



ASSOCIATION OF
FAMILY AND
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eNEWS

President's Message

By Nancy Ver Steegh, JD, MSW, St. Paul, Minnesota

Those of us who live in cold climates sometimes go through a period of winter hibernation. Instead of fighting the cold and dark, we relax into its austerity. Deep winter calls us to clear our mental cupboards, hold close what we value most, and make an honest appraisal of our well-being. It's a period of retreat and reconnection with the rhythms of the natural world. When we gaze into the fireplace or wake in the still of the night, we remember and we imagine.

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AFCC 51st Annual Conference Navigating the Waters of Shared Parenting: Guidance from the Harbour May 28-31, 2014 at the Westin Harbour Castle Toronto

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Thank you to the 51st Annual Conference Sponsors! This year's Diamond Sponsor is OurFamilyWizard.com, and the Platinum Sponsor is Devry Smith LLP, Lawyers & Mediators. Special thanks to

MONTHLY E-NEWSLETTER
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Upcoming AFCC Conferences



AFCC 51st Annual Conference
May 28-31, 2014

the Sponsorship Committee: Steven Benmor, Barbara Fidler, Fareen Jamal, Michael Kleinman and patti cross. Thank you as well to the Conference Program Committee: Hon. Denise McColley and Matthew Sullivan, co-chairs; and committee members: Rachel Birnbaum, Andrea Clark, Hon. George Czutrin, Barbara Fidler, Hon. R. John Harper, Hon. Emile Kruzick, Daniel Pickar, Arnold Shienvold, and Larry Swall—all of whom spent many hours preparing for what promises to be an excellent conference program. Please click the link below to see a full list of conference sponsors, visit their websites and learn more about them. AFCC is grateful for their generous support.

[51st Annual Conference Sponsors](#)

Sneak Peek: April 2014 Family Court Review—Articles on Shared Parenting

AFCC is pleased to offer a sneak peek at three articles to be published in the April 2014 *Family Court Review*. This Special Issue of *FCR* will examine shared parenting controversies previously explored in *FCR* and at AFCC conferences. It will include additional articles and commentaries on the Final Report on the Think Tank on Shared Parenting. The AFCC 51th Annual Conference, *Navigating the Waters of Shared Parenting: Guidance from the Harbor*, will feature presentations on the articles below and numerous related topics.

Closing the Gap: Research, Policy, Practice and Shared Parenting—AFCC Think Tank Final Report, Pruett, M.K., & DiFonzo, J.H. [Read article](#)

Parental Separation and Overnight Care of Young Children, Part I: Consensus through Theoretical and Empirical Integration, Pruett, M.K., McIntosh, J.E. & Kelly, J.B. [Read article](#)

Parental Separation and Overnight Care of Young Children, Part II: Putting Theory into Practice, McIntosh, J.E., Pruett, M.K. & Kelly, J.B. [Read article](#)

Poster Proposal Deadline February 7

AFCC is accepting proposals for posters to be exhibited during the annual conference. Students, lawyers, mental health professionals, and academics are invited to propose posters concerning innovative interventions, initiatives, new programs, legal or policy changes, and/or research. The deadline to submit a poster proposal is February 7, 2014.

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AFCC 54th Annual Conference

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Apply for a Conference Scholarship by March 1

Conference scholarships are available to assist recipients with the cost of conference attendance. Scholarships include registration for a pre-conference institute, the conference, attendee meals, networking functions, and a certificate of attendance. A limited number of stipends to help recipients offset the cost of travel and lodging will be awarded. The deadline to apply is March 1, 2014.

[Apply for a scholarship](#)

Register Now—Early Bird Registration Discounts End March 7

AFCC members who register and pay by March 7, 2014, will receive the best rates for conference registration. Not yet a member of AFCC? You can join with your conference registration! Then register at the member rate and save \$10 on your first year of membership. It is strongly encouraged that you register for the conference and book your accommodations early; previous year's annual conferences have sold out in March.

[Register online](#)

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Canada's largest and most diverse city, Toronto is exciting, vibrant and cosmopolitan. The Westin Harbour Castle is located on the waterfront of Lake Ontario. Nearby attractions include the Hockey Hall of Fame, CN tower, Eaton Centre (shopping mall), theatre and financial districts. The special rates for AFCC conference registrants are \$185CAD/night single and \$206CAD/night double. All rooms are subject to availability and *early reservations are encouraged* to ensure a room at these rates—the AFCC hotel block has sold out in recent years. On May 1, 2014, any non-reserved rooms in the block will be released for general sale and the AFCC rate cannot be guaranteed. For reservations call 800-937-8461 or [book online](#).

The History and Development of the Cook County Child Protection Mediation and Facilitation Program

By Susan M. Storcel, JD, Chicago, Illinois

The Circuit Court of Cook County, Illinois, established its first alternate dispute resolution (ADR) program for divorce cases in the 1960s. Then, in 1979 the Court started a program to refer misdemeanor cases to mediation at the Center for Conflict Resolution, a non-profit organization based in Chicago. In the more than thirty years that followed, no less than 14 additional ADR

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March 15, 2014
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March 27-28, 2014
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March 28, 2014
Regis College
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Missouri Chapter Annual Conference

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programs were started by the Court to address small claims, landlord-tenant issues, delinquency matters and, in 2010, a mortgage foreclosure mediation program was launched.

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Member News

Ellen Bruno, San Francisco, California, has directed a new film, [Split](#). The film explores the separation of parents exclusively from point of view of the children aged 6-12, offering insight to parents and professionals, while reassuring children that they are not alone.

J. Herbie DiFonzo, Hempstead, New York, and Ruth C. Stern have written a new book, [Intimate Associations: The Law and Culture of American Families](#). The rise in divorce, cohabitation, single parenthood, and same-sex partnerships, along with an increase in surrogacy, adoption, and assisted reproductive technologies, has led to many diverse configurations of families, or intimate associations. The authors chart these trends over the past several decades and investigate their social, legal, and economic implications.

Linda Fieldstone, Miami, Florida, was awarded a certificate of appreciation by the 11th District Judicial Circuit of Miami-Dade County, in recognition of her “outstanding dedication and willingness to go above and beyond the call of duty for the Eleventh Judicial Circuit, the Judiciary, and the citizens of Miami-Dade County.”

Parenting Coordination Trainings in Chicago

Register now for two two-day parenting coordination training programs held by AFCC, in collaboration with Loyola University Chicago School of Law’s Civitas ChildLaw Center. Joan B. Kelly, PhD, will present *The Essentials of Parenting Coordination: Helping High Conflict Parents Resolve Post-Separation Disputes*, March 10-11 and Robin M. Deutsch, PhD, will present *Pitfalls, Process and Prescriptions: Advanced Strategies for Managing Parenting Coordination Cases*, March 12-13. Each training program is eligible for 12 hours of continuing education.

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AFCC Scholarship Fund

If you have already donated to this year’s annual appeal, THANK YOU. If you have not donated yet—there is still time to help professionals and students attend AFCC conferences. As the scholarship applications for Toronto come in, we are reminded of just

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how important this effort is. Although AFCC conferences are relatively inexpensive compared to other international and national professional education conferences, registration fees, travel and hotel expenses add up, making attendance being cost prohibitive for many of our colleagues. Please know that the scholarship recipients your donation assists are both incredibly grateful and incredibly worthy of your support.

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Nominate a Colleague for an AFCC Award

Do you have a friend, colleague or program that deserves extra recognition this year? The AFCC Awards Committee is seeking nominations for the John E. VanDuzer Distinguished Service Award, Stanley Cohen Research Award and Irwin Cantor Innovative Program Award, to be presented in conjunction with the AFCC 51st Annual Conference in Toronto. Nominations must be received or postmarked on or before March 15, 2014. Please review the award criteria and descriptions for more information and submission instructions, as well as a list of previous recipients.

[More information](#)

ACR Spirituality Section Rocky Mountain Retreat

AFCC is pleased to join in supporting the 2014 Spirituality Retreat as a collaborating organization. The ACR Spirituality Section will hold its seventh retreat July 17-20, 2014, at the Shambhala Mountain Center in Red Feather Lakes, Colorado. Dr. Joan Borysenko, author of more than 20 books on mind-body science, is the featured speaker for the weekend. Spaces have been set aside for members of AFCC and ACR; fewer than 20 spaces remain.

[More information](#)

Conference Audio and Materials Available

Access to audio recordings of conference plenary sessions is a benefit of AFCC membership. AFCC members can log in [here](#) to listen to free conference audio from Annual and Regional Conferences, as well as Symposiums on Child Custody Evaluations dating back to 2004. Audio recordings of all conference sessions are available for purchase either as discounted packages or individually through [Digital Conference Providers, Inc.](#) AFCC also has a limited number of USB drives containing conference session handouts available for purchase, \$20 for members and \$40 for non-members with no fee for standard shipping. Call the AFCC office at (608) 664-3750 or email [Carly Kreger](#) to check availability and place an order.

the Experts piece?

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Readers are welcomed and encouraged to forward this e-newsletter to interested colleagues.

The opinions expressed in articles published or linked to in the AFCC eNEWS are those of the authors and do not necessarily reflect the positions of the Association of Family and Conciliation Courts.

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Family Law in the News

Woman Claims Lawyers Should Have Told Her Divorce Would End Her Marriage

By Tomas Jivanda, courtesy of The Independent

A British woman attempted to sue her former lawyers for professional negligence, claiming that, alongside a number of other allegations, they failed to advise that finalising divorce proceedings would inevitably cause her marriage to end.

[Read more](#)

Kids Whose Bond With Mother Was Disrupted Early in Life Show Changes in Brain

By Mark Wheeler, courtesy of the UCLA Newsroom

Children who experience profound neglect have been found to be more prone to a behavior known as "indiscriminate friendliness," characterized by an inappropriate willingness to approach adults, including strangers. UCLA researchers are now reporting some of the first evidence from human studies suggesting that this behavior is rooted in brain adaptations associated with early-life experiences.

The findings appear in the Dec. 1 issue of the peer-reviewed journal

[Biological Psychiatry](#).

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Navigating the Waters of Shared Parenting: Guidance from the Harbour

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Special thanks to the Sponsorship Committee for the AFCC 51st Annual Conference:

Steven Benmor, Barbara Fidler, Fareen Jamal, Michael Kleinman and patti cross.

**Closing the Gap: Research, Policy, Practice and Shared Parenting
AFCC Think Tank Final Report**

Marsha Kline Pruett* and J. Herbie DiFonzo*

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I. Overview

Shared parenting after separation or divorce is one of the most hotly debated issues in family law today. Just as many parents are in conflict, professionals with different perspectives, experiences, and educational backgrounds disagree about the best direction to take in both global family policy and in particular cases. While professionals agree that children of separation and divorce fare best when they have stable, healthy and continuing contact with both parents, reaching a consensus about shared parenting policy has been elusive. Professionals, as well as parents, seek guidance from both social science research and the legal system. This sensible quest must deal with two contrasting fluidities; the change as experienced by individual families and the far slower flow of transformation in legislatures and courts.

Shared parenting consists of two distinct conceptual and legal entities that are combined; joint decision-making (joint legal custody) and shared parenting time (joint physical custody). Diverse opinions exist in the field about the appropriate policy for each of these. Many professionals favor a legal presumption of joint decision-making, while some are opposed.ⁱ An even wider diversity of opinion seems to exist regarding shared parenting time. One perspective

is that parents should be encouraged to agree to a significant minimum quantum of time for each parent unless there are reasons to conclude that it would not be in their child's best interest.

Others contend that shared parenting time should be the default presumption. . Still others raise concerns about the wisdom of any legal presumption, particularly in cases involving infants and toddlers, high conflict, and domestic violence. Some of these professionals take a more circumspect approach, contending that because one size never fits all, parenting time must be determined on a case-by-case basis, preferably by the parents themselves. These various perspectives have been highlighted by recent legislative activity across the globe. Shared parenting legislation has been passed in the United Kingdom, reversed in Denmark, and revisited in both Australia and Israel. In the United States, a statute lengthening the minimum amount of parenting time was recently passed by the Minnesota Legislature, but vetoed by its Governor, while a comprehensive parenting law was enacted in Arizona. Bills on this subject are being studied in numerous jurisdictions and the pace of legislative proposals has been increasing over the past several years.

Across the range of views about shared parenting, experts agree on the need for reliable information to better inform family courts, policymakers, practitioners, and parents. Social science research has provided much of the information relied upon by the family law field, but researchers acknowledge that the types and specificity of information desired and needed is not always available. Moreover, research that is available and on point is not always interpreted or represented accurately in legal and policy advocacy processes.

With an emphasis on the role that research plays in the process of legal controversy and decision-making, as well as in policy formulation, the Association of Family and Conciliation Courts (AFCC) convened a Think Tank of 32 family law experts (e.g., legal, mental health

practitioners, conflict resolution practitioners, educators, judges, court services administrators, and researchers) to examine the issues surrounding shared parenting.¹ The Think Tank focused on the gaps between research, practice and shared parenting policy and began identifying where and how to offer guidance to policymakers and practitioners.

Challenging and at times uncomfortable discussions were had over the course of the three-day Think Tank in January 2013. It is notable that among the group of professionals selected intentionally for both their expertise and divergent perspectives, there were important points of agreement, evidenced by a majority view. Areas of agreement typically revolved around general propositions, the specifics of which were debated as points of tension with areas of disagreement and dissent were noted as they arose.

Regarding shared parenting time:

1. The most effective decision-making about parenting time after separation is inescapably case-specific.
2. Statutory presumptions prescribing specific allocations of shared parenting time are unsupportable since no prescription will fit all, or even the majority of, families' particular circumstances.

At variance from the majority, several Think Tank participants supported the notion of a statutory presumption of a minimum amount of time with each parent, but no optimal amount of time was specified. The concern also was expressed that while tailoring individualized arrangements would be optimal, the lack of a clear policy and the

¹ The professionals who convened and participated in the Think Tank are listed in Appendix A.

guidance a clear policy offers could result in increased incidence of interparental conflict, which negatively affects everyone in the family.

3. Social science research strongly supports shared parenting (*i.e.*, frequent, continuing and meaningful contact) when both parents agree to it. There is also empirical support for shared parenting under broader conditions (*e.g.*, some forms of parental conflict or disagreement) for children of school age or older.
4. There is no “one-size-fits-all” shared parenting time even for the most vulnerable of families.
 - a) Child development professionals agreed that the current state of research supports no definitive conclusion about the impact of some overnights, frequent overnights, or no overnights, on long-term parent-child relationships and child well-being.
 - b) Shared parenting in the midst of high conflict is generally not in children’s best interests. However, some families are able to manage the conflict on their own or with third party assistance, such that shared parenting can be implemented without harm to the children; thus, bolstering the case for individualized parenting time determinations.
 - c) While family violence usually precludes shared parenting, there are some cases in which the violence is tied to the separation or to the dynamics of the adults’ relationship while living together and may end when the parents live apart.ⁱⁱ In such cases, shared parenting may be feasible. The context and meaning of the intimate partner violence and the implications for parenting must be carefully determined for each family.

Regarding joint decision-making:

5. A majority of Think Tank participants supported a presumption of joint decision-making, while a substantial minority espoused a case-by-case approach.

Definitions relevant to shared parenting

At the end of a traditional divorce proceeding, the court typically awarded “custody” of the couple’s children to one parent. As *legal* custodian, that parent made all major decisions regarding the child’s welfare. As *physical* custodian, that parent served as the residential parent with whom the child lived, while the other parent was entitled to *visitation*. In today’s legal culture, many legislatures, courts, and mental health professionals have jettisoned these terms and recast the underlying concepts. Use of the term “custody” is rapidly diminishing. Parental responsibilities after separation or divorce are instead usually divided into decision-making and parenting time.

Decision-making refers to the legal right and responsibility to make all nonemergency decisions for a child, including those regarding welfare, education, health care, and religious training. Joint decision-making means that both parents share all parental rights, privileges, duties, powers, responsibilities, and obligations, except for specified decisions as set forth in the parenting plan.ⁱⁱⁱ

Parenting time refers to the periods of time each parent spends with the child as outlined in a parenting plan or similar court order.^{iv} Increasingly, statutes in the United States call for parents to have significant time periods during which the child resides with or is under the supervision of each parent.

Shared parenting connotes that the parents have joint decision-making authority and that the child spends at least 30-35% of his or her time with each parent. However, the concept of shared parenting is often used without clarification about whether it is decision-making, parenting time, or both that are under study or discussion. In a meta-analysis of individual joint custody studies, Bauserman (2002) had difficulty separating joint decision-making from parenting time as independently assessed criteria in studies; and when they were, shared parenting time (physical custody) was defined as “substantial” sharing with no further elaboration. Studies of representative court samples (McIntosh, Smyth, Kelaher, Wells, & Long, 2010) defined shared residential care as a minimum of 35% (5 overnights per fortnight) for all children two years and older, while (Sandler, Wheeler, & Braver (in press)) found 30% to be the most representative minimum level. Experts at the Think Tank agreed that joint decision making and a 30-35% threshold of parenting time would reasonably constitute shared parenting for our purposes.^v

From a psychosocial perspective rather than a legal perspective, shared parenting is marked by the attitudes and behaviors of each parent that express a commitment to being actively involved in raising their children. Experts agree that it is highly desirable for parents to collaborate and act as a team in order to provide children with the fullest range and depth of emotional social, and economic resources that the parents can pool between them. At the very least, supporting the other parent’s presence in the child’s life attitudinally and behaviorally fosters coparenting involvement. But it may be possible, depending on the child’s age, maturity, and other circumstances, for parents to have minimal communication and coordination and yet share the raising of their children in what is called “parallel parenting” (an arrangement in which

parents agree to exchange important information about the child's welfare, but otherwise permit each other to parent the child autonomously).

II. Social Changes Leading to the Emergence of Shared Parenting as a Major Family Law Controversy

The second half of the twentieth century marked a period of economic, social and political changes among industrialized nations that brought with them rapid transformation in family structures and diversity in espoused roles. Family roles traditionally structured along normative gendered lines were called into question, and prescriptions about the division of work and family among couples with children were expanded into more widely accepted variations. These shifts in roles were accompanied by higher rates of divorce among married partners and higher rates of separation among never married partners. These shifts were also accompanied by a greater incidence and acceptance of children born outside of marriage.

