

### “BENDING” EVIDENCE FOR A CAUSE: SCHOLAR-ADVOCACY BIAS IN FAMILY LAW

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There are a number of salient public policy issues in the family law field that have invoked impassioned policy debates on a recurrent basis. In the absence of a body of research to address these critical concerns, advocates under the guise of social science scholarship have exacerbated the confusion and controversy by construing the scant available research evidence to justify their own ends, without regard to the relevance, quality, utility, and limitations of the studies. This is one of two articles on this problem that we have named “scholar-advocacy bias.” In this article, we discuss the difference between truth in social science and truth in law. We identify common ways in which social science researchers and reviewers of research—wittingly or unwittingly—can become advocates for ideological positions and social policies at the expense of being balanced reporters of research evidence as illustrated by recent debates about overnight parenting of infants and toddlers. We also consider how adherence to established scientific principles and methods prevents the misuse of research in this way.

Key Points for the Family Court Community:

- Scholar-advocacy bias, the intentional or unintentional use of social science research to legitimize advocacy claims, is a problem that practitioners and policy makers must recognize and guard against in family law.
- Because of different methods of pursuing and establishing truth in science and the law, ironically, the less rhetorically convincing argument often represents science most faithfully.
- Practitioners—and scientists—must guard against using various rhetorical tactics that bend research evidence, for example, the rules of science dictate that we must prove our hypotheses; others need not disprove them.

**Keywords:** *Advocacy Research; Scholar-Advocacy Bias; and Social Science Research.*

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Thomas Huxley famously pointed to “The great tragedy of Science - the slaying of a beautiful hypothesis by an ugly fact.” Huxley’s “tragedy” is tongue-in-cheek. He delighted in empirical science’s triumph of evidence over ideas. Our present concern is the opposite of Huxley’s: facts murdered, or merely maimed, in the name of a cause, even a worthy one. The name of this enterprise is not Science, but “Scholar-Advocacy Bias” masquerading in the name of Research. We define scholar-advocacy bias as the intentional or unintentional use of the language, methods, and approaches of social science research, as well as one’s status as an expert, for the purpose and/or outcome of legitimizing advocacy claims at the cost of misrepresenting research findings. We argue that scholar-advocacy bias goes largely unacknowledged in family law.

Advocacy and research in family matters are terms that embody an essential tension between the pursuit of truth in law and science. Truth in the law is about persuasion, using the legal rules of evidence to advocate for your side and ultimately to convince a judge or jury of the truth of your case. Truth in science is about public demonstration, designing research procedures that others can use objectively to replicate your findings. Both pursuits of truth serve very worthy purposes. Establishing what is social science evidence is complicated within an adversarial legal system where the legal

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approach to reaching truth is zealous advocacy to make the best case for opposing sides. The scientific approach is to adhere to scientific principles and methods that guard against bias. When the legal advocacy approach to fact-finding is applied to scientific evidence, then one-sided presentations of data and polarization of controversial positions become more likely.

Combining the terms advocacy and research produces an oxymoron—advocacy research.<sup>2</sup> Research involves seeking knowledge about, or solutions to, problems that can be objectively demonstrated to others; advocacy implies one already knows the solution and the task is convincing others to mobilize resources accordingly. Although researchers can advocate for the use of their findings to affect policy and practice, they still are bound by the rules of science. Scientists know they may be wrong. They acknowledge the limitations of their research, while disputing specious challenges to their methods. Scientists must also recognize the difficulties in translating limited research findings into real world solutions.

Cautions about scientific integrity, caveats, and limitations may not be terribly persuasive to non-scientists, especially in contrast to the certainty of advocacy. Advocates marshal unambiguous arguments, often with emotional appeal, in pursuit of persuading others of the truth and moral rectitude of their side, including arguments about what “research shows.” Thus, ironically, a key to distinguishing science from advocacy researcher bias is that the scientist is likely to be rhetorically less convincing than the researcher working from a position of advocacy bias. As psychologist Daniel Kahneman (2011) has shown, our brains are wired to accept emotionally charged arguments over rational ones. Our brains respond quickly and unquestioningly to powerful emotions, which may signal that our very survival is at stake, in comparison to rational arguments, which are less emotionally appealing and require time and effort to sort through.

### SCHOLAR-ADVOCACY BIAS IN FAMILY LAW

Scholar-advocacy bias is not a new concern in family law. A decade ago, the AFCC sponsored a plenary session at its annual conference on the politics of research entitled “The Use, Abuse and Misuse of Social Science Research.” The presenters at this conference, along with others before and since, emphasized the need to develop effective cross-disciplinary communication, common standards, and ethical principles for the use of research findings to provide accurate court testimony and to build an evidence-informed knowledge base of effective programs and policies (Cashmore & Parkinson, 2014; Cherlin, 1999; Gelles, 2007; Johnston, 2007; Kelly & Ramsey, 2007; Kelly & Ramsey, 2009; Pruett, 2007; Ramsey & Kelly, 2004; Ramsey & Kelly, 2006).

Although there have been important contributions of science in politically sensitive areas of family law,<sup>3</sup> during the past decade, unfortunately public investment in civil court matters has remained a low priority. Consequently, research that directly addresses critical family court questions is limited or absent, leaving the door wide open for scholar-advocates to promote false or misleading claims within impassioned debates about what “research says” with regard to a range of family law issues, such as liberal divorce laws and effects on children, sex abuse allegations in custody disputes, same-sex marriage and parenting, artificial procreation and single parenthood, relocation, father involvement, and child support enforcement. More recently, parenting time policies for infants and young children, parental alienation, and intimate partner violence in family court have been at the center of controversy.

