases, time restrictions may not allow such an evaluation to take place. In others, the nature of issues before the Court are narrow enough that a broad-based child custody study is not required. However, this does not mean that professionals with expertise in child development do not have much to offer the Court and that they cannot play an essential and critical role in assisting the Court in the Court’s determination of what is in the best interests of the child. Such experts, known as didactic or educational experts, can offer useful and enlightening testimony with regard to specific issues and phenomena in cases.

Child custody cases are often complex and the issues at hand can be nuanced and subtle, adding to the complexity of the case. Typical issues in cases that can be illuminated through the use of didactic testimony include areas such as family violence, child abuse, substance use/abuse, child maltreatment and abuse, relocation matters, resistance/refusal dynamics and mental health/illness amongst others.

Commonly, the didactic or educational expert is not court appointed but is, instead, a party-retained and compensated expert proffered by one side in the litigation and compensated by that side. This kind of expert is retained for purposes of providing didactic testimony at trial by one side in a dispute when that side believes that additional high-level, specialized and technical information that is thought not to be in the general information bank of the trier of fact (the Court) would be of assistance to the trier of fact in formulating their opinions and best interest orders in the case. For example, in the United States, Federal Rule of Evidence 702 provides

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) The expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data

(c) The testimony is the product of reliable principles and methods; and

(d) The expert has reliably applied the principles and methods to the facts of the case.
Of course, whenever there is a witness who is retained by one side to the dispute and who is also compensated by this side to the dispute, there are concerns about the integrity, veracity and objectivity of that expert. Needless to say, the didactic expert has a tall order to meet, in terms of overcoming the perception of being an individual whose opinion is “bought and paid for”. This is an area in which the psychologist must practice to the highest ethical standards. For example, no matter who retains the services of the psychologist and who pays the psychologist for their time, the psychologist is ethically required to represent to the Court their opinions irrespective of which side has retained and paid them. Put another way, one should be unable to tell which party to a dispute retained and paid the psychologist based on the contents of the answers to questions the psychologist is asked. Principle C of the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association states, in pertinent part, “Psychologists seek to promote accuracy, honesty and truthfulness in the science, teaching and practices of psychology.” Thus, it is the job of the psychologist to be honest, to be truthful, to be clear and not to behave in deceptive or misleading ways no matter their role, the amount of compensation received or the source of their compensation. If the psychologist offering didactic testimony in a proceeding involving contested custody remains faithful to his or her ethical obligations and requirements, one can have increased trust and confidence that the opinions of the psychologist are arrived at absent biases that might be introduced by a desire to help the side retaining and paying them to prevail in the litigation. This, in turn, increases the Courts’ confidence in the objectivity and helpfulness of the testimony offered by the didactic expert.

The Review Expert

The role of the review expert in child custody litigation has received increasing attention in the professional literature and is a professional role that has taken on increasing attention and prominence in child custody litigation. This child custody expert role may be the most nuanced and complex role for child custody experts in cases of contested custody. The increasing use of review experts in child custody litigation was in part responsible for the establishment of a task force by the Association of Family and Conciliation Courts in 2009 to look at the role of mental health consultants in child custody litigation. While the role of reviewing expert is not without controversy, the use of review experts in child custody litigation has become commonplace, especially in hotly contested matters in which the litigants are able to afford such experts.

The fundamental job for the review expert is to objectively evaluate the work product of the Court’s neutral expert, the child custody evaluator. The review expert will assess and opine on numerous aspects of the evaluator’s work product, basing these opinions on a comprehensive review of the written report, and potentially the evaluator’s underlying record and the expert’s utilization of forensic procedure, appropriate interview methods, data gathering, and inference-making as revealed in the evaluator’s work product. The review expert also considers the relationship between the data gathered by the evaluator and the recommendations made – the “logical nexus”. In addition to evaluating recommendations for a logical nexus between the data gathered and the recommendations made, the recommendations are also considered in view of developmental considerations for the children or special needs for the children. The review expert is likely to approximate a picture of the evaluator’s approach to the evaluation and the procedures used in conducting the evaluation to ascertain whether appropriate forensic methods and techniques of data gathering in inference-making were used in carrying out the evaluation. In addition, the professional and ethical reviewing expert will also develop an understanding for the strengths and assets of the work product. Finally, the review expert will be alert to indicators of potential bias in the work product. More often than not, a litigant’s attorney will retain the services of a review expert in those cases where the child custody evaluator’s recommendations are seen as favoring the other parent. Because of this, it is understandable that review experts are sometimes viewed with skepticism and as experts “on a mission” rather than experts who approach their work with the same neutral, objective and balanced point of view that one would expect of other experts. The reputation of some review experts as “hired guns” may be well earned. However, it is also important to recognize that the process ethical review experts employ is one in which a comprehensive sense of both strengths and weaknesses of reviewed work products is presented to the retaining attorney. Therefore, only after learning of the review expert’s opinions, the retaining attorney may choose to designate that expert to testify at trial. In other words, there is a selection process whereby the review
expert’s supportive review of a work product viewed as adverse by the retaining attorney is likely not to be known because that attorney is quite unlikely to actually take the testimony of a review expert whose opinions are not supportive of their clients’ ultimate goals and objectives. It is only after the review experts complete their objective/neutral review of a work product that the retaining attorney may choose to actually designate that expert as a witness. Therefore, the existence of a positive review of a work product viewed as adverse by an attorney may never be known.

It is essential that the presentation of the strengths and weaknesses of the court-appointed child custody evaluator’s work product be presented to the retaining attorney in a candid, straightforward and comprehensive manner. Not only is this an indication of a skilled, professional and ethical review expert, this is also the kind of objectivity that is ethically required of professional psychologists.

While the immediate goal of the retaining attorney, when hiring a review expert, may be to undermine and impeach the report and recommendations offered in a child custody evaluation, the overarching purpose of review experts is the establishment and maintenance of a system of checks and balances of the quality of and integrity of child custody evaluations in general. Stated differently, to the extent that it becomes routine or customary that child custody evaluations are subject to scrutiny and objective review, it becomes more likely that child custody evaluators will utilize evaluation processes and procedures that are more likely to result in unbiased, objective and unbiased analyses of the best interests of children.