Although expectations that partners share work and family roles are increasingly normative, partners beginning a family often specialize in breadwinner and family caregiver roles in order to be efficient, even when both parents have paid employment (Coontz, 2006). The efficiency that sustains relationships when a couple acts to fulfill shared family goals can become the root of trouble when the couple must determine how to share parenting and family responsibilities after separation or divorce. The parent who has been the primary breadwinner for the family may demand the opportunity for equal sharing of child care and assumption of

financial responsibility, while the parent who has taken primary responsibility for caregiving frequently wants to retain the larger share of the child's care and upbringing and receive child support and/or other forms of financial support from the breadwinning parent. Even when both parents have actively participated in their child's care, the gendered division into roles of larger and smaller amounts of child care and responsibility play out in a similar vein after separation.^{vi} The development of mandatory child support guidelines linking the amount of support to the parenting arrangements constitutes a significant complicating factor. The fact that increased parenting time often equates with a decreased child support obligation can serve to cloud the real interests of the parents and children during a time of troubling family transition, when negotiations between parents may be fraught with mixed personal motivations and/or imputation of distrust of the other parent's motives.

Among never married partners who were not romantically involved with each other for any extended period of time prior to or subsequent to the child's birth, there are two common scenarios. The first is similar to the one faced by divorcing parents, where the parent who has spent less time in care giving wants to increase parenting time. A second scenario may present as the parent with most of the responsibility for the child wishes to influence the other parent into taking more responsibility for the child's upbringing. Both situations involve parents seeking conflicting arrangements for legal decision-making and parenting time after the couple splits up.

III. Legal Changes Leading to the Emergence of Shared Parenting as a Major Family Law Controversy²

² A more detailed treatment of the range of child custody presumptions and their legal effects is provided elsewhere in this issue (DiFonzo *et al.*, 2013).

Presumptions in custody law: A brief historical introduction

For several centuries until the mid-1800s, common law courts generally awarded sole custodial rights to the father, unless the court had determined the father to be an unfit parent. In the 19th century, American courts were confronted with two related cultural shifts: the industrial revolution's remaking men into marketplace wage earners and the emergence of a "separate sphere" for women as domestic caregivers. These courts gradually crafted a "tender years" doctrine that allocated custody of young children to their mothers upon divorce or separation.

Both the paternal preference rule and the tender years doctrine that supplanted it during the 19th century signaled the law's conviction that after a marital breakup, children could properly be raised only by a sole custodial parent. Except in extreme cases, these legal conventions also avoided judicial evaluation of the welfare of the children whose custody was being determined. Unless the child would be placed in serious jeopardy through an award of custody to the legally favored parent, the paradigmatic custody rules at play until the late 20th century allowed the courts to determine the result by reference to broad legal norms without reference to the particular family. The Uniform Marriage and Divorce Act, approved in 1970 and widely adopted in varying forms by many of the United States, provided an individualized best interests standard for determining child custody. The tender years doctrine weakened as courts began to acknowledge that gender roles were changing. But despite the nearly universal abolition of this presumption, many judges continue to prefer that the custody of young children be placed in the mother, who is still in westernized societies the parent who spends more time engaged directly with young children. Though remnants remain, the tender years doctrine is a relic of the common law.

An increasingly equitable division of parenting responsibilities, coupled with a growing unease at the win-lose mentality of custody battles and the resultant harm to children, led to a greater social and legal acceptance of no-fault divorce, mediated or interest-based settlements, and joint custody in the 1970s and 1980s. Shared parenting is today permitted and indeed, often encouraged in Australia, Canada, New Zealand, the United Kingdom, and all 50 U.S. states, although the conditions for and contours of the arrangement can differ markedly.

The current status of shared parenting presumptions

The most significant trend in contemporary child custody law is toward greater active involvement by both parents in postseparation childrearing. In recent years, statutes dealing with parental responsibilities after separation or divorce have been repeatedly amended and proposals for further changes are regular features of legislative sessions across the United States and Canada. Presently there is no consensus in Australia, Canada, England, New Zealand, or the United States regarding the applicability, appropriateness, or even the definition of shared parenting.

The emphasis on mutual consultation and collaboration between separated parents has led many courts to refuse to sanction shared parenting when parental cooperation and communication are severely lacking. However, some U.S. states also do not allow one parent to employ a unilateral veto on the arrangement. The general rule is that mutual hostility will not doom a shared parenting plan if the parents are committed to cooperation and are capable of setting aside their differences and/or encapsulating them from the child's witness or experience.

The vast majority of statutes, even those enacting a shared parenting presumption, avoid a specified allocation formula. Statutes continue to frame the norm for decision in terms of the

best interests of the child, which almost every legislature has linked to a fairly comprehensive set of factors for the court to consider. In most cases, a shared parenting determination assures the child “frequent and continuing” contact with both parents rather than an equal or particular division of time. Trial courts retain a great deal of discretion to determine the actual distribution of parenting time.

Domestic violence and “friendly parent” provisions

Jurisdictions across western countries have legislated or found that domestic abuse renders joint decision-making and shared parenting time inconsistent with the best interests of the child. For a variety of cultural reasons, domestic abuse tends to be both difficult to detect and under-reported compared to its incidence. Some commentators argue that the statutory framework is problematic because it requires the victim to prove the violence. To compound the problem, courts, practitioners and other components of the family law system often fail to acknowledge the significance of domestic abuse and minimize its extent, despite contrary legislative direction. Other commentators have expressed concern about the use of false allegations of domestic violence as a strategy to marginalize the accused parent’s role and gain leverage in a parenting dispute. Similarly, concerns abound about the use of false allegations to turn a child against the accused parent and create delays in the legal process that turn into lengthy parent-child separations that have the power to undermine a previously affectionate relationship.

Many jurisdictions have added to their best interest factors one favoring the parent most willing to encourage contact with the other parent, commonly referred to as “friendly parent” provisions. Under this rubric, in determining the primary residential parent in contested cases,

courts assign some weight in favor of the parent most likely to foster the child's relationship with the other parent. For example, in effectuating the principle that children should have as much contact with their parents as is consistent with their best interests, Canadian and American courts must consider the willingness of the person seeking sole decision-making or primary parenting time to facilitate contact with the other parent. This allows the court to consider which parent best recognizes and meets the child's need for a positive relationship with both parents.

But some commentators have warned against the use of "friendly parent" provisions in cases involving domestic violence (*e.g.*, Bailey, 2013). Some problems that have been identified include that sometimes the perpetrator may appear to be the more cooperative parent (particularly if the victim-parent is trying to prevent the perpetrator from access to the child), that the victim may, in exchange for receiving primary parenting time, accept the violent partner having unsupervised periods of contact with the children, and that "friendly parent" provisions can urge cooperative parenting even in cases in which parental interactions may aggravate conflict to the detriment of the child. Some statutes attempt to address these concerns by declaring that the friendly parent provision does not apply in cases involving domestic violence.

Parenting plans

Another popular legal movement has sought to reroute custody proceedings from contested hearings onto alternative resolution pathways that encourage and facilitate self-determination and problem-solving approaches to custody disputes. A major initiative in this rerouting is the development of a parenting plan by the parents. Parenting plans have become the preferred method to achieve the public policy goal that children have frequent and continuing contact with both parents, and they are an integral component in an increasing number of shared parenting resolutions.

Parenting plans, which may be individually crafted or adapted from a menu of acceptable plans promulgated by the state courts or private sources, aim at setting out each parent's area of responsibility in providing for the child's physical care, emotional stability, and well-being, both at the present time and as the child ages and matures. In the best case, they also incorporate agreements for methods of resolving future disputes outside of court before turning to the traditional court process as a means of last resort. For example, court resources for disputing parents among Canadian provinces routinely suggest that parents consider mediation, collaborative law, parent coordination, and/or arbitration as dispute resolution methods should they encounter difficulties in carrying out their parenting plan. Australian law also encourages parents to take responsibility for their parenting arrangements and to use the legal system as a last resort for resolving disputes. Many American state statutes require a parenting plan as part of the process for sharing parenting responsibilities.

IV. Priorities at Issue

The Think Tank participants articulated five statements of crucial priorities and competing tensions among children, parents, and/or the state:

1. The child's developmental needs for stability and continuity in important relationships with the recognition that those relationships will continue to evolve over time.

This statement refers to the will to support children's regulatory adaptations when they are very young. Children need consistent rhythms in their life that do not change frequently. Stability and continuity in relationships does not necessarily mean being cared for in a single environment, but they demand consistency in each caregiver's responsiveness to the child from one day to the next, bearing in mind that children can often adapt and benefit from differences in temperament and behavior among the adult care-givers who interact with them. The

indeterminate factor is how much change is optimal, tolerable, or desirable for each child over the short and long term.

2. The child's current developmental needs with needs that will emerge over time.

As noted above, change is unpredictable. Statement number **two** frames the tension between parenting plans based on current developmental needs of children with the certainty that those needs will always change. Two dilemmas are present here. First, the initial legal outcome may create a status quo difficult to alter even when the developmental changes call for it, unless incorporated into the parenting plan framework. Second, setting the threshold for reopening the case in a way to facilitate appropriate change without encouraging litigation is a difficult balance.

3. Maintenance of family relationships with the protection of children from conflict and violence and the safety of both parents.

This tension between keeping both parents involved with their child in the face of emotional and often volatile separations whose trajectory cannot be accurately predicted is a major Gordian knot facing family court professionals. Moreover, when parents have been violent in the recent past, disentangling how to maintain parent-child relationships that involve the perpetrator(s) without sacrificing the safety necessary for sound parenting among the victim(s) presents another complicated picture.

4. Preservation of family autonomy through minimized interference by the court system with the protection of vulnerable family members.

The most important functions of the court entail enforcement of protections for vulnerable family members. How much to mandate protective measures while maintaining the law's commitment to non-interference in private family affairs also presents a tension.

5. Court efficiency in addressing the needs of families well and in a timely manner with meeting the complex needs of families across diverse dynamics, structures, and cultural and socioeconomic backgrounds.

Finally, family law dockets are overcrowded and understaffed, often resulting in a slow and inefficient process that exacerbates tensions within the family during the time outcomes are languishing in decision purgatory. Sometimes cases take longer than anyone involved would hope because the financial and/or relational issues are so complex that a great deal of time, professionals, and/or evidence gathering is needed to sort out competing views and uncovered facts. Giving complexity its due must be balanced against the tension of resolving cases without contributing further to entrenched stances that suck the resources out of families in the interim. Responding to this paradox of “hurry up and make sure you are thorough” describes the fifth tension inherent in the current family law system that affects shared parenting controversies.

Empirical and clinical knowledge serve as valuable tools for sorting out and resolving these competing interests. However, divergence within the field about how such knowledge is best understood and applied creates barriers to forming consensus and establishing policy and common practices about shared parenting. The constituents who desire clarity about how research can be used to make decisions in the shadow of these competing interests include:

- Judicial officers, to help in decision-making;
- Legislators, to guide in the drafting of empirically informed statutes;
- Mental health, dispute resolution and legal professionals working with separating families;
- Separating parents, to inform them of the law and current legal policy basis when they negotiate their parenting agreements; and
- The wider community impacted by the laws and research applied on behalf of individual families and society at large.

V. The Evidence Social Psychological Research Brings to Bear on Potential Policy Directions

Without clear direction for how best to resolve these different priorities and the sociopolitical and familial tensions they engender, family law scholars and practitioners have looked to sociological and psychological research in hopes that it will offer guideposts for decision-making that preserve child well-being in the long-term.³ Research has led to widespread agreement among professionals that children generally have improved prospects after separation and divorce when they have healthy, loving relationships with two parents before and after separation and divorce. Research has also soundly established that the multiple changes in home, school, neighborhood, etc. that often accompany separation and divorce are difficult for children, and that continuity and consistency—especially in quality parenting and parent-child relationships—support child adaptation. In particular, studies have focused on the importance for children of their fathers staying involved after separation, as fathers are more apt than are mothers to spend less time or withdraw from their children after separation. Figuring out how best to support the child’s relationship with both parents while maintaining consistency and continuity in the child’s life has proved challenging.

To date, shared parenting research has not been utilized sufficiently or accurately as a springboard for advice to policymakers faced with competing interests and claims about what is best for children after separation and divorce. Is there statute-worthy science? What does

³ Throughout this article, we summarize research central to the Think Tank discussions. In order to keep the text to a manageable length, and because this is a Report and not a research article, we provide citations sparingly. We do not cite individual studies (with one exception in the “overnights” section) but instead identify relevant reviews. When we present statements attributable to an author, we provide citations.

relevant research, considered in the aggregate, point to as policy directions that best support interests of children and families? There has been no clear articulated position from involved professionals across disciplinary and theoretical perspectives. In response to this void, policymakers are making decisions based on pressures brought to bear by various constituent groups, concepts of “fairness” and anecdotal evidence from highly litigated cases, rather than on accumulated social science knowledge.

Throughout this report we present points of consensus that emerged in discussions as policy-worthy for their salience and their backing by at least a majority of Think Tank participants. Our first point centers on beliefs about the importance of shared parenting as a policy cornerstone for family well-being.

***Consensus Point 1:** Promotion of shared parenting constitutes a public health issue that extends beyond a mere legal concern. Parents who collaborate in child rearing have a positive effect on their children’s development and well-being. Parents who engage in protracted and/or severe conflict that includes rejecting or undermining the other parent have a negative impact. The potential for shared parenting is present for children regardless of the family structure in which they live, and it represents a key protective factor in (a) helping children adjust to separation and divorce and (b) establishing an ongoing healthy family environment in which to rear children and facilitate high quality parenting.*

As interdisciplinary professionals involved in family law, Think Tank participants agreed that our mission involves educating all families about the value of shared parenting that is carefully developed and maintained over time. Shared parenting has inherent benefits for the entire family, but the risks of ongoing conflict and of making compromises that are not child-centered in order to placate one parent’s desires for “equal” parenting over the other’s objections must also be recognized. Preventive measures against such risks must be delineated so that protections can be

made available. Policy debates are often framed as competing choices between maximizing the potential benefits of shared parenting and minimizing the potential risks. We framed two questions as underpinning key policy controversies:

- 1. Do we fear the potential harm caused by inappropriate use of shared parenting more than the harm potentiated by a lack of shared parenting when it is appropriate?*
- 2. How does research help us establish where the benefits and harms to children in shared parenting lie?*

To answer these questions, we began by recognizing that social science research has played a critical role in shared parenting throughout its evolution as both a conceptual frame and legal possibility. Research has contributed volumes to understanding the following family characteristics and dynamics both directly and indirectly relevant to shared parenting:

- a) child development at various stages and its relationship to separation/divorce adjustment;
- b) contributors and barriers to high quality parenting – notably parental mental health, characteristics of successful co-parents and co-parenting interactions;
- c) the protective factor of cooperation and the risk factor of parental conflict;
- d) the specification of various types of family conflict and their harmful and—in cases of protracted and high level conflict that is witnessed by and/or involves the children—destructive force for children’s well-being;
- e) the sustaining capacity of positive father involvement;
- f) influences of re-partnering and having children with a new partner;
- g) interventions that foster parental well-being, sensitive and appropriately structuring parenting, a positive co-parental relationship, dual parent involvement, reduced conflict; and
- h) the role of alternative dispute resolution in general and mediation in particular for

fostering co-parenting agreements and promoting familial self-determination of post-separation arrangements and decision-making.

In each area, research has provided enhanced understanding of the broad brush strokes relevant to shared parenting and some of the specific conditions under which parental sharing works well or works poorly for children of varying needs and developmental eras. The interdisciplinary group at the Think Tank recognized both the value and the limitations of applying research findings within family law. In particular, we highlighted two areas:

***Consensus Point 2:** At its most influential, research evidence offers legal professionals and clinical decision makers the best available information without providing answers or predictions in any individual case. However, when aggregate-level research is applied as determinative of a specific case outcome, its value becomes compromised in the adversarial process.*

Research becomes part of the problem rather than the solution when it is used as a hammer instead of a level. When empirical knowledge is used to nail down points of evidence rather than to provide a point of balance from which to draw conclusions based on other relevant information, it loses its potential to provide clarity in the highly subjective world of legal negotiation and decision-making. When an area of research is used to typify an all-encompassing standard rather than a point at which to begin asking questions, we immediately run the risk of undermining its contribution of identifying probabilities based on particular factors or circumstances.

***Consensus Point 3:** We need to differentiate areas with sufficient research to offer consensus in legal situations from those without a sufficient data basis or agreement about its interpretation. Only then can consumers of research distinguish the quality of individual studies and the authority of an aggregate body for assisting in decisions.*

Some areas of research are established with sufficient quantity and quality of information to offer bright line recommendations (*e.g.*, the effect and conditions under which conflict undermines children's positive development), but these must be distinguished from studies that offer preliminary information, yet do not create an adequate body of research to suggest a policy direction for a broad subsection of family populations. For example, areas of research with strong supporting bodies elucidate both the harm to children due to continued exposure to parental conflict, and the important protective factor of positive quality parenting by both parents. In contrast, under what conditions and how best parents in moderate conflict can continue to share decision-making and parenting time exemplifies an area about which we do not have a sufficient body of knowledge to recommend policy. Similar concerns underlie the question of when having children alternate between two homes on a regular basis becomes more anxiety producing than beneficial.

With these refrains in mind, we turn to brief synopses of the relevant research literatures in order to lay out critical issues defined in the Think Tank. Four bodies of work were identified as central to the discussion. The first includes direct studies of what is commonly referred to as joint custody, be it physical (residential) or legal (decision-making), and sketches what we know about shared parenting and its efficacy for children. For comprehensive texts on the subject, *see* Kuehnle & Drozd, (2012); also *see* Kline, Pruett, & Barker, 2009; Kelly, 2007). Following this synopsis of shared parenting research, we turn to three areas that flag vulnerable subgroups and dynamics in the family after separation: (1) parent involvement and behavior by one parent that interferes with or undermines the child's relationship with the other parent; (2) infants and toddlers whose shared parenting schedules include overnights at the less-seen parent's home; and (3) shared parenting in the context of prior or current family violence.