Where does the truth lie? For advocates, truth emerges from judgements based on competing arguments that reach beyond the available social science evidence and focus on moral and ethical arguments, personal experiences, consideration of related laws and legal procedures, calls for the protection of civil rights, and appeals to social values and morals. By contrast, the role played by science is more circumspect and in some ways less compelling. Given the broad reach of family law, the rare use of random assignment studies (the “gold standard” of scientific research), and the relatively small number of studies (and researchers) in the field, the ultimate empirical truth regarding many family law controversies often is “more research is needed.” Of course, this answer can frustrate both

advocates and neutral legal professionals, like judges, who must make the best possible evidence-based decisions *now*.

Scholar-advocates too often fill the frustrating void of “more research is needed” with certain answers. They espouse that all of the research points in one direction, supporting the advocate’s position. Not unlike distraught family members desperate for answers about pressing problems like cancer or autism, legal professionals can be susceptible to claims that purport to have answers that, for them, cannot wait for “more research.” Moreover, legal professionals may feel unprepared to evaluate scientific evidence, and more basically, may not be motivated to question the legitimacy of advocacy research. Why question the cure you have been searching for? What is more emotionally convincing: “The evidence is inconclusive.” or “I have the answer!”?

An overarching goal of this paper is to urge readers to work toward reversing our human, emotional tendency to be persuaded by certainty, particularly certainty about new or controversial topics. Scientific facts take time to establish. Once established, most scientists readily agree that an established fact is true, even if there are occasional dissenters. The warning we already raised bears repeating: an excellent way of screening out scholar-advocate bias from scientific evidence often is by contrasting their degree of certainty about new or controversial topics. Following the lead of experts who offer only limited answers does not provide the certain direction that many professionals want. But clinging to the hope offered by research biased by advocacy is, in the end, false hope.

The potential for scholar-advocacy bias in scholarly reporting is not unique to the family law field. It plagues many fields fraught with public policy controversies such as climate change, evolution, vaccinations, environmental hazards, drugs, crime, and gun control. In fact, *National Geographic* magazine ran a cover story titled “The War on Science” in the March 2015 issue, as we were writing this paper. As the article discusses, on some issues, such as evolution or climate change, scholar-advocates vehemently claim that there is scientific controversy when virtually none exists.

In this paper, we explore the relationship between principles and methods of scholarship and advocacy, particularly the distortion of research for the purpose of advocacy. We then detail different rhetorical strategies and tactics that scholar-advocates use to appear convincing scientifically but which are, in fact, antiscientific. Next, we briefly consider these tactics and scholar-advocacy bias more generally in the context of a specific example, the contemporary controversy about frequent infant overnights. Finally, we outline a few essential steps for helping to ensure that research is used to inform evidence-based policy rather than distorted in the service of a cause.

## **PRINCIPLES AND METHODS OF SCIENTIFIC SCHOLARSHIP VERSUS ADVOCACY**

Social science scholarship requires a systematic approach that aims to further existing knowledge without pursuing preconceived outcomes or ultimate ends. In this quest, the scholar’s purpose is to be, insofar as possible, self-aware and critical about prior assumptions, personal values, and biases, willing to subject hypotheses to rigorous inquiry and falsifiable tests, and prepared to consider alternative interpretations of the data. Because scientific knowledge builds on itself, comprehensive and relevant literature reviews are foundational to the research enterprise.

Scholars are expected to uphold the standards and follow the disciplined procedure of the scientific method by using logical and replicable research methodologies to test their predictions. The findings from empirical tests may be either consistent or inconsistent with predictions. Thus, research findings either strengthen or modify the state of knowledge about a phenomenon of interest, allowing public discussion of its implications for policy and practice. Methodology of the study is expected to be transparent and implemented with fidelity, and results are to be reported fully and accurately. Most importantly, limitations imposed by the research design, along with deviations or flaws in implementing it, are inevitable in the real world. These need to be fully disclosed and discussed in terms of how they may have affected the nature and generalizability of the findings.

As social scientists, we have been trained to value objectivity. In this role, we acknowledge that there is room for interpretation with respect to many empirical findings. In our quest for knowledge, we welcome alternative interpretations. Criticisms often lead to good questions, and good questions often lead to new and improved research. Conversely, inquiry is closed off when evidence is misinterpreted or prematurely claimed to be conclusive. More basically, making strong claims that go beyond the empirical evidence is a violation of perhaps the most basic rule of science: making consistent efforts to maintain objectivity.

We find much that is right and nothing that is inherently wrong with either science or advocacy. We are deeply concerned however, when science is misrepresented by advocates or advocacy is misrepresented as research, because either can damage both science and policy. As social scientists, we value the advocate's commitment to, and passion for, a cause. Moreover, we acknowledge that, unlike scientists, advocates can rightly base their claims on philosophical or moral grounds. Our concern is when advocates make false claims about science, either by asserting the truth of facts that are not yet and may never be established as scientific facts or by launching spurious, rhetorical attacks on legitimate scientific ideas ("No one will ever convince me that I'm descended from a monkey!").

In short, social science and advocacy are fundamentally different enterprises in terms of goals and strategies. Social science researchers in applied fields like family law are often pressed to opine on policy, and many believe it is their responsibility to do so. They may also choose to advocate or to work in close collaboration with advocates and in this capacity, they can and do have a constructive role to play in helping prepare the discourse for the advocate's agenda. However, if working in dual roles, they may have to struggle with inherent tensions between the strategies, goals, and values of both social science and advocacy. The bottom line is that, regardless of their philosophical position or personal opinion, researchers are expected to retain their methodological discipline, honesty and integrity with respect to the development, reporting, and usage of research findings as they ponder implications for policy.

