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Jody M. Higdon, Clerk  
Morgan County, Georgia

**IN THE SUPERIOR COURT OF MORGAN COUNTY  
STATE OF GEORGIA**

**TYLER PERRY,  
Petitioner,**

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**V.**

**Civil Action File  
Number: SUCA2018000030**

**KAITLYN V. JENKINS  
Respondent,**

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**MOTION**

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NOW COMES Petitioner, Tyler Perry, by and through his attorney, to file this motion and request that the Final Order as remanded and ordered by the Georgia Court of Appeals be filed within thirty days of the hearing that was scheduled for June 17, 2020, showing the following:

1.

This is an action filed by Petitioner on February 15, 2018 for Legitimation, Custody, Visitation and Child Support. There was a Temporary Hearing in May 2018 and the Final Hearing was held on October 29, 2018. The Final Order was filed on November 30, 2018, granting primary physical custody to Respondent.

2.

Petitioner filed a Notice of Appeal on December 19, 2018 with the case docketed on January 24, 2019. The Court of Appeals issued a ruling on October 29, 2019 reversing and remanding the case “for findings and conclusion with give effect to OCGA §§ 19-9-3 (D) AND 19-9-6 (6) and to give due consideration to the issue of joint physical custody.” (Ruling, page 6). The Remittitur was filed with the Morgan County Clerk’s Office on November 21, 2019.

3.

Petitioner notes that, in a typical case, a trial court that has a portion of its judgment reversed or vacated with direction will follow that direction and dispose of any unresolved issues promptly. In fact, the law requires nothing less. Pursuant to O.C.G.A. § 15-6-21 (a), “it is the duty of the judge of the superior court of a county of less than 100,000 inhabitants, to decide promptly, within 30 days after the same has been submitted to him.” Based on the date of the filing of the remittitur and the latest U.S. Census data for Morgan County, Georgia, the trial court had until **December 21, 2019** to enter its Final Order on Remand.

4.

Petitioner further notes that “[t]he decision and direction [of the appellate court] shall be respected and carried into full effect in good faith by the court below.” O.C.G.A. § 5-6-10. “[I]t is the duty of the trial court in good faith to carry into full effect the mandate of this court. The rulings of our appellate courts are binding on the trial court in all subsequent proceedings in the case.” Blanton v. Bank of Am., 263 Ga. App. 284, 285, 587 S.E.2d 411, 413 (2003).

5.

When no Order was filed by the middle of May 2020, Petitioner believed that the Court was waiting for and desirous of additional input from the parties on the subject of custody, specifically joint physical custody. For that reason, Petitioner provided a Rule Nisi for the Court to schedule a hearing. The Rule Nisi was filed on May 18, 2020, scheduling a hearing for June 17, 2020 at 9:00 AM.

6.

Petitioner’s first enumeration of error was that the Court, having found both parents fit and proper, failed to give due consideration to Petitioner’s request for joint physical custody of

the child. The Court of Appeals agreed with this enumeration and remanded this case to the Court to do so.

7.

Petitioner was willing to provide argument on the issue such that the Court would have sufficient information on which to give “due consideration” to joint physical custody, which would have included, among other things, reference to an article published in the Spring 2019 issue of the Family Law Review, a publication of the Family Law Section of the State Bar of Georgia. The title of that article is “Joint versus Sole Physical Custody: What Does the Research Tell Us About Children's Outcome? ‘Legitimate’ Cause for Concern.” Certainly the title of this article, the credentials of its author, and the credibility of its publisher would make it of keen interest to anyone giving joint physical custody “due consideration.” For the Court’s convenience, it is attached hereto as Exhibit “A.”

8.

At the time of the hearing on June 17, 2020, the Final Order required on Remand was almost six (6) full months overdue. In the hearing, the Court indicated that it did not wish to hear any additional information or argument and that his understanding of the Court of Appeals order remanding the case was that he just needed to include in the order the information he used in consideration of joint physical custody in this case. When Petitioner’s counsel stated that it was Petitioner’s contention that the Court did not consider joint physical custody in making his Final Order, the Court stated that he always considers joint physical custody. The Court then stated that he would write and file the Order and the parties would get a copy of it.

9.