Shared parenting: sharing the parenting rather than dividing the time

Parenting plans allocate decision-making and parenting time. Though there is little evidence on the outcomes of children when joint decision-making and shared parenting time arrangements are carefully differentiated, research by and large confirms that when parents freely choose to be in shared parenting situations, family members show positive adjustment. Parents who choose these arrangements have reported that their children are better adjusted across multiple measures than their sole-custody or stepfamily peers. These trends have held internationally across cultures and countries.

Considered as a body of work, the efficacy of shared parenting has been supported for children preschool and older. But *how much* time allocation makes a difference for or against positive development is as yet unknown. Moreover, any benefits of shared parenting may well be reduced or even reversed in vulnerable circumstances (*i.e.*, younger children, high conflict, court mandated sharing). This prevents the framing of confident conclusions about whether shared parenting can be successfully adopted and implemented in any given situation. The sheer number of potential intervening factors, let alone their balance, outstrips the current knowledge base.

The focus on a division of parenting time obviates the most important element of shared parenting. Shared parenting time is ideally constituted by organizing complementary schedules that support the healthy functioning of the reconstituted family. Think Tank participants shared the view that in an optimal parenting plan, responsibilities and time are not allocated according to a principle of abstract fairness to the parents, but by family functionality (*e.g.*, how each parent's work schedule coincides with the child's school and activity calendar) as it relates to the child's best interests.

As a result, participants at the Think Tank cautioned that the nuances apparent in the current literature on parenting time call for parental agreement or individualized judicial assessments rather than decisions premised on legal presumptions. Parents who do not attempt to remove themselves or their children from conflict, who do not commit to supporting the presence of the other parent in their child's life, or who are unable to collaborate in making mature decisions that are truly child-centered are typically not considered appropriate for shared parenting arrangements (unless they can agree sufficiently and safely to raise the children with “parallel parenting” strategies). On the other hand, there is enough research to conclude that children in families where parents have moderate to low conflict and can make cooperative, developmentally-informed decisions about the children would clearly benefit from shared parenting arrangements.

Parent involvement

As child development research has been concentrated most often on mothers as parents, parent involvement research after separation has typically focused on fathers (For reviews, *see* Amato & Dorius; 2010; Fabricius, Braver, Diaz, & Velez, 2010; Kline Pruett, Pruett, C. Cowan, P. Cowan, & Diamond, 2011). Relationships between biological fathers and non-biological father figures who are important to the child in their role as “father” and caregiver are implicated in dynamics that strongly impact family adjustment after separation. Given that mothers are the more prevalent residential parent across countries and family structures, the issue of how—and how much—fathers can stay involved with their children after separation lies at the center of current debate over shared parenting. Research about parent involvement is one of the more robust literatures that have developed in the past generation. In a nutshell, *positive* parent involvement that combines nurturing with sensitive but effective discipline proves beneficial for

children. And as noted above, shared parenting arrangements can ameliorate the negative effects of lessened father contact and involvement associated with parental separation.

Despite the extensive list of advantages to positive father involvement, separation from and lack of involvement with the child's mother fuel a number of family dynamics that combine to pose obstacles to continued father involvement. One problematic dynamic arises from parental gatekeeping, which characterizes one parent's control over the extent to which the other has access to their child and to information that facilitates their involvement, such as school and medical information. Maternal gatekeeping has again received more attention in separated families than paternal gatekeeping. Studies have repeatedly shown that the strongest predictor of father involvement is not the father's desire or intention to be engaged, but the mother's desire to have him involved. She thus has a great deal of power in regard to the type and amount of access he has to the child, if he is not living much of the time with the child. Other factors that contribute to father involvement attenuation include pain of separation that leads to paternal withdrawal, involvement with new partners, involvement with children of those partners, and having children with those partners. Additional adverse factors include inexperience or ignorance about parental rights (especially among unmarried and/or teen parents), as well as institutional and societal barriers that still make it difficult to parent outside of an intact family. All of these factors suggest that it is more difficult for men than women to stay committed to parenting after separation, but it is important for the family system that they do so when they are motivated to be loving, engaged parents.

It is also well understood that any parent loss presents a risk factor for any child. These consequences result in part from losing child rearing and financial and community resources normally combined in an intact household. Father absence due to divorce has been associated

with poorer child and adolescent outcomes. Shared parenting arrangements in studied populations have mitigated these effects and benefitted children's family relationships, economic stability and social capital.

Shared parenting is one way of securing fathers' rights and abilities to be involved with their children by affording them time and opportunities in ways that reinforce their sense of authority, value, and significance in the life of their child. Joint decision-making and shared parenting time can ease a father's fear of losing his parental role and/or sense of belonging in his child's life. Think Tank participants agreed that having parenting time that is not solely on weekends typically contributes to higher quality parenting and more enduring relationships with children; a handful advocated further for a norm of equal sharing.

Young children's overnights

Embedded within the shared parenting research is a hotbed of controversy on the question of overnights for fathers with very young children who do not primarily reside with them. As indicated, early paternal involvement serves as a protective factor for later father-child relationships. Yet the primacy of attachment research paradigms for mapping the pathway to healthy development has led to dyadic considerations of security and stability that have, until very recently, excluded the father or other caregiver. The emphasis on assisting parents through a conflict-laden transition, while their children's brains and minds are developing rapidly and in need of consistent nurturance and support in order to develop physiological and biological regulation and trust in the world around them, can pit the uncoupling family's dynamics in direct opposition to the child's capacities and needs. The question of stability is one of perspective: a child loses the stability of consistent nighttime routines and comfort taken from a relied upon caregiver, or the nurturance at those times from the other parent. The relative loss and

corresponding instability created for the child depends in part on how distinct or overlapping the caregiver roles were at night prior to separation. The question of how to negotiate these critical and sensitive junctures in family life has led to controversy in legal arenas, with research scarce and very limited in terms of generalizability. In this Think Tank, we only began to sketch out the issues of controversy and sift through them, arriving at a few points of agreement.

***Consensus Point 4.** Infancy is an important time of rapid growth and foundational development. During this time, sensitive caregiving is critical to maximize the child's immediate and long-term well-being. Special consideration needs to be given to meeting young children's developmental needs.*

***Consensus Point 5.** Children benefit from parents sharing in their upbringing throughout their life span, where appropriate, including in the earliest stages of life.*

***Consensus Point 6.** When there is a dispute over a young child's care, decision makers (including parents) should consider all relevant factors. No single factor trumps the influence and importance of the aggregate.*

Discussion about how best to ensure the twin and at times competing priorities of both parents' involvement and the young child's stability stalled, although the group agreed that these two priorities are not always mutually exclusive as so often described in the literature or in individual cases. While no consensus was reached about how to reconcile these competing developmental concerns, Think Tank participants identified the relevant factors that must be accounted for in order to balance them in any particular case. These are discussed in the next section of this Report. Additionally, McIntosh, Pruett, & Kelly (this issue) have taken steps to incorporate both priorities in policy recommendations that build upon the general propositions arrived at during the Think Tank.

Domestic violence/intimate partner violence (IPV)

Think Tank experts agreed that when either or both parents have been violent through physical, verbal, or psychological abuse of the other parent, a comprehensive assessment is necessary before a shared parenting plan is considered. A substantive body of research makes clear how destructive such violence can be to parents' ability to raise their children with the requisite sensitivity and structure that promotes victim and child safety and well-being. In addition to diminishing parenting capacity, family violence negatively affects children's well-being directly. When children are directly involved in the conflict or are the subjects of it, the probabilities for their healthy development are far worse.

Think Tank discussions acknowledged that even violence is not a clear presumptive factor against shared parenting as it might appear. Individualized considerations bear on assessing the impact of family violence for shared parenting. Namely: *When* and *how* the violence occurred (frequency; severity; distant or recent past versus present; separation-specific or not; perpetrated by one family member against another or part of an ongoing family dynamic); *whether* and *how* the child can be insulated from it; the child's prior and current relationship with the perpetrator(s); and whether some controlled contact promoted under conditions of safety will help support both the child's capacity to cope with his/her family situation and the violent parent's capacity to draw on his/her nurturing capacities to strengthen the parent-child relationship without endangering the child or the child's other parent.

What the victim-parent(s) faces in shared parenting is of paramount concern. The cooperation or communication that is inherent in making decisions jointly or moving children between two homes creates countless opportunities for the perpetrator to continue patterns of manipulation, violence and control on the other parent. Shared parenting can be structured to keep parental contact at a minimum, through carefully structured parenting plans and separating

decision-making authority across major domains. But it still increases the danger of one parent being able to lord fear, threat, intimidation, or other forms of power over the other, while using the children as pawns in order to secure the other parent's compliance or hurt the other parent by manipulating the children to reject the parent.

Given this omnipresent possibility, the Think Tank participants supported caution in considering any shared decisions or arrangements when IPV is/was involved. Moreover, a legal presumption in favor of shared parenting would task parent-victims with the obligation of countering a rebuttable presumption that would further burden this already vulnerable group of parents. The abuse might not be established, as IPV is not always uncovered through screening and evidential inquiry. Furthermore, many professionals familiar with domestic violence dynamics emphasize that victims often fear angering their perpetrators and increasing the risk of further abuse, so IPV goes underreported. Parents who have been abused and are already feeling disempowered vis-à-vis the abusing parent are often unwilling to risk appearing to be the uncooperative parent in a legal dispute, therefore putting themselves potentially at a disadvantage in negotiations. For all of these reasons, there was general agreement on the need for individualized assessments. Moreover, a complicating factor in evaluating some IPV cases is the risk posed by false allegations aimed at manipulating the legal outcome. Comprehensive summaries of the IPV issues involved in potential shared parenting situations can be found in (Hardesty, Haselschwerdt & Johnson, 2012; Johnston & Ver Steegh, 2013; Ver Steegh & Dalton, 2008; Hannah & Goldstein, 2010). In addition, Brinig, Drozd & Frederick (this issue) provide a full consideration of presumptions and factors that warrant specific and careful weighing when IPV is or has been present in potential shared parenting situations.

VI. Complications in Applying Shared Parenting Research to Family Law

The Think Tank discussions encompassed parameters for using social science research to assist legal decision makers in shared parenting cases. As noted above, in some areas relevant to shared parenting research, we have larger and more consistent bodies of knowledge. The Think Tank participants recognized early on, however, that cross-pollinating science and practice or policy has inherent pitfalls. Social science research provides a starting rather than ending point for policy development. Appropriate reflection on research contexts will help prevent the misapplication of data in broad sweeps to all individuals. Some of the pitfalls encountered and ways to avoid them include the following:

Making comparisons of studies that are not directly comparable

Even when individual studies are sound, the individual studies or accumulated literature gets distorted when it is interpreted. For example, in the overnights literature, three major studies are often cited on overnight studies (Solomon & George, 1999; Kline Pruett, Ebling & Insabella, 2004; McIntosh, Smyth, Kelaher, Wells, & Long, 2010). Comparisons of these studies have led to distorted conclusions that result from faulty assumptions made that these studies look at similar outcomes measured in similar ways, which they do not. Responsible scholarship acknowledges and elaborates on these differences so that they are clearly articulated.

Research rarely answers the specific question policy makers are trying to address

The difficulty remains in the translation from science to policy, or from social science to law. Research studies may point to a desired direction for family relationships (*e.g.*, keeping the father involved), but the studies themselves do not shed light on how that direction is to be reached. Accepting that both parents are important to child adjustment when parents live apart,

and that their involvement in shared parenting promotes child adjustment, does not address *how* parents best become and stay involved. Some parents choose not to be or to stay involved, while others find their role circumscribed until their involvement is reduced or prevented altogether. The unsettled policy issue lurking behind the “*how*” question is whether reluctant or excluded parents can achieve full participation in child rearing without a statutory time specification.

Recognizing trustworthy research

Science endeavors to be objective, above taking sides in a controversy. This is of course, a fallacy, as researchers bring their own biases to the process in the form of their beliefs about human nature, how they form their questions, what variables they select to investigate, and how they interpret their results. The purpose of utilizing research to clarify policy options is to obtain a more objective standpoint than that propagated by advocacy groups. Relying on trustworthy research further reduces the risk of it being used inappropriately for political reasons. While a comprehensive treatise is beyond the scope of this report, a few tips can help maximize the selection and appropriate use of reliable research.

First, stick to the selection of peer-reviewed studies. A rigorous peer review process in social science is designed to minimize biases. The process requires each study to undergo review from several anonymous peers, presumably with relevant expertise, whose goal is to pick apart the study in sufficient depth that biases will be stripped away and methodological deficiencies will be corrected if possible, and acknowledged in any case. Studies that have not been subjected

to this process (reports, research summaries, magazine publications, some—but not all—book chapters) should be considered with appropriate skepticism and relied upon conservatively.

Second, consider significant as well as non-significant results. Often a large amount of attention is garnered from one finding, when most of the variables investigated were not statistically significant. If shared parenting was related to greater incidence of externalizing behavioral problems, but had no bearing on internalizing behaviors, social skills, self-esteem, or parent-child relationships, the risk should be assessed as a real but contained one, and the one negative effect should not be presented without reference to the other non-significant findings that are equally telling. Moreover, a significant effect may not be an important one in real world application. Two variables may be related to a significant degree, but still only co-occur 1 in 5 times in the real world. A public policy should not be based upon the conjunction of factors that will not be connected 4 out of 5 times they are assessed. Similarly, when scores on outcome variables differ significantly between two research groups but fall within the normal range, the differences are less relevant for public policy. Children in shared parenting arrangements may differ from those who are not on attachment security, for example, but both percentages may still fall within the norms for attachment security in the general population. Depending on other factors pertaining to the child's individual and family well-being, the finding may not be sufficient around which to construct a public policy.

In addition, research reports should consider alternative explanations for results. A common error in interpretation occurs when association is implied to mean causation; two variables that co-occur such as positive father involvement and child academic achievement do not prove that father involvement leads to school success. In fact, children whose fathers are

highly involved may be more likely to value education for other reasons, or both factors may be related to socioeconomic status or better partnerships with the children's mother.

Trustworthy studies in this field garner information from both parents to the fullest extent possible, rather than relying solely on mothers' or fathers' reports. Trustworthy research uses measurement instruments and procedures with proven reliability and validity, and the study methods fit the policy-related question. For example, it is known widely that the "Strange Situation," a research paradigm used to assess attachment in young children, is less valid for fathers than mothers. Studies of married, white middle class parents cannot be assumed to be applicable to low income families or parents of color, and vice versa. Comparing overnights in a sample of children who rarely saw their fathers before separation with one that lived with them continuously will likely produce different group results that are not necessarily attributable to the overnights; pre-existing conditions in the families must be taken into account.

Even if a study provides ample context to know that it was conducted with best practices and appropriate disclaimers are made about not over-interpreting the research, studies become cited by press releases, journalists, and other authors who may choose a part of a study to describe, may report findings without including methodological cautions raised by the author, may downplay or accentuate aspects of a study out of context ("cherry picking"), or may misrepresent variables, findings or data analyses out of ignorance or misunderstanding. These errors are then copied from one author to the next, and – like the telephone game – the story changes down the line. Something important gets lost in translation, and it is no longer remembered what the study was once truly about or what it reported. Often this process occurs from natural selection or disintegration over time. However, it can also occur when deliberate or inadvertent biases creep into the research process in order to make it more pertinent in the legal

process. As a result, studies get used for purposes other than what they were intended, and the politicization of the process renders the research misleading and ultimately of limited or distorted value. When research is made a tool for advocacy, results are emphasized that support a particular view, while contrary findings or studies that refute the policy goal are ignored.

Static versus dynamic view of parenting

When applied judiciously to a set of circumstances, research provides valuable information about how a set of events or dynamics may turn out for a child or family, given statistical probabilities. They cannot offer probabilities about how a living arrangement is likely to turn out for a family in the future, unless all of the factors that might affect that outcome are also taken into consideration. Nor can research foresee a change in the family's direction. For example, how two parents are getting along eight months after separation gives us a better than chance occurrence that they will co-parent the child cooperatively two years later. We have an even greater basis for prediction if they had a positive relationship before the separation. However, that history may lose its predictive force if one or both parents form a new union that impacts the co-parental bond for better or worse; what happens in the new relationships may alter one or both parents' desire or ability to be involved with the children from the separated family. This raises the question whether post-separation parenting policy should ensure a process for re-assessing post-separation parenting arrangements since they often evolve in unpredictable ways. In terms of shared parenting presumptions, the central question is whether they support consistency at the cost of flexibility, both at the time of the separation and as the child and family change over time.

In sum, research cannot fully bridge the gap between science and the needs of the legal system. The intersection of science (inherent questioning and uncertainty leading to tentative findings) and legal process (inherent certainty in presentations leading to definitive rulings)

defines the disparity between what family law research is equipped to do and what it is asked to do. Closing this gap requires that both legal and social science professionals strive for consensus in using research to further family law policies in the best interests of children and families.

VII. Presumptions and Factors about Shared Parenting and Joint Decision-Making

Family law generally endeavors to strike a delicate balancing act between a) finding individualized solutions for each family and b) promulgating rules, guidelines and presumptions to provide separating parents with “starting points” for their individual determinations. After considering the way in which shared parenting serves as a lynchpin for policy, practice, and research controversies, the Think Tank participants summarized the desirability of presumptions and factors, and considered the research each supported.

Presumptions

Consensus Point 7. Supporting self-determination by parents whenever it is safe for the parents and children to do so is an optimal goal for professionals in family law.

- *The family justice system should treat parents and children with fairness and respect that will support parents in determining how they will meet their children’s needs.*
- *When asked or required to do so, courts should make decisions concerning parenting arrangements based on the specific and unique needs of individual children.*
- *Special circumstances and limiting conditions to parental self-determination require caution and specialized knowledge (empirical and clinical) in order to focus on the individualized circumstances that might affect child stability through shared parenting arrangements. They include the mental illness of a parent and the child’s specific maturational, medical, social or educational*

needs. In these situations, the emphasis placed on the child's needs for stability and trust, the parents' ability to co-parent and communicate, and each parent's availability and consistency must be attended to with vigilance.