In the following section we identify five general rhetorical strategies and eight specific biasing tactics that are used by scholar-advocates when they press to "bend" research evidence for a cause. Our goal is to help decision makers use social science research effectively by adhering to established principles and methods of science that can help prevent bias and distortion.

## **SCHOLAR ADVOCACY STRATEGIES AND TACTICS THAT BIAS RESEARCH EVIDENCE**

### **STRATEGY #1: SETTING UP AN ADVOCACY AGENDA**

The foremost strategy used by advocates is to shift the agenda of the enterprise from research to advocacy by using tactics like *Shifting the Burden of Proof* and *Claiming the Null Hypothesis*. These tactics violate the principles of deductive logic that are basic to the scientific method.

*Shifting the Burden of Proof* is a common tactic of scholar-advocates. Rather than claiming the much more difficult ground of "Research supports my position!", the clever scholar-advocate instead proclaims "No research supports the opposing position!" Shifting the burden of proof in this way is a familiar tactic among legal professionals. Juries may need to be reminded that the prosecution needs to prove that a defendant has committed a crime; the defense does not need to prove the defendant's innocence. Yet, this essential procedural protection in the law can be overlooked in debates about the policy implications of empirical evidence. As such, shifting the burden of proof can be an effective rhetorical tactic, particularly if evidence is thin and the advocate also offers philosophical or moral arguments.

*Claiming the Null Hypothesis*: Alternatively, in the absence of scientific evidence of support for a hypothesis (null findings), the advocate may claim "There is no evidence that I am wrong!" or substitute a social value in support of their position: "There is no evidence our proposal harms anyone." Consider, for example, a tobacco company defending smoking to a trade group in 1959. "There is

absolutely no sound, scientific evidence that smoking *causes* cancer!” There may not have been any sound scientific evidence that there was a causal relationship, but there was growing correlational evidence that was cause for concern. There also was no sound, scientific evidence that smoking does *not* cause cancer. The tobacco company advocate shifted attention away from the possible link and instead made a scientific-sounding argument by subtly shifting the burden of proof.

A basic tenet of science is that the burden of proof lies with the proponent of any hypothesis. You must prove your new miracle drug is effective. It is not possible to conclude anything from findings that the drug has neither positive nor negative effects - because it would logically take an infinite number of tests to prove that. However, one can undertake tests to bring evidence to support the hypotheses that the drug is, in fact, effective in curing X and/or the drug has negative side effects Y and Z. Scientists know that they are obliged to support their own hypotheses, as well as to acknowledge the limits of existing evidence on their side of a debate. Advocates pound the table while proclaiming, “There is no evidence that I am wrong.” Even if advocates are right in asserting that the evidence against them is weak, they are wrong because the burden lies with them to provide empirical support for their own ideas. Interested professionals need to evaluate evidence supporting a claim, not just the absence of evidence undermining it. Clearly, the absence of evidence supporting the *opposing* position cannot be misinterpreted as providing scientific support for one’s preferred position.

A problem arises in family law (and many other disciplines) when empirical evidence does not point clearly in one direction or another in relation to some pressing, real world circumstance. What should be our default assumption while we await the verdict of research? For example, until we establish that 50/50 shared custody either hurts or benefits children (and under what circumstances), what should we do? Science cannot yet answer such questions. In the meantime, the default assumption is a matter of values. Through the adoption of laws, rules, and philosophies, society can *assume* that 50/50 is best (or not) until proven otherwise. But a scientist who makes such an assumption in the absence of a substantial body of evidence is acting as an advocate, and is not acting as a scientist.

## STRATEGY #2: SELECTIVE USE OF RESEARCH

A group of scholar-advocate tactics involve the biased selection of research evidence that support advocacy goals, while suppressing research that does not support those goals. We name these tactics *Cherry Picking*, *Stacking the Deck*, and *Net Widening*. These tactics all violate scientific principles that review and critique of the evidence needs to be *comprehensive, relevant, and balanced*.

*Cherry picking* involves selecting specific studies or parts of studies to review, based on the advocate’s position. It is not necessarily done with malice, but is a result of premature closure, not doing a full search, or not looking for disconfirmation of a bias. Cherry picking can result in a short-circuited view of the evidence that merely proves prior assumptions rather than disproving less favorable evidence. For example, searching the Internet can find evidence to support just about any theory, but requires concerted effort to ascertain various points of view and distinguish the quality of the information.

Researchers adhering to professional standards ensure that a comprehensive review of the evidence pertaining to policy has been conducted and is available, for example, as an appendix to a policy proposal. Authors who seek to undertake fair and balanced reviews report a detailed strategy used to search for, identify, retrieve, include and exclude research studies in the review. They also will provide a set of standard criteria by which each study is described and evaluated, usually in table form. Sufficient information within each category is provided so that the reader can compare studies directly with one another. Strengths and limitations of the studies are duly catalogued along with each study’s findings. Standard methods for systematic reviews of evidence such as meta-analysis are well known (Petticrew & Roberts, 2006).

Responsible researchers ensure that written summaries describing the study’s sample, research design, methods, data analysis, limitations, and location of the full report accompany presentations

of findings. Any policy recommendations logically flow from the weight of evidence presented in the report, and should be endorsed with the caveat that the weight of evidence may change as new research findings using different or better methodologies become available.

