



AFCC Think Tanks: Promoting Dialogue on Difficult Issues in Family Law

Peter Salem

Foreword

Practitioners who work in family justice systems make difficult decisions everyday about the lives of children. Not only are the facts of each and every case often subject to disagreement, but in addition, the broader substantive issues of family justice may, at times, be hotly contested. For example, in public law, although there is broad consensus that all children have a right to family life, not all would agree with permanent severance of parental rights and adoption. Equally in private law, debates continue about appropriate levels of shared care, particularly where there have been allegations of domestic violence. In the absence of national mechanisms for working through contested issues, bitter exchange can fuel divide and close down opportunities for constructive dialogue. In this context, the Nuffield Family Justice Observatory is delighted to publish a first Insight Article from Peter Salem, who is Executive Director of the Association of Family and Conciliation Courts (AFCC). The focus of Peter's article is on AFCC's pioneering work to establish mechanisms for working through contested issues in family law. As co-chair of a number of AFCC think tanks, Peter is ideally placed to share with readers the organisation's success but also the struggles encountered in working through difficult family law issues.

For readers unfamiliar with the work of the AFCC, this is an organisation with a large interdisciplinary membership of professionals dedicated to the resolution of family conflict. Members include leading practitioners, researchers, teachers and policymakers in the family court arena. The organisation works to promote education, research, innovation and best practice. The AFCC was first established in North America, but has a growing international membership indicating the salience of family law issues across the globe. Given a wealth of expertise in resolving family conflict, the AFCC is very well placed to bring these skills to bear on consensus building in family justice, more broadly.

In this article, Peter describes three AFCC think tanks, which over the years, have addressed family law education (FLER), domestic violence and family courts (Wingspread), and shared parenting (Closing the Gap). The purpose of the three think tanks was to promote interdisciplinary dialogue and a shared understanding of the nature of divide on contested issues. The process aimed to surface points of consensus and disagreement, develop relationships, and identify paths forward. Overarching was an aspiration to improve service delivery for children and families. Peter takes his readers step-by-step through the practicalities of the think tank: venue, choice of participants, agenda setting and actions beyond formal meetings. Effective leadership and representation were key to engendering trust among participants and open dialogue. Actions beyond formal meetings, such as the co-authoring of articles or guidelines, encouraged ongoing collaboration between individuals who might not ordinarily work together.

In reading about the successes and struggles that resulted from all three think tanks, it is clear that an aspiration to reduce conflict among participants holding very different perspectives was possible both within and beyond the think tanks. However, as Peter describes, tit-for-tat arguments also continued, particularly on the issue of shared parenting time. On domestic violence and the family courts, Peter states that the work greatly benefited those in the field by creating more cohesive products that are more widely accepted. However, on shared parenting, the think tank was preceded and followed by personal and professional attacks which served to confuse policy makers and practitioners seeking guidance. It is clear that timing, specifically, the prevailing political or professional climate together with the maturity of the evidence and debate, can strongly influence the success or otherwise of projects that seek to build consensus.

So finally – the role of social science. Peter makes clear that social science research evidence plays an important role in consensus building, but also has its limits. First, robust research evidence remains in its infancy regarding many key topics in family law. Equally, proponents of different sides of debate can appropriate research for their own purposes and for just about every angle on a substantive issue – a citation can be found. In common with their practice or policy colleagues, researcher identities also reflect particular value positions on key debates that are made and claimed through successive publications and the like. As the Nuffield Family Justice Observatory moves forward with its own project, similar challenges surely lie ahead and it will be interesting to see the extent to which Observatory products however, robust, evidence based and collaboratively produced, do or do not influence the field. Looking ahead, it will be important to work closely with the AFCC as the organisation works to understand research literacy among family court practitioners and develops and tests guidance on the use of social science research in the family courts.



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I. Introduction

The last half-century has seen dramatic changes in private family law. The 1970 introduction of no-fault divorce in California was followed by the development of family mediation in the 1970s and 1980s (Thoennes, et al, 1995), then multiple innovative family justice processes and programs worldwide (see, e.g., McIntosh et al, 2008; Parkinson, 2013; Salem, 2009; Walker & Marjoribanks, 2018). These developments emerged alongside increasing divorce rates, a greater number and acceptance of children born outside of marriage, and changes in family roles that called into question the traditional division of work and family responsibilities (Pruett & DiFonzo, 2014a).

The typical 1960s divorce outcome of sole legal and physical custody for the mother with alternate weekends, child support, and alimony obligations for the father, has evolved to individualized, often nuanced, parenting, decision-making and financial arrangements that reflect changes in contemporary post-separation family life. Procedures to reach these outcomes have also changed. Lawyer-directed distributive settlement negotiation and litigation have been supplemented, if not largely supplanted, by integrative (or “win-win”) negotiations, mediation, collaborative law, parenting coordination and various hybrid processes (Macfarlane, 2008, Shienvold, 2004; Yates & Salem, 2013). Indeed, the twenty-first century family law landscape, “has, both literally and metaphorically, moved from confrontation to collaboration and from the courtroom to the conference room.” (Schepard & Salem, 2006, p. 516).