- *If the court determines that one or both parents have committed one or more acts of domestic violence, the court should make an individualized determination regarding parenting arrangements. The ability of one or both parents to reflect on and repair relationships after the domestic violence should be taken into account, along with other relevant factors.*

Consensus Point 8. *A majority of Think Tank professionals supported a presumption of joint decision-making, while the rest supported a case-by-case approach. Even with a joint-decision making presumption, the factors that trigger individual determinations (e.g., domestic violence) remain to be fully delineated.*

- *It was also recognized that joint decision making is already common across many countries and jurisdictions, and can more easily be circumscribed and managed for many families than can shared parenting time.*

Consensus Point 9. *Negotiations and determinations about parenting time after separation that involve third parties (mental health, legal) are inescapably case-specific.*

- *Research informs areas of inquiry and illuminates key considerations for determining the most appropriate parenting arrangements for particular families. However, research cannot prescribe caregiving arrangements suitable for all families in all situations.*

Consensus Point 10. *Children's best interests are furthered by parenting plans providing for continuing and shared parenting relationships that are safe, secure, and developmentally responsive, and which avoid a template calling for a specific division of time imposed on all families.*

- *Shared parenting presumptions may support both parents' involvement, but when parents are unable to manage their conflict appropriately, that very involvement may aggravate the conflict to the child's detriment.*
- *It is inappropriate to have a presumption that covers all situations when not enough is known to verify that the presumption will benefit almost all children*

and families. Presumptions appear in the law as a blunt instrument, yet we know very little empirically about how a presumption would apply to same sex couples, non-biological parents, never marrieds who had no significant partnership before having a child together, and so on.

- *In particular, the highly unique circumstances, needs, and developmental trajectories of young children in separating families counsel convincingly for the rejection of any presumptions either for or opposed to overnights or regarding a specific amount of contact with each parent. We simply do not have the science to support such precise presumptions.*

Consensus Point 11. *In lieu of a parenting time presumption, a detailed list of factors bears consideration in each case. These relevant factors, which generally comprise the best interests standard, by and large, cut across age and special circumstances. They delineate the major aspects of personal, dyadic, and environmental interactions and conditions that affect development, as demonstrated by empirical evidence and clinical knowledge from the social sciences.*

Factors

Having agreed upon the importance of taking factors into account to individualize shared parenting determinations, Think Tank participants listed the relevant factors. The list that follows is extensive but not all-inclusive. The categories generally apply to all age children, although some specifics will differ based on the age and developmental stage of the child or other familial circumstances. Not all of these factors are based on similar amounts or quality of science. Most have some empirical support, while others are informed more substantially from clinical experience.

Qualities of the infant/child: need to develop secure attachments with significant caregivers, need to develop self-regulatory mechanisms which are associated with sensitive and consistent caregiving, breast-feeding circumstances if applicable, temperament, age, maturity level,

response to separations and transitions, current routines, cognitive strengths, and any particular physical, emotional, educational, or other needs resulting from developmental stage or characteristics of the child.

Qualities of the parent: temperament (fit with child's temperament), parent's mental health (including mental illness, substance use or abuse); sensitivity to child's early developmental needs, capacity and willingness to be flexible as child's needs get expressed in the moment and change over time, capacity and interest in effecting cooperation in child-rearing domains and economic resources;

Nature of each parent-child relationship: warmth, availability, ability to correctly discern and respond sensitively to the child's needs, past experience living with the child and caregiving history, caregiving interest and motivation, and history of perpetrating child physical or emotional abuse or neglect;

Quality of the co-parenting relationship: capacity and willingness to be flexible as child's needs get expressed in the moment and change over time, level and nature of conflict and/or domestic violence (history, recency, intensity, frequency, content, and context (separation-specific or broader), competence to encapsulate the conflict and protect the child from exposure, ability to communicate appropriately and in a timely manner about the child, degree of facilitative versus inhibitive gatekeeping behavior, and capacity for cooperation about the child's developmental needs; and

Nature of the broader caregiving and cultural environment: proximity of parental homes, breast/bottle feeding arrangements, work schedules and circumstances, presence of extended kin or close friends that participate in caregiving, availability of additional childcare if needed and economic resources to it, and transition mechanics.

A fuller explication of these factors in light of empirical knowledge about each awaits more summarization and analysis than was addressed in the short time frame of the Think Tank conference. Some papers on these themes are forthcoming in current and future Family Court Review issues.

VIII. Role of the Family Courts in Shared Parenting Dispute Resolution

Our final Consensus Point captures the decision by Think Tank participants to align themselves with the movement to nudge parents in family disputes away from the adversarial process and toward dispute resolution alternatives.

Consensus Point 12. Shared parenting arrangements may be supported or hindered by the legal processes that are intended to help parents separate. In order to maximize the court's potential to assist parents in achieving as much self-determination and collaboration as possible, both alternative dispute resolution (ADR) options and case management tools are strongly preferred.

- *ADR processes are markedly better than litigation for separating parents and their children. Mediation is desirable for families who have not attempted ADR. These dispute resolution options are preferred to litigation, with the exception of some situations involving family violence or when a family member has been harmed, or when one parent contends that the other is substantially interfering with his or her access to their child, all of which require a careful assessment before determining appropriate strategies.*
- *Court case management is highly desirable as part of the ADR process. This would include a dedicated family court, the assignment of one judge throughout each family's process, and built-in follow-ups where families have a place to return to court to assess how their arrangements are holding, or to seek changes if safety becomes an issue or enforcement becomes necessary.*

The Think Tank also recognized that unresolved issues abound about the family court's role vis-à-vis parental self-determination. Bringing clarity to these issues in the future will help create consistent decisions across courts and geographical locations. Most pressing is the question of whether a judge should be able to overturn parental decisions, and on what basis? Should a judge be allowed to set aside a parenting agreement only on the ground of manifest injustice? Or should a judge also set aside agreements that they find not to be in the child's best interests? Would such a decision rest on the judge's view about whether the agreement is not sufficiently protective of one or both parties' own best interests? Are these decisions best left to relatively unfettered judicial discretion or should some stricter legal standards be developed?

IX. Future Research

The Think Tank participants shared more agreement about the value and limitations of social science research for family law pertaining to separation and divorce than we might have expected, given the diversity of views and professional roles represented in the group. Through the conversation, certain themes were reiterated, leading to a statement of research priorities for the future.

Shared parenting arrangements

- What parenting plans are most widely implemented and in which situations? Do these plans hold over time or are they modified in light of evolving developmental stages or family transitions?
- How are children faring in different types of arrangements over time?
- How is age a factor in children's adjustment to various shared parenting arrangements?

- Do shared parenting plans that are mandated have the same benefits as those that are voluntarily agreed to? For whom, and under what conditions?
- What types of arrangements maximize sensitive and responsive parenting in the immediate aftermath of the legal decision and in the longer term?
- What are children's views of living in different types of arrangements?
- Does shared parenting discourage parent-child coalitions against the other parent?

Parent involvement

- What types of arrangements, both legal and residential, support non-residential parent involvement for those who are reluctant to be involved? Can certain arrangements encourage involvement?
- How can gatekeeping interventions help parents facilitate or prevent parents from obstructing the ongoing involvement of a previous partner/parent?
- Do statutes that express a minimum percentage of time due to each parent provide protection for parents that cannot otherwise stay involved? On the other hand, would these explicit time prescriptions lock unwilling parents into unremitting conflict? What wording in statutory time specifications best accomplishes the policy goal of keeping non-residential or less-seen parents involved in children's lives after separation?

- What are the feedback mechanisms, and the directional influences, between shared parenting arrangements and parental involvement? For instance, does shared parenting (and what types and to what degree) stave off a sense of loss, anger or being treated unfairly following separation?
- To what extent do shared parenting arrangements help cement vulnerable parent-child ties?
- How are cultural differences accounted for in parenting plan arrangements? How do they impact the outcomes for children? What types of norms (familial, cultural, community) influence how shared parenting roles play out in families?

Young children and overnights

- How much separation constitutes an undue hardship for children at very young ages? What types of relationships with the other parent/care giver serve as protective factors?
- How much of child outcomes can be explained by variables such as age or gender after conflict is accounted for? Under what circumstances does the co-parenting relationship trump age as the factor likely to enhance children's developmental stability rather than undermine it? Are there as-yet undetermined factors that must be explored?
- How do emotion regulation, attachment, day care and school adjustment, and child socialization stack up as goals for understanding the influence of shared parenting and parenting plan variables?

- When we look at overnights, what other factors must be included in our studies, such as temperament, schedule consistency, cultural norms, etc.?

Domestic violence/IPV

- How can both parents' involvement be supported without compromising the safety of any family member?
- What types of screening and assessment instruments best serve decisions made about whether shared parenting is desirable for individual families?
- What types of evidence-based interventions can be utilized when shared parenting is being considered? Can some arrangements be tried more effectively only when certain kinds of supports and treatments are available and in place? What are those?

Family court processes

- Do states with formal policies calling for frequent and meaningful post-separation contact implement different parenting plan arrangements than those who do not? Does this statutory guidance result in particular normative time allocations? How do these state outcomes differ from those that specify a minimum time allocation?
- Do temporary parenting orders foster stability or lock in a perhaps inappropriate status quo?

X. Conclusion

This report represents but a first step in the process of thinking through how research, policy and practice about shared parenting can be more effectively integrated. Think Tank participants broadly agreed that the child's best interests, including health, safety, and welfare, are the paramount considerations in decision-making and parenting time determinations. Getting to consensus in policy is an ongoing conversation that will evolve as our knowledge base grows. Separating and divorcing families stand to benefit most if we can narrow the gap between social science research and family law policy and practice. As the professionals guiding these families, we too will benefit from a more cohesive integration. This report endeavors to present some thoughtful reflection and to provide some points of consensus that will hopefully lead to new models for comprehending the issues, research that fills in some of the current gaps, and recommendations that follow from the whole of what we come to understand about shared parenting. Shared parenting encompasses both danger and delight. We believe that, when all potential hazards are addressed, shared parenting offers unparalleled opportunities for families to reorganize and sustain their better selves after separation to ensure that children continue to be nurtured by parents whose collaboration sets a path for a strong family future.

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Appendix A

Think Tank Contributors

Conveners: Arnold Shienvold, Ph.D. (Co-Chair), Peter Salem, M.A. (Co-Chair), Marsha Kline Pruett, Ph.D., M.S.L. (Co-Reporter), J. Herbie DiFonzo, J.D., Ph.D. (Co-Reporter), Bernie Mayer, Ph.D. (Facilitator), Loretta M. Frederick, J.D. (Steering Committee), Hon. Ramona Gonzales (Steering Committee), Stacey Platt, J.D. (Steering Committee), and Kyle D. Pruett, M.D. (Steering Committee).

Participants: Nicholas Bala, J.D., Lawrence Jay Braunstein, J.D., Margaret F. Brinig, J.D., Bud Dale, J.D., Ph.D., Robin Deutsch, Ph.D., Hon. Grace G. Dickler, Leslie Drozd, Ph.D., Robert Emery, Ph.D., William V. Fabricius, Ph.D., Hon. William Fee, Jonathan Gould, Ph.D., Linda Fieldstone, M.Ed., Hon. Dianna Gould-Saltman, Grace M. Hawkins, LCSW, Leslye Hunter, LMFT, Janet R. Johnston, Ph.D., Joan B. Kelly, Ph.D., Jennifer McIntosh, Ph.D., Anne Menard, Irwin Sandler, Ph.D., Andrew Schepard, J.D., Richard A. Warshak, Ph.D., and Justice R. James Williams.

Invited but unable to attend: Chief Justice Diana Bryant (Family Court, Australia), Jean Clinton, M.D., Justice Rebecca Love Kourlis (Colo. Sup. Ct., *ret.*), Michael Lamb, Ph.D., Robert Marvin, Ph.D., and Leslie Ellen Shear, J.D.

Appendix B

Points of Consensus Reached at the Think Tank

Consensus Point 1: *Promotion of shared parenting constitutes a public health issue that extends beyond a mere legal concern. Parents who collaborate in child rearing have a positive effect on their children's development and well-being. Parents who engage in protracted and/or severe conflict that includes rejecting or undermining the other parent have a negative impact. The potential for shared parenting is present for children regardless of the family structure in which they live, and it represents a key protective factor in (a) helping children adjust to separation and divorce and (b) establishing an ongoing healthy family environment in which to rear children and facilitate high quality parenting.*

Consensus Point 2: *At its most influential, research evidence offers legal professionals and clinical decision makers the best available information without providing answers or predictions in any individual case. When aggregate-level research is applied as determinative of a specific case outcome, its value becomes compromised in the adversarial process.*

Consensus Point 3: *We need to differentiate areas with sufficient research to offer consensus in legal situations from those without a sufficient data basis or agreement about its interpretation. Only then can consumers of research distinguish the quality of individual studies and the authority of an aggregate body for assisting in decisions.*

Consensus Point 4. *Infancy is an important time of rapid growth and foundational development. During this time, sensitive caregiving is critical to maximize the child's immediate and long-term well-being. Special consideration needs to be given to meeting young children's developmental needs.*

Consensus Point 5. *Children benefit from parents sharing in their upbringing throughout their life span, where appropriate, including in the earliest stages of life.*

Consensus Point 6. *When there is a dispute over the care of a young child's care, decision makers (including parents) should consider all relevant factors. No single factor trumps the influence and importance of the aggregate.*

Consensus Point 7. *Supporting self-determination by parents whenever it is safe for the parents and children to do so is an optimal goal for professionals in family law.*

- *The family justice system should treat parents and children with fairness and respect that will support parents in determining how they will meet their children's needs.*

- *When asked or required to do so, courts should make decisions concerning parenting arrangements based on the specific and unique needs of individual children.*
- *Special circumstances and limiting conditions to parental self-determination require caution and specialized knowledge (empirical and clinical) in order to focus on the individualized circumstances that might affect child stability through shared parenting arrangements. They include the mental illness of a parent and the child's specific maturational, medical, social, or educational needs. In these situations, the emphasis placed on the child's needs for stability and trust, the parents' ability to co-parent and communicate, and each parent's availability and consistency must be attended to with vigilance.*
- *If the court determines that one or both parents have committed an act of domestic violence, the court should make an individualized determination regarding parenting arrangements. The ability of one or both parents to reflect on and repair relationships after act(s) of domestic violence should be taken into account, along with other relevant factors.*

Consensus Point 8. *A majority of Think Tank professionals supported a presumption of joint decision-making, while the rest supported a case-by-case approach. A presumption in favor of joint decision-making is not appropriate in every case, and factors that trigger individual determinations (e.g., domestic violence, far distance from parental domiciles) remain to be fully delineated.*

- *It was also recognized that joint decision making is already common across many countries and jurisdictions, and can more easily be circumscribed and managed for many families than can shared parenting time.*

Consensus Point 9. *Negotiations and determinations about parenting time after separation that involves third parties (mental health, legal) is inescapably case-specific.*

- *Research informs areas of inquiry and illuminates key considerations for determining the most appropriate parenting arrangements for particular families. However, research cannot prescribe caregiving arrangements suitable for all families in all situations.*

Consensus Point 10. *Children's best interests are furthered by parenting plans providing for continuing and shared parenting relationships that are safe, secure, and developmentally responsive, and which avoid a template calling for a specific division of time imposed on all families.*

- *Shared parenting presumptions may support both parents' involvement, but they may also encourage insensitive parenting aggravated by ongoing parental contact.*
- *It is inappropriate to have a presumption that covers all situations when not enough is known to verify that the presumption will benefit almost all children and families. Presumptions appear in the law as a blunt instrument, yet we know very little empirically about how a presumption would apply to same sex couples, non-biological parents, never marrieds who had no significant partnership before having a child together, and so on.*
- *In particular, the highly unique circumstances, needs, and developmental trajectories of young children in separating families counsel convincingly for the rejection of any presumptions either for or opposed to overnights or regarding a specific amount of contact with each parent. We simply do not have the science to support such precise presumptions.*

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Consensus Point 12. *Shared parenting arrangements may be supported or hindered by the legal processes that are intended to help parents separate. In order to maximize the court's potential to assist parents in achieving as much self-determination and collaboration as possible, both alternative dispute resolution (ADR) options and case management tools are strongly preferred.*

- *ADR processes are markedly better than litigation for separating parents and their children. Mediation is desirable for families who have not attempted ADR. These*

dispute resolution options are preferred to litigation, with the exception of some situations involving family violence or when a family member has been harmed, or when one parent contends that the other is substantially interfering with his or her access to their child, all of which require a careful assessment before determining appropriate strategies.

- *Court case management is highly desirable as part of the ADR process. This would include a dedicated family court, the assignment of one judge throughout each family's process, and built-in follow-up where families have a place to return to court to assess how their arrangements are holding, or to seek changes if safety becomes an issue or enforcement becomes necessary.*

* Marsha Kline Pruett, PH.D., M.S.L., ABPP is the Maconda Brown O'Connor Chair at Smith School for Social Work and Adjunct Professor at Smith College, Department of Psychology. She conducts original research, designs and tests preventive interventions in courts and community agencies, consults nationally and internationally about family law issues, and maintains a small clinical practice that includes couples mediation and parenting plan consultation. Her books include *Your Divorce Advisor* (with D. Mercer) and *Partnership Parenting* (with K. Pruett). She has authored numerous articles, book chapters, and curricula; she is a frequent speaker and trainer for judges, attorneys, mental health professionals, and parents. Much of her work focuses on father involvement, co-parenting, and child adjustment.

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ⁱ This type of presumption is often referred to as a "rebuttable" presumption. Courts must adopt a rebuttable presumption as the decision in the case unless the party opposed to the presumption succeeds in overcoming it with sufficient evidence that a different allocation of decision-making would be in the child's best interest. By contrast, an "irrebuttable" presumption is a rule of law and cannot be overcome with evidence. All presumptions discussed in this Final Report are rebuttable.