*Stacking the Deck* occurs when the majority of references in a review are advocates for a favored position or when studies that support a particular view are intentionally included, while studies that raise questions about that position are either underrepresented or omitted. Typically, research findings consistent with an advocate's views are truncated endorsements, with positive findings highlighted and limitations of the study ignored or rationalized away. When the deck of research is stacked in this manner, it is important to check further to see if the authors acknowledge and provide a convincing rationale for the lop-sided references and make explicit their theoretical or ideological viewpoint. A common, particularly subtle occurrence is to give full credence to the findings they favor and to discuss only a few of the more benign limitations, thereby making the analysis appear more objective or balanced.<sup>4</sup> In other situations, scholar advocates completely dismiss valid research findings that do not support their preferred hypothesis on the basis of common, unavoidable, or minor limitations. In this case, the proverbial baby is thrown out with the bathwater.

Some scholars publish their research in peer-reviewed journals where they carefully acknowledge the limitations of their findings, but they abandon caution when presenting at conferences, offering testimony, or speaking to the media.<sup>5</sup> Researchers need to be consistent in the messaging of their findings across platforms, including published articles, presentations, expert testimony, media interviews, and other forms of dissemination activities.

*Net Widening* involves overincorporating irrelevant research in claiming empirical support for one's position. Net widening may occur when scholar advocates push to broaden the application of their agenda to new domains, populations or phenomena with little or no research to support this translation. Alternatively, a net cast too wide may resist or ignore efforts to identify subgroups who are disadvantaged by a favored policy.

Scholar-advocates use net widening to expand the review of research findings from a circumscribed topic into a broader domain *without a well-argued theoretical or empirical rationale*. In the process, important concepts may be redefined, loosely argued associations may be presented as established truths and correlational data may be portrayed as causal. Net widening is evident in the introduction of nonpeer reviewed reports, testimonies, and other literature that has not passed the scrutiny of the peer review process, for purposes of listing more examples of evidence for a position, and including irrelevant studies that are counted as "evidence" for the cause. In order to decide if a particular case of net widening can be justified, the task of the researcher is to review the research evidence to see if the advocate's assumptions are defensible and whether there is a case for theoretical and programmatic integration. This kind of review pays careful attention to different programs of research, delineation of conceptual similarities and differences, examination of the empirical relationships between concepts, and reconciliation of competing formulations in the service of a holistic integrative model of the problem that then needs to be reconsidered in terms of policy implications.<sup>6</sup>

### STRATEGY #3: SPINNING RESEARCH FINDINGS

Several scholar-advocacy tactics violate valued scientific principles of *accuracy, transparency, and logic* when, in the pursuit of advocacy goals, they *over-simplify* reports of research, make conclusions that overreach data favorable to their viewpoint, and use straw-man arguments to diminish research that is unfavorable.

*Oversimplifying and Overreaching*. As often happens with news stories, scholar advocates often put a spin on the story they tell about a research study by oversimplifying, slanting, or distorting the findings or reporting them out of context. Reputable social science research reports are subject to some degree of simplification. Authors summarize in order to help the reader discriminate the overall pattern of findings and distinguish the main arguments and findings from background issues, such as

methodological details. Scholar-advocates simplify results to the point where the information may be misleading or factually incorrect.<sup>7</sup>

Sound bites about “what the research says” are typically employed to reduce complex information into a format that is more easily communicated and has greater capacity to be influential. Activists shrink sound bites further to one-line political slogans without reference to context or limitations. It is not surprising that oversimplification and distortion of the data occur to the point that the scholar-advocate reaches exaggerated conclusions about the significance, certainty, or importance of the study and the implications of its findings. This problem is unlikely to be resolved soon for the “twittering” generation.

Because many professionals only read the abstracts of scientific papers, researchers need to ensure that their abstracts are detailed and consistent with the body of the manuscript to minimize oversimplification and over-reaching conclusions. This will assist readers who skim the paper, attending only to the overview or summary, so they are not oblivious to being misled.

*Straw-Man Arguments* set up extreme or weak representations of opposing positions in order to “knock down” those arguments or research findings. Straw man arguments are, in part, the end result of oversimplification and distortion of data. They also reflect a dominant goal of advocacy: to demarcate polarized policy alternatives such that a favored choice is obviously the right one.<sup>8</sup> In turn, this can provoke competing advocacy efforts to “put the record straight” by stacking up the research evidence for the opposite point of view. For example, scholar advocacy debates have in the past resulted in a dichotomy of mutually exclusive policy solutions framed in absolutist terms—either shared parenting or primary maternal care is optimal for infants and toddlers; either an alienating parent or an abusive one is germane to the problem of children who reject a parent.

The actual data produced from scholarship seldom supports extreme positions because there are too many complex variables involved to limit the results or conclusions to any sound bite across diverse family situations. Rather than presenting absolute truths about the data, researchers need to report on the multiple factors both controlled, and not controlled, that could influence the direction and magnitude of the association among variables.

#### STRATEGY #4: AD HOMININE ARGUMENTS

Rather than deal with the scientific merits of a research study and its findings, some scholar-advocates resort to ad hominine arguments, with *Appeal to Authority* or proclamations that leading researchers endorse their viewpoint about the status of the research evidence. Alternatively, they may seek to defame the integrity and competence of researchers whose studies challenge their views in a negative campaign of *Character Assassination*. Ethical standards for professional scientific behavior are clearly violated in these latter cases.