While the prevailing tenor has emphasized collaboration, it has been accompanied by bitter conflicts that play out within some families. Practitioners¹, program managers, policy makers, and researchers alike struggle to understand the dynamics and develop effective interventions for the small percentage of cases involving high conflict (Johnston & Campbell, 1988), parental alienation (Fidler & Bala, 2010), shared parenting disputes (Pruett & DiFonzo, 2014a), and domestic violence (Ver Steegh & Dalton, 2008), all of which increase risk for children and consume disproportionate public and private resources. These issues also serve as catalysts for parallel disagreements about research, policy and practice, with various practitioners, advocates, and researchers—individually and organizationally—coming down on different sides of some deep divisions, frequently along the lines of gender.

In recent years, the Association of Family and Conciliation Courts (AFCC) has convened interdisciplinary think tanks to address difficult issues related to family law. This essay

* Peter Salem is executive director of the Association of Family and Conciliation Courts, and co-chair of the AFCC think tanks referenced in this essay. The author thanks Arnold Shienvold, Erica Salem, Bernie Mayer, Andrew Schepard, Marsha Kline Pruett and Maureen Sheeran for their thoughtful feedback on earlier drafts of this essay. All opinions expressed in this essay are those of the author and do not represent AFCC or any individual or partner organization in the think tanks.

¹ Practitioners in this essay are defined as those who deliver services to separating and divorcing parents and include judges, lawyers, mediators, psychologists, counselors, social workers, financial professionals, custody evaluators, parenting coordinators, parent educators and others.

examines three AFCC think tanks that addressed family law education, domestic violence and family courts, and shared parenting. Part II provides a brief introduction to AFCC and its role. Part III describes the substantive issues addressed, Part IV identifies the goals and Part V details the process of each think tank. The final two sections examine the aftermath of the think tanks (Part VI) and the lessons learned (Part VII).

II. The Association of Family and Conciliation Courts

AFCC was founded in 1963 as a small group of California family court judges and counselors to improve the work of the family court. Membership subsequently expanded to include the private bar, mental health and dispute resolution professionals, social science and legal scholars, educators, and others. Today, AFCC has more than 5,000 members, representing over a dozen disciplines, from 31 countries, but based primarily in North America. AFCC's mission is to improve the lives of children and families through the resolution of family conflict.

AFCC and its members have developed myriad family dispute resolution processes (Press, 2013) as well as practice standards and guidelines² for interdisciplinary professionals. This has historically placed AFCC in the center of conflict, as various interest groups have strongly supported, or vociferously opposed, some of these efforts. This occurred in the 1980s, when both the private bar and advocates for battered women strongly opposed mediation (see, e.g., Berman & Alfini, 2012; Hart, 1990), while father's groups viewed it as an opportunity for fairer treatment than in court, which they believed still favored the mothers. AFCC has at times advocated for the implementation of processes it helped create (e.g., mediation, parenting coordination) while also attempting to maintain a balanced perspective in policy debates, although it has not always been seen as balanced. Indeed, AFCC conferences have been picketed on separate occasions by domestic violence advocates, parental alienation organizations, and father's rights groups.

In the early 2000s, AFCC decided to emphasize opportunities to address critical issues in family law. This enabled the association to devote resources necessary to convene the think tanks that are at the focus of this article: (1) The Family Law Education Reform Project (FLER); (2) The Domestic Violence and Family Courts Project; and (3) Closing the Gap: Research, Practice, Policy and Shared Parenting. Although FLER did not arise from an enduring conflict and the subject matter is not a focus of advocacy groups, it is useful to

² AFCC has developed Model Standards of Practice for Family and Divorce Mediation and Child Custody Evaluation, and Guidelines for Parenting Coordinators, Brief Focused Assessment, Court-Involved Therapy, Child Protection Mediation, and Examining Intimate Partner Violence.

include as it laid the groundwork for future think tanks and provided valuable lessons of its own.

III. Substantive Issues

Each think tank was designed to address an identified divide in the family law community, and the specific divisions helped inform the design of the process. A brief description of the substantive issues below sets the context:

The Family Law Education Reform Project (referred to hereafter as FLER) took place in 2005. It was co-sponsored by Hofstra Law School and addressed the “substantial and growing gap between family law teaching and family law practice [which] undermines the best efforts of new family lawyers to assist parents and children” (O’Connell & DiFonzo, 2006). Contemporary family law requires an understanding of interdisciplinary practice, dispute resolution processes, new case management techniques, and social science, yet, according to FLER co-reporters Professors Mary O’Connell and Herbie DiFonzo, as of 2006, “the materials from which most family law professors teach contain nary a word on most of these topics or on the skills necessary for effective family law practice” (2006, p. 524).

The Domestic Violence and Family Courts Project (Wingspread) was held in 2007 and was co-sponsored by the Family Violence Department of the National Council of Juvenile and Family Court Judges (NCJFC), which represents judges and works closely with the domestic violence advocacy movement. Wingspread stemmed largely from two decades of conflict between domestic violence advocates and family mediators (Ver Steegh, 2003), which was reflected in concerns about family court practice generally. While co-reporters Professors Nancy Ver Steegh and Clare Dalton (2008) identify several critical tensions in their think tank report, perhaps most central was family court professionals’ support of private ordering and collaborative dispute resolution, which advocates suggested undermined safety, transparency and accountability. Ver Steegh and Dalton identify “a surprising lack of agreement” among researchers and practitioners from different backgrounds about the nature, causes, frequency and appropriate legal treatment of domestic violence. They observe, “These differences have historically been fueled, rather than resolved by research... [and] acrimonious exchanges among both researchers and practitioners have tended to focus attention on contentious issues and left little room for cooperation” (Ver Steegh & Dalton, 2008, p. 454).

