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Linda Nielsen

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Preface to the Special Issue: Shared Physical Custody: Recent Research, Advances, and Applications

Linda Nielsen

Department of Education, Wake Forest University, Winston-Salem, North Carolina, USA

Changes in custody laws are sweeping the country, too slowly and insufficient for some people and too quickly and ill-considered for others. The *Washington Post* and the *New York Times* are among the many newspapers taking note of the fact that 20 states are in the process of revising custody statutes to be more favorable toward joint physical custody (JPC). In 2014 one of the two largest newspapers in Australia featured the debate among researchers over whether children under the age of 4 should spend overnight time in their father's care after their parents separate. In 2015 *Time* magazine featured the work of Swedish researchers whose studies document the benefits of JPC. In 2016, fueled by the custody battle between Angelina Jolie and Brad Pitt, *Time* again chose to interview social scientists about JPC. In 2016 when the governor of Florida vetoed the shared parenting bill that had been approved by the legislature, at least one social scientist spoke out against JPC in the press. All of this is taking place against a backdrop of ongoing controversy about what “the research says.”

In this special issue, the terms *joint physical custody* (JPC) and *shared parenting* are used synonymously to refer specifically to custody arrangements where children live with each parent at least 35% of the time. In studies conducted 20 to 30 years ago, at a time when JPC was extremely rare, researchers defined JPC as living with the father a minimum of 25% of the time—which, at that time in history, was considered a generous dose of shared parenting. For the past 10 to 15 years, however, researchers and most states' guidelines for determining child support payments have defined JPC as living at least 35% of time with each parent. In the 60 studies that have compared JPC and sole physical custody (SPC) children's outcomes over the past 30 years, all but 5 of the studies specified that JPC children were living at least 35% of the time, and often 50% of the time, with each parent (Nielsen, 2018). In contrast, SPC means the children reside primarily or exclusively with one parent, with the other being the nonresidential parent. Because the overwhelming majority of SPC children live with their mother, this plan typically restricts children's time with their nonresidential father to every

other weekend, an alternating midweek visit, and a portion of vacation or holiday time, which totals roughly 15% to 20% of the parenting time.

In academia scholars are arguing more openly and more vociferously about the risks and benefits of JPC. Several professional organizations have sponsored conferences and think tanks or commissioned journal articles on the topic. The intensity of the debate is rising in part because the issue has gained momentum in state legislatures and has captured more attention in the media and on the Internet. Whereas this heightened public attention is new, the issue itself is not. For the past 30 years, researchers—or at least a small cadre in the vanguard—have grappled with this question: Do children benefit most from living in SPC with one parent or from living with each parent in JPC—growing up in a “two-home” family where neither parent is the nonresidential parent?

Why the need for a special issue on this topic—and why now? The main catalyst is that much misinformation about JPC children and their parents has made its way into the media, onto the Internet, and into the hands of legislators, mental health and family court practitioners, and parents. Allowing this information to stand, uncorrected and unchallenged, does a disservice to children whose well-being depends on adult decisions that should be based on complete and accurate information. A tsunami of speculation, anecdotal stories, and partial information can too easily capsize even a large body of empirical data. This special issue aims, therefore, to present the most recent and most comprehensive summaries of research in as complete a form as possible in the limited space allotted for journal articles.

The special issue is also a much needed presentation of articles by authors who analyze a large body of empirical data, rather than present personal opinions, speculate, or restrict their analyses to a relatively small number of the available studies. These authors were also chosen because their analyses have been underrepresented or excluded entirely in some articles or books that are intended for mental health and family court practitioners involved in custody issues. The fact that much of their work is not represented in papers and presentations purporting to represent summaries of the existing data and current thinking in the field is much like the proverbial elephant in the room: Everyone knows it is there, but hopes that if they ignore it long enough, the big wrinkly pachyderm will pack up its trunk and lumber off into oblivion. This special issue is a “spotlight” on the “elephant,” intended to balance the existing literature and media reports with data that too many commentators continue to ignore or downplay.