*Appeal to Authority*. Advocate researchers may use important sounding titles, affiliations with venerable institutions, declarations of prestige and authority, or claims of the allegiance of prominent figures, living or dead, to lend credibility to their arguments. In an adversarial legal system, it is not unusual for factual evidence to be established by citing the opinions of and endorsements by such credible sources, especially expert witnesses. This is not the way truth is established in social science research. Pronouncements about the qualifications, experience and titles of authors of research findings do not constitute evidence of the validity of scientific work.

When social scientists support their knowledge claims with the signatories of leading authorities, it is a clear signal that they have shifted their primary role from science to advocacy. Unless defensible social survey methods are used, gathering signatures of support for a viewpoint or knowledge claim amounts to little more than a petition or plebiscite—an advocate strategy for garnering support for a cause.

Research evidence is established by adhering to scientific methods that help guard against bias. The credentials of a speaker or author do not in and of themselves constitute evidence nor enhance the status of research evidence. When acclamation by appeal to leading authorities is done for the

purpose of legitimating a knowledge claim, it should raise a red flag that the author may be unduly emphasizing an advocate viewpoint. For example, it is not uncommon for research studies to be named after their institutional sponsor or referenced in a quick-hand manner such as the “Yale Study” or the “Berkeley Study.”<sup>9</sup> This appeal to the authority of an academic institution is no guarantee that the research evidence has been reported or interpreted accurately by the writer.

*Character Assassination.* Defamation of the character and integrity of the researcher is an advocacy tactic designed to question any work done by a given researcher instead of carefully evaluating the findings of specific studies. Scholar-advocacy discourse may suggest that the researcher has dubious motivation, harbors bias or prejudice, or engages in careless or corrupt research practices. These kinds of remarks are made at professional meetings or on the Internet, where they are easily promulgated widely and repeated by others. Defamation can escalate into an ugly campaign, a witch hunt designed to frame a researcher as inherently untrustworthy. Fringe groups of disgruntled extremists can join the fray, circulating hate mail, “hit lists” and other ominous threats to messengers with disagreeable data.

Researchers need to remain professional and respectful of differences when discussing the strengths and limitations of research studies. Character assassinations distract from a richer discussion of the implications of research findings. The use of standard rating tools for assessing methodological quality can help researchers use common metrics for assessing the strengths and limitations across research studies and help to depersonalize these assessments. The destructive nature of such assassinations hurts not only the attacked researcher, but the field as a whole, as trust in the science associated with the field erodes, along with the ability of professionals who differ with each other to respectfully collaborate.

#### **STRATEGY #5: SCHOLARLY RUMORS**

Disseminating scholarly rumors and myths involves a cohort of scholar-advocates who misquote research, and then quote and cite one another, without checking back to the original source. Peers share viewpoints about the state of the evidence, cite others who agree with them and are influenced by the opinions of their peers, especially when making sense of complex and ambiguous information. To the extent a group is a closed network with few dissenting voices, there is potential for biased views and misconceptions to multiply. This process becomes more salient between groups with competing advocacy agendas.

In accord with scientific principles of accuracy, and self-critical reflection, scholarly authors are expected to investigate their knowledge claims carefully, using the full range of credible sources, including those who hold opposing positions. To avoid disseminating scholarly rumors, it is essential for literature reviewers to read the original paper: synopses and secondary reviews of primary sources can be misleading. Alternatively, all works that have not been directly read by the author/reviewer should be acknowledged in the text in the conventional manner required by APA style, that is “source author names (date) as cited in reviewer names (date)” to alert the reader that the information is derived from a secondary source.

#### **EXAMPLE: THE ROLE OF SCHOLAR-ADVOCACY BIAS IN THE INFANT OVERNIGHT AND SHARED PARENTING DEBATE**

Parenting plans for children under the age of four, after parental separation and divorce, have been a salient public policy issue and the subject of smoldering debates for decades as the thrust to legislate shared parenting statutes gathers momentum. The most recent controversy, flamed in response to research on overnight time-sharing schedules for infants and toddlers, prompted researchers and reviewers of the research to accuse each other of advocacy bias—that is, the misuse of social science evidence to support their partisan cause. The purpose of this case illustration is not to opine

on the issue itself, but rather to evaluate how these accusations of bias are or are not substantiated by published research and commentary on the subject, and to illustrate how they escalate through a cycle of advocacy.<sup>10</sup> We also seek to illustrate what makes research studies vulnerable to misuse for advocacy purposes.

## STATE OF THE EMPIRICAL EVIDENCE

Our data for this case study are the original four empirical studies of overnights that included children four years and younger (McIntosh, Smyth, & Kelaher, 2010; McIntosh, Smyth, & Kelaher, 2013; Pruett et al., 2004; Solomon & George, 1999a, 1999b; Tornello et al., 2013), along with 26 papers published within the past five years that included 12 reviews (Cashmore & Parkinson, 2014; Kline Pruett, McIntosh, & Kelly, 2014; Lamb, 2012a; McIntosh, 2011; McIntosh, 2012; McIntosh, Kline, Pruett, & Kelly, 2015; McIntosh & Smyth, 2012; Neilsen, 2014a, 2014b; Smith, Caffino, Van Horn, & Lieberman, 2012; Solomon, 2013; Warshak, 2014), 9 critiques or commentaries (Garber, 2012; Hynan, 2012; Lamb, 2012a, 2012b; Ludolph & Dale, 2012; Ludolph, 2012; Millar & Kruk, 2014; Smyth, McIntosh, & Kelaher, 2011), and 5 replies to critiques (Tornello et al., 2013; McIntosh, 2011; McIntosh, 2012; McIntosh, Smyth, & Kelaher, 2015; Parkinson & Cashmore, 2011) on these studies and on the subject more broadly. Each of the four single studies tested specific hypotheses about the association between overnight stays and indicators of young children's security of attachment, proxies for emotional regulation and/or emotional-behavioral functioning. In aggregate, the studies found few statistically significant results; there were some negative associations across different outcomes among children under the age of four. There was more variability than similarity across the studies and outcome measures assessed. The samples, each drawn from a different source and spanning different age groups (in months), were described clearly. The research methodology and data analysis were transparent in each study. The findings were accurately reported, and study limitations were disclosed. Relative to the inordinate amount of attention, scrutiny, and repudiation or acclamation they have garnered, there are few studies and they lack common variables and measures, precluding any systematic comparison of data across studies or aggregation of the evidence.