Closing the Gap: Research, Practice, Policy and Shared Parenting: (Closing the Gap) took place in 2013. It was a response to a heated debate about shared parenting and, in particular, research and practice related to overnights for infants and toddlers. This think tank was convened by AFCC in response to specific precipitating events: a special issue of AFCC’s journal, *Family Court Review* (FCR), and an AFCC conference, both featuring assertions by attachment researchers that post-separation overnights for infants and

toddlers should be limited (George, Solomon & McIntosh, 2011; Main, Hesse & Hesse, 2011; Schore, 2012), challenging the sentiment of shared parenting proponents, including many AFCC members (e.g., Ludolph, 2012). AFCC was criticized for presenting these views without contrasting opinions on the same plenary sessions and in the same FCR edition. There was some backlash, by no means unanimous, and AFCC leadership identified an opportunity for much needed dialogue.

IV. Think Tank Goals

Central to each think tank, irrespective of one's position on any issue, was a desire to ultimately improve service delivery for families. That said, we were aware of the limitations. Legal and academic institutions embrace change at a glacial pace, even when a strong consensus exists. The stated goals across each think tank focused on interdisciplinary discourse, shared understanding of problems, identifying points of consensus and disagreement, developing relationships, and identifying paths forward (O'Connell & DiFonzo, 2006; Ver Steegh & Dalton, 2008; Salem & Dunford Jackson, 2008; Salem & Shienvold, 2014). FLER also included objectives related to curriculum development (Schepard & Salem, 2006). These seemingly modest goals may have been a reflection of the challenges we anticipated. Indeed, Professor Bernie Mayer (co-facilitator for Wingspread and facilitator for Closing the Gap) and Professors Kelly Browe Olson and Nancy Ver Steegh (co-editors of the FCR Wingspread special issue) believe that the real challenge is getting people with profoundly divergent views together at all (Mayer 2018; Olson & Ver Steegh, 2008). Professor Dalton, notes:

In this charged atmosphere, it is easy for the different constituencies to take sides, for each side to accuse the other of bad faith, and for neither side to listen with an open mind to what the other has to say. Unaddressed, this dynamic can result in each constituency talking only to itself because the risks of being mischaracterized or ignored by the other are too great and the chances of genuine communication across party lines too small (1999, p. 290).

While Professor Dalton refers to longstanding conflict between domestic violence advocates and family court professionals, the tension between shared parenting camps was equal if not greater. Thus, while we may have secretly hoped for more, the articulated goals were to lay a foundation for future progress, particularly for Wingspread and Closing the Gap. Professor Mayer, writing about Closing the Gap, identified one such goal: "I should be able to challenge your research results or analysis and you mine—and... we both should be able to garner support for our approach and analysis—without either of us trying to destroy the other's standing or self-respect" (2018, p. 60).

V. The Think Tank Process

It would be nice to say that each think tank was the result of expert analysis of a complex problem following a review of potential challenging conflicts in the family law community. In fact, FLER and Wingspread evolved serendipitously for AFCC through our co-sponsors. Closing the Gap was more intentional. A detailed discussion of the process follows.

A. Establishing Partnerships

FLER began with a conversation with my co-chair, Hofstra Law School Professor Andrew Schepard—then editor-in-chief of FCR—who is known in U.S. family law circles for his innovation and resourcefulness. Professor Schepard expressed his concerns about the state of family law teaching and practice and proposed convening AFCC members and legal scholars to explore new ideas.

Wingspread began when co-sponsor NCJFCJ decided to increase its focus on domestic violence in family courts. At the time, AFCC and NCJFCJ had a strained history that reflected divisions discussed above. NCJFCJ leadership extended an olive branch by attending an AFCC conference and inviting AFCC leadership to dinner, where a potential partnership was discussed. Two and a half years later, the conference at Wingspread transpired.

Closing the Gap was a deliberate response to previous AFCC-related activity, and was convened solely by AFCC, as the differing perspectives resided largely within the association. Some participants were connected to outside advocacy groups.

The importance of well-regarded partners for FLER and Wingspread was critical. Without Hofstra, AFCC was not, by itself, a credible convener for a legal education project. Similarly, we would have been unable to engage the diverse leadership from the domestic violence community and the critical voices of a wide range of judges in Wingspread without the partnership of NCJFCJ. The partnerships also brought resources that supported each effort.

B. Setting the Stage

The setting for both FLER and Wingspread was the Wingspread Conference Center, a Frank Lloyd Wright-designed facility on the shores of Lake Michigan in Racine, Wisconsin, designed to create an environment for creative and effective problem solving. The hallways are lined with pictures of inspiring former conference participants including President Jimmy Carter, First Lady Eleanor Roosevelt and Vice-President Al Gore, Jr. The idea is not unlike St. George's House consultations in Windsor. The meals were communal, and there were numerous opportunities for participants to develop relationships and exchange ideas on the fringes of formal convenings, an important feature of such meetings (Mayer, 2018).

Unfortunately, when Closing the Gap took place, Wingspread was no longer sponsoring meetings on family issues and the venue was a Chicago hotel. Efforts were made to emulate the Wingspread experience, but the atmosphere could not be replicated.