Petitioner notes that during the hearing, the Court asked whether or not a transcript had been produced in the case. This indicates that nearly six (6) full months after the Final Order was already due, the Court had not yet begun to work on it. Petitioner further notes that the Final Order on Remand was already overdue well before the Supreme Court of Georgia's Order Declaring Statewide Judicial Emergency was filed on March 14, 2020. Regardless, the period that followed this declaration was one during which much court was not held at all. This would have seemed the perfect time for trial courts to address overdue orders on remand.

10.

Petitioner was surprised and concerned to learn during the June 17, 2020 hearing that the Court did not require or desire more information or argument in reference to joint physical custody. For if no further information or argument was desired, there appears to be no explanation whatsoever for the lengthy delay in producing the required Final Order on Remand.

11.

Petitioner points out that the Court's delay in producing the required Final Order on Remand is infringing Petitioner's ability to exercise full custody and visitation with his son. More importantly, it is infringing his son's long-recognized right of equal access to both parents. "[A] child . . . has a right to shared parenting when both are equally suited to provide it. Inherent in the express public policy is a recognition of the child's right to equal access and opportunity with both parents, the right to be guided and nurtured by both parents, the right to have major decisions made by the application of both parents' wisdom, judgment and experience." In the Interest of A. R. B., 209 Ga. App. 324, 327 (1993).

WHEREFORE, Petitioner respectfully requests that the Trial Court file its Final Order on Remand no later than thirty (30) days from the date of the scheduled hearing on June 17, 2020 or by July 17, 2020.

Respectfully submitted this 19<sup>th</sup> day of June 2020.

/s/ Virginia Nell Morris  
Virginia Nell Morris  
Attorney for Tyler Perry  
GA Bar No. 334206  
MORRIS LAW  
P.O. Box 7224  
Athens, Georgia 30604  
(706) 395-2592 (Office)  
(706) 296-6002 (Cell)  
(706) 395-2593 (Fax)  
[ginny@vnmorrislaw.com](mailto:ginny@vnmorrislaw.com)

/s/ Woodrow W. Ware III  
Woodrow W. Ware III  
Attorney for Tyler Perry  
THE LAW OFFICES OF WOODROW WILSON  
WARE, LLC  
Georgia Bar No. 702906  
1551 Jennings Mill Road  
Suite 1800A  
Watkinsville, Georgia 30677  
(706) 410-1300

# **EXHIBIT A**



# The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Spring 2019



Cultural Considerations in Custody  
Litigation in Our Diverse Community



# Joint versus Sole Physical Custody: What Does the Research Tell Us About Children's Outcome? “Legitimate” Cause for Concern

By Linda Nielsen

Do children fare better or worse in joint physical custody (JPC) families where they live with each parent at least 35 percent of the time than in sole physical custody (SPC) families where they live primarily or exclusively with one parent? This question assumes even more importance as JPC has become increasingly common in the United States and abroad. For example, in Wisconsin JPC increased from 5 percent in 1986 to more than 35 percent in 2012. And as far back as 2008, 46 percent of separated parents in Washington state and 30 percent in Arizona had JPC arrangements. JPC has risen to nearly 50 percent in Sweden, 30 percent in Norway and the Netherlands, 37 percent in Belgium, 26 percent in Quebec and 40 percent in British Columbia and the Catalonia region of Spain.

At least 20 states are considering changes to their custody laws to make them more supportive of JPC. In April 2018, Kentucky became the first state to establish a rebuttable presumption of equal parenting time in all child custody cases, absent situations such as drug abuse or domestic violence that pose a danger to children. Arizona enacted a shared parenting statute in 2014, which has been functioning as a rebuttable presumption of equal parenting time. Four years after its enactment, lawyers, judges and mental health professionals evaluated the law favorably in terms of children's best interests and perceived it as having no impact on legal or personal conflicts between parents.<sup>1</sup>

But are children's outcomes better in JPC than SPC families—especially if their parents do not get along well as co-parents? And if JPC children have better outcomes, is this because their parents have more money, less conflict, better parenting skills or higher quality relationships with their children before they separate? Put differently, are JPC parents “exceptional” because they get along better than SPC parents and mutually agree to the custody plan from the outset?