Child custody evaluation reports are advisory reports to the Court. Advisory reports carry great influence with Courts and the recommendations that flow from the work of the Court’s expert often guide the findings and orders of the Court. Child custody evaluations are extraordinarily complex works with many components and moving parts. Therefore, due process and maximizing outcomes that benefit children demand that review work be welcomed by the Court as long as the review is work be done with the same rigor and forensic orientation that one hopes to see in the child custody evaluation itself.

Among those conducting reviews, there exists some disagreement as to whether it is acceptable for the same child custody expert to testify as to the strengths and weaknesses of a child custody evaluation (the testifying expert) and also offer “behind the scenes” advice, counsel and consultation with the attorneys. Dale and Gould (2014) argue that bright line prohibitions against one child custody expert occupying both of these roles are unwise. They assert that these two roles are not incompatible and that “The different kinds of assistance attorneys can receive from mental health experts can be tailored to the needs of the case”. Others such as Stahl and Simon (2013), and Martindale (2007) argue that a bright line does exist and should be observed for various reasons including maintaining objectivity and discovery issues. Although the purpose of this article is other than examining the specific pros and cons of this issue, it is important to highlight the presence of this debate. The reader is encouraged to delve into the issues in this debate more thoroughly when considering retaining a reviewing expert.

Who Is The Client?

It is essential that the child custody expert be very clear on who the client is. This is a critical element of the practice of any type of professional psychology. Psychologists have certain duties to their client, and the establishment of a positive psychologist-client relationship facilitates best practice for the psychologist. Like any professional psychologist, psychologists working as child custody experts must clearly identify their client. Most psychologists, trained in the clinical model, think of the term “client” as synonymous with the recipient of psychotherapeutic services. In transferring this understanding to the child custody expert, they may identify the client as the litigant. When undertaking the work of a court-ordered child custody evaluation, most evaluators would agree that the psychologist’s client is the Court. However, for the child custody expert working in a didactic role or a review role, this is not the case.

The Court, as previously stated, appoints the child custody evaluator, and this child custody expert becomes the Court’s eyes and ears. This expert takes their direction and scope of services directly from the Court and they are accountable to the Court. Therefore, the Court is the client of the child custody expert serving as a child custody evaluator.

Who is the client for the didactic child custody expert and the child custody expert who provides review services? In these roles, it is the retaining attorney who is the client. In these roles, psychologist is hired by and, therefore, responsible to the attorney who retains those services. Some child custody experts confuse the litigant...
represented by the retaining attorney with their client. Yes, the expert may have interaction with the attorney’s client (the litigant), even extensive interaction in some cases, but the consulting psychologist takes direction from and is responsible to the retaining attorney. The retaining attorney’s client, i.e. the litigant parent, is not the consultant’s client. The psychologist is working for the attorney. Some see this distinction as focusing on minutia and as unreasonably picky, but this distinction is critical. When in the role of a behind-the-scenes consultant, working for the attorney rather than the attorneys’ client extends to the forensic psychology consultant the benefits of the attorney-client work product privilege and/or the trial preparation privilege since the consultant is working with and for the attorney. In so doing, that work product is protected. When one is in the role of an expert witness, the fact that the witness is employed by the attorney and not the litigant helps the witness overcome the perception of being an advocate for the litigant and protects the witness from interactions with the litigant that can harm the testimony or compromise the litigant’s case.

Attorneys and experts are advised to be clear about the locus of the expert/client relationship. We know that for the attorney, the client is the litigant in the child custody dispute. However, for the expert, as described above, it is the attorney who is the expert’s client. The critical element in this distinction has to do with the issue of to whom the expert is responsible and accountable. It is a best practice for the expert to be responsible and accountable to the retaining attorney and to take direction from the attorney, not the litigant. There are critical reasons for this. First, it is wise for the testifying expert, in particular, to avoid contact with the litigant unless the litigant’s attorney is also present. Even when the litigant’s attorney (the expert’s client) is present, it is important that all present recognize that anything and everything discussed is subject to full discovery and disclosure. Indeed, specific advise informed consent is advised when expert/litigant conversations take place. Under circumstances where the expert views the client as the litigant (a circumstance we strongly advise against) taking direction from the litigant can lead to bias and the perception of bias. It can also quite readily lead to testifying situations in which the expert may be appropriately asked to opine with regard to perceptions about the litigant.

To summarize, when providing a neutral forensic evaluation such as a child custody evaluation, the psychologist’s client is the Court. When engaged in an expert witness role, either as a didactic expert or review expert, the attorney, and not the litigant parent, is the client.

**The Bottom Line**

Child custody experts perform vital and essential functions in matters of litigated custody of children. Child custody experts bring to child custody disputes highly developed and specialized knowledge and expertise in the domains of child development, family life, the impact of conflict on children, developmental norms and patterns and expertise in specific areas such as family violence that cannot be expected of even the most seasoned and wizened judicial officer. Therefore, realizing the importance of the issues before them and the weight of the critical decisions they must make about the lives of the children whose parents are litigating, judicial officers turn to, lean on and appreciate input, information and education from those with specific expertise with regard to children.

A commonality amongst the roles and functions that child custody experts play in cases is that these experts, as licensed mental health professionals, owe fidelity to their ethical principles and code of conduct that, when adhered to, help assure that the input of the child custody expert is unbiased, neutral, objective and, ultimately, helpful to the Court.

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References


4. In other words, the expert witness is objective and not invested in outcome of the case no matter who retained them.

5. See, for example, the Model Standards for Child Custody Evaluations, promulgated by the Association of Family and Conciliation Courts, the Forensic Specialty Guidelines for Psychologists, promulgated by the American Psychological Association and the xxxx from Singapore....

6. For example, see provision 9.01 of the American Psychological Association’s Ethical Principles and of Psychologists and Code of Conduct, http://www.apa.org/ethics/code/


8. It is noted that while experienced judicial officers have typically been exposed to a wide variety of high level information and knowledge from fields apart from the law, itself, fields such as psychology and child development are evolving and progressing fields in which new research and new information is developed on an ongoing basis. Therefore, providing the court with expert didactic testimony can be extremely helpful to the Court and should not be mistaken for a litigation strategy that implies diminished respect or esteem for the Court’s knowledge, authority or expertise.