ⁱⁱ Definitions of domestic violence, IPV, and/or abuse encompass a wide variety of behaviors. Depending on the jurisdiction, the proscribed conduct may include both physical and psychological harms. For example, the California Family Code sets out a presumption against awarding sole or joint legal or physical custody to a person who has “perpetrated domestic violence” within the past five years. The statute declares that

a person has “perpetrated domestic violence” when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order ... to protect the other party seeking custody of the child or to protect the child and the child's siblings.

Cal. Fam. Code Sec. 3044. A different provision (Sec. 3011) requires the court to consider “any history of abuse” by a parent as a factor in determining the child’s best interests. Abuse in this context is defined to include “[i]ntentionally or recklessly to cause or attempt to cause bodily injury;” “[s]exual assault; “[t]o place a person in reasonable apprehension of imminent serious bodily injury to that person or to another;” and the following behaviors:

molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls ..., destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party....

Cal. Fam. Code Secs. 6203, 6320.

By contrast, the New York Legislature established domestic violence as a factor for the court to consider in decision-making and parenting time proceedings. While the statute (N.Y. DRL § 240) does not define domestic violence, the legislative findings indicate that the statute is not limited to acts causing actual physical harm by referring specifically to “physical or psychological violence [used as] the means of control and the norm for the resolution of disputes.” *Child Custody and Visitation Proceedings—Domestic Violence as Factor*, 1996 Sess. Law News of N.Y. Ch. 85 (A. 2446–C) (McKinney’s). The legislature also declared that “[a] home environment of constant fear where physical or psychological violence is the means of control and the norm for the resolution of disputes must be contrary to the best interests of a child.” *Id. See, e.g., J.D. v. N.D.*, 170 Misc. 2d 877, 882, 652 N.Y.S.2d 468, 471 (Fam. Ct. 1996):

Compelling proof of an unmistakable pattern of power and control exerted by the Petitioner against the Respondent emerged at this trial. Economic, verbal and sexual abuse, coupled with regular and frequent threats and intimidation, while more subtle in nature, are no less damaging than a physical blow. This panoply of factors is omnipresent in the case at bar. When taken together, they form the profile of a Respondent whose body may appear intact, but whose spirit has been

pummeled and eroded by her husband's verbal aggression and psychological terror.

ⁱⁱⁱ See, e.g., Ariz. Rev. Stat. Ann. § 25-401 (Joint legal decision-making means that “both parents share decision-making and neither parent's rights or responsibilities are superior except with respect to specified decisions as set forth by the court or the parents in the final judgment or order”); Cal. Fam. Code § 3003 (Joint legal custody “means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.”); Utah Code Ann. § 30-3-10.1 (joint legal custody “means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified”).

^{iv} In general, parenting plans aim at setting out the specific responsibilities of each parent in providing for the child’s physical care and emotional stability, now and as the child ages and matures. The plans optimally cover decision-making and parenting time arrangements as well as specifics relevant to transitions between parents, changes in schedule, handling of future conflicts, agreements on cost sharing for child-related expenses beyond child support, etc. Parenting plans are discussed more thoroughly in the text at p. 13, *infra*.

^v See, e.g., Mo. Ann. Stat. § 452.375(1)(3) (defining joint physical custody or parenting time as “an order awarding each of the parents significant, but not necessarily equal, periods of time during which a child resides with or is under the care and supervision of each of the parents. Joint physical custody shall be shared by the parents in such a way as to assure the child of frequent, continuing and meaningful contact with both parents...”; Utah Code Ann. § 30-3-10.1 (stating that joint physical custody or parenting time:

- (a) means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support;
- (b) can mean equal or nearly equal periods of physical custody of and access to the child by each of the parents, as required to meet the best interest of the child;
- (c) may require that a primary physical residence for the child be designated; and
- (d) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

Note that decision-making and parenting time are separate concepts. See Ariz. Rev. Stat. Ann. § 25-403.02 (“[s]hared legal decision-making does not necessarily mean equal parenting time”); Utah Code Ann. § 30-3-10.1 (joint legal custody “is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated”). But note also that “[a] parent who is not granted sole or joint legal decision-making is entitled to reasonable parenting time to ensure that the minor child has substantial, frequent, meaningful and continuing contact with the parent unless the court finds, after a hearing, that parenting time would endanger the child's physical, mental, moral or emotional health. Ariz. Rev. Stat. Ann. § 25-403.01.

^{vi} Note that the division is not solely gendered. Among same sex and non-traditional gender couples, divisions of labor occur and result in similar controversies after separation.



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The History and Development of the Cook County Child Protection Mediation and Facilitation Program

By Susan M. Storcel, JD, Chicago, Illinois

The Circuit Court of Cook County, Illinois, established its first alternate dispute resolution (ADR) program for divorce cases in the 1960s. Then, in 1979 the Court started a program to refer misdemeanor cases to mediation at the Center for Conflict Resolution, a non-profit organization based in Chicago. In the more than thirty years that followed, no less than 14 additional ADR programs were started by the Court to address small claims, landlord-tenant issues, delinquency matters and, in 2010, a mortgage foreclosure mediation program was launched.¹

Despite this endorsement of ADR, utilizing mediation in child protection cases was not seriously considered in Cook County until a special commission created by the Illinois Supreme Court issued its final report in 1993. The Commission concluded "...that a sound, well-administered mediation program can lessen the adversarial character of abuse and neglect proceedings...[and] improve outcomes for families...."² In response, the Illinois Juvenile Court Act was amended in 1994 to allow court officers who completed mediation training to conduct informal pre-dispositional conferences in child protection cases.³ That program was unsuccessful for a variety of reasons and the legislation was repealed a year later. Lack of success notwithstanding, the attempt proved educational. Perhaps the most valuable lesson learned was that child protection mediation (CPM) is much more than a conference conducted by an individual who completed mediation training!

In August 2000, the National Council of Juvenile and Family Court Judges invited the Presiding Judge of the Child Protection Division⁴ of the Cook County Juvenile Court and two court employees to a two-day conference highlighting family group conferencing and dependency mediation⁵ in Santa Clara County, California. Before that small delegation returned to Chicago, it drafted an eight point plan to bring mediation to the Child Protection Division. A few months later a proposal for a mediation pilot program was submitted to the Chief Judge, and in February 2001, a pilot program was launched using a facilitative co-mediation model.

Cases referred during the pilot came from two of the Division's 15 child protection courtrooms.⁶ Only post-adjudication neglect and dependency cases could be referred, and then only if a written motion for reunification of the family or a change in the

visitation plan was pending and the judge determined the matter would be contested. Before the pilot was launched, the judges and all court personnel in these two courtrooms were trained by a professional mediation trainer with significant experience in child protection litigation. The training included an introduction to mediation and CPM; an overview of the Cook County pilot program including its history, protocol and logistics; an interactive demonstration of a mediation session; and practical information including ethical issues, how to prepare for mediation and how to maximize its potential benefits. In spite of these efforts to normalize mediation for judges and attorneys practicing in the Child Protection Division, there was significant resistance from both camps. Frankly, courtroom personnel were accustomed to Cook County's litigious and adversarial court environment and were therefore uncomfortable with this proposed change in operations.

Caseworkers from the Department of Children and Family Services (DCFS) and private social service agencies were also skeptical—if not resentful.⁷ Some viewed the establishment of the program as a negative appraisal of their performance and an undue interference with their ability to do their jobs. They also erroneously believed that they routinely conducted mediation sessions in the course of their casework because they often discussed and negotiated a variety of issues with parents and foster parents, such as what programs and services the parents would need to complete; visitation schedules and goals aimed at providing permanency for the child. The caseworkers simply did not understand true mediation.

Mediation is a confidential process facilitated by a neutral third party who has no stake in the outcome of the discussion. Also, it is predicated on the notion that everyone participating in the discussion is on a level playing field. Caseworkers in child protection cases cannot be neutral and the discussions they have with the families cannot remain confidential. As agents of DCFS, caseworkers are required to report to the court about their work with court involved families and whether parents are making progress in completing their service plan. They are also expected to make recommendations to the court about removal of the children, reunification of the family, permanency for the children, and termination of parental rights. Moreover, any discussions they have with the families they work with do not occur on a level playing field. An inherent power imbalance exists in discussions caseworkers have with family members because caseworkers are agents of the authority that was awarded custody of the child after it investigated abuse or neglect allegations, and then removed the child from the family home. It is also important to note that in Illinois, performance based contracting was in place in the late 1990s and early 2000s.⁸ Consequently, at the time, caseworkers had a significant stake in the outcome of the case and therefore the outcome of their “negotiations” with family members as well.⁹

On the recommendation of the committee charged with designing a CPM program for Cook County, early sessions conducted in 2001 were strictly agreement driven and followed a four step process.¹⁰

1. The mediators first met with only the attorneys and caseworkers to refine the issues to be discussed. It was believed that the process would be best served by an initial dispassionate narrowing of the issues. There was also a belief it would be counterproductive for family members to witness the attorneys arguing legal issues.
2. Thereafter, the remaining participants were invited in to engage in a discussion of the issues identified by the professionals.
3. Non-attorney participants were later excused if the attorneys wished to pursue additional legal arguments.
4. Finally, all participants were reunited to conclude the mediation and where applicable, to sign a memorandum of agreement.

However, it soon became apparent that this process often placed the neutral mediators in the awkward position of conveying the “perspectives” of the professionals to the family and vice versa.¹¹ Moreover, it undermined the importance of empowering family members with a sense of self-determination.

In fall 2001, mediation staff were introduced to a different CPM model. Instead of separating the professionals and non-professionals at the beginning of the session, the orientation was presented to all participants simultaneously, and everyone contributed to setting the agenda for the discussion. In addition to increased efficiency and time savings, this change highlighted the value of engaging and empowering family members at the beginning of the mediation, which in turn prompted an effort to make CPM available to more families. Accordingly, the program was opened to all cases in all child protection courtrooms, and issues appropriate for mediation were no longer limited to visitation and reunification. As the scope of cases eligible for mediation expanded, so did the types of issues and number of cases referred. This proved to be a turning point in the court system’s approach to child protection cases in Cook County.

Unlike litigation, CPM focuses on engagement, empowerment, communication, collaboration, cooperation and establishing working relationships among participants.¹² Over time, most attorneys, caseworkers and judges in the Child Protection Division have come to embrace CPM and its goals. They now acknowledge that some conflicts and matters impacting case outcomes cannot and should not be resolved in the context of litigation. Moreover, they recognize that mediation is an effective intervention when an obvious conflict exists, but that it is equally effective to prevent conflicts that might arise in the future. They also now accept what research bears out: reunification is more likely when parents are actively engaged early and often throughout the course of the litigation; a close working relationship between the parents and the service providers is vital to achieving timely reunification; lasting permanence rests on involving parents and other family members in important decisions about the children’s future; and, court-involved families are better served by way of a collaborative team approach that begins at case filing. Consequently, judges are thinking more broadly about the types of conversations that are possible in mediation, and are referring more cases to the program.

In Cook County, CPM is now mandatory for all new cases where temporary custody is awarded to DCFS. The goals of these early sessions (called facilitations) are to empower and engage parents and involve them more fully in decisions being made about their children and family; explore placement, visiting and transportation resources within the family and its support network that are often not known to DCFS staff when the initial emergency removal occurs; begin forging relationships between the professionals, the family and the caregivers; establish a detailed visitation schedule for parents and siblings; clearly outline federal and state timelines relating to permanency for the children; and clarify the responsibilities and expectations of everyone involved in the case. Thereafter, cases can be re-referred to CPM for myriad reasons as long as the court retains jurisdiction over the case.¹³

Anyone involved with a case can ask the judge to enter an order to mediation or the judge can enter an order without prompting. Once an order is entered, individuals identified in the order are mandated to participate. Parents and their attorneys, foster parents, case managers, service providers, and the child's guardian *ad litem* typically participate in mediation and facilitation sessions. Others, such as extended family members, significant others, and friends are often invited to participate. Children rarely participate, but they are not absolutely excluded. Children can be included in the discussion if doing so would benefit them and the process. Everyone who participates is required to sign an agreement to mediate that explains the rules of confidentiality and outlines exceptions to those rules.

Although participation in mediation is mandatory, entering into a written agreement is strictly voluntary. The mediators are available to help the parties reduce their points of agreement to writing, but it is not their role to broker an agreement. The role of the mediator is to manage the process and facilitate a discussion. They neither offer advice nor propose solutions to the issues raised during the discussion. The program is no longer agreement driven because it is now clear that the success of CPM cannot be measured by agreement rates alone. CPM is often successful even when no written agreement is reached, because the open and honest discussions that occur in CPM improve communication, build trust and foster healthy working relationships among the professionals and family members involved in the case.

Unlike its 1994 predecessor, the Cook County Child Protection Mediation and Facilitation Program is a success. For thirteen years, it has operated in a comfortable space in the courthouse, far removed from the courtrooms. It is a dynamic and flexible program, and its procedures and protocol change as necessary to meet the changing needs of the court and the program's consumers. In addition to a director, program staff has grown from a part-time assistant and one full-time mediator, to two full time assistants and seven full-time mediators. Despite fiscal challenges, not unlike those being faced by courts throughout the United States and beyond, the program remains strong and its staff committed to making efforts to improve outcomes for court-involved families.

¹ See, Kelly Browe Olson et al., Association of Family and Conciliation Courts, *Guidelines for Child Protection Mediation*, p. 6 (2012), www.afccnet.org/resourcecenter/practiceguidelinesandstandards.

² Illinois Supreme Court Special Commission on the Administration of Justice, Final Report, Part II, p.21, December 1993.

³ 705 ILCS 405/2-21.1, repealed by PA 89-17, § 10, eff. May 31, 1995.

⁴ The Child Protection Division adjudicates cases involving allegations of child abuse, neglect and dependency.

⁵ Also referred to as child protection mediation in other jurisdictions.

⁶ Three of those courtrooms have since been closed due to a drop in the child protection caseload.

⁷ The Guardianship Administrator of the Illinois Department of Children and Family Services is appointed legal custodian of court involved children. However, during the 1990's, most child welfare services in the state were privatized. Therefore, while DCFS directly services some court involved families, the vast majority of families are serviced by private social service providers that serve as agents of DCFS.

⁸ See, <https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=139&articleID=3639>.

⁹ See, <http://muskie.usm.maine.edu/helpkids/telefiles/Performance%20Contracing%20in%20IL-%20Paper.pdf>, and <http://www.dshs.wa.gov/pdf/ca/CaseyFamilyPBCreview.pdf>.

¹⁰ *Child Protection Long Term Vision Group, Child Protection Mediation Pilot Proposal*, drafted October 3, 2000, revised January 22, 2001, Chicago, Illinois.

¹¹ *First Anniversary Summary and Overview of the Child Protection Mediation Program*, May 7, 2002, Chicago, Illinois.

¹² See, Susan E. Carruthers, *Mediation in Child Protection and the Nova Scotia Experience*, 35 Fam. & Conciliation Cts. Rev. 102, 105 (1997).

¹³ Under very limited circumstances, the program director has authority to allow parties to return to mediation after the court case has closed, on a voluntary basis, for discussions about issues that are impacting or threatening permanence for the child.



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eNEWS

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President's Message

By Nancy Ver Steegh, JD, MSW, St. Paul, Minnesota

Those of us who live in cold climates sometimes go through a period of winter hibernation. Instead of fighting the cold and dark, we relax into its austerity. Deep winter calls us to clear our mental cupboards, hold close what we value most, and make an honest appraisal of our well-being. It's a period of retreat and reconnection with the rhythms of the natural world. When we gaze into the fireplace or wake in the still of the night, we remember and we imagine.

Winter also invites us to contemplate who we are, and who we aspire to be as professionals. Author Donald A. Schon has written extensively about reflective practice and what he calls "professional artistry," or the use of professional judgment in contexts of uncertainty.¹ He focuses on how practitioners in various fields learn to "name and frame" new situations and he notes that "[t]hose who hold conflicting frames pay attention to different facts and make different sense of the facts they notice."²

AFCC members value interdisciplinary collaboration, believing that the sum of the parts is greater than the whole. But, if we're candid, we might admit that conflicting frames sometimes take us by surprise and cause us consternation. I think this is, in part, because our frames (which are generally useful and valuable) sometimes cross over into the arena of assumption.

Author Stephen D. Brookfield writes that critical reflection is largely about "hunting assumptions."³ He suggests that we operate under "structuring axioms" that we insist are "objectively valid renderings of reality" and that we have difficulty identifying on our own.⁴

By its nature, AFCC is an ideal community for exploring professional frames and "hunting assumptions." So here is my New Year's resolution: when I'm perplexed by what a colleague is asserting, I'll try to learn more about his or her

¹ DONALD A. SCHON, EDUCATING THE REFLECTIVE PRACTITIONER 22 (1987).

² *Id.* at 4-5.

³ STEPHEN D. BROOKFIELD, BECOMING A CRITICALLY REFLECTIVE TEACHER 2-3 (1995).

⁴ *Id.* at 2.

professional frame and view the conversation as an opportunity to uncover some of my own hidden assumptions.

The upcoming annual conference in Toronto, *Navigating the Waters of Shared Parenting: Guidance from the Harbour*, May 28–31, 2014, will present many opportunities for rich conversation and reflection (even if winter is actually over by then). I look forward to seeing you there.

**PARENTAL SEPARATION AND OVERNIGHT CARE OF YOUNG CHILDREN,
PART II: PUTTING THEORY INTO PRACTICE**

Jennifer E. McIntosh¹, Marsha Kline Pruett, and Joan B. Kelly²

This article is a companion piece to the empirical and theoretical perspectives on infant overnight care arrangements offered in Pruett, McIntosh, and Kelly, Part I (this issue).

Grounded in an integrated psycho-developmental perspective, the paper provides a set of clinical assumptions and a related chart of practical considerations, to guide decision making about infant overnight care, both in the individual case and in broader policy contexts. At all levels of decision-making, we endorse the need for developmentally sensitive resolutions that protect both the vulnerabilities of early childhood and support life-long parent-child relationships, whenever possible.