Those who have expressed misgivings about JPC have made a number of claims that they report are based on the research. For example, in a 2014 judicial branch education seminar<sup>2</sup> and a 2016 seminar sponsored by the Nebraska Psychological Association,<sup>3</sup> Robert Emery stated that no study had ever found positive outcomes for infants or toddlers who spent overnight time with fathers after their parents separated. He went on to add that, according to an Australian study by McIntosh and her colleagues, babies who spent one overnight a week with their fathers were more irritable and more insecure than babies who never spent a night away from their mothers. In his book on child custody, Emery goes further by stating: “Conflict is more damaging to children than having only a limited relationship with your other parent (p. 51).”<sup>4</sup>

How accurate are claims such as these? Do the empirical data support them? To answer these questions, I reviewed all 60 studies that compared JPC and SPC children's outcomes, especially those studies that considered parental conflict, family income, and the quality of children's relationships with their parents when they separated. I also reviewed an additional 19 studies that compared JPC and SPC couples' levels of conflict in order to answer the question: Do JPC parents have significantly less conflict and more cooperative co-parenting relationships than SPC couples?



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## META-ANALYSES OF JPC AND SPC CHILDREN'S OUTCOMES

Researchers sometimes conduct a “meta-analysis,” which is a statistical procedure that compares the statistical findings from a group of studies selected by the researcher. There are only two meta-analyses that compared children's outcomes in JPC and SPC.<sup>5,6</sup> Both reached the same conclusion: JPC children had significantly better outcomes than SPC children. The first analysis by Bauserman<sup>5</sup> analyzed only 11 studies from peer reviewed academic journals because so few published studies existed 20 years ago. His analysis did, however, include 22 doctoral dissertations which also found JPC children had better outcomes. Bauserman also examined parental conflict and found that JPC children still had better outcomes even after accounting for parental conflict.

The second analysis by Baude<sup>6</sup> et al. included only 18 of the 55 studies that existed at the time and did not examine parental conflict. But they did address another important question: Do JPC children who live 50 percent time with each parent have better outcomes than JPC children who live 35 percent to 49 percent time with each? The answer was yes.



## RESULTS OF THE 60 STUDIES

This article is an abbreviated version of an article published earlier this year that summarizes the results of all 60 studies that statistically compared JPC and SPC children's outcomes across a wide range of measures of well-being.<sup>7</sup> Fifty-three were published in English in academic journals. The other seven were published by Australian teams of academic researchers as part of their country's ongoing studies of JPC and SPC. These seven studies are included because they are often cited in the literature on JPC and because most of them have large, representative sample sizes. A detailed description of each of the 60 studies, their limitations and the reference citations are provided elsewhere and are available upon request (nielsen@wfu.edu).<sup>7</sup>

Data from the 60 studies can be grouped into five broad categories of child well-being: (1) academic or cognitive outcomes (2) emotional or psychological outcomes (3) behavioral problems which include teenage drug, nicotine or alcohol use; (4) physical health or stress related physical problems and (5) the quality of parent-child relationships.

The overall conclusion is that JPC children have better outcomes than SPC children. Compared to SPC children, JPC children had better outcomes on all of the measures in 34 studies; equal outcomes on some measures and better outcomes on other measures in 14 studies; and equal outcomes on all measures in six studies. In six studies JPC children had worse outcomes on one of the measures but equal or better outcomes on all other measures.

Did JPC children still have better outcomes when the researchers considered family income? Yes. In the 25 studies that considered family income before comparing the children, JPC children had better outcomes on all measures in 18 studies, equal outcomes on some measures and better outcomes on other measures in four studies, and equal outcomes on all measures in one study. In only two income studies did the JPC children have worse outcomes than SPC children on one of the measures—with equal or better outcomes on all other measures.

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

One argument against JPC is the hypothesis that these parents had much better relationships with their children before their separation than did SPC parents. If that is true, then maybe it isn't the JPC arrangement, but the quality of the relationships, that accounts for the better outcomes. Nine of the 60 studies tested this possibility. JPC children had better outcomes on all measures in five studies, equal outcomes on some measures and better outcomes on others in two studies, and worse outcomes on one of several measures in two studies. Based on this small group of studies, it does not appear that the quality of parenting accounts for JPC children's better outcomes.

## OTHER NOTEWORTHY FINDINGS

Several other noteworthy findings emerged from the 60 studies. First and foremost, in no study did JPC children have worse outcomes on all, or even most, measures than SPC children. JPC and SPC children had the fewest differences in regard to academic achievement or cognitive skills. This suggests that the custody arrangement has less impact on grades and cognitive development than on the other areas of children's lives.