Each think tank had a steering committee of 10-12 members, including the co-chairs, facilitator(s), and co-reporters. The steering committees would have ideally been fully representative of participants; however, the breadth of perspective was at times difficult to achieve. Co-reporters were typically law professors (one social scientist) charged with observing and analyzing the proceedings, clarifying discussion points, taking notes, and writing a comprehensive report. Facilitators helped develop the agenda, identify critical issues, and manage the proceedings. For Wingspread there were two facilitators, one selected by each sponsoring organization. This was a reflection of both the trust level and an effort to assure a balanced process.

With a limit of 30-35 participants per think tank, there were extensive discussions about who to invite to achieve representation of various perspectives. Selection criteria included diversity in profession and geographic region, organizational affiliation or representation, point of view, and an acknowledged leadership role in the field. Wingspread and Closing the Gap intentionally included participants who had strongly and publicly criticized the work of others in attendance. While we hoped everyone would take a problem-solving approach, we wanted the diverse and often firm viewpoints that necessitated the meetings in the first place. Thus, some participants with more extreme views were included to the extent that we believed they would not disrupt or undermine the process. Given the divergent nature of the academic and professional communities for FLER, two meetings were held, one exclusively for law professors at Hofstra, the second at Wingspread, a mix of law professors and practitioners.

Steering committees met to plan, in person and by telephone, prior to each convening. FLER preparation was more extensive. In addition to the preliminary meeting with law professors, open discussion forums were held at several conferences and a survey of practitioners, law professors, and students was conducted (Hedeen & Salem, 2006). Formal and informal information gathering tailored to each think tank focus also occurred for Wingspread and Closing the Gap. These discussions served to better inform the process and engage those the steering committee thought might resist participating or otherwise create challenges.

C. The Think Tanks

Meeting structures varied, but generally took place over three days and included a combination of small group problem solving exercises and/or discussion, facilitated plenary discussion and structured and facilitated research panel presentations. Facilitators and reporters were appointed for small groups. Case studies had been developed and were used to stimulate discussion of some intractable issues. There were ongoing efforts to identify

consensus and work through disagreements. Pruet and DiFonzo (2014b) noted that Closing the Gap might have been better served if individual votes on specific consensus points were tallied for reporting purposes, although requiring open pronouncements of positions might have had process ramifications.

There was activity on the fringes at all think tanks, as noted by Mayer (2018). Surprisingly, at FLER a fundamental disagreement surfaced between two members of the steering committee, necessitating ad hoc shuttle diplomacy. The issue was resolved but would resurface during the report writing process. Wingspread was noteworthy for periodic and visible caucusing among advocates, which concerned me at the time. At Closing the Gap, I observed deep conversation between two participants with opposing perspectives, which made me optimistic. I was mistaken on both counts; the caucusing ultimately turned into collaboration and the deep conversation seemed only to harden perspectives.

Participants offered process critiques during all three think tanks; there was some walking on eggshells, and each meeting ended with some views unexpressed. The facilitators were asked to push the discussion as far as they thought would be productive, which they did. I believe that people came into the meetings with different expectations, and it was not possible to meet them all. Each think tank concluded with the plan for next steps.

D. Post-Think Tank Efforts

Following each think tank there were strategic opportunities to further identify points of consensus and disagreement, work toward a greater meeting of the minds, disseminate information, and expand the conversation to more people. The centerpieces of these efforts were AFCC conferences and special issues of FCR that featured the reports, invited commentaries, and commissioned articles. Here, FLER differed, as there was robust agreement around a work plan and less need for further consensus building.

1. Think Tank Reports: Reporters began writing shortly following the think tanks. Draft reports were circulated to respective steering committees and then participants for comment, resulting in wide-ranging feedback, generally supportive, at times critical, typically brief, but sometimes extensive. Most discourse was civil although disagreements emerged, and on one occasion, a “reply-to-all” email harshly criticized the work of a specific Wingspread participant. A few participants did not respond and dropped out of the process. Backchannel communication between subgroups prior to submitting feedback was widespread, marshalling support for positions and aligning responses. Memories and notes differed at times. Co-reporters reviewed comments and redrafted, attempting to accommodate feedback and reconcile differences, which was not always possible. The final reports were disseminated through AFCC and co-sponsoring organizations prior to publication in FCR. Formal endorsements for reports were sought and received from individual participants and organizations for FLER and Wingspread.

2. Commentaries: Following FLER and Closing the Gap, colleagues were invited to respond, in the same FCR issue, to the published final reports. FLER commentaries were provided by participants and others. Closing the Gap specifically invited those who did not participate to extend involvement. Commentaries varied and were both supportive and critical. Closing the Gap reporters wrote a rejoinder. For Wingspread, rather than risk division at a pivotal time when progress appeared imminent, we commissioned specific articles instead.

3. Commissioned Articles: Each special issue of FCR included invited articles. For FLER, the articles were based on studies related to negotiation (Schnieder & Mills, 2006) and legal education (Hedeen & Salem, 2006). For Wingspread and Closing the Gap, the writing assignments were more strategic. Recognized authors with opposing views were asked to write together to further opportunities for joint problem-solving, generating new, shared perspectives and, publicly modeling collaboration. Invitations to write were issued following the think tanks when we hoped to have garnered sufficient optimism among participants. This strategy was particularly fruitful for Wingspread. My co-chair, Billie Lee Dunford-Jackson and I began with an article calling for collaboration and an assessment of the divisive history between family court and domestic violence professionals (Salem & Dunford-Jackson, 2008); Drs. Joan Kelly and Michael Johnson (2008) collaborated on an article about a then controversial topic, differentiation and domestic abuse; and, Drs. Janet Johnston and Peter Jaffe ended a decade-old disagreement with a joint publication (Jaffe, Johnston, Crooks & Bala, 2008).