## POLICY CONTROVERSY

One of the four empirical studies in particular became the lightning rod for subsequent public and professional controversy when the researchers explained their findings. Based upon the assumption that infants' and toddlers' development of self-regulation depends upon a secure or organized attachment to at least one parent, the researchers proposed that substantial overnights spent with the other parent may constitute a significant stressor during a critical period of the younger child's brain development, with possible negative longer term consequences.

This interpretation of the pattern of empirical findings was made in terms of the attachment paradigm of developmental psychology without considering alternative perspectives that had previously justified overnight stays with the nonresidential parent (e.g., Lamb & Kelly, 2001). Notably missing were the perspectives of theorists who had written about the importance of multiple attachments, and those who researched young children's risk and resilience. From these perspectives, the same research findings, limited in number and scope, might have been framed or interpreted differently.

Although no explicit policy recommendations were made in the original four studies, none of the four studies cautioned against premature policy conclusions. Scientific protocols do not require researchers to do so. In the void, implications for policy were generally assumed from the interpretations given by the researchers of the target study; they were perceived to be advocating that separating fathers in secondary parenting roles with very young children should stand aside and allow mothers, who are usually the primary parent for very young children, to assume primary childrearing until the child is four. This assumption of advocacy reignited the battle between extant powerful

political interests (representing mothers' or fathers' interests) and resulted in media attention and public concern.

The aforementioned report also ignited a fiery cycle of allegations of scholar advocacy bias. Within the next couple of years, findings from the study, and interpretation of those findings, were widely presented within national and international forums (e.g., papers published in *Family Court Review* and at national conferences of the Association of Family and Conciliation Courts, family law meetings, professional trainings, and legislative hearings). Rumors began circulating that they were influencing legislation in several locales to recommend against shared parenting for infants and toddlers.

The subsequent wave of published critiques and reviews of the research that followed widespread dissemination of the few empirical findings substantiate the gulf between the limited empirical research evidence and the much larger policy issues at stake. The majority of reviews and critiques are incisive and constructive, especially clarifying methodological issues and study limitations.<sup>11</sup> From a social policy viewpoint, the reviews also call attention to the potential chilling effects of the research upon father involvement with their very young children and the likelihood of it increasing father dropout.<sup>12</sup>

*Scholar-Advocacy Bias in Response:* Proponents of shared parenting viewed this state of affairs as illustrating the problems of scholar-advocacy bias that we describe in this paper: (1) selecting research literature that favors a specific position without citing contrary research that suggests alternative perspectives and interpretations, (2) using leading authority declarations to support their position, and (3) widely disseminating their position to influence policy without giving sufficient attention to the limitations of their findings. Some critics also allege that the researchers' conclusions have overreached their data in pursuit of advocacy goals.

This perception of scholar advocacy led some proponents of shared parenting to "put the record straight" in subsequent reviews. However, in arguing that the authors of the target study engaged in what we are calling scholar-advocacy bias, several of the reviews demonstrated multiple examples of many of the tactics identified in this paper, escalating a cycle of advocacy bias that sheds more smoke than light on the state of scientific evidence and potential implications for policy. One or more of these reviews:

1. Attempted to claim the null hypothesis and shift the burden of proof by falsely accusing researchers (with unfavorable empirical data to their position) for asserting, "infant overnights should be assumed harmful until proven otherwise." Simultaneously, these same critics asserted (based on favorable theory but no direct evidence) "research shows that overnights benefit children."
2. Greatly widened the net by reviewing literature about the benefits of shared parenting and father involvement to children of all ages, largely without distinguishing what is known specifically about infants and toddlers who were the age group at the focus of the debate.
3. Used specious reasoning and straw man arguments about outdated theories of infants' exclusive preference for the mother as primary caregiver to characterize the target research report as gender biased and as favoring mother care over father involvement, whereas in fact the study did not address any gender hypothesis.
4. Sought to refute and discredit studies with findings inconsistent with their views about infant overnight by subjecting them to a higher level of critical scrutiny and evaluative standards compared to those that favored their policy views.
5. Misrepresented prior research findings, thus contributing to scholarly rumors that supported their bias, for example, erroneously reporting that a large study of divorcing parents resulted in data on young children's emotional and behavioral adjustment, which supported the benefits of shared parenting.
6. Overly simplified the findings by concluding unconditionally that there were no grounds for concern about young children - including infants and toddlers—in shared parenting arrangements of any kind, rather than noting that there is some evidence that gives reason for concern and noting the limitations of that evidence.