The greatest advantage for JPC children was better family relationships. In 22 of 23 studies that assessed family bonds, JPC children had closer, more communicative relationships with both parents. The second greatest advantage for JPC children was better physical and mental health. In 13 of 15 studies that addressed physical health, JPC children had fewer psychosomatic, stress-related physical problems. Forty-two studies assessed children's emotional health: depression, life-satisfaction, anxiety, and self-esteem. In 24 studies, JPC children had better outcomes and in 12 studies there were no significant differences between the two groups. In six studies, the results were "mixed" depending on gender and which measure of emotional well-being was being assessed.

As teenagers, JPC children also had better outcomes. Twenty-four studies assessed one or more of these behaviors: drinking, smoking, using drugs, being aggressive, bullying, committing delinquent acts, getting along poorly with peers. In 21 studies JPC teenagers had better outcomes on all measures. In three studies the results were "mixed" because the differences between JPC and SPC teenagers depended on gender or on which measure was being assessed.

What about children's relationships with their grandparents—and why should we care? In all four studies that addressed this question, JPC children had closer relationships with their grandparents than SPC children. This matters because children who have close relationships with their grandparents after their parents separate tend to be better adjusted emotionally and behaviorally. Especially when the family is experiencing the stress of the parents' separation, strong relationships with grandparents can be a protective factor for children.

## NEGATIVE OUTCOMES FOR JPC CHILDREN

In six of the 60 studies JPC children in particular circumstances had worse outcomes than SPC children on one of the measures of well-being. Four of these studies were with teenagers. They first examined a group of Australian teenagers. The boys in JPC were somewhat more likely than boys in SPC to say they "sometimes did not get along well with peers"—but the reverse was true for girls.<sup>8</sup> On the other hand, JPC teenagers reported better relationships with both parents, stepparents and grandparents than SPC teenagers.

The second study assessed a group of American teenagers, all of whom had high conflict divorced parents. When they gave one of their parents a low rating for "positive" parenting (making the children feel they mattered, establishing and consistently enforcing rules), JPC teens had more behavioral and emotional problems



than SPC teens. But when the teenagers gave both parents positive ratings, JPC teenagers had fewer problems than SPC teenagers.<sup>9</sup>

In two studies from Belgium, the results were also mixed. In the first Flemish study JPC and SPC adolescents had similar outcomes on all measures of well-being with two exceptions.<sup>10</sup> Ten teenagers who felt they had bad relationships with their fathers were more depressed and more dissatisfied in JPC than in SPC. And when parental conflict remained high eight years after the divorce, girls were more depressed in JPC than in SPC—but boys were less depressed in JPC.

In the second Flemish study “neurotic” (anxious, tense, depressed, sad) teenagers fared just as well in JPC as in SPC.<sup>11</sup> But highly “conscientious” (task oriented, rule oriented) teenagers felt more depressed and less in control of their lives in JPC than in SPC. In contrast, the least conscientious teenagers fared better in JPC.

### SHARED PARENTING FOR BABIES, INFANTS AND PRESCHOOLERS

Six studies focused exclusively on children ages 0 - 5. I begin with the two studies that have received the most worldwide attention because both are frequently cited as evidence that infants and toddlers should spend little, if any, overnight time in their father's care.

In an Australian study led by Jennifer McIntosh,<sup>12</sup> the 19 JPC toddlers were “less persistent at tasks” than the 103 SPC toddlers. And the 22 JPC toddlers scored lower on a test of how they “interacted with” their mothers (sometimes refusing to eat, being clingy when she was leaving). These researchers interpreted this to mean that JPC created more “distressed relationships” with their mothers. In fact, however, JPC toddlers and the majority of toddlers in intact families behaved in these same ways with their mothers — and their scores were perfectly within normal ranges. For children under the age of two, according to their mothers, the 43 babies who overnighted more than four times a month were more “irritable” than the 14 babies who overnighted less than four times a month. The researchers interpreted this as a sign of “stress” from overnighting. But again, babies from intact families had the same irritability scores as the overnighting babies. The 59 infants who overnighted more than four times a month “looked at their mother” and “tried to get her attention” more frequently than the 18 babies who overnighted less than four times a month. The researchers interpreted this as a sign of “insecurity” caused by overnighting. This is a highly questionable interpretation because the researchers extracted the three questions from a test of language development where looking at the mother and trying to get her attention were positive signs that the baby was more ready to learn to talk. This study has been widely criticized for its questionable methodology and interpretations of data.<sup>21,23</sup>