Following Closing the Gap, we identified several areas of disagreement and authors who would write about them. Most noteworthy were two articles that addressed conflict between professionals about overnights and young children. Drs. Marsha Kline Pruett, Jennifer McIntosh and Joan Kelly struggled mightily to reach consensus on evidence-informed guidance for family law practitioners (McIntosh, et al, 2014; Pruett, et al, 2014). The results were praised as groundbreaking by some, excoriated by critics, and misinterpreted by others.

4. AFCC Conferences: AFCC annual conferences created opportunities to continue think tank discussions in a public and interactive forum. Conferences occurred in Vancouver in 2008 and Toronto in 2014 for Wingspread and Closing the Gap, respectively, and think tank participants presented at plenary and breakout sessions. In Vancouver there was strong attendance by NCJFCJ officials and AFCC provided several scholarships for advocates to encourage broader buy-in. Each conference attracted over 1,000 participants. A single conference breakout session featuring McIntosh, Pruett and Kelly in Toronto attracted over 450 people.

VI. Aftermath and Outcomes

The outcome of each think tank was markedly different. FLER moved forward to develop family law coursework, as originally envisioned. The FLER Report was endorsed by several major family law and dispute resolution organizations, although one prominent group chose not to do so. A follow-up retreat focused on the development of curricula and teaching materials, which were made available online. Four years after the think tank, in 2009, William Mitchell School of Law hosted a conference for law professors, many of whom were implementing FLER recommendations in their curriculum. A second issue of FCR on family law education reform was published in 2011 and as recently as 2018, programs on family law education reform were presented at the AFCC annual conference.

Wingspread has been touted as a game changer by many in both the domestic violence and family courts communities – the joining of opposing forces after years of conflict (Dalton, Ver Steegh & Kelly, 2008), although friction remains among some. Nonetheless, since 2007 AFCC, NCJFCJ and the Battered Women’s Justice Project (BWJP) have partnered on several projects, including practice guidelines, curriculum development, training programs, and policy discussions. At times it has been difficult, but the collegial relationships developed over the last decade have helped us persevere. Here, there seems to have been a true integration of colleagues into one another’s professional communities.

Closing the Gap might be euphemistically called a work in progress. Divisions remain deep and have played out publicly in a series of related publications. There is progress in some circles (e.g., Pruett, et al, 2014; McIntosh, et al, 2014) but political divides continue. The lack of a general consensus seems ironic given the nearly universal endorsement of shared (but not equal) parenting time for most families (Pruett & DiFonzo, 2014a), but it is perhaps unsurprising given the political context. Following the think tank, but prior to the publication of its report in FCR, one Closing the Gap participant published his own review of research (Warshak, 2014) with a bolder interpretation of existing social science than the think tank report, which by contrast drew cautious conclusions. The Warshak article was highly unusual in that it included public endorsements of 110 researchers and practitioners who, the author reported, “...endorse this article’s conclusions and recommendations, although they may not agree with every detail of the literature review” (Warshak, 2014, p. 46). Other than the author, no Closing the Gap participant endorsed the article, and many were not invited to do so. The number and names of those asked to endorse—and those who declined—has not been made public. This may best represent the divide we were trying to address at the think tank.

The article, which forcefully critiqued the original research of another think tank participant, was later labeled by the author as an “International Consensus Report” (Warshak, 2017). Thus, along with divergent views on shared parenting, and claims and counterclaims of misrepresenting research, another debate emerged over the question: What represents consensus in the scientific community (McIntosh, et al, 2015; Warshak, 2017; Neilson, 2017;

Neilson, 2018)? In their report, Pruett & DiFonzo (2014a) identify six “consensus points” representing the majority, but not unanimous, view of Closing the Gap participants. McIntosh, et al (2015) reference “important elements of consensus writing” in the two articles by Pruett, McIntosh and Kelly (2014). Neilson defines consensus as “a decision or recommendation reached by a sizable group that represents widespread agreement on an issue” (2018, p. 3). The noteworthy distinction is that Closing the Gap and Pruett, McIntosh and Kelly represent efforts that intentionally included contrasting views. Neilson repeatedly references the Warshak (2014) effort, which identified only those who agreed with his conclusions and failed to identify or report on any efforts to engage those who disagreed, including many Closing the Gap participants.

AFCC meanwhile convened seven eminent researchers³ to collaborate on two articles about scholar-advocacy bias⁴ (Emery et al, 2014; Sandler, et al, 2014), which some viewed as skewed and political.⁵ These articles were followed by a special issue of the *Journal of Divorce and Remarriage* edited by Neilson in 2018, which was an outgrowth of a small conference convened by the National Parents Organization (formerly Fathers and Families) and the International Council on Shared Parenting. The former group advocates in the United States for presumption of equal parenting time legislation and its testimony at legislative hearings cites research reviews produced by Neilson and Warshak, which are then rebutted as misleading by opposing experts.⁶ At this writing, there appears no end in sight, which merely illustrates our inability to achieve—and the dire need for—constructive dialogue, a curious parallel to high conflict families in the family court system.