Keypoints:

- Parenting orders or plans for children 0-3 years should foster both developmental security and the health of each parent-child relationship, now and into the future.
- From a position of theoretical and empirical consensus (Pruett, McIntosh, Kelly, this issue), we provide an integrated set of assumptions and considerations to guide decision making about overnight parenting plans.
- These considerations apply equally to planning in the individual case and to policy level decisions.

Keywords: infants, children, attachment, parent involvement, separation, divorce, parenting plans, overnights

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² The authors wish to thank Janet Johnston for her thoughtful guidance in the final stages of organizing these companion articles.

TOWARD DEVELOPMENTALLY RESPONSIVE PARENTING PLANS AND ORDERS

The consensus points outlined in Part I of this paper (Pruett, McIntosh, & Kelly, this issue) provide the foundation for the current article (Part II). We take the view that parenting orders or plans for the 0-3 year group have twin and mutually reinforcing responsibilities; the first to foster developmental well-being during the first three years, and the second to the support the health of each parent-child relationship, now and into the future. Here we bridge relevant bodies of developmental and divorce research into a set of assumptions and clinical considerations, in the hope of providing practical guidance for individualized planning about the post-separation care of young children.

Throughout these two companion papers, we resist the urge to prescribe fixed formulas about numbers of overnights or age of commencement, and encourage policy makers and practitioners to do likewise. Instead, we provide guidance about the key assumptions, principles and specific factors that, when weighed together in the individual case, will foster developmentally sound decisions.

THE UNDERPINNING ASSUMPTIONS

A set of core assumptions provides a critical context for the decision-making chart that follows. These assumptions prioritize both attachment organization and joint parental involvement whenever the conditions of safety and the minimization of stress are met. Under such conditions, a responsive parenting plan would allow the child to benefit from the ways that parent-child relationships in early childhood differ normatively, and enable access to the full complement of

emotional, cognitive, family, social and economic resources each parent can offer. The clinical reasoning within the chart (see Table 1) rests on three levels of assumptions:

First level assumptions:

Parenting plans and orders made for children 0-3 years are developmentally supportive when they provide for a care-giving environment in which:

- 1.1) the young child is safe with, and can be comforted by, both parents; and
- 1.2) the young child is protected from harmful levels of stress.

Second level assumptions:

When level one assumptions are met, parenting plans:

2.1) Support the development of organized attachments to each parent/caregiver wherever parenting opportunities and capacities permit.

2.2) Encourage parenting interactions that support the development and maintenance of attachments with each parent. These interactions:

- a) provide regular opportunities for direct care from each parent, involving soothing and settling, teaching and playing, maintenance of important routines throughout the day and night, and support to explore the wider world outside of the home and the immediate family; and
- b) provide the young child with support to transition between parents, including comfort and reassurance as needed.

2.3) Anticipate changes in the parenting plan through a series of well articulate step-ups, to be implemented at a pace and level determined by the young child's responses to each step, and each parent's ongoing ability to effectively enact the proposed plan individually, and preferably, in concert.

2.4) Reflect practical considerations. The arrangements are adequately supported by individual and relationship resources, including realities of parents' proximity to each other, work-life schedules and flexibility, or lack of the same, and support networks.

2.5) Maximize the amount of time the young child is cared for by a parent, or when a parent is otherwise unavailable, a family member or other person trusted by both parents. Parents consider the child's other parent as a first port of call when child care is needed.

2.6) Encourage shared decisions about major child-related issues, with effective use of mediation, co-parenting counseling, and related programs as needed.

Third level assumptions:

When level one assumptions are *not* met:

3.1) The priority is to ensure that one organized attachment relationship is formed (with practical and therapeutic support as needed), even if that results in delaying time with the other parent.

3.2) Such circumstances may reflect characteristics or chronic behaviors of one or both parents (e.g., neglect, current violence, severe personality disorders, mental illness) or factors within the parental relationship (violence, high conflict, geographic distance) that render two organized attachment relationships difficult to foster or sustain.

3.3) Some infants and toddlers will have two parents with a history of psychiatric problems, substance abuse, poor parenting, and troubled relationships. Unaided, the infant may not be able to form an organized attachment with either parent within a timeframe that is developmentally useful to the child. Ongoing therapeutic support and parenting education in these cases are of critical importance.

TABLE 1 ABOUT HERE

TABLE 1. Considerations for determining post-separation overnight care of children aged 0-3 years.

<p><i>Bear in mind when using this chart, that...</i></p> <p>1) The left column reflects conditions within the care-giving environment to be considered in determining the presence or absence, and frequency, of overnights.</p> <p>2) Parents and other decision makers will need to weigh not only the number of overnights, but the spacing and frequency of transitions between homes, and the emotional ease of the exchanges for the child.</p> <p>3) Even when all parenting conditions are met, higher frequency overnights (see right hand column) are not generally indicated for infants 0-18 months. For reasons of temperament or maturation, this will also apply to older infants/toddlers who demonstrate regulation difficulties or other signs that they are stressed by the arrangements.</p> <p>4) When either lower or higher levels of overnights are not indicated initially, they may become so with the child’s maturation, and/or with the assistance of educational and/or counseling support for parents, or mediation. An agreed “step-up” plan is helpful in progressing toward overnights.</p> <p>5) This developmentally based guidance for children 0-3 (i.e. up to 48 months) <i>is not intended to override the discretion of parents who jointly elect to follow other schedules in the best interests of their child, and in the context of their own circumstances.</i></p>			
Considerations (In order of importance)	Rare/No overnights indicated	Lower frequency overnights indicated (1-4 per month)	Higher frequency overnights indicated (5+ per month)
<p>1. Safety</p> <p>A) The child is safe in the care of each parent</p>	<p>A or B are absent</p>	<p>A is established. B: Conflict</p>	<p>A and B are established</p>

<p>B) Parents are safe with each other</p>		<p>is separation- related & non- threatening or endangering</p>	
<p>2. The child’s trust and security with each parent</p> <p>The young child:</p> <p style="padding-left: 40px;">A) is continuing an established, trusting relationship (of 6 months or more) with a parent</p> <p>When resident parent is not present, the young child:</p> <p style="padding-left: 40px;">B) seeks comfort from and is soothed by the other parent</p> <p style="padding-left: 40px;">C) finds support for exploration with the other parent</p>	<p>A or B & C absent</p>	<p>A is established, B & C are emerging.</p>	<p>A-C are established</p>
<p>3. Parent mental health</p> <p>The parent has:</p> <p style="padding-left: 40px;">A) sensitivity in recognizing and meeting child’s needs</p> <p style="padding-left: 40px;">B) no or well-managed drug and alcohol issues</p> <p style="padding-left: 40px;">C) no or well-managed mental health issues</p>	<p>Any of A- C are absent</p>	<p>A-C are emerging</p>	<p>A-C are established</p>
<p>4. Health and development</p> <p>The young child:</p> <p style="padding-left: 40px;">A) has significant developmental or medical needs</p>	<p>A exists but B is absent; C exists</p>	<p>A and/or C are absent; or A exists but</p>	<p>A and C are absent; A exists and B is</p>

<p>B) such needs are well supported in the proposed arrangement</p> <p>C) the infant is exclusively breast-feeding or will not yet accept a bottle</p>		<p>B is emerging/ established</p>	<p>established</p>
<p>5. Behavioral adjustment</p> <p>Relative to temperament and stage of development, the child shows any of the following <i>persistent behaviors (i.e., over 3-4 weeks)</i>:</p> <p>A) irritability, frequently unsettled, without medical cause</p> <p>B) excessive clinging on separation</p> <p>C) frequent crying or other intense upset</p> <p>D) aggressive behavior, including self-harming behavior</p> <p>E) regression in established behaviors, e.g. toileting, eating, sleeping</p> <p>F) low persistence in play and learning</p> <p>G) any regressions or difficulties in the above are short lived and readily resolved</p>	<p>Any of A-F exist; G is absent</p>	<p>Any of A-F sometimes exist but G is established</p>	<p>Any of A-F are rare; G is established</p>
<p>6. Co-parental relationship</p> <p>Parents are able to:</p> <p>A) communicate civilly about and plan for their young child together</p> <p>B) manage conflicts arising, using interventions as needed</p> <p>C) be consistent yet responsive with the schedule</p> <p>D) value or at least accept the child's relationship with the other parent</p>		<p>A-F are established or emerging</p>	<p>A-F are established</p>

<p>E) put their child’s needs before their own wishes for time/contact</p> <p>F) ensure low stress exchange of the child at transitions</p>			
<p>7. Pragmatic resources to support sharing of overnights</p> <p>Parents:</p> <p>A) can be the main caregiver for the young child during scheduled overnight and majority of scheduled day time (excluding work time)</p> <p>B) live within a manageable commute of each other</p> <p>C) when a parent cannot personally care for the child overnight, care by the other parent is prioritized</p>	<p>A, B and C are absent</p>	<p>A and B are established, and C is emerging</p>	<p>A-C are established</p>
<p>8. Family Factors</p> <p>A) Older siblings sharing the same overnight schedule are a source of security to the young child</p> <p>B) Overnight arrangements would enable maintenance of other relationships that are sources of security to the child, (e.g., grandparents) and/or enable exposure to important elements of each parents’ cultural or religious practices.</p>		<p>A exists if applicable; The importance of B for the child is emerging or established</p>	<p>A exists if applicable; B is established</p>

CENTERPOINT: NATURE AND QUALITY OF THE PARENT-CHILD RELATIONSHIP

We suggest that both attachment and parental involvement perspectives point to a common centerpoint upon which decisions about overnights are best grounded: the nature and quality of the parent-child relationship. It is here that most young children have their early psycho-emotional needs met, and where the young brain receives the developmental nourishment that sets a future course for healthy maturation. Attachment security, child mental health, resilient coping, and cohesive family environments hinge squarely on each parent's history of providing consistent, sensitive responses to the child's needs.

In all families, an essential condition for implementation of overnight care in the years 0-3 includes a pre-existing relationship with the nonresident parent, generally for at least six months, in which the infant has been safe and felt comforted. Hence, early overnights are more likely to occur with parents who have lived together through pregnancy and in the early months of the child's life, or by non-cohabiting parents who are cooperative and mutually invested in the child's relationship with both parents. In all contexts, it is important that parents monitor their child for signs of overload, and respond accordingly.

Within our suggested framework, individual infant needs and parents' circumstances may dictate the need for more or less daytime contacts, or overnights, and different starting points. The guidance provided should not prevent parents from adapting their arrangements to ensure more effective, responsive parenting. From the child's perspective, caregiving schedules are designed to minimize separation-induced distress and support routines in the child's day-to-day life. The schedule should not create lengthier separations from either parent than the child can manage. Symptoms in the child as described in the table above (see Point 5) may signal the need for

changes in the schedule or in aspects of parenting, co-parenting, or the transition itself, to better accommodate the child. Patience will be needed while finding the right balance for the individual child.

Some parents have not established or consolidated a relationship with the child, or with each other, yet co-parenting has clear merit, and a plan to support its growth is needed. In this scenario, the duration of parenting time with an unknown or lesser known parent would initially be limited to a few hours on each occasion, and of sufficient frequency, until the parent-child relationship is on sure footing. This will encourage familiarity and growth within the infant of memories of trust and comfort (Main, Hesse, & Hesse, 2011). A focus on safety and security for the child means that in cases of chronic parental or interparental disturbance, manifested in abusive or neglectful parenting, apportioning parenting time to ensure the development of at least one organized attachment, with one person determining how day-to-day care will proceed for the child's sake, becomes a necessary priority.

MEANINGS FOR LEGISLATION AND POLICY

Understanding the confusion and anxiety that indeterminate legal standards can engender, family lawyers and advocates for mothers, fathers, and children have sought presumptive rules that can be applied to most or all families. We believe, however, that unqualified presumptive “for” or “against” rules regarding parenting plans will not adequately protect the best interests of very young children. We suggest that a hierarchy of priorities, such as that offered here, can guide both the decisions that parents and family court professionals make, as well as the expectations of parents in settlement and parenting time planning. Given the general developmental, divorce and separation-specific research about overnights described in Part I of

our shared writing, we recommend a thoughtful approach. In general, when there are concerns about any key aspect of the child's development and/or the caregiving environment, parenting plans that are initially conservative about overnight frequency, and that have built in step-ups, are appropriate. Optimally, growth in the plan would be forecast in advance, and step-ups would occur within a specified timeframe, guided by the young child's adjustment to each change, and without the need to return to family court.

We support co-parenting as a general rule and principle. We also support the goals of developing parenting capacity and supporting the deepening of skills and knowledge within each parent and between parents, whenever possible. Availability of specialized parent-infant mental health interventions, parent education programs designed for infancy through age 3, and programs for high conflict situations that help parents understand the destructive nature of their behaviors and implement positive change are important in this regard.

There are families within the court population for whom this co-parenting principle will not apply, and for whom these interventions will not be successful. For multiple reasons, some parents involved in post-separation disputes demonstrate significant impediments to collaborating over child rearing, including in decision-making. Increasingly, parents are entering the family court younger, with fewer social and socioeconomic resources (Kaspiew et al, 2009). Most important, many of these parents lack the foundation provided by having once had some relationship with each other of an affectionate and trusting nature before having a baby together. Others have had only sporadic contact with the infant since birth. Chronic mental health problems, drug or alcohol addictions, histories of engaging in high risk behaviors, ongoing threat and coercion, and personality disorders are some of the confounding dynamics that further inhibit development of a collaborative co-parenting alliance (Johnston et al., 2006; Kaspiew et al,

2009). One or both parents may lack the skills or intent to collaborate with the other, reject the importance of the other, and have no desire to co-parent toward the purpose of jointly protecting and enriching their child's development.

Conflict is not always perpetrated or maintained by both parents (Kelly, 2003). Conundrums exist when the parent caring for the child a majority of time is also the one to unreasonably reject or block the meaningful participation of the other parent. Severe borderline pathology and/or rage associated with the separation often underlie the unreasonable behavior and accompanying conflict. Especially in these situations, individualized planning becomes essential. From the perspectives of attachment and parental involvement, when a nonresident parent has been an involved parent prior to separation in ways beneficial to the parent and child, it may be important to implement a parenting plan involving that parent regularly in all aspects of the child's care, despite the lack of a parenting alliance. These are likely to be situations requiring careful mental health and parenting evaluation and intervention, and skilled parenting coordination (Kelly, in press; Sullivan, 2013), monitoring and weighing multiple parent and family based conditions that will impact the child's current and future mental health.

Parents who did not have a trusting relationship with each other and/or the child before separating will need some assistance that helps each to appreciate the value of the other in the child's life, to become aware of their responsibilities and parental obligations, to parent effectively, to find ways to communicate with each other, and to co-parent despite potentially little knowledge of each other. Parenting courses or specialized infant-parent therapies can help parents transcend fragile beginnings, while mediation and parenting coordination can assist in determining if, and to what extent, parents are able to participate meaningfully in the child's care, including overnights.

CONCLUSIONS

Building on the theoretical, developmental, and empirical consensus established in Pruett, McIntosh, & Kelly, Part I (this issue), this paper takes the task of integration a step further, by detailing a practice framework for crafting developmentally supportive arrangements for children 0-3 years. This framework prioritizes *both* the early establishment of organized attachment *and* the early nurturance and maintenance of enduring relationships between each parent and their child. When infants enjoy trusting relationships with both parents, and when their parents can work together to implement plans that support these goals jointly, there is more opportunity to advance both goals concurrently. When conflict and other qualities of parent(s) or their interaction render it impossible to advance both goals simultaneously, it becomes necessary for the developmental goals to be staggered.

In normal development, new competencies and skills rarely come ‘online’ simultaneously, or with equal efficacy. Staggered or uneven development naturally occurs in the 0-3 years, especially as the young child tackles a new or higher order developmental challenge. While working to gain competence in one area, such as speech, a pause or temporary lapse is often evident in a more physically determined skill, as the child pours their energy into the new challenge. We believe this scenario is a metaphor for what happens with overnights, and provides a useful lens for parents and other decision makers to apply. Despite parents’ best efforts, when a young child shows that they cannot concurrently master both attachment security and the developmental demands placed on her by overnights, delaying overnights may simply allow development to catch up with the challenge of the new situation. Often, this requires little more than a slower pace of progression in the parenting plan to afford the child time to grow or

advance her ability to self-regulate and adjust. If supported to do so, the child will soon signal that she is able to manage, if not eager to assume the next step.

As one parent described in a letter to the therapist involved, recognizing and supporting the need for staggered progress can be key to ensuring the child's confident movement into higher levels of overnights³:

... Our son is nearly three. We separated shortly after he was born, and had court orders for increasing overnights, which would have led to 50/50 by the time he was two. He started to stay overnights with me when he turned one but was clearly distressed with the separations. I couldn't have him be distressed. I chose (despite friends believing otherwise) to work with his desires and wants. So we discontinued the overnights for awhile. He was always happy with me in the day including being put to bed for his day time sleep, and we kept that going, and brought the nights back slowly. Over time, through his own volition he became comfortable with staying overnight. Now, he will just state (for the record!) that he will be staying 'all night' with me and that's it. Sometimes, after this declaration he might back track a little but by then I just reassure his doubts and we move on and he is happy, and sleeps soundly. He often now wants to stay on longer with me and transition times are joyfully undertaken. We are on a roll. So, needless to say I'm happy with the decision to allow him to come to this in his own time.

A basis of trust between parents for working through overnight care issues supports a triadic base of security for early development, and beyond. The case of parents who have never lived together during the child's lifetime or never shared an intimate bond is clearly different. Here, support to forge a safe connection between parents is necessary for the very young child to

³ Printed with permission, with identifying details altered.

forge a safe connection with each parent. Given the diversity in parenting circumstances endemic to the family-law field, we suggest that case-by-case planning for children 0-3 years is essential. This need not be a lengthy, arduous or specialist task. Using the assumptions and considerations mapped in this paper as a guide, a shared analysis by parents and family law practitioners of the pertinent qualities within the family triad is possible.

In time, we hope to better differentiate circumstances that allow young children to benefit from various overnight parenting plans, and to distinguish those that do not. Research will help advance the discussion from supposition to a nuanced understanding that accounts for the incredible diversity evident in developmental trajectories and family constellations. Our work here represents only a beginning in this task. As clinical experience in using this framework increases, we expect that patterns will emerge that are instructive to designing interventions and policies that support parents with the challenge of creating a developmentally supportive life for a young child, after separation.