The special issue also seeks to conduct the debate about JPC on impersonal, academic terms. Professionals have too often infused these discussions with nonacademic remarks, statements with little to no scientific basis, and tactics that diminish the quality of discourse, obscure the empirical data, and potentially lead to decisions that are not in children’s best interests. One

common example of these harmful polemics is ridiculing and rebuking scholars or individuals who support JPC as “fathers’ rights” activists who are waging a “gender war” where fathers’ selfish needs are put ahead of children’s needs. There is no getting around the fact that JPC is a “gendered” issue because mothers are usually awarded the lion’s share of parenting time, whereas fathers receive significantly less time and less extended segments of time with their children. It would also be a “gendered” issue if the reverse were true. It is disingenuous and distracting to frame JPC as a “gender war,” however, when it cannot help but be a “gendered” topic. JPC is inevitably linked to gendered roles in parenting and gendered attitudes that have historically been reflected in gendered child custody statutes.

Playing on the same theme, in their work some scholars have repeatedly invoked the Bible story of King Solomon to cast a parent’s desire for JPC as a selfish act where children are sacrificed and figuratively cut in half to serve a parent’s self-interests. In a similar fashion, scholars sometimes claim that those who hold a favorable view of JPC recommend “50/50 JPC for all children” regardless of the circumstances. This is a straw man—or more aptly, a straw child—argument. To my knowledge, no social scientist has ever made such a claim. As the special issue articles demonstrate, scholars who are generally supportive of JPC openly acknowledge those situations where it is not beneficial and none contend that JPC must be distributed exactly 50–50 to benefit the children. It is also worth noting that decades ago when fathers asked to share “legal” custody (making decisions about their children’s upbringing and having access to medical and educational information about their children) opponents argued that this “radical” plan would leave children “torn and divided” between their parents. Yet today shared legal custody is the nationwide standard in practice and in custody statutes.

The academic debate also suffers when scholars label or refer to their coauthored articles as “consensus” papers. By definition, a *consensus* is a decision or recommendation reached by a sizable group that represents widespread agreement on an issue. It is misleading to describe an article coauthored by several scholars who have reached an agreement on a particular topic as a consensus. Further, when a relatively large group reaches a consensus, it remains a consensus regardless of whether the group was convened by an organization or by an individual, and regardless of whether the group reached its consensus by talking face to face or by communicating electronically.

JPC research is also compromised when several social scientists create charts, checklists, or rubrics together and then promote their product as representing a consensus in the field. In conjunction with the phrases *research based* or *evidence based*, the misuse of the word *consensus* can obscure the fact that there is very little research to undergird a particular

rubric or checklist—and that what appears to be a trustworthy instrument to guide custody decisions has never been validated as a measure of what it claims to be measuring or predicting.

Some commentators have also degraded the level of academic discourse about JPC by resorting to belittling comments about scholars who disagree with them. Examples of such unfortunate remarks include telling journalists that social scientists who have been critical of one's own research study are impassioned, biased advocates who are waging a personal war and seeking to sully one's reputation to advance their own agendas or publicly mocking colleagues' peer-reviewed publications as dull, unnecessary, divisive and retrograde, and a mountainous pile of advocate views, pseudo-academic reviews, projection, countertransference, and rumor all jumbled together. Especially when a particular JPC study is sensationalized and disseminated widely to the public or when it appears to be having an impact on policies or practice, the study merits and will receive careful scrutiny. Authors of such studies should expect and welcome this scrutiny.

Referring to JPC as a “grand social experiment” that is conducted without knowing how it affects children implies that JPC is haphazardly conceived, lacks research support, and imperils children in ways that should appall or frighten us. Countries and states in the United States that have enacted JPC legislation would take exception. For instance, Sweden's social policies are among the most “child centered” in the world—policies such as paid paternity leaves, free child care for young children, and widespread government support for JPC. Framing JPC as an ill-conceived “experiment” overlooks the fact that, with little to no research to justify it, the United States and other countries “experimented” with having children live primarily or exclusively with their mother in SPC. SPC often resulted in more emotional and behavioral problems for children and damaged or destroyed relationships with their father—an “experiment” that became codified in custody statutes and that ran counter to the large body of research showing that children living in “fatherless” families had the worst outcomes. As documented by decades of research, the impact of SPC, which was labeled the impact of “divorce,” was not beneficial for millions of children.