³ Robert Emery, Amy Holzworth-Munroe, Janet Johnston, Marsha Kline Pruett, JoAnn Pedro-Carroll, Michael Saini, and Irwin Sandler.

⁴ The authors state “ We define scholar-advocacy bias as the intentional or unintentional use of 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” (Emery, et al, 2016).

⁵ Emails from William G. Austin, April 22, 2016, and Milfred Dale, May 8, 2016.

⁶ Personal communication, Sol Rappaport, April 10, 2018. See also Milfred Dale, Testimony to the Kansas House Judiciary Committee, February 6, 2018, on file with the author.

VII. Lessons Learned

A. The Importance of Timing

Both FLER and Wingspread benefitted from good timing. The FLER report was published just prior to a major report on legal education by the Carnegie Foundation (Sullivan, et al, 2007), which was remarkably consistent with FLER recommendations. Moreover, the 2008 recession impacted legal practice and education in a way that encouraged the development of a curriculum along FLER lines and was followed by legal education reform efforts by the American Bar Association⁷ and the Institute for the Advancement of the American Legal System,⁸ among others.

Wingspread, as Professor Mayer noted, seized the moment and built on less successful efforts dating back twenty years. “The way forward was there, but we had to find a way to take it” (Mayer, 2018, p. 60). By the time we reached Wingspread, domestic violence advocacy was a powerful sociopolitical movement, having spurred the passage of more than 4,700 statutes protecting domestic violence victims and children (Salem & Dunford Jackson, 2008). I believe that many advocates understood that legislation itself was not sufficient to resolve all of their concerns, and that they were well-positioned to engage with AFCC members in a more nuanced discussion about differentiating domestic violence rather than continuing an unproductive binary approach to problem-solving. Nonetheless, I was frequently reminded of the risks by my co-chair. There were potential unintended consequences, limited margin for error, and personal experiences and trust issues that argued against proceeding. But NCJFCJ appeared to believe the time was right, as did AFCC.

Closing the Gap, on the other hand, may have suffered because some thought AFCC turned the calendar back by addressing attachment and young children, which elicited a swift, organized, and widespread response. Anecdotally, AFCC received both support and criticism from members and non-members alike. The trend toward shared parenting is clear, irrespective of legislation (Cancian, et al, 2014) and enjoys widespread support (Pruett & DiFonzo, 2014a); however, some in the shared parenting movement—especially those promoting equal parenting time—may have believed, unlike our NCJFCJ colleagues, that their overall gains were not sufficiently realized. They may have feared that a more nuanced approach would slow the momentum of their legislative advocacy, a risk they were unwilling to take. In fact, Closing the Gap occurred around the outset of a multi-state push by the National Parents Organization for controversial legislation promoting an equal parenting time presumption. When testifying to legislators, advocates for this legislation frequently cite research reviews that suggest the empirical evidence supporting nearly universal shared or

⁷ The American Bar Association established the Commission on the Future of Legal Education in 2017.

⁸ The Institute for the Advancement of the American Legal System established the Educating Tomorrow’s Lawyers Initiative in 2011.

equal parenting time is compelling. Closing the Gap participants did not agree that such compelling evidence existed.

B. The Role of Research

Social science was an important component of Wingspread and Closing the Gap; for FLER it was largely tangential. At Wingspread, there were several research panel presentations, some that highlighted very controversial work. While this created some strain at the meeting, it did not impede future progress. This may have been because participants recognized the potential harm of debating research, a notion we clearly articulated. “[I]t appears that research on domestic violence exists in support of just about any proposition and that, often, as soon as findings are published, efforts quickly follow to discredit them through methodological or other critiques that are at times informed by underlying political agendas” (Salem & Dunford-Jackson, 2008). Thus, the focus following Wingspread was on building relationships and collaborating on projects, not what social science did nor did not suggest.

For Closing the Gap, research was a precipitating factor and embedded in the discussions. Efforts to navigate away from research met with resistance even though participants understood the myriad complications in applying shared parenting research to family law (Pruett & DiFonzo, 2014a) and the unproductiveness of the debate. Pruett and DiFonzo suggest that we may have overreached in attempting to weave two related, but distinct issues: shared parenting law and policy, and how to properly develop and rely upon the social science research pertaining to shared parenting (2014b). The aftermath suggests that the concurrent push for equal parenting time legislation was not compatible with a consensus. Our inability to move the discussion to effectively address the tension between these issues likely contributed to the exhaustive focus on the minutia of research methods and the tit-for-tat publications that continue to this day.

C. The Role of Values and Identity

Values and identities, both personal and professional, underpinned much of the discussion at the think tanks, particularly Wingspread and Closing the Gap. Most participants have spent years honing their craft and developing a professional identity and community aligned with their values, and many have created programs or practices consistent with their beliefs. It is difficult to argue with notions such as collaborative dispute resolution, safety and empowerment; or parents actively involved in raising their children. However, when the realization of these ideas conflict with one another difficult questions arise. Does a collaborative dispute resolution process compromise safety and self-determination for domestic violence victims? Could a 50/50 parenting plan for an infant unnecessarily risk the stability offered by a primary home? Will a child’s healthy relationship with two parents

mitigate exposure to ongoing conflict? These and similarly vexing issues have been debated extensively and research will not settle our differences at their most basic level. The answers represent not only values priorities, but actual dilemmas that practitioners encounter. In most cases, a convincing argument can be made that either answer is best for children. Thus, with intractable disputes, when positions are rooted in strongly held values, it is more likely than not that research findings, however limited or inconsistent, will be used to buttress claims rather than be viewed with a dose of skepticism.