7. Gathered the endorsements of authorities in support of their position regarding the state of the evidence without disclosing any methodology of recruitment of the signatories, criteria for exclusion, what the signatories were told, if anything, about the controversy, and what they understood they were agreeing to when they signed.

## COMMENTARY

In response to the research they were denouncing, some of the reviewers clearly crossed an advocacy bias line. Most salient, none of them followed standards for completing *systematic* reviews. In the absence of clear criteria for inclusion and exclusion of studies, reviews and critiques vary in coverage of relevant populations. Variables measured in different ways across studies are at times mutated and merged into broader concepts more consistent with advocacy positions (e.g., attachment security = good or strong relationship; # of overnights = # of access days; emotional regulation = well-being). The fact that the reviews are mostly qualitative interpretations about a small number of empirical studies, and do not follow standard guidelines in the field for systematic quantitative reviews of the literature, opens the door to advocacy-biased interpretation from all perspectives. In essence, reviewers decide which factors they want to highlight, and which results and factors remain silent in the background. Hypothetical statements are made about the kinds of factors that may be influencing outcomes (theory-driven versus statistically driven), but clear methods for testing these hypotheses are not delineated. As a result, interdisciplinary scholars and practitioners continue to conjecture about the conditions under which overnights are stressful for infants and toddlers to a degree that affects healthy development, and conjectures are often difficult to distinguish from evidence in the manner they are presented and discussed.

As we have described, research at risk for advocacy bias are those preliminary studies that directly address salient policy issues. Scholar-advocacy bias is generated in situations where there is steadfast pressure upon social scientists to answer critically important policy questions before adequate, consistent, reliable, replicated findings exist. In the case example, the controversy about overnights for infants is reflected in the ratio of number of research studies to number of reviews (1:6). Four studies constitute an inadequate body of research upon which to speculate about policy implications. By contrast, this ratio is likely to be of reverse magnitude in reputable journals that specialize in reviews of social science evidence such as *Psychological Bulletin*. At the very least, research studies are expected to exceed research reviews in quantity on any topic.

We conclude that with seemingly little awareness, scholars on both sides of the debate crossed to the dark side, contributing to an escalating cycle of advocacy bias, albeit to different degrees. In a companion paper (Sandler et al., 2016), we describe and illustrate how to avoid and prevent scholar-advocacy bias, ways of remedying the damage, and getting back on track. Similar to the case of the overnights for infants debate, a discussion of intimate partner violence is used to illustrate how some scholars on both sides of the debate have begun to contribute to a productive collaboration.

## CONCLUSION

### **MORE RESEARCH IS NEEDED: MORE THAN THE USUAL PLATITUDE**

The standard conclusion at this point in many papers is “more research is needed.” This statement is so commonplace that the platitude is often ridiculed, particularly by practitioners and policy makers who want clear guidance now, not more muddy studies in a few years. As researchers concerned with policy, we have sympathy both with the standard “more research is needed” conclusion and

with those who are frustrated by it. So, we would like to offer a different stronger version of that conclusion here: the dearth of quality research on family courts, on the issues and conflicts that bring families to court, is a national disgrace in the United States.

Divorce, nonmarital childbearing, and the breakup of cohabitations are major disruptions in the life of close to half of all families in North America today (Kreider, 2005; Statistics Canada, 2013). Family conflicts that arise from these transitions can manifest as child custody disputes. In dealing with these disputes, family court judges are expected to, and do, reach decisions that intrude greatly into the private lives of parents and children. Yet, family law gives judges wide discretion in reaching their conclusions. This means that judges can be, and are, influenced by ideas that are little more than political agendas of the moment—fads. Some of the political fads that have affected our courts include arguments about the benefits or lack thereof of sole versus joint legal and physical custody, and few or many overnights for very young children. Our courts weigh allegations of abuse that arise for the first time in a custody hearing, as well as competing allegations of parental alienation and intimate partner violence. Judges may award sole or joint custody, or limit or forbid parents' contact with their children, not based on hard evidence, but on the conclusion of experts whose opinions and tests often are based on grounds that are scientifically dubious, at best.

In making these observations, we are not condemning judges and other professionals who are grappling with doing what is best for children in the absence of a clear legal or empirical definition of "best." What we condemn is our national failure to attempt to define "best." Until and unless our legislatures enact clear legal and philosophical guidelines about what our society assumes is best for children, the definition of "best" is an empirical question. More research is needed. Yet, no federal agency is dedicated to funding research on family courts and the conflicts that bring families to court. Many agencies, such as the National Institute of Mental Health, explicitly rule out such funding. Moreover, no private foundation has attempted to fill the gap by making family courts and family conflicts a priority for funding research grants, despite the calls to consider family conflict and its sequelae as a public health issue (Salem, Sandler, & Wolchik, 2013). We as researchers have funded our research in creative ways, and not conducted research we would like to complete, because we could not secure the necessary resources.

More research is needed, but the needed research will not be forthcoming until some agency, public or private, steps up and funds sound empirical research on family courts and the conflicts that bring families to court. Until this occurs, judges and others will have to rely on scant research conducted by investigators who do not have the resources to conduct definitive studies such as randomized clinical trials. And the present circumstance, where studies are few and subject to differing interpretations, is fertile ground for scholar-advocacy bias. Until we have sufficient research to make clear, evidence-based conclusions, claims will be made about what "research says" when research really says nothing of that sort. . .and the costs to individual families and society will continue to accrue.