In the 1970s researchers began documenting the positive effects of children spending more time with their divorced fathers. These findings contributed to an increase in JPC and custody statutes that promoted more fathering time. Children themselves also recognized the price they had paid for the decades-long worldwide SPC experiment. Indeed, one of the most frequent laments about their parents' separation was missing or “losing” their father—which is one of the most robust and earliest findings to emerge from this large body of research over many decades (Kelly, 2012; Warshak & Santrock, 1983).

A chorus of experts have echoed children's conclusions. Almost a quarter-century ago, 18 expert social scientists chosen by the National Institute of Child Health and Human Development recommended that parenting time be distributed so that it would "ensure the involvement of both parents in important aspects of their children's everyday lives and routines—including bedtime and waking rituals, transition to and from school, extracurricular and recreational activities (Lamb, Sternberg, & Thompson, 1997, p. 400)." In 2014 an international group of 110 social scientists and mental health practitioners agreed that JPC should be the norm for parenting plans for children of all ages, including very young children (Warshak, 2014). Shortly thereafter, a group of 32 social scientists, mental health practitioners, judges, lawyers, and law school professors chosen by the Association of Family and Conciliatory Courts agreed that "There is enough research to conclude that children in families where parents have moderate to low conflict and can make cooperative, developmentally informed decisions about the children would clearly benefit from JPC arrangements (Pruett & DiFonzo, 2014, p. 162)." Most recently in 2017, the 12 experts who were invited to present keynote talks at the International Conference of Shared Parenting went a step further by largely agreeing that JPC should become a legal presumption with a minimum of 35% of the parenting time allocated to each parent for children to reap the benefits of JPC (Braver & Lamb, 2018).

The consensus of these separate groups of experts and of the children themselves fails to support those who frame JPC as an experiment, contend that fathering time is not high on the list of children's priorities, or that JPC is not child centered. In that vein, when scholars or policymakers warn that we should not encourage or support JPC until we accumulate "more" research—more than the 60 existing studies that have compared children's outcomes in JPC and SPC families—we might wonder why they do not issue similar warnings against SPC given the large body of research that has failed to support it.

It is also disparaging to describe JPC and legal presumptions for shared parenting as "cookie cutter," one-size-fits-all plans. The flip side of this, of course, is that SPC and the long-standing custody statutes that favor it could also be described as one-size-fits-all, cookie cutters—half-baked ideas cooked up with little to no empirical data to justify them. These sounds bites do nothing to advance academic discussions about JPC.

The one-size-fits-all, cookie cutter insult also rests on the idea that adults involved in custody decisions—especially judges and family court or mental health professionals—should individualize the plan for every child on a case-by-case basis instead of relying on a legal presumption or guidelines widely recommended by many experts. The argument for individualizing also assumes that research findings have little to no value because they cannot consider each individual child's unique circumstances. The notion of

individualizing rather than “cookie cutting” is intuitively appealing, but it falls apart under closer scrutiny (Braver, 2014; Lamb, 2014).

First, even though all families are unique, this does not mean they have nothing in common with the thousands of families in the research studies. Because the studies include a wide array of families and circumstances, it would be unlikely that the research would not generalize in any way to the majority of families. Second, JPC research points out the exceptions to the general recommendation—situations where JPC is not beneficial. For example, legal presumptions for JPC include exceptions if there is a history of domestic violence in the family. To contest JPC on the grounds that it does not protect those children who would likely be harmed by this arrangement is to ignore that legal reality.

Third, taking individual circumstances of the parents and children into consideration does not mean we ignore the research. A custody decision entails a prediction about which arrangement is likely to be most beneficial throughout the child’s remaining years of childhood. Research data strengthen the foundation for making such predictions. Without being aware of the current research or the conclusions of different groups of experts, on what grounds can we individualize custody decisions for children?

Fourth, we generalize from research to individual children in making decisions or creating policies in regard to many aspects of their lives. For example, we create and respect policies regarding compulsory education and protocols for treating children with particular mental or physical health problems—all of which are based on generalizations applied to individual children. We do not rebuke or dismiss these policies or guidelines as cookie cutter, one-size-fits-all missteps. To single out JPC as the one situation where we cannot generalize from the research would be illogical and out of step with how we routinely generalize social science findings to individual children. It is impossible to know or to assess all of the factors that might predict a child’s outcomes after his or her parents separate. Generalizing from a body of research, however, at least shows us the probabilities of what is most or least likely to occur. Then, too, in a situation as emotionally charged as deciding how much time children will spend with each parent after they separate, the research could be especially beneficial.