The original conceptual basis for this article was published in the New York Law Journal on January 10, 2018. The current article will address an issue that arises on a regular basis and specifically in the following fact pattern: a family is being raised adhering to certain religious principles, but then one of the parents decides that he or she no longer wants to continue in the observance. The case at hand is one that transpired in the State of New York. Although the issue takes place throughout the country, the outcome and analysis of each case will depend on how each jurisdiction weighs the religious observance of the parties as it relates to custody matters.

In August 2017 in the case of Weisberger v. Weisberger, the New York Appellate Division Second Department modified the religious observance provision arising out of the parties’ Stipulation of Settlement. The decision was initiated by a motion to the Kings County Supreme Court: Both parties moved for a change to the custody and visitation provision of the parties’ underlying agreement. This article reviews the decision in the broader legal context.

In Weisberger, the father moved for the enforcement of the religious terms of the Stipulation, which provided “that the parents would give a Hassidic upbringing to the children”. The opinion indicates that there were no specific terms to define “Hassidic upbringing.” The Court cites Lee v. Weissman, and Lawrence v. Texas to indicate that a Court cannot enforce religious observance on an individual but does not address the case when the parties agree to abide by said terms.

The question to be addressed is whether a contract is enforceable if it obligates a person to religious conduct required by the school the children attend. Do such requirements interfere with an individual’s religious freedoms?

Contracts are enforceable, yet at the same time, the circumstances of an individual’s life may change. But if that individual contractually obligated himself or herself to observe a certain religious conduct in the presence of the children during the period of time that the child is unemancipated, do the individual’s rights trump his or her legal contractually obligations?

In other words, can one contractually obligate himself or herself to religious conduct with religious implications required by the children’s school or lifestyle (as agreed by the parties jointly in the past), even if that contractual obligation interferes with one’s individual rights? Furthermore, is it possible for a person to waive his or
her constitutional rights? The establishment clause of the U.S. constitution deals with the legality of imposing religious observance, but does not address the case when an individual has contractually waived those rights. Further, it does not address cases where there is an agreement. The Appellate Court in Illinois in the matter of Schneider v. Schneider, in which a religious divorce (Get) was ordered, stated that it did not violate the husband’s constitutional rights. “The order had a secular purpose of enforcing a contract between the parties.” Id. The Court based its decision on the parties’ marriage contract. Similarly, in cases such as Weisberger, if the parties enter into an enforceable contract, should it be enforced and should it not be held in violation of one’s constitutional rights?

The Appellate Division, First Department in the case of Pearlstein, indicated that parents may contract to have their children brought up in compliance with a certain religious lifestyle. This has been established in the State (See Weinberger v. Van Hessen and Kananack). We also know that religious observance was a factor taken into consideration in awarding custody in the similar case of Friedwertzer, in which “the best interest” standard was the preeminent factor.

The Appellate Division in Weisberger indicated that in the event that either parent changes his or her lifestyle, the fact that the contract provided that the parents “shall be free from interference, authority and control directly or indirectly from the other” affirms that the parent’s right to change his or her lifestyle trumps the contractual agreement they had made. If that clause was not in the agreement, would the decision have been different in light of the fact that the only term referred to was “Hassidic lifestyle”?

Practitioners must seriously examine the precise definitions that are utilized in a stipulation of settlement. In connection with considering the best interest standard of the children: if a child was brought up in a certain lifestyle and both parents have agreed to raise the child in compliance with that lifestyle, what happens when one parent changes their beliefs and level of observance? Given that change would interfere with the religious teachings that the child is being taught in school, would it be considered in the child’s best interest to be exposed to a contradictory lifestyle? Although an individual’s personal and religious beliefs cannot be regulated by the Court, the case to be made for requiring compliance is not similar to the case of Lawrence v. Texas, where the public was subjected to listening to a religious speech.

Rather, in the case at bar, and many cases before the Court, the stipulation calls for the children to maintain a determined mode of observance. If one parent’s conduct contradicts the school policies or religious upbringing of the children, and conflicts with the teachings that have been observed to date, one would question how it could be in the best interest to allow the parent to subject a young child or teenager to a conflict between his or her way of life and a parent’s alternative lifestyle. For example, this might include watching movies or a mode of dress in clear contradiction to the schooling and tradition which is the child’s way of life.

An obvious conflict arises when the agreement calls for a clause in which neither party shall disparage the other. The child attends a parochial school, be it a Yeshiva, Catholic, or Muslim school whose teachings mandate that alternative lifestyles are not accepted by his or her religion. In that case, how would the non-disparage clause be honored?

While the separation of church and state is paramount, it must be viewed in the context of circumstances in which parents have voluntarily entered into a contract that requires the children to be brought up in a mode of religious observance which imposes requirements on the conduct of the parents. The role of the Court is to adjudicate the enforcement of the contract. A forensic evaluation that utilizes a best interest analysis must also give weight to the issue of the enforcement of the contract. The question of how the Court in a litigated matter weighs such factors in making and finalizing a decision would depend on the jurisdiction. The psychological analysis is the same, but the legal analysis will be left for another article.

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Parenting Coordination: The Genesis and Development of the Field

by Matthew Sullivan, PhD.

I’ve been involved in doing, training and writing about Parenting Coordination (PC) for the last 20 years. The role was first developed in Northern California in a couple of jurisdictions, one where I practice, so I had the opportunity to be part of the emergence of PC practice. A particular judge was exasperated in seeing the “frequent filers” in her Court several times a year, post-judgment (when a Court-ordered parenting plan was already in place) for disputes about holidays, children’s activities, transitions, clothing, and even disagreements about the family pet. She convened an interdisciplinary group with an appeal to create an alternative dispute resolution process that would address ongoing disputes that consumed disproportionate Court resources to address. Parenting Coordination was born in my County and, in the next few years, cases in which parenting coordinators were utilized (by agreement only in California) burgeoned beyond the availability of competent mental health and legal professionals to meet the need. In the mid 1990s, a local psychologist, Terry Johnston, did an effectiveness study which measured the number of Court appearances the year before a PC appointment and the year after, and found a six-fold decrease in appearances in Court after a PC was on the case (a six time reduction per case the year prior, and once in five cases the year after). The judge and her fellow bench officers were ecstatic and Parenting Coordination was launched.