## NOTES

1. Alphabetical listing of authors: Robert E. Emery, Amy Holtzworth-Munroe, Janet R. Johnston, JoAnne L. Pedro-Carroll, Marsha Kline Pruett, Michael Saini, and Irwin Sandler. The Researchers' Roundtable is a group of colleagues who were troubled to see the conflict emanating from one of these issues—overnight time-sharing for infants and toddlers—undermining the integrity of the field. We came together under the auspices of AFCC to label and define the problem of scholar-advocacy bias and in the process became aware of the lack of easily understandable standards for evaluating research studies. We set to task on the design of collaborative guidelines for evaluating research. The hope was to design some tools to help distinguish between scholarship and advocacy bias. Our intent is to turn bystanders into critical consumers of research who will help prevent and break cycles of bias that will inevitably erupt in this and other fields of nascent science in which the policy stakes are high and actively being drawn.

2. There are social scientists that pursue advocacy research responsibly from ideological convictions using protocols that are systematic and transparent (e.g., social deconstructionists and feminists). They are expected by training to be self-critical about their own subjectivity and forthright about the limitations of their methods.

3. For example, *Parenting Plan Evaluations. Applied Research for the Family Court*. 2nd Edition by Drozd, Saini and Olesen (2016). This edited volume, includes chapters from prominent scholars in the field of family law each of which contains a table of studies that make up the review, each of which, in turn, examines the strengths and limitations of the body of evidence in the selected area.

4. Examples include: (1) reporting statistical significance but not noting the effect size, (2) making comments about the size of the sample without doing power analysis to determine the actual sample size to minimize the risk of type II error, (3) reporting biased and unrepresentative samples, (4) not controlling for other extraneous variable, and (5) implying causation from correlational data.

5. An example of this is the research on parental moveaways and its subsequent misrepresentation in the amicus briefs on both sides of the question that were submitted in *LaMusga*, a relocation case. Kelly and Ramsey (2007) provide an incisive critique of the problems with these briefs and propose ethical standards for submission of these documents to the court.

6. Examples of good theoretical integration of diverse research literatures may include reviews produced by disputing social scientists collaborating on joint papers about the merits and implications of special topics. This has occurred in both areas of intimate partner violence and overnights for young children (Jaffe, Johnston, Crooks, & Bala 2008; Pruett, McIntosh, & Kelly (2014).

7. For example, meta-analytic reviews may report small effect sizes (below .20) as a relationship between variables, but the summaries of the results simply report that there is an effect without comments about the lack of strength of that relationship. Future summaries then repeat the over simplification of the results with no mention of the limited strength of the effect size found in the primary source of data. More sophisticated approaches present the practical implications of the effect sizes or their clinical relevance rather than solely whether or not they are statistically significant. This is also an example of scholarly rumors.

8. See Cherlin (1999) on the nature of extremism in national debates about the extent of harm, if any, inflicted on children by liberal divorce laws as argued by advocates for and opponents of these policies. Cherlin observed that on one pole of the spectrum, divorce is viewed as seriously disruptive to children's development with significant negative long-term consequences because essential parenting functions are compromised for an extended period. On the other end of the ideological spectrum, divorce was depicted as a life transition, a relatively short-term event for children in which biological contributions were determinative. Cherlin reasons that the research evidence lies somewhere in between these two extremes.

9. For instance the "Stanford Study" (Maccoby & Mnookin, 1992) has been cited as finding that very young children benefit from joint physical custody. As a matter of fact, children's adjustment was not measured during this longitudinal study and the authors' social policy recommendations did not favor shared parenting presumptions. A 10-year follow-up by Buchanan, Maccoby, and Dornbusch (1996) who interviewed the teenage children found some relatively small positive correlations of their adjustment with shared custody at this later time. Similarly, the "Yale Study" by Pruett, Ebling, and Insabella (2004) is cited in courts both as favoring overnights and as being explicitly against them. In fact, the study explores overnights in a wider context (gender differences, schedule consistency) for young children 0–6, the majority of whom are toddlers and preschoolers—and nothing is deduced by the researchers from the findings to support particular social policies or practices.

10. The purpose of this paper is not to engage in the debate on the issues themselves, nor to impute blame. For these reasons, in this case illustration, individual authors are not identified by name in the text and citations to all participants in the published literature on the debates are grouped together in footnotes.

11. Reviews and critiques challenge the more speculative knowledge claims made by the original researchers, (e.g., the level of clinical disturbance in young children, if any, as a result of overnights; the lack of evidence distinguishing between enduring negative effects of overnights versus relatively mild threats to attachment security; and the questionable predictive validity of attachment security measured during the upheaval of parental separation). Critics also question whether the neuroscience of emotion regulation and infant's attachment relations can be directly linked to the time-sharing schedule of overnights. Other variables that might differentiate for whom overnights are more stressful were raised for consideration (e.g., temperament of the child). The nature of the prior relationship of separated parents of infants and toddlers was identified as an important consideration missing from the debate, although it was a central issue identified in all four of the original research papers. Some of the critiques proposed alternative, more benign interpretations of the toddlers' symptomatic behaviors, for further investigation.

12. More specifically, the reviews serve as reminders that the risks of attenuating the often fragile, nascent infant–father relationship in the separated family, and the associated opportunity costs, cannot be estimated from present research evidence. This policy concern is in addition to the threat posed to fathers' civil rights and lawful personal interests. It raises the specter of realities posed by the old adage "possession is nine-tenths of the law," and child support considerations, that in part motivate men's push for early shared care. In sum, the critiques and reviews play an important function, calling attention to the fact that research has not weighed the relative importance of developmental stage of the child with many of the other factors, including quality of father involvement, believed to influence children's outcomes in separated families.

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