You will find that the authors of the special issue articles offer dispassionate, logical analyses of the JPC research. Citing a large body of recent studies to support their analyses, they offer rigorous, above-board, academic challenges to other scholars’ views and interpretations of the literature—the kind of candor, rigor, openness, intensity, and thoroughness that advance social science. Interpreting these articles and the debates over JPC as divisive, aggressive, polarizing, “gotcha” style attacks or wantonly maligning scholars’

interpretations of the research as biased “scholar advocacy” or a choice of “tribe over truth” comes across as an attempt to silence, shame, or shun people whose analyses do not agree with one’s own— or an attempt to banish the elephant in the room.

Children’s outcomes in JPC and SPC families

This Special Issue opens with my article summarizing the results of the 60 existing studies that compared the outcomes of children in JPC and SPC families. As these studies document, JPC children fare better than SPC children on a wide range of measures of well-being—above all, the quality of their relationships with both parents. More notably, independent of family income, the level of conflict between the parents, the quality of their relationships with each parent, and quality of the parenting skills, JPC children are still generally more advantaged. Still, as this article explains, there are situations where JPC is not more beneficial than SPC.

Warshak’s “Night Shifts: Revisiting Blanket Restrictions on Children’s Overnights With Separated Parents,” then addresses an even more controversial issue: Should we continue the traditional practice of blanket restrictions by having infants, toddlers, and preschoolers live with their mother and spend limited, if any, overnight time in their father’s care? As Warshak documents, the decades-long shifts and rifts among scholars about this topic have been based largely on theory and speculation, not on data. Drawing on research from the large literature on early childhood development over many decades, Warshak explains why “contemporary proposals of blanket restrictions are contradictory and rest on faulty interpretations of a narrow bandwidth of scholarship.”

Mahrer, O’Hara, Sandler, and Wolchik’s analysis of 11 studies then turns our attention to another vexing and hotly debated question: “Does Shared Parenting Help or Hurt Children in High-Conflict Divorced Families?” Contrary to popular belief, children with higher levels of JPC do not have poorer adjustment when their parents have high levels of conflict during the divorce process or in the first few years following divorce. It is the more rare, long-lasting conflict that matters. Moreover, having a high-quality relationship with parents is linked to better child adjustment even in high-conflict families.

The second part of the Special Issue opens with Fransson, Hjern, and Bergström’s overview of the many fascinating and methodologically sophisticated studies from Sweden where JPC has become the norm. In “What Can We Say Regarding Shared Parenting Arrangements for Swedish Children?,” we learn that toddlers fare just as well as older children in JPC families and that JPC children of all ages have better outcomes than SPC children. We also learn that the Swedish government is fully behind JPC policies, as is the

general population. As Sweden has been in the vanguard internationally in creating policies that benefit children, these findings could be a harbinger of things to come in other developed nations.

Unfortunately researchers have paid relatively little attention to whether either of the two custody arrangements fosters better relationships between children and their grandparents. Jappens is the exception. In “Children’s Relationships With Grandparents in Married and in Shared and Sole Physical Custody Families,” Jappens documents that JPC children have stronger relationships with both sets of grandparents than SPC children. This matters because these relationships are linked to better outcomes for children after their parents separate. Through her ongoing studies, Jappens reminds us that custody arrangements affect children, not only through their parents, but through their grandparents.

Braver and Lamb’s “Shared Parenting After Parental Separation: The Views of 12 Experts” summarizes the views of the 12 plenary speakers at the 2017 International Conference on Shared Parenting. These experts largely agreed that JPC should become a legal, rebuttable, presumption with a minimum of 35% of the parenting time allocated to each parent for children to reap the benefits of JPC. They also agreed that conflict between parents or one parent’s opposition to JPC should not preclude or rebut JPC.