I made a presentation on this new role together with Christine Coates, an attorney doing PC work in Boulder, Colorado at the Association of Family and Conciliation Courts (AFCC) annual in 1994. There were four professionals in attendance then. Since that time, Parenting Coordination has expanded to most states and provinces in North America, with legislation to support the role in most jurisdictions. PC is gaining a foothold in Europe (Italy and Sweden, in particular), Hong Kong and more recently, Singapore. Trainings and workshops, sponsored by the AFCC and other family law organizations take place throughout the year and there is a growing body of literature about the practice and outcomes. AFCC and the APA have published guidelines for PC practice (AFCC, 2006; APA, 2012) and the AFCC is currently updating their initial guidelines to respond to the evolution of the role that last 15 years.

In an article in the Journal of Child Custody, “Co-parenting and the Parenting Coordination Process (2008)”, I provided an understanding of high-conflict co-parents (roughly 15% of co-parents in shared custody arrangements) that suggested the basic goal of Parenting Coordination is in these cases. Since the Parenting Coordinator becomes the link between co-parents, the PC can construct a parallel model of co-parenting that manages and minimizes interparental conflict. Since interparental conflict is toxic to children, the children benefit by the process the PC guides to structurally disengage co-parents.

A parallel parenting model in shared custody arrangements starts with a very detailed parenting plan, which reduces the need for engagement about most areas of potential dispute, most importantly, timeshare schedules (regular, holiday and vacation). It provides protocols to deal with most transactions...
co-parents need to engage in to raise their children (health care management, contact between the non-custodial parent and child(ren), right of first refusal to provide care, etc.). Assuming co-parents have a detailed parenting plan, the appointment of a PC further disengages co-parents by structuring and monitoring communication.

Virtually all co-parenting communication is conducted through email (or on a web-based shared parenting site) with expected rules of engagement (businesslike, child-focused and respectful). The PC monitors and enforces compliance to make sure that information sharing and other necessary transactions adhere to these rules. When more extensive co-parenting engagement is necessary because of disputes that arise in implementation of the parenting plan (calendaring vacations and holidays, alleged violations of the plan etc.) or when child-related issues arise (mental health, education, activities, etc.) highly structured meetings (often by phone or video conference) are conducted by the PC to attempt to resolve issues. The aim is to achieve agreement, or if necessary to “hear” the issue and provide an order to resolve the dispute. The ability to control and limit the engagement of high conflict co-parents and efficiently resolve disputes provide the “peacekeeping” function in high-conflict shared custody. Though the work is rarely directly with the child(ren) in the family, the benefits of this co-parenting work make the PC role invaluable to buffer children from the deleterious impact of co-parenting conflict.

In my research on PC practice and involvement on the original guidelines (AFCC, 2006) and current update of the AFCC PC guidelines (in process), I’ve learned that there is tremendous variability in PC practice across and within jurisdictions. I’d like to provide what I consider a few essential elements and recommendations to support PC practice.

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**Appropriate Case referral: Parenting Coordination should only be utilized when there is a parenting plan ordered. It is not a role designed to create parenting plans, but to address disputes that arise (interpretation, clarification, monitoring, minor revisions) as high conflict co-parents attempt to implement their parenting plan. Significant custody issues such as major and permanent changes in parenting time, relocation of a parent, and school placement issues, should be handled by other dispute resolution processes and fall outside the scope of the PC role.**

**Authority:** Parenting Coordination is the most intensive co-parenting intervention available in the family court context. It is most effective when the PC has authority delegated by the Court to make immediately binding orders about issues specifically defined as within their scope of authority in their appointment order. If the PC has no Court authority or can only recommend a resolution to a particular dispute, the role is often ineffective as (1) issue submitted are time sensitive (e.g., a child’s involvement in a team sports activity) and (2) the burden of implementing the recommendation in a Court order is on the parent who agrees with the PC’s recommendation.

**Case Management:** This aspect of the function of the appointed PC is critical in many cases. The PC is involved in the ongoing management of interventions that are ordered by the Court to address issues such as substance abuse, mental health issues, domestic violence, child abuse and alienation. Common to these issues is that parenting time is typically restricted for one parent, with increases in timeshare for the identified problem parent tied to effective intervention. The Court is ill-equipped to monitor compliance with treatment, assess progress, coordinate care among treatment providers and assess and determine if and when parenting time should be modified. PCs have the skill-set, access to all parts of the system both within and surrounding the family and the
The Court is ill-equipped to monitor compliance with treatment, assess progress, coordinate care among treatment providers and assess and determine if and when parenting time should be modified.

Professional Risk Management: The PC role is “risky business.” Complaints to the Court, to regulatory agencies (the state bar, the state licensing board for mental health professionals, the American Psychological Association) and civil suits are on the rise as this role expands. I suggest you consider the following steps to manage professional risk if you work in this role:

(a) Insist on a formal Court appointment, rather than a private consent agreement before getting involved in a case as a PC. Include provisions in the appointment order that address the scope of your authority, your immunity from civil law suits (in California the Parenting Coordinator is an officer of the Court and has quasi-judicial immunity from law suits), allocation and payment of fees (including working only from a retainer), and procedures for addressing both the Court’s review of objections to orders you may issue and grievances about your conduct.

(b) Gain training in PC work and maintain competence. Parenting Coordination is still an emerging role in the family courts. It is a highly specialized legal and psychological hybrid which requires knowledge of legal procedure, alternative dispute resolution (mediation, settlement, documentation, arbitration) and knowledge of multiple psychological domains (child development, intimate partner violence, alienation and estrangement, etc.). Having readily available consultation (a professional group or respected colleague) is critical to being effective, managing case dilemmas, and avoiding burn-out.

(c) Maximizing your professional liability insurance. Complaints go with the territory in this practice. It will be emotionally stressful to deal with disgruntled clients who complain, so make sure it’s not financially costly.

(d) Being cautious in accepting cases. Referrals from collaborative and respected attorneys are great because they will continue to be part of your team with predictably difficult parents. Since cases are demanding and unpredictable in terms of the time required to manage them, don’t have your PC casework exceed half of your overall caseload. Managing cases requires the ability to respond in a timely manner (though a client’s emergency based on poor planning does not mean that the PC must consider it an emergency). It is important to keep cases under control.

(e) Knowing when to “fold-em.” Withdrawing from a case may be the best professional risk management decision. It may still be the right decision, even when it may reinforce the bad behavior of a parent who is clearly engaging in behavior to encourage you to withdraw. I have never regretted withdrawing from a case after I had taken that action.