Ultimately, informed policies and practices that both embrace the unique complexity of the first three years of life, and build strong relationship foundations for the coming years, will best protect the life-long developmental interests of the young child. We hope our shared interest in safeguarding children and families has provided a useful framework for parents and for professionals to thoughtfully resolve their own uncertainties about these issues, case by case.

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**Parental separation and overnight care of young children, Part I:
Consensus through Theoretical and Empirical Integration**

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Abstract

Association of Family and Conciliation Courts (“AFCC”)-convened a Shared-Parenting Think Tank (see Pruett et. al. this edition) in response to an identified need for a progression of thinking in the family law field, removed from the current polarizing debates surrounding the post-separation care of infants and very young children. This is a goal shared by these authors, whose research and commentaries have been centrally implicated in the current controversies. Our collaboration over this empirical paper and its clinical counterpart (this issue) endorses the need for higher order thinking, away from dichotomous arguments, to more inclusive solutions grounded in an integrated psycho-developmental perspective. We first critically appraise the theoretical and empirical origins of current controversies relevant to attachment and parental involvement research. We then describe how attachment and parental involvement contribute complementary perspectives that, taken together rather than apart, provide a sound basis from which to understand the needs of very young children in separated families. As a companion piece, Part II offers a collective view of a way forward for decision making about overnights for infants and young children, toward the integration of theoretical and empirical with clinical wisdom.

Keywords: infants, children, attachment, parent involvement, separation, divorce, parenting plans, overnights

¹This paper was collaboratively authored with seminal contributions from each of the authors.

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Introduction

Various narrative strands combine within the family law arena to form this decade's debates about overnight care for young children of separated parents. These deliberations occur against a backdrop of increasing legislative support for shared-time parenting following separation. Presumptions are being proposed in various states, provinces, and countries for both legal (decision making) and physical (parenting time) care of children, yet the merits of such presumptions remain unclear, especially for families with very young children. While developmental vulnerability unique to this stage of life is duly acknowledged by most who offer a view on the topic, the associated solutions offered when parents separate or live apart vary, sometimes quite markedly. Common to all arguments is an attempt to protect the infant and young child by ensuring that essential components of early development are not jeopardized by the post-separation parenting arrangement.

Proposals for the arrangements that could best provide this protection vary along differing theoretical and research lines. Two foci often posed in family law as "either-or" propositions are attachment theory, with its focus on continuity of care-giving for the young child and an historic emphasis on the role of mothers in this, and joint parental involvement, with its focus on the ongoing mutual parenting roles of both parents following separation, with particular emphasis on father involvement. Reliance on *either* attachment theory or joint parental involvement research, as if these two strands of development are not overlapping and inextricably related, has in our view, fostered polarizations in legal and academic thinking and practice, impeding thoughtful integration of the existing reliable knowledge bases.

The need to achieve a coherent view is pressing, with the certain knowledge that every family law decision carries significant and potentially enduring consequences for young children and their parents. In this paper we begin by examining the sources of dichotomous perspectives at the heart of the current debate. While acknowledging that differences in professional opinion will remain, we concur that perspectives on parenting plans and judicial orders in separated families

that focus simultaneously on the developing child and his/her significant relationships are not only theoretically possible but empirically supported. After examining the scant existing research in terms of what it does and does not tell us about overnight care, we identify points of consensus we share. We conclude with a summary that lays the foundation for our companion paper (Part II, this issue). Part II provides a set of assumptions about the individual and family conditions under which overnights are most likely to support the developmental needs of the very young child, and a chart of considerations for weighing these in the individual case.

Early childhood definitions

Terminology in itself can cause problems, as when parties think they are describing the same events or experiences but in fact are not. The definitions pertaining to early childhood are no exception. Although researchers in the early child mental health field (National Research Council and Institute of Medicine, 2000; Zeanah & Zeanah, 2009) recognize the formative years as spanning pre-birth through to the fifth year, a ‘0-3 years’ definition is commonly used to connote the years of greatest vulnerability (*see* www.Zerotothree.org) in family law and mental health literature. Included in this definition is infancy, commonly referred to as the pre-verbal stage, which ends around the first year with the emergence of talking and locomotion. In line with the available research specific to separated parents and overnight care, we refer to early childhood as the period from birth to and including the year of being three (0-48 months). Given the significant and normative diversity of psycho-emotional and cognitive accomplishment among three year olds, ambiguity surrounds this age cutoff for overnights. At issue is whether the age of three is substantively different enough from 1-2 years old, regarding psychosocial and emotional development, to be included in the definition of “young child” and all it represents when making decisions about overnights, or whether it constitutes a significantly less vulnerable age. In this paper we adopt the view that the year between 3 and 4 belongs in this 0 to 3 period, while recognizing normative and significant variation in the age at which children manifest a range of vulnerabilities

and consolidate new skills. We include the year of being three in our “young child” distinction as it affords the protective function some children of this age need.

Within the vast spectrum of developmental achievement from infancy through preschool, three broad eras within these years are generally evident and differentiated in our formulation: the first eighteen months of life, the second eighteen months of life (18-36 months), and the year of being three. As each era presents different challenges and possibilities for parents living apart, we occasionally make these distinctions within this paper, and when combining the eras, use the collective term “early childhood”.

Synonymous with healthy social and emotional development, ‘infant mental health’ refers to the young child’s capacity to experience, begin to regulate and express emotions, form close and trusting relationships, explore the environment and learn (Greenough, Emde, Gunnar, Massinga, & Shonkoff, 2001; Zeanah, 2009). Given the sheer dependence of infants and young children on their caregivers, mental health in early childhood is best understood in a relational frame. There is general agreement about factors important in explaining both health and dysfunction in early psychosocial and emotional development. Chief among these stressors that affect development are poverty, neglect and abuse, heritable predispositions – including cognitive capacity and temperament, and the interactions of each of these with the early care-giving environment. Multiple factors determine the overall care-giving environment, chiefly parent mental health and associated parenting capacity (Clarke-Stewart, Vandell, McCartney, et al., 2000; Cummings, Keller, & Davies, 2005; Kaufman, Plotsky, Nemeroff & Charney, 2000; Keitner & Miller, 1990; Meadows, McLanahan, & Brooks-Gunn, 1999), parental reflective functioning (Slade, 2005), care-giving sensitivity and response (Brown, Mangelsdorf, & Neff, 2012; George & Solomon, 2008), and the quality of the co-parental relationship in collaborative care-giving (Cowan & Cowan, 2011; Pruett & Pruett, 2010). The implicating factors for childhood outcomes most substantively in the purview of family law are parenting and co-parenting capacities. During the powerful transitions in the family initiated by separation it is the nurturing and teaching that

parents and supportive co-parenting provide that safeguard healthy trajectories of psychosocial, emotional, and cognitive well-being throughout the first years of life.

Whether examining child development from the perspective of attachment (Zeanah, Boris, & Lieberman, 2000), neurobiology (Schore, 2012; Siegel, 1999), or broader psycho-emotional, social and family systems perspectives (Harris, 1995; Karney & Bradbury, 1995; Minuchin, 1988), there is wide consensus that the infant's success in meeting the emotional and behavioral goals of early childhood is profoundly influenced by the relationship foundations laid in infancy and sustained thereafter.

Theoretical frameworks for understanding early childhood overnights debate: Origins of the controversy

Of the many early childhood and family theoretical perspectives brought to bear on the dilemma of overnights, two main bodies of knowledge have been emphasized in family law deliberations over the past 25 years: attachment and parental involvement. Controversies about overnights for young children stem, in part, from adherence to either one or the other of these theoretical positions. The attachment and parental involvement arguments over the past decade are well documented (Kelly and Lamb, 2000; Lamb & Kelly, 2001, 2009; Solomon and Biringen, 2001; Pruett, 2005; McIntosh, 2011; Warshak, 2005), and we will not repeat them here. We do describe the core tenants of each position to identify the principles from which we are working.

Attachment theory and its interface with the overnights debate

Attachment refers to a specific facet of the infant/parent relationship. Attachment is a biologically based behavioral system in all infants of all cultures that has the set goal of ensuring protection from disorganizing anxiety through proximity to attuned and responsive caregivers, who soothe in the face of distress and support exploration in the world. Attachment relationships are understood to support the infant's growing ability to express and regulate emotions (see Siegel & McIntosh 2011 for overview), as well as to explore and learn with confidence (Gunnar, 2000; Sroufe, Egeland, Carlson & Collins, 2005). Studies in multiple contexts have demonstrated the

developmental reach of attachment trauma (Sagi-Schwartz & Avierzer, 2005; Zeanah, Danis, Hirshberg et al, 1999), as well as the power of healthy attachments to buffer trauma (Sroufe, et al., 2005).

Early attachment researchers in the Bowlby/Ainsworth tradition studied a culturally and socio-economically diverse range of families (Carlson, Sroufe, & Egeland, 2004). However, these studies lacked gender diversity, with investigations predominantly focused on the development of infant-mother attachments, their antecedents and longer-term consequences. From this research emerged the concept of attachment primacy, referring to an infant's preference in the first two or so years of life for seeking comfort from one figure over others, this figure usually being the mother, and the stress that separation from this figure posed. Application of this research to family law provided a basis for decision-making, in which lengthy and frequent separations from primary caregivers were accepted as a risk factor for infant security. For several decades in many Western countries, overnights with fathers during infancy were widely discouraged. Bowlby and Ainsworth wrote about the importance of both parents, and over the past 30 years, empirical attention has slowly but increasingly been given to attachment interaction between father and infant, and the complementary roles of mother and father in fostering developmental security. Unfortunately, to date little attention has been paid to attachment dynamics with same sex parents.

Research on infant-father and other significant attachments confirm Ainsworth's early observation (1977) that infants are equipped to form concurrent attachments to emotionally available caregivers by approximately 7-8 months (Easterbrooks & Goldberg, 1987; Lamb, 1977 a, b). There is agreement across multiple studies that infants prefer proximity to one parent or the other at different ages and for different needs and experiences, particularly in their first 18 months (Fox, Kimmerly, & Shafer, 1991; van IJzendoorn & De Wolff, 1997). Attachment status to mother and father are generally independent, with each relationship influenced by the contingent response of each parent. While security with one parent does not reliably predict security with the other, attachments to co-habiting parents are mutually influenced (Main et al, 2011; Kochanska & Kim,

2013; Sroufe, 1985; van IJzendoorn & De Wolff, 1997).

Meta-analytic studies of infant attachments to both parents in non-clinical samples found a similar proportion of infants (67%) classified with secure attachments to father or to mother (van IJzendoorn & De Wolff, 1997; Kochanska and Kim, 2013). In a demographically varied sample of 101 families, Kochanska & Kim (2012) reported that 45% of infants had secure attachments concurrently to both their mothers and fathers, while 17% were insecurely attached to both. Insecure attachments to both parents pose a greater risk: "double-insecure" children at 15 months had greater behavioral difficulties at six years (teacher report) and eight years (self report) than those secure with at least one parent.

As first articulated by Bowlby, normative differences between mother and father care-giving behaviors have long been noted across cultures. Mothers' sensitive response to infants' stress states and fathers' sensitive and stimulating play and teaching behaviors are particularly salient (Ainsworth, 1967; Brown et al., 2012; Grossmann et al., 2002; van IJzendoorn & DeWolff, 1997). Each pattern of interaction can foster secure attachment. Theory posits and research provides evidence that a mother's sensitive response to stress enables the child to experience that the world is predictable, safe, and that the child can learn to manage his/her distress through the relationship. Similarly, a father's sensitive challenging facilitates the child's learning to monitor and control his/her excitement, promoting the goal of self-regulation.

Normative differences between trends in mothering and fathering are often exaggerated, with exciting play and teaching attributed as the exclusive domain of fathers and sensitive response as the main province of mothers. In contemporary family life and particularly when fathers are involved in direct child care, mothers and fathers respond far more similarly than differently in the ways they soothe, play and teach, and mother and father attachments reinforce each other's influence on the child's development (Grossmann, Kindler & Zimmermann, 2008; Parke & Asher, 1983). The triadic nature of attachments is only beginning to be understood. The literature on same sex parents' attachment interactions with their young child is yet to be established, but there are no

theoretical grounds to suggest that empirical evidence for the independence of an infant's attachment to each parent will not also be demonstrated in these relationships. The idea that babies have gender biases in attachment formation is not well supported. The more accurate assertion is that babies respond best to sensitive and predictable care giving that facilitates internalized patterns of care; that is, babies learn to respond across situations as if they can expect such quality of care (Bazhenova, Stroganova, Doussard-Roosevelt, et al, 2007; Carlson, Cicchetti, Barnett & Braunwald, 1989; Grossman, Johnson, Farroni, Csibra, 2007; Minagawa-Kawai, Matsuoka, Dan et al, 2009; Trevarthen, 2001).

The joint parental involvement literature and its interface with the overnights debates

There is little argument that, given the opportunity, forming two secure attachment relationships in early infancy is multiply beneficial, as is preserving them beyond infancy. Policy debates during the era of the 'tender years' assumptions focused on preventing disruption in the primary attachment relationship, with solutions often giving preference to safe-guarding the mother-child over father-child attachment. A new wave of commentary and research has emerged in the past two decades, focusing on joint parental involvement, and bringing equal weight to examining the critical developmental role of fathers in early childhood (Cowan & Cowan, 1992; McHale, 2007; K. Pruett, 2000).

The concept of parental involvement is a broader one than attachment, encompassing behavioral and learning systems that support relational as well as cognitive, educative, socio-economic, moral, cultural, and spiritual developmental goals. Parental involvement literature focuses on the developmental advantages accrued to children when both parents are physically and emotionally accessible, participate in direct care taking tasks and decision making, and provide financial support (Collins, Maccoby, Steinberg, Hetherington, & Bornstein, 2000; Luster & Okagaki, 2006; Pleck, 2010).

A research focus on fathers has emerged, particularly in the separation and divorce literature, as a natural outgrowth of the knowledge imbalance about the role each parent plays in

child development. Whereas a wealth of theory and research had already confirmed the salient influence of early mother-infant relationships on long-term outcomes, less was known with respect to father-infant relationships. A second major impetus for father-focused research came from several decades of custodial determinations and parenting plans that minimized the non-resident father's role and the time allotted to him to spend with his children (typically every other weekend or 14% of time). In response to the realization that a growing number of children were growing up with minimal, if any, involvement of their fathers, a concern developed across academia, policy and government about what effect "fatherless America" (Blankenhorn, 1996) was having on children's developmental trajectories in the U.S., with similar concerns expressed in other Western nations and more recently, in countries worldwide.

Studies on father involvement repeatedly showed that school aged children whose fathers were minimally present or absent from their lives had difficulties across behavioral, cognitive and academic achievement, social, moral, and emotional domains (Furstenberg, Morgan, & Allison, 1987; McLanahan, 1999; Wallerstein & Kelly, 1980). In contrast, significant benefits for children across domains are associated with higher levels of positive paternal involvement (for reviews, *see* Kelly, 2012, King, 2002, Cowan, Cowan, Cohen, Pruett & Pruett, 2008). Like mothers, fathers' warmth, structure, and discipline benefit children. Studies find that fathers also make unique contributions to sibling, peer, behavioral and achievement outcomes, with many of the benefits manifested through middle childhood and into adolescence and adulthood (Flouri & Buchanan, 2004; Steele, Steele & Fonagy, 1996; Verissimo et al., 2011; Verschueren & Marcoen, 1999). Still, the ideal bases for development of positive father-child relationships and benefits, like mother-child, are initiated in the earliest years of life (Boyce et al., 2006; Brown et al., 2012; Feinberg & Kan, 2008). The attachment literature added support to the father involvement literature on this very point. Researchers from both theoretical leanings established through their studies what children have always demonstrated clinically: the early years matter *and* young children desire and benefit

from warm and positive involvement with both of the people who gave birth to and are invested in their well-being.

An important contribution of the father involvement research was the identification of demographic, personal, interpersonal, and institutional barriers that impede many separated fathers' ability to remain meaningfully involved with their children (Cowan, Cowan, Pruett & Pruett, 2007; Kelly, 2007). Demographic variables associated with diminished father involvement include being unmarried at childbirth, unemployment, lower income, less education, and the younger age of the child (Amato & Dorius, 2010; Amato, Meyers, & Emery, 2009; Insabella, Williams, & Pruett, 2003). Fathers' personal barriers include prior marginal involvement with their children, inability to be consistent and in compliance with parenting plan schedules, mental illness, substance abuse, violence, anger and depression (Hetherington & Kelly, 2002; Johnston et al., 2008; Kelly, 2007). Interpersonal barriers include highly conflicted co-parental relationships (Maccoby & Mnookin, 1992), and maternal gatekeeping when it unjustifiably discourages or limits contacts (Austin, Fieldstone, & Pruett, 2013; Pruett et al., 2012; Trinder, 2008). Cultural and institutional policies and practices often reflected a disproportionate lack of support for an active paternal parenting role after separation (Alio, Bond, Padilla, Heidelbaugh, Lu & Parker, 2011; Coakley, 2013; Cowan et al., 2008; Parkinson, 2010).

Parenting Time Distribution after Separation: At the Heart of the Debate

The question of overnights for young children of separated parents is embedded in several questions concerning 'what amount of time' with each parent optimizes adjustment to separation and ongoing general development. How much time is needed to ensure that separated parents each continue to invest in the early relationship with their young child and are able to consolidate a foundation for life-time involvement? How much time with one parent is needed for a baby to become or to remain behaviorally secure in that attachment? How much time away from a parent, at what points in early childhood, and in what circumstances, is stressful and disruptive to that attachment and to related developmental goals? How should the amount of time spent with each

parent be considered in the context of attachment with one or both parents who have seriously compromised mental health?