D. The Value of Joint Conveners

The partnerships with Hofstra Law School and NCJFCJ were invaluable, as previously noted. Not only did they help engage the right participants, but they served an important organizing and negotiating function as well. There were limited disagreements between practitioners and law professors per se, but Hofstra's role in FLER let members of the academic community know they were well represented, if nothing else symbolically. For Wingspread, NCJFCJ played a vital role in making sure that the judicial and advocate voices were heard and in managing some of the side-bar conversations, just as AFCC did for the family court professionals. In retrospect, the dynamic was different for Closing the Gap. Because it stemmed from disagreement within AFCC, we felt no need to partner with another organization. Although a shared parenting advocacy group might have been considered, we did not see AFCC as being on any side of the issue. To reiterate, most AFCC members support shared parenting generally, and for most only specific circumstances (e.g., high conflict, domestic violence, frequent infant overnights) create discussion or caution. That said, think tank leadership clearly did not engender sufficient trust in all participants to result in open communication and true collaboration. Looking back, it isn't clear any leadership could have prevailed in consensus among those with contrasting views given the politicized and emotionally charged context.

E. Sometimes it's Personal

Finally, there is no getting around acknowledging the role of personalities and personal conflicts in relatively small professional communities. I have not focused on behaviors accompanying conflict related to the think tanks and will not detail them here, but at times it was extraordinary, both positively and negatively, and this ultimately impacted the work. Wingspread resulted in long-time adversaries becoming colleagues and even friends. This has benefitted the work being done in our field, creating more cohesive products that are more widely accepted. Closing the Gap was preceded and followed by some personal and professional attacks, and more. This obviously makes the work more difficult and has resulted in multiple narratives, which only serve to confuse the policy makers and practitioners that require guidance.

VIII. Conclusion

It seems appropriate that an organization with a mission focused on resolving family conflict should do its part to address disputes within its own family, i.e., the members of the association and the extended community of professionals. Looking back, it appears that we can claim to have planted the seeds for some exceptional progress over the last decade in family law education and the collaborative work accomplished by domestic violence and family court professionals. It is not clear how much time will pass before the shared parenting debate matures to the point of productive discourse. The inability of Closing the Gap to reach our definition of consensus—agreement among those with divergent views—was perhaps a necessary step on a longer journey that will ultimately result in a more collaborative approach. Importantly, for meaningful success the process must include all perspectives even if the interim results are not those we desire.

References

- Berman, D., & Alfini, J. (2011). Lawyer colonization of family mediation: Consequences and implications. *Marq. L. Rev.*, 95, 887.
- Cancian, M., Meyer, D. R., Brown, P. R., & Cook, S. T. (2014). Who gets custody now? Dramatic changes in children's living arrangements after divorce. *Demography*, 51(4), 1381-1396.
- Dalton, C. (1999). When paradigms collide. *Family Court Review*, 37(3), 273-296.
- Dalton, C., Ver Steegh, N., & Kelly, J.B. (2008). Domestic violence, differentiation and family court: Tensions, terminology and collaboration. Presentation at the 45th Annual Conference of the Association of Family and Conciliation Courts, May 28, 2008. Vancouver, Canada.
- Emery, R. E., Holtzworth-Munroe, A., Johnston, J. R., Pedro-Carroll, J. L., Pruett, M. K., Saini, M., & Sandler, I. (2016). "Bending" evidence for a cause: Scholar-advocacy bias in family law. *Family Court Review*, 54(2), 134-149.
- Fidler, B. J., & Bala, N. (2010). Children resisting postseparation contact with a parent: Concepts, controversies, and conundrums. *Family Court Review*, 48(1), 10-47.
- George, C., Solomon, J., & McIntosh, J. (2011). Divorce in the nursery: On infants and overnight care. *Family Court Review*, 49(3), 521-528.
- Hart, B. J. (1990). Gentle jeopardy: The further endangerment of battered women and children in custody mediation. *Conflict Resolution Quarterly*, 7(4), 317-330.
- Hedeen, T., & Salem, P. (2006). What should family lawyers know? Results of a survey of practitioners and students. *Family Court Review*, 44(4), 601-611.
- Jaffe, P. G., Johnston, J. R., Crooks, C. V., & Bala, N. (2008). Custody disputes involving allegations of domestic violence: Toward a differentiated approach to parenting plans. *Family Court Review*, 46(3), 500-522.
- Johnston, J. R., & Campbell, L. E. (1988). *Impasses of divorce*. Free Press: New York.
- Kelly, J. B., & Johnson, M. P. (2008). Differentiation among types of intimate partner violence: Research update and implications for interventions. *Family court review*, 46(3), 476-499.
- Ludolph, P. S. (2012). The special issue on attachment: Overreaching theory and data. *Family Court Review*, 50(3), 486-495.
- Macfarlane, J. (2008). *The new lawyer: How settlement is transforming the practice of law*. UBC Press.