My website (sullydoc.com) and the Association of Family and Conciliation Courts website (afccnet.org) has many resources for professionals about Parenting Coordination practice.

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He is President-Elect of the Association of Family and Conciliation Courts (AFCC). He currently serves on the American Psychological Association Ethics committee. He is the co-founder of Overcoming Barriers, inc., which is a non-profit organization that has developed a variety of innovative programs for high conflict shared custody arrangements. Dr. Sullivan received the 2012 Joseph Drown award for outstanding service to children by the Association of Family and Conciliation Courts, California chapter.

For more information his website is sullydoc.com

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Joint versus Sole Physical Custody: What does the research tell us about children’s outcomes?

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Do children fare better in joint physical custody (JPC), where they live with each parent at least 35% of the time, than in sole physical custody (SPC), where they live primarily or exclusively with one parent? Based on the 60 studies that have compared outcomes for JPC and SPC children, JPC children have the advantage in terms of better scores on a variety of standardized tests that the researchers used to measure different aspects of children’s well-being. Among the aspects of well-being that were measured in these studies were: emotional and psychological health (i.e. depression, anxiety, self-esteem), behavior or social problems (i.e. drinking, aggression, school misbehavior), physical health (i.e. headaches, sleep problems) and quality of relationships with parents, grandparents or stepparents. Detailed summaries of these 60 studies are available in my two papers cited at the end of this article. 1, 2

Based on their scores on the various measures of well-being mentioned above, compared to SPC children, JPC children had significantly better outcomes on all measures in 34 studies; equal outcomes on some and better outcomes on other measures in 14 studies; and equal outcomes on all measures in six studies. In the other six studies JPC children had worse outcomes on one of the measures of well-being, but equal or better outcomes on all others. In short, JPC trumped SPC.

Did JPC children still have better outcomes when the researchers considered family income? Yes. In these 25 studies, JPC children had better outcomes on all measures in 18 studies, equal outcomes on some and better outcomes on other measures in four studies, and equal outcomes on all measures in one study. In two studies JPC children had worse scores than SPC children on one of the tests measuring well-being.

What about parent conflict? When conflict was high, did children still fare better? Yes. In these 19 studies, JPC children still had better outcomes on all measures in nine studies, equal outcomes on some and better outcomes on other measures in five studies, and equal outcomes on all measures in two studies. In three studies JPC children had worse outcomes than SPC children on one of the measures.

The fact that JPC children still had better outcomes even after factoring in parent conflict undermines the claim that children do not benefit from JPC unless their parents have a low conflict, cooperative relationship where they both “voluntarily” and freely agreed to JPC from the outset. In fact, in an analysis of the 19 studies that directly compared JPC and SPC parents’ levels of conflict and co-parenting, JPC couples did not have significantly less conflict or notably more cooperative co-parenting than SPC couples at the time they separated or in the years following separation.3 In these studies, conflict and co-parenting were measured with various types of standardized tests or with specific questions about conflict and cooperation presented by the researchers. Moreover, seven studies asked JPC parents whether they had both initially agreed to the plan, or if one of them had been “forced” or “coerced” into accepting JPC. From 30% to 80% of JPC couples did not initially agree to share. Yet in all seven studies, JPC children had better outcomes than SPC children.

Did JPC children have better outcomes because they had better relationships with their parents to begin with? Did their parents have better parenting skills that SPC parents? Either of these two variables, or a combination of both, could account for better outcomes regardless of the custody arrangement. Only 9 of the 60 studies tested this possibility. JPC children had better outcomes on other measures in four studies, and equal outcomes on all measures in one study. In two studies JPC children had worse scores than SPC children on one of the tests measuring well-being.
scores on all tests measuring various aspects of well-being in five studies, equal on some and better on other outcomes in two studies, and worse outcomes on one measure in two studies. Based on this small number of studies, we cannot draw strong conclusions. But in these studies, the quality of the pre-existing parent-child relationship or parenting skills did not account for JPC children’s better outcomes.

Looking more closely at the outcomes, several findings are noteworthy. No study found worse outcomes for JPC children on all, or even on most, measures of well-being. The greatest advantage was better family relationships. In 22 of 23 studies, JPC children had closer, more communicative relationships with their parents. JPC children also had fewer stress related health problems in 13 of 15 studies. And they had better emotional and psychological health (depression, anxiety, self-esteem, life satisfaction) in 24 of the 42 studies. In 12 studies, the two groups were equal and in six studies the results depended on the child’s gender and which measure of emotional well-being was being assessed.

As for teenage behavioral problems (drinking, smoking, using drugs, being aggressive, bullying), in 21 of 24 studies JPC teenagers had fewer problems than SPC teenagers. In the other 3 studies, the results were “mixed” depending on the child’s gender or which behavior was being assessed.

What about children’s relationships with their grandparents—and why should we care? In all four studies that addressed this question, JPC children had closer relationships with their grandparents than SPC children. This result matters because children who have close relationships with their grandparents after their parents separate tend to have fewer emotional and behavioral problems.

In six of the 60 studies, however, JPC children had worse scores than SPC children on one of the measures of well-being. (1) Teenage boys in JPC were more likely than boys in SPC to say they “sometimes did not get along well with peers”—but the reverse was true for girls. (2) In high conflict families, those teenagers who gave one parent a poor rating on “positive” parenting (setting and enforcing rules consistently, being supportive, providing adequate supervision) had more behavioral and emotional problems than SPC teens. (3) Teenagers who had bad relationships with their fathers were more depressed and more dissatisfied in JPC. (4) For teenagers whose parents were still in high conflict 8 years after their divorce, girls were more depressed, but boys were less depressed, in JPC. (5) Teenagers who were highly “conscientious” (extremely rule oriented, orderly and planful) were more depressed in JPC, but the more laid back (less conscientious) teenagers were less depressed in JPC than in SPC. (6) For infants and toddlers with impoverished, never married, minority parents with high rates of incarceration, physical abuse, drug use, and mental health problems, JPC toddlers had more insecure attachment scores to their mothers than did SPC toddlers.