The credentials of these 12 scholars are presented at the outset of the article because credentials do matter. Indeed, standards for judging the admissibility of experts’ testimony in court include an evaluation of their qualifications (Zervopoulos, 2015). Although professional accomplishments are no substitute for research data, not all scholars’ opinions or analyses carry equal weight. In that vein, we need to be aware that the conclusions reached by these 12 experts agree with the conclusions reached by the 110 experts who endorsed Warshak (2014) consensus paper supporting shared parenting for children under the age of 4. When groups of scholars with impeccable credentials independently reach the same conclusions about JPC, those conclusions merit our careful attention.

Kruk’s article, “Arguments Against a Presumption of Shared Parenting in Family Law,” summarizes the many reasons why, from the 1970s to the present day, proposals for a legal presumption for shared parenting have met with resistance. Top among them are the beliefs that children will inevitably be harmed by being forced to live with an abusive or negligent parent and that judges will be unable to protect children from being placed in JPC when they believe this is not in children’s best interests. As Kruk explains, these arguments have failed to find support in the empirical data and are based more on speculation, fear, and opinion than on data.

In “Shared Physical Custody: What Can We Learn From Australian Law Reform?,” Parkinson provides a close-up view of how the arguments against a legal presumption of shared parenting have played out in Australia’s long

journey to revising its custody laws. From 1995 until 2011, Australia was roiled by the “trench warfare” between advocacy groups over the JPC legislation. Largely quelled by Australian researchers whose work failed to find more negative outcomes for children after the legislative reforms, the battle has now largely come to a peaceful end. Parkinson cautions us, however, not to exaggerate the impact of revising custody laws, as custody arrangements are influenced by more than just legislation.

Fabricius, Aaron, Akins, Assini, and McElroy also offer us a detailed portrait of the careful and inclusive process involved in revising custody statutes in Arizona. Then they present their findings from the first study to address the question: “What Happens When There Is Presumptive 50–50 Parenting Time?” Four years after the law’s implementation, court staff, judges, mental health providers, and attorneys evaluated the new law positively in terms of being in children’s best interests. Among other findings, the overall view was that the new statute had not increased parents’ legal or personal conflicts and that, even though the law was not worded as a presumption for 50–50 equal parenting, this is generally how it has been interpreted and put into practice.

In “Parental Gatekeeping and Child Custody Evaluation,” Austin directs our attention to the interplay between custody evaluations and JPC arrangements for very young children. Austin explains how evaluators can incorporate research on gatekeeping, attachment theory, social capital, and JPC into their work. Because restrictive gatekeeping works against JPC arrangements, evaluators have to be able to recognize how gatekeeping works and to distinguish between warranted gatekeeping that protects children and unwarranted gatekeeping that undermines or sometimes destroys their relationships with one parent.

The special issue concludes with Braver and Votruba tackling the question that has vexed researchers and policymakers for decades: “Does Joint Physical Custody ‘Cause’ Children’s Better Outcomes?” Analyzing the various research designs employed in JPC studies, they explain their strengths and weaknesses. They then describe ways to design future studies to answer the question of causality. After analyzing studies that have applied the most sophisticated designs, Braver and Votruba conclude that JPC probably is the “cause” of children’s better outcomes. Based on their analyses, they reassure social scientists that they can now provisionally recommend a rebuttable presumption of JPC to policymakers.

Conclusion

The 20 authors of the articles in this two-part special issue and the 12 experts at the international conference in 2017 reached the same conclusion—and reached it independently of one another without being commissioned by any

organization to try to achieve a consensus. This body of scholars concludes that JPC is generally in the best interests of children, with some exceptions, including, but not limited to, children who need protection from a parent whose care is abusive, neglectful, or grossly inadequate. These conclusions are in accord with those reached by the 110 international experts who endorsed Warshak's (2014) consensus paper on shared parenting for children under the age of 4.

Even though only a small percentage of parents end up in court to resolve their custody issues, custody laws affect all separating parents by establishing norms about what their state or their country believes is in children's best interests. Hopefully then, the research in this special issue will have a wide reaching impact on the legislative decisions about custody statutes that are currently underway throughout the world, as well as usher in more evidence based attitudes and practices for family court and mental health professionals.

Speaking on behalf of my esteemed colleagues who have contributed their exceptional work to this Special Issue on Shared Physical Custody, we will continue to work at acknowledging the elephant in the room by focusing attention on research that should inform deliberations about JPC.

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