These questions must be asked for each infant-parent relationship. Yet they are often laced with an implicit assumption that one parent's gain is the other parent's loss, and that the baby either wins or loses, as well. An integrated perspective suggests that the goals of both attachment and parental involvement are mutually attainable, though achieving both goals becomes more complicated when parents separate. As with parents in dispute, the best interests of the child are likely to be met by the best care that each parent provides. We focus the remainder of the paper on a fundamental reconceptualization of the current debate, wherein attachment and parental involvement become nested concepts, and the place where they meet becomes the locus for crafting parenting arrangements for very young children.

Reframing the questions and issues toward an integrated solution

We start from a developmental perspective, and ask: 'What is the developmental goal of a parent spending time with a baby?' For many attachment researchers, the answer is equipping the baby with "at least one care-giving relationship" that is constant and responsive enough for the baby to develop an organized strategy for finding protection, relief from anxiety, and delight in shared interaction (Main, Hesse, & Hesse, 2011). Organized strategies refer to secure and insecure ambivalent or avoidant patterns. All three patterns represent adaptations made by the baby to the caregiver. Disorganized attachment refers to the young child who shows little consistency in behavior toward attachment figures at times when most would seek reassurance. Instead, the child appears fearful of the parent and unsure about what to expect in terms of the care that will be provided. Separation and divorce, like other major transitions, are associated with an increase in children's insecure behaviors. Separating parents may be preoccupied and stressed, responding to the child with less attentiveness, more anger, and less patience; moreover, the structure of the family unit has abruptly changed (Hamilton, 2000; Hetherington, Cox & Cox, 1985; Waters, Merrick, Treboux et al, 2000). It is expected that behaviors associated with a more aroused

attachment system will be evident, though a constant arousal puts the baby at risk for disorganized attachments becoming stable. High levels of parent conflict and violence during marriage and after separation are similarly related to increased evidence of insecure behaviors and may challenge the consolidation of healthy attachment relationships that were forming (Cummings & Davies, 2010; Solomon & George, 1999).

Both attachment and parent involvement perspectives express concern about the impact of lengthy or extended separations on infant-parent attachments and stress levels. One problem has been the lack of concrete definitions for these terms. In separation/divorce research, father-child time has been most commonly measured by the frequency of contacts in a defined period of time. This imprecise measure fails to indicate the amount of actual time children and nonresident parents spend together or the pattern of that time. Recently, researchers have used the quantity of time spent between children and nonresident parents in a given period because it better indicates opportunities for parenting (Fabricius, Sokol, Diaz, & Braver, 2012), but this does not address the issue of time intervals between contacts (i.e., the length of the separation from either parent) or the frequency of transitions made by the child.

From the attachment perspective, “frequent” separation refers to repeated absences occurring regularly, and concern focuses on the impact of frequent change on the baby’s security with main care-givers. From the paternal attachment perspective, “frequent” contact was intended to avoid lengthy separations of the infant from the father which had previously characterized parenting plans for very young children. Here, the outcome of concern was nurturing or sustaining the infant-father attachment without stressing the infant. “Lengthy” separations address the number of continuous hours within a unit of contact, but there is no agreement as to whether “lengthy” means eight hours, 24 hours or three days. “Extended” separation refers to the continuing absence of a care-giver over many days or weeks, but this too is not well defined, and there is no consensus about what is “too long”, or how this might differ by age and temperament.

Attachment theory is clear that a core determinant of stress in separation from an attachment figure is the presence or absence of another effective attachment figure. Profound distress arises when such a relationship is not available, leaving the infant's attachment state "switched on". When another effective attachment figure is available, the baby's anxieties can be assuaged and stress reduced. This attachment perspective on the years 0-3 provides this guidance: at least one organized attachment is essential for the young child, especially in the face of stress and adversity (Sroufe et al., 2005). When two positive relationships with parents have been established prior to separation, the facilitation of two organized attachments after separation would normally enhance developmental outcomes, and thus represent the young child's interests (van IJzendoorn et al., 1997). In this scenario, parenting time and behavior needs to allow for regular responsive interaction with infants.

Taking a longer view, we ask: how do we create a healthy start for life-long relationships that begin from a fragile basis, without jeopardizing early attachment organization? There is irony in the attempt to compartmentalize these developmental issues into "either-or" options. Whatever their theoretical persuasion, developmental experts regard the nucleus of early development as occurring in the context of care-giving relationships that exist within concentric family and community rings of influence (Bronfenbrenner, 1986; Sagi & Van IJzendoorn, 1996; Tavecchio & van IJzendoorn, 1987). Just as each parent crafts his/her child's attachment security (Sroufe, 1985; van IJzendoorn & DeWolff, 1997), similarly, each parent contributes to the development of wider behavioral systems and psychosocial attainment. Just as neither parenting function covers the gamut of childhood developmental needs, "either-or" thinking about children's needs after separation is incomplete.

Current research findings: understanding the data before moving to a consensus perspective

In integrating disparate perspectives, we suggest that a consensus perspective of the available research on young children and parenting plans is also possible. Toward this end, we summarize the small pool of studies reporting data on the demography of pre-school overnight care

arrangements, parent-child time data, and the developmental correlates of various parenting arrangements.

Demography of overnight care arrangements

While representative studies show that rates of overnight parenting time across the world have climbed in school age and adolescent populations (Bjarnason et al., 2010; Carlsund, Eriksson, Lofstedt, & Sellstrom, 2012), relatively few families undertake high levels of overnights in early childhood. Current general population statistics in the United States and Australia indicate that in separated families, between 93-97% of children aged 0-3 years spend less than 35% of their nights with the non-resident parent (Kaspiew et al, 2009; McIntosh, Smyth, Kelaher, 2010; Tornello, Emery, Rowen, Potter, Ocker & Xu, 2013). These data appear to reflect normative sociological differences in parenting roles during infancy. While active parenting by fathers is increasing in intact families, across many western countries (Casper & Bianchi, 2001; Pleck & Masciadrelli, 2004) the majority of hands-on care-giving during infancy is still undertaken by mothers (Baxter, Gray & Hayes, 2010). Furthermore, a significant amount of leisure time is spent by parents together with their young child. Divorce and separation not only changes individual parenting time, but also clearly subtracts normative “together time” from the young child’s care-giving equation.

Parents who share higher frequency overnight schedules tend to be socioeconomically advantaged relative to lower frequency or no contact groups (Smyth, Qu & Weston, 2004; McIntosh, Smyth & Kelaher, 2013). Differentiating factors include significantly higher incomes, educational attainment, marital status, prior co-habitation in a committed pre-separation relationship, and maintenance of a cooperative relationship post-separation. The clustering of these characteristics in family court populations, especially among parents who have never been married, is less frequent, suggesting that parental choices about overnights, and hence disputes, may play out differently across family structures.

Developmental outcomes in early childhood associated with parenting time

Studies examining correlates of post-separation parenting plans for very young children are scant. Any new field of science begins with single studies that form an incomplete picture. Commonalities can be identified across studies as the research pool grows. Research in this area is still a long way off from forming a critical mass. Four of the five existing studies are recently and thoroughly reviewed elsewhere (Kuenhle & Drozd, 2012), and our attention to them here is in the service of integration. A brief review of the five studies is provided below (*see* McIntosh & Smyth, 2012 & Pruett, 2012 for more extensive details on sampling, methodology, analytic strategy, and limitations). A summary of relevant sample similarities and differences is presented in Table 1.

Table 1

Comparison of Samples in Overnights Studies

	<i>Solomon & George</i>	<i>Pruett et al.</i>	<i>McIntosh et al.</i>	<i>Altenhofen et al.</i>	<i>Tornello et al.</i>
<i>Parents' prior relationship status</i>	Married/Living together/Non-cohabitating	Married/Living together	Married/Living together/Non-cohabitating	Married	Predominantly Non-cohabiting
<i>Primary Reporter</i>	Mothers	Mothers and Fathers	0-2 years: Mothers; 2-5 years: 75% Mothers	Mothers	Mothers
<i>Measures</i>	Attachment observations at age 1 and 3 years	Child behavior surveys	Emotional regulation by parent and teacher report	Observed ratings of mother-child interaction	Attachment and childhood adjustment at 1,3 and 5 years
<i>Child Age</i>	1 year, then 3 years	2-7 years at time of study	3 groups at time of study: 0-24 mos., 2-3 yrs, 4-5yrs	1-7 years At time of study	1, 3 and 5 years
<i>Socioeconomic Status</i>	Mixed	Mixed	Mixed	Middle	Low

Solomon and George (1999) conducted the first study in this area with a voluntary sample of 126 separated mothers and explored the course of attachment organization to the mother from ages one to three years. Most of the parents had not shared a live-in relationship prior to or after the child's birth. At follow-up, using a modified Strange Situation (Ainsworth, 1978) as the methodology of study, they found evidence of significantly more anxious, unsettled, and angry behavior in toddlers who as infants had weekly or more overnights with non-resident fathers (compared to a mixed group of non-overnighters and children in intact families – a confound in the study). High parental conflict, anxiety, and parents' inability or unwillingness to communicate with each other about their baby influenced the children's outcomes. Notably, 41% of children moved to an overnight plan in the intervening year before the follow-up. Some had not seen their fathers regularly in the intervening year, and a few had no prior contact.

Pruett et al. (2004) studied a working and middle class sample of 132 parents with children 0-6 years who averaged 4.9 years old a year and a half after the parents entered the study and when the overnights data were collected. The family court-involved parents agreed to be part of a randomized study that included a cooperative co-parenting intervention and a control condition; data were collected from both parents. Most (75%) of the children had one or more overnights per week. Parenting plans were reported in terms of overnights (yes/no), number of caregivers and consistent schedules week-to-week. Reports of children's cognitive, social and emotional difficulties according to each parent were studied. Similar to the Solomon & George and McIntosh et al. studies, parental conflict and parent-child relationships were more highly related to children's difficulties than were the parenting plan variables. Consistency of schedule and number of caregivers were more important than overnights in and of themselves. Girls were beneficiaries of overnights and multiple caregivers, but boys were not. Two characteristics of the data to note are: 1) These children were not infants, the majority were preschoolers. 2) Parents reported moderate or lower levels of conflict and high conflict parents were excluded or opted out of participation.

McIntosh et al (2010, 2013) used a sample of parents living apart, drawn from a large randomized general population database³. Emotional regulation was examined for children in three age groups – infants under two years, 2-3 years, and 4-5 years. Different thresholds of overnight care were defined for infants under two years, and for 4-5 year olds, ranging from no overnights but regular day contact, to some overnights, and most frequent overnights (one per week or more for babies under two years, and 35-50% for 3-5 year olds). Emotional regulation outcomes were studied after accounting for parenting style, co-parenting relationship qualities, and socio-economic status, variables known to influence developmental outcomes.

Parents with higher levels of angry disagreement and parenting and lower education had children with poorer health, emotional functioning, and lower persistence. No differences were found in global health or other scores related to physical or other aspects of development in any of the three age groups.

While some variables studied showed no group effects, infants in the “most frequent” overnight group (1+ nights per week) were reported to be more irritable than the “less than weekly” overnight group, and kept watch of their parent significantly more often than the “daytime only” group. Children aged 2-3 years in the “most overnights” group (35% or more overnights between their parents) showed significantly lower persistence in play and learning than those in either of the lower contact groups, and more problematic behaviors. Overnights did not predict significant group differences in the 4-5 year old group on any outcomes. Limitations of this study include small sample sizes for the infant group and relatively small effects. Given that the analyses were conducted at one point in time, neither cause and effect between overnights and outcomes nor the clinical significance of such findings over time can be concluded.

Altenhofen, Sutherland & Biringen (2010) conducted a small study of child attachment in a sample of 24 divorcing mothers and children, ages 12 to 73 months, the majority of whom were 2-4

³ This study used unit record data from *Growing Up in Australia*, the Longitudinal Study of Australian Children (LSAC). The study is conducted in partnership between the Department of Families, Housing, Community Services and Indigenous Affairs, the Australian Institute of Family Studies and the Australian Bureau of Statistics.

years old. Parents were white, educated, and infants averaged eight overnights per month with fathers. Waters' Attachment Q-Set (AQS) (Vaughn & Waters, 1990; Waters & Deane, 1985) and the Infancy/Early Childhood version of the Emotional Availability (EA) Scales (Biringen et al., 1998) provided the main assessment tools. In this sample, 54% of children showed an insecure attachment with the mother. Mothers' emotional availability was related to a less conflictual co-parenting relationship, and the children involving their mothers in play contributed to attachment outcomes. Neither age at which overnights started nor other relevant variables in the study explained differences in children's attachment security. Similar to Pruett et al., this study showed the most salient contributors to child difficulty or adjustment to be the quality of parenting and the co-parenting relationship. Limitations of the study include the small sample and lack of a control group or data from fathers.

Tornello, Emery, Rowen, Potter, Ocker & Xu (2013) utilized data from the Fragile Families and Child Wellbeing Study. These data are representative of the population of 20 major inner US cities, consisting of predominantly black, unmarried, low income mothers who typically had not lived together with the father at birth or follow-up. The study analyzed attachment and childhood adjustment data provided by mothers from a separated families sample of 1,023 one-year-olds and 1,547 three-year-olds who had contact with both parents. Consistent with Solomon and George (1999) and McIntosh et al (2010), one year olds with more frequent overnights (1 or more per week) were more likely to show attachment insecurity/emotional dysregulation when those infants were three-years-old. Consistent with (Kline) Pruett et al, three-year-olds with more frequent overnights (at 35%+) did not show adjustment problems at either ages three or five years. One of 28 analyses showed that three year olds with more frequent overnights had more positive behavior at age five than those who had rare overnights or day only contact. As with the other studies, overnights were not related to a number of child outcomes when the child was age three. The socio-economically disadvantaged sample of inner-city parents, most of whom had never lived together,

is applicable to families with similar characteristics seen in the family court, but is not generalizable to the whole spectrum of families seen in separating families with or without parenting disputes.

On many levels, the studies are difficult to summarize, and defy grouping. Each used different samples and different data sources, asked different questions about how outcomes are related to overnight time schedules for infants, and explored different schedules and amounts of overnight time. None of the studies can be said to provide a comprehensive coverage of the relevant developmental issues. The usual research caveats are applicable: data collected at one time point precludes interpretations that suggest cause and effect (this pertains to all of the studies except Tornello), and statistically significant findings may be small enough in absolute terms not to be clinically relevant (*see* Pruett & DiFonzo, this issue, for an expanded explanation of the latter caveat). Moreover, the studies illustrate the importance of taking into account differences between and within samples of families with widely varying demographic characteristics. Multiple questions remain, such as which infants fare better with more frequent overnight arrangements, and what aspects of development – such as cognitive, language, and psychosocial outcomes – may be enhanced by including overnight care in parenting schedules from an early age as well as later ages. None have covered the range of families seen in family court and those who negotiated parenting plans with lawyers, mediators, or among themselves. This field of knowledge will advance and increasingly differentiate family and parenting circumstances based on the collective evidence of multiple studies that are yet to be conducted.

From the overlap across existing studies and an integration of the broader developmental and family literatures, we offer seven points of consensus that form the basis of subsequent clinical recommendations and policy considerations (see Part II of this issue). Bear in mind that the research utilizes group data, and we encourage a view that validates *both* group trends in these data *and* the importance of appreciating variation in each family's individual situation.

Points of consensus about the developmental needs of young children in families living apart

#1: Early childhood (0-3 years inclusive) is a period critical to subsequent psychosocial and emotional development and is deserving of special attention and planning in family law matters.

#2: Across all family structures, healthy development in the young child rests on the capacity of caregivers to protect the child from physical harm and undue stress by being a consistent, responsive presence.

#3: Similarly, healthy development rests on the capacity of caregivers to stimulate and support the child's independent exploration and learning and to handle the excitement and aggression that accompanies the process of discovery.

#4: Secure development in this phase requires multiple supports to create both continuity and an expanding care-giving environment for the young child that includes family, community, educational and cultural connections.

#5: A "both/and" perspective on early attachment formation and joint parental involvement is warranted. The young child needs early, organized care-giving from at least one, and most advantageously, more than one available care-giver. An optimal goal is a "triadic secure base" constituted by both parents and the child as a family system, where a healthy co-parenting environment supports the child's attachment relationships with each parent and vice versa.

#6: The small group of relevant studies to date substantiates caution about high frequency overnight time schedules in the 0-3 year period, particularly when the child's security with a parent is unformed, or parents cannot not agree on how to share care of the child. Equally true, clinical and theoretical cautions against any overnight care during the first three years have not been supported.

#7: Critical variables in considering readiness for and the likely impact of overnight schedules include parents' psychological and social resources, the current nature of parental dynamics – particularly conflict, and the nature and quality of each parent-child relationship prior to separation.

Conclusions

As articulated throughout this article, and addressed elsewhere (Pruett & DiFonzo, this issue), little is yet known about the developmental impacts of overnight care. The field is practically

devoid of longitudinal datasets or studies that follow children's adjustment through preschool and into school. The roles of other family members (siblings, grandparents) and the potential influences of child care as additional forces that influence children's responses to separation and overnights remain unexplored terrain. The place of ethnic and cultural identities and practices raise questions that are virtually untouched. The relevance of parent gender will in time be explicated by research conducted with separating same-sex couples, and by studies of heterosexual fathers who were stay-at-home dads prior to the separation. Studies differentiating age, education level, and family values will enable us to better compare international trends. We eagerly anticipate the time in which answers to questions about infant overnight care evolve from methodologically sophisticated studies with diverse samples.

Until that time, we stand together as three authors whose viewpoints have been linked to differing attitudes and findings about overnights for young children, and have been used in court rooms and conference rooms as "proof of" evidence for which we declare there to be no proof. We present here, instead, an attempt at integrating foundational knowledge. Our synthesis of attachment and parental involvement perspectives points to the centrality of parent-child relationships for sound decision making. Even though we strongly encourage co-parenting, we also understand that some relationships and family contexts restrict how much and how well parents living separately can raise their child together at a given time. For children 0-3 years, parents' capacity to function as a supportive unit in the service of protecting the child's rapidly developing and highly vulnerable world may determine whether overnights support, are neutral, or are harmful to the child. In Part II of our parental separation and overnight care of young children series, we take the next step of building upon the consensus principles we have reached here by charting the facilitative and protective conditions under which the youngest children are likely to thrive in overnight care.

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