**No Woozling Allowed**

Woozling is the process in which research findings are manipulated and distorted in order to support just one point of view—either by exaggerating or reporting only part of the data, or by excluding certain studies, or by interpreting ambiguous data in only one way. To avoid woozling of the 60 studies, I want to clarify several points.

First, the 60 studies have limitations, as do all social science studies. The studies are correlational so they cannot prove that JPC caused the better outcomes. On the other hand, a number of studies ruled out conflict, income and quality of parent-child relationships as possible influences—which lends stronger support to the argument that JPC in and of itself is beneficial for children. Moreover, according to a recent analysis...
of those JPC studies that used the kinds of statistical techniques and research designs that help to establish causality, JPC is the cause of children’s better outcomes. These research designs and statistical analyses take into consideration more than one of the variables (i.e. income, conflict, quality of co-parenting) that might influence children’s outcomes and then compare JPC to SPC children.

Second, the 60 studies are not of equal quality in terms of sample size, sophistication of the research design, or including factors other than the custody arrangement (i.e. income, conflict) that might influence children’s outcomes. But despite the differences in quality, the findings across studies are consistent, which lends more credibility to the “construct validity” of the results.

Third, most of the 60 studies did not report effect sizes which are statistical analyses of the strength of the relationship between two or more variables. So even though the difference between the JPC and SPC children is “statistically significant”, we don’t know how strong the link is unless the effect size is also measured. For those studies that did report effect sizes, the effect was generally small. It would be a mistake, however, to interpret this to mean that JPC does not matter because small effect sizes are common in social science and medical science studies—and yet these small effect sizes can have an important or far reaching impact on large numbers of people. For example, if there is a statistically significant link between JPC and teenage drug use, suicide or drunk driving, but the effect size is small, we certainly would not dismiss or minimize this finding since the consequences for children can be fatal. Then too, JPC effect sizes are much larger in certain samples or for certain types of problems. For example, in a meta-analysis of 20 JPC studies, effect sizes were four times stronger for children’s behavioral problems than for emotional ones, five times stronger in school samples than in national samples, and five times stronger for JPC children who lived 50% time with each parent instead of 35% - 49% time.

To prevent woozling, I want to emphasize that these 60 studies did not conclude that JPC is beneficial for all children in all circumstances, or that constantly being dragged into the middle of parents’ conflicts has no negative impact on children, or that JPC has more impact than the quality of parent-child relationships. What the studies are saying is that even when conflict is high—with the exception of the kind of physically abusive conflict that endangers children even before their parents separate—and even after considering family income and the quality of parent-child relationships, children still had better outcomes in JPC than in SPC. It is an injustice to children, and to the researchers who have conducted these studies to frame the discussion as if one single factor—conflict, income, JPC, or the quality of parent-child relationships—has to be the sole winner in some imaginary contest or to argue over which beneficial factor is “more” important than another. Our goal should be to provide children with as many positive situations or beneficial “factors” as possible—regardless of how weak or strong those statistically significant links may be. Based on the existing research, many scholars now concur that JPC is clearly one of the factors that generally contributes to better outcomes for children. 6, 7

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REFERENCES
Articles summarizing the 60 studies and their citations are available upon request from the author: nielsen@wfu.edu | nielsen@wfu.edu | www.wfu.edu/~nielsen

The impetus for the debate on joint versus sole custody is found in the Australian law reforms of 2006, which pushed many of the mediated and litigated cases into shared care custodial arrangements rather than primary custody (in Europe, Belgium is at the forefront of legislation for shared parenting time as noted by Smyth, McIntosh, Emery and Higgs Howarth 2016). New legislation mandated that disputing parents, lawyers, and judges must consider equal or near equal parenting sharing arrangements rather than primary custody. Therefore, a discussion of pros and cons of shared parenting is all the more relevant today because of its increased prevalence. This article will review the most recent literature comparing joint versus sole custody across a number of important variables such as age of the children, gender, education and socio-economic status. The role of potentially confounding variables will also be examined.

Parenting is best understood from an ecological perspective in which the quality of parenting is affected by personal characteristics of the parent, the characteristics of the child (e.g., temperament), interpersonal factors (e.g., social support) and situational aspects of the environment (e.g., financial stressors.) Parenting is a dynamic, fluid process that is impacted upon by a multitude of factors within and outside the family.

What constitutes good parenting? Sandler and his colleagues (Sandler, Wilchik, Winslow, Mahrer, Moran, & Weinstock 2012) identify two critical parenting dimensions: (a) the quality of the parent-child relationship (e.g., the presence of warmth, support, encouragement and positive communication) and (b) the use of effective discipline (e.g., the enforcement of age appropriate rules and expectations). Sandler and his colleagues (2012) indicate that, for non-custodial fathers in post-divorce proceedings, the quantity and quality of post-divorce involvement with the children is an additional important dimension to consider.

How we define shared parenting? Pruett & DiFonzio (2014) indicate that shared parenting consists of two distinct conceptual entities: Joint decision making (legal custody) and shared parenting time (physical custody), operationally defined as a child spending at least 30-35% of his time with each parent.)

In an article published in Family Court Review (the result of AFCC assembling a “Think Tank” in January 2013 to discuss the issue of shared parenting) Pruett & DiFonzio (2014) suggest that decision making about parenting time following the parental separation should be case specific as there is no “one size fits all” shared parenting time arrangement. Pruett & DiFonzio (2014) further argue that social science research strongly supports shared parenting (i.e., frequent, continued, and meaningful contact by both parents with their children) when both parents can work this out.

But what constitutes effective shared parenting? According to Pruett, Cowan, Cowan, & Diamond, (2012) effective shared parenting involves joint parenting plans in which both parents strive to agree on the child’s needs, value contributions that the other parent has to offer, and allow the children’s needs to dictate how conflicts get resolved. The reviewed literature suggests that joint custody and parental collaboration in childrearing appears to be positively correlated with children’s well-being (Bauserman 2002; Lamb 2012, 2016).

Bauserman (2002) in a meta-analytic review assessing the impact of joint v. sole custody on children’s adjustments concludes that children and adolescents with divorced parents are likely to be better adjusted on a variety of dimensions (e.g., measure of general & behavioral adjustment such as the Child Behavior Check List (CBCL), measures of emotional adjustment such as the Child Depression Inventory (CDI), and measures of self-esteem such as the CooperSmith Self-Esteem Inventory) when their parents are engaged in a successful cooperative arrangement involving joint legal and/or physical custody.