- Main, M., Hesse, E., & Hesse, S. (2011). Attachment theory and research: Overview with suggested applications to child custody. *Family Court Review*, 49(3), 426-463.
- Mayer, B. (2018). Can we talk? What we have learned about how to have productive conflicts about family policy and family Law. *Family Court Review*, 56(1), 56-63.
- McIntosh, J. E., Wells, Y. D., Smyth, B. M. & Long, C. M. (2008). Child-focused and child-inclusive divorce mediation: comparative outcomes from a prospective study of postseparation adjustment. *Family Court Review*, 46(1), 105-124.
- McIntosh, J. E., Pruett, M. K., & Kelly, J. B. (2014). Parental separation and overnight care of young children, part II: Putting theory into practice. *Family Court Review*, 52(2), 256-262.
- McIntosh, J. E., Smyth, B. M., & Kelaher, M. A. (2015). Responding to concerns about a study of infant overnight care postseparation, with comments on consensus: Reply to Warshak (2014). *Psychology, Public Policy and the Law*. 21(1), 111-119.
- Nielsen, L. (2017). Re-examining the research on parental conflict, coparenting, and custody arrangements. *Psychology, Public Policy, and Law*, 23(2), 211.
- Nielsen, L. (2018). Preface to the Special Issue: Shared Physical Custody: Recent Research, Advances, and Applications. 1-11.
- O'Connell, M. E., & DiFonzo, J. H. (2006). The family law education reform project final report. *Family Court Review*, 44(4), 524-570.
- Olson, K. B., & Ver Steegh, N. (2008). Introduction of special issue editors. *Family Court Review*, 46(3), 434-436.
- Parkinson, P. (2013). The idea of family relationship centres in Australia. *Family Court Review*, 51(2), 195-213.
- Press, S. (2013). Family court services: A reflection on 50 years of contributions. *Family Court Review*, 51(1), 48-55.
- Pruett, M. K., McIntosh, J. E., & Kelly, J. B. (2014). Parental separation and overnight care of young children, Part I: Consensus through theoretical and empirical integration. *Family Court Review*, 52(2), 240-255.
- Pruett, M. K., & DiFonzo, J. H. (2014a). Closing the gap: Research, policy, practice, and shared parenting. *Family Court Review*, 52(2), 152-174.
- Pruett, M.K. & DiFonzo, J.H. (2014b). Advancing the shared parenting debate, one step at a time: Responses to the commentaries. *Family Court Review*, 52(2). 207-212
- Salem, P., & Dunford-Jackson, B. L. (2008). Beyond politics and positions: A call for collaboration between family court and domestic violence professionals. *Family Court Review*, 46(3), 437-453.

Salem, P. (2009). The emergence of triage in family court services: the beginning of the end for mandatory mediation? *Family court review*, 47(3), 371-388.

Salem, P., & Shienvold, A. T. (2014). Closing the gap without getting to yes: Staying with the shared parenting debate. *Family Court Review*, 52(2), 145-151.

Sandler, I Saini, M. Pruett, M.K., Pedro-Carroll, J.L., Johnston, J.R., Holtzworth-Munroe, A., Emery, R.E. (2016). Convenient and inconvenient truths in family law: Preventing scholar-advocacy bias in the use of social science research for public policy. *Family Court Review*, 54(2), 150-166.

Schepard, A., & Salem, P. (2006). Foreword to the special issue on the family law education reform project. *Family Court Review*, 44(4), 513-521.

Schneider, A. K., & Mills, N. (2006). What family lawyers are really doing when they negotiate. *Family Court Review*, 44(4), 612-622.

Schore, A.N. (2012). Attachment and brain development: The micro context. Presentation at the 49th Annual Conference of the Association of Family and Conciliation Courts, June 7, 2012. Chicago, IL.

Shienvold, A. (2004). Hybrid processes. In J. Folberg, A. L. Milne & P. Salem (Eds.), *Divorce and family mediation: Models, techniques, and applications* (pp. 112-126). New York: Guilford.

Sullivan, W.M., Colby, A., Wegner, J.W., Bond, L., Shulman, L. (2007). *Educating Lawyers: Preparation for the Profession of Law*. The Carnegie Foundation for the Advancement of Teaching. Unpublished Manuscript.

Thoennes, N., Salem, P. & Pearson, J. (1995). Mediation and domestic violence. *Family Court Review*, 33(1), 6-29.

Ver Steegh, N. (2003). Yes, no, and maybe: Informed decision making about divorce mediation in the presence of domestic violence. *Wm. & Mary J. Women & L.*, 9, 145.

Ver Steegh, N., & Dalton, C. (2008). Report from the Wingspread Conference on domestic violence and family courts. *Family Court Review*, 46(3), 454-475.

Walker, J. & Marjoribanks, D. (2018). Modern families, modern family justice: Supporting family relationships in fast changing socio-political-economic climates. Report from the St. George's House Consultation in partnership with Relate and the Association of Family and Conciliation Courts. Unpublished manuscript.

Warshak, R. A. (2014). Social science and parenting plans for young children: A consensus report. *Psychology, Public Policy, and Law*, 20(1), 46-67.

Warshak, R. A. (2017). Stemming the tide of misinformation: International consensus on shared parenting and overnighting. *J. Am. Acad. Matrimonial Law.*, 30, 177.

Yates, S. M., & Salem, P. (2013). Family court ADR: Decades of cultivating innovation. *Disp. Resol. Mag.*, 20, 4.