In the early 1990s, the literature seems divided on the benefits of shared versus sole custody. Some argued that shared custody was disruptive to children’s lives and
exposed them to ongoing parenting conflict. However, today the consensus seems to be that shared parenting can work and positively impact the children’s well-being when parents are able to cooperate and arrangements are made with the children’s needs in mind (Trinder 2010, McIntosh & Smith 2012, Smyth et. al. 2016). In contrast, shared arrangements are more problematic and unlikely to yield positive outcomes in high conflict cases even when court mandated (Trinder, 2010, McIntosh & Smith, 2012, Smyth et. al. 2016). For instance, Trinder (2010); McIntosh & Smyth (2012) in their review of the literature, suggest that in high conflict cohorts, there is evidence that shared parenting is associated with greater hyperactivity in boys.

McIntosh and her colleagues (2012) argue that the advantage of successful (low conflict) shared parenting for children are obvious and include:

- An active relationship with both parents.
- Maintaining two active social support networks.
- Less risk of depleted emotional availability associated with single parenting.
- Happier mothers who can maintain work and family balance.
- Happier fathers who can maintain a gratifying level of involvement with their children.

Several authors (Trinder, 2010, Pruett et. al. 2012, Pruett, Pape Cowan, Cowan, Pradhan, Robins and Pruett 2016, Lamb 2012, Bauserman, 2012) argue that the quality of the bond (e.g., as assessed by the degree of involvement, the warmth of the relationship, and the extent of open-communication between parents and children) is the most critical variable in determining the success of post-divorce sharing arrangements—as opposed to quantity (the amount of time spent together by fathers and children.) However, Sandler et al. (2012) caution that the quality of parental time following separation is the by-product of a multitude of dynamic factors including the social context (e.g., social support, stressors in parents’ life, interpersonal conflict) the characteristics of the child (e.g., child temperament) and their parents.

Bauserman (2012) meta-analytic review of the literature referred above suggests some other interesting trends such as:

- Joint custody fathers are more involved with their children and more satisfied in their relationship with their children (as reported by fathers and mothers alike.)

Some authors (Pruett et. al. 2012, Pruett e. a. 2016) note that the fathers’ active engagement in the children’s life is inherently different and complement those of mothers. Whereas fathers are often associated with novelty and excitement, and emphasize independence, competence and frustration tolerance, mothers are often associated with calm and nurturance, and a tendency to regulate and soothe.

Several authors (Pruett et. al. 2012, 2016 Lamb 2012), in their analysis of the research on parenting plans and children’s well-being, notes that, while fathers’ active participation following divorce is beneficial, a critical moderating variable is the influence of maternal attitudes on the extent of paternal involvement following the divorce. Mothers can be influential gatekeepers of parental involvement (see Austin, Kline-Pruett, Kirpatrick, Flens, & Gould 2013, Saini, Drozd & Olesen, 2017), through attitudes and behaviors that limit or facilitate fathers’ opportunities for meaningful contact with their children.

### Young Children and Shared Custody

The issues of shared vs. sole custody comes to the fore particularly when dealing with young children (children below age of 4), as the question emerges of how to balance the need of fostering attachment, security and stability to a primary attachment figure with the concept of fostering a healthy relationship with two parents. That relationship, by necessity, involves multiple and repeated transitions. The evidence of the research here is mixed. Pruett and her colleagues 2012, 2016 urge that caution is warranted in considering whether young children (below age 3) should spend regular overnights in two homes, especially in the presence of parental conflict, and that while overnights seem clearly beneficial for older preschoolers, the risk and benefits for young children have yet to be clearly determined. McIntosh & Smyth (2012) suggest that during the first years of life, repeated and prolonged absence from the primary caregiver figure is uniquely stressful for young children. The research reviewed by Smyth et. al. (2016) indicate that infants who have overnights weekly with the non-custodial parent exhibit higher level emotionally dysregulated behavior. Therefore, according to McIntosh & Smyth (2012) and Smyth et. al. (2016) shared parenting with
infants and preschool children carries increased risks. (For a dissenting view, please refer to Dr. Warshak). McIntosh & Smyth (2012) and Smyth et. al. (2016) further suggest that parents should be encouraged to wait for the child’s attachment to be secured and for the child’s cognitive-language skills to further develop so that the child is ready to master the task of repeated transitions and separations from the child’s primary caregiver.

Children’s view on shared v. sole custody

What are the children’s views on shared vs. primary care arrangements? While the divorce literature has suggested that children miss the presence of their father, children’s views of shared care is highly contingent upon the nature of such arrangements. Haugen (2010), in a qualitative study in Norway involving 15 children in shared custody, found that, for some children, shared parenting seemed a pleasure because it allows them to maintain a relationship with both parents, while for others, it was experienced as a burden because it involved constant back and forth, and not having a single place they could call home. Some universal factors seem to account for children’s satisfaction with post-divorce care arrangements. These include the following:

(a) Whether children’s needs and wishes are prioritized, or whether the arrangements are based on the needs of the parents.

(b) Whether the arrangements are flexible or rigid. Specifically, rigid arrangements that are not responsive to children’s needs are more likely to lead to poor outcomes (McIntosh & Smith, 2012.)

(c) Whether the children feel equally at home with both parents.

(d) Whether the children feel that they have a voice in the living arrangements rather than having such arrangements imposed on them.

The Role of Gender

A consistent theme across studies reviewed by Bauserman (2012) was that primary custodial fathers were more likely to be more satisfied, when compared to fathers with shared caring arrangements. However, joint custody mothers reported less satisfaction than sole custody mothers even though they reported less parenting stress. How is one to make sense of these gender-based findings? One hypothesis worth considering is whether the level of parental conflict was controlled for in Bauserman’s analysis. An alternative hypothesis, warranting further investigation, is whether these findings may be related to gender-related differences in socialization processes and the expectations these gender related differences may create. Specifically, one wonders what weight should be given to the fact that historically women have often functioned in the role of primary child caretaker. May this sociological trend partially account for this finding? Future research may want to explore the role of expectations that mothers and fathers carry when considering the level of satisfaction with regard to shared parenting arrangements.

Role of High Conflict on Shared Parenting Arrangements.

When high conflict is factored in the equation of shared parenting, mothers are more likely to report that such arrangements are not working for their children, compared to mothers with sole custody (Trinder, 2010, Bauserman, 2012.) Furthermore, these conditions bode ill for children’s adjustment. Trinder, 2010 and Bauserman, 2012 converge to suggest that shared care in the high conflict population, far from resolving the problem, seems to perpetuate and even accentuate the conflict, and as a result, the children are caught in the crossfire.

One potential implication of these findings is that the debate between shared versus sole custody may be a straw man, because the level of parental conflict may be a critical variable upon which viable post-divorce arrangements (shared versus sole custody) should be predicated.

Some Confounding Variables

Research in the area of shared parenting is complicated by a number of factors. For instance, most of this research is cross sectional (comparing groups at one point in time) and therefore correllational in nature. Hence, no causality can be assumed. To illustrate, if shared parenting works, one needs to consider whether this is because families who entered into such an arrangement have a more favorable history of conflict management anteceding the divorce and are more predisposed toward conflict resolution. This raises the specter of self-selection, meaning that the differences in shared versus sole custody may have little to do with the arrangement per se, and may be more likely to reflect certain enduring characteristics associated with successful parenting. In fact, some variables have been associated with successful engagement in shared parenting. For instance, Bauserman (2012) & Trinder (2010) have found that parents who are able to successfully engage in shared parenting tend, on average, to be older, better...
educated, earn higher incomes and live in relatively close proximity to one another. Stated differently, age, level of education and level of income seem to be correlated with fruitful shared parenting plans. Another intriguing finding in Bauserman’s review (2012) was that, in joint custody, a greater degree of contact between fathers and children occurs irrespective of whether the arrangement involves physical or legal custody. This suggests that joint custody fathers may reflect a cohort of people with a higher pre-existing level of commitment to their children.

**Protective & Risk factors in Shared-Parenting Plans**

Trinder (2010) and Bauserman (2012), in reviewing the available research, conclude that early or pre-existing family characteristics predict subsequent pathways and outcomes following a divorce. In their view, cooperative parents tend to develop flexible shared care arrangements and positive outcomes, whereas high conflict parents develop rigid arrangements that are associated with poorer children’s adjustment and lower levels of child satisfaction. Thus, in addition to looking at the efficacy of different post-divorce arrangements, time would be well spent in delineating what distinguishes the cooperative low conflict group of parents from their high conflict counterparts. (Some of these differences have already been delineated – age, socio-economic status) but clearly further research is needed. The reviewed research does not support the view that simply dividing children’s time between the parents ensures the children’s happiness. What matters most is the quality of parenting time (warmth, sensitivity, and discipline style) and the ability of parents to focus on the children’s needs. Thus, time allocation should be secondary to an analysis of the quality of the parent-parent and parent-child relationships in post-divorce proceedings.

McIntosh & Smith (2012) in their review of the literature identify some of the risk factors that predict poor shared parenting arrangements. These include the following:

1. Younger parents, from lower socio-economic strata.
2. Parents who live far apart.
3. Parents who did not select a shared custodial arrangement, but, rather, these arrangements were imposed on them.
4. Parents who are unable to maintain a business-like relationship, distrust one another, and whose parenting arrangements are not child focused.
5. Parents with limited external resources.

**Additional Factors that are Correlated with Negative Outcomes are:**

6. The parents’ difficulty in operating within the framework of the child’s best interest.
7. The parents’ fixation on achieving parity of time.
8. The parents’ poor emotional availability to their child.
9. Poorly managed interpersonal conflict between the parents.

The authors emphasize the importance of pragmatic parenting plans with an accent on child focused arrangement as being critical in maintaining viable post-divorce arrangements.

Smyth et. al (2016) note five domains that relate to child outcome in shared time arrangements to assess the risk and benefits of such arrangements. These domains include (1) the safety and security in the caregiving environment (e.g., the presence of violence and protracted parental conflict are risk factors that negatively impact on the safety and security of children); (2) The parenting quality and the parent child relationship (e.g., growing up in an environment with two trusted and good enough parenting relationships is likely to prove beneficial to the child); (3) Child specific factors, which factor into the children’s developmental needs (as noted, shared parenting arrangements may carry different risk for children below the age of three compared to school age children); (4) The nature of the shared parenting arrangements, and how those are exercised (e.g., the risk/benefits of shared arrangements will vary depending on variables such as the quality of the parental relationship, the parental capacities and how these are practically implemented); (5) Practical considerations such as financial resources, work flexibility and geographic proximity are important variable to be considered in shared parenting. The authors maintains that the risk levels for shared parenting arrangements are significantly increased when the safety and security of the caregiving environment is potentially compromised.
Conclusions

In dissecting this large body of the literature on shared parenting versus sole custody some lines of consensus appear to emerge.

1. Children seem to benefit from shared arrangements when their parents are able to jointly establish viable parenting plans and are able to co-parent in respectful and cooperative fashion that factors in the children’s needs first and foremost.

2. Shared parenting works best when children are provided with the opportunity to maintain meaningful and satisfying relationship with both parents and have a voice in such arrangements.

3. Shared-parenting that increases the frequency of child’s exposure to conflict is associated with poor socio-emotional outcomes for the children.

4. Children do not benefit of parenting arrangements that are rigid and unresponsive to their needs.

5. Shared parenting plans must consider the age of the children. It may be less advisable for children under the age of three because, by that point, preschoolers have yet to develop an ability to self-soothe, organize their own feelings and behaviors, or use and understand language to communicate their emotional states. The development of these milestones appears to be critical in alleviating the risk of strain that accompanies repeated movements between two homes and repeated separation from primary caregivers.

Some Methodological Issues

- Most of the studies reviewed did not have a comparison or a control group.
- Studies differed with respect to samples, and approach to measurements. How do we get around these issues when we seek to compare various research findings?
- How does one define shared parenting? Is it a 50/50 split, a 35/65 split?
- How we define our clinical samples? Is it wise to combine cooperative self-selecting families with court mandated high conflict families that have been forced into shared arrangements?
- Can we assume that joint legal and joint physical custody are one and the same for research purposes or are they likely to contaminate findings when pooled together?

As previously noted, many of the reviewed studies are cross-sectional and correlational in nature with no implications for causality. All of these factors would need to be considered in future research.

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