The second was an American study supervised and co-authored by Robert Emery.<sup>13</sup> The study was based on a sample that was not representative of the general population or of divorced parents. The sample was comprised largely of single parent, never married,

impoverished, minority families with high rates of incarceration, physical abuse, and mental health problems living in 20 large cities. Even in these families, children ages 0 - 5 who overnighted frequently or who lived in JPC families were not significantly different from those who did not overnight on six measures of well-being with two exceptions. First, children in JPC as three year-olds had fewer social problems at age five than children who were not in JPC at age three—a finding which, for unexplained reasons, is described as “chance.” Second, the 111 infants and toddlers in JPC had more “insecure” scores on a test assessing their attachment behaviors toward their mother. The researchers interpreted this to mean that overnights away from the mother resulted in more insecure attachments to her. The problem here is that half of the JPC children were living with their fathers. So the attachment scores were assessing their behavior with their mother even though she was not their primary care-giver. Moreover, the attachment test was based on mothers' reports, not on reports from objective observers. This undermines its validity. In his seminars and book, Emery applies these findings to the general population and describes the study as the “best and biggest” study of the impact of overnighting on babies' attachments to their mothers.

The third study was a nationally representative Swedish study with three, four and five-year-old children. The JPC children had fewer psychological and behavioral problems on a standardized test and on preschool teachers' reports than did SPC children. This held true even after controlling for parents' education levels and the children's ages.<sup>14</sup>

Similarly, in an American study, college students who had lived in JPC families or had frequently overnighted with their fathers before the age of three had better relationships with both parents than those who had not overnighted.<sup>15</sup> They also had better relationships than children who only started overnighting or moved into JPC after the age of five. This held true regardless of the parents' educational levels or how much conflict they had when separating or in ensuing years. “Lost overnight parenting time at age two was not made up by parenting time later (p.11).”

In yet another American study, two to three year-olds who overnighted at least once a week did not have more behavioral or emotional problems than those who did not overnight.<sup>16</sup> Moreover, the four to six year-olds who overnighted had fewer attention problems and fewer social problems than the non-overnighters.

In the oldest of the six studies, the sample included an unusually high number of violent and high conflict parents for the overnighting children.<sup>17</sup> Only eight of the 44 overnighting infants spent more than three nights a month with their father, often going weeks without seeing one another. Nonetheless, the overnighting and non-overnighting infants were not significantly different in their attachment scores with their mothers. Even though the overnights had more “disorganized” scores (meaning the child's behavior was too inconsistent to classify) than babies in intact families, the lead author recently reiterated, that any attachment problems were due to poor parenting or negative characteristics of the parents, not to



overnighting.<sup>18</sup>

In sum, there is no reliable evidence that regular and frequent overnights or that JPC harms infants, toddlers or preschoolers who are in the care of fit and loving parents. A recent article provides a detailed history of this debate and a summary of the literature relevant to infant overnights.<sup>19</sup>

#### WHY IS JPC BENEFICIAL EVEN WHEN PARENTAL CONFLICT IS HIGH?

The fact that JPC children still had better outcomes even after factoring in parent conflict undermines the claim that children do not benefit from JPC unless their parents have a low conflict, cooperative relationship. This might partly be explained by the fact that in a separate analysis of<sup>19</sup> studies, JPC couples did not have significantly less conflict or more cooperative, communicative relationships than SPC couples at the time they separated or in the years following separation.<sup>20</sup> Seven of these studies assessed whether most JPC parents had initially agreed to the plan without conflict or whether one or both of them had been “forced” or “coerced” into accepting JPC. From 30 percent to 80 percent of the couples who ended up with JPC did not initially agree to share. In these cases, one or both parents initially wanted sole physical custody. Yet in all seven studies, JPC children had better outcomes than SPC children.

#### LIMITATIONS OF THE STUDIES

All studies have limitations, and those discussed in this paper are no exception. First, these studies are correlational so they cannot prove that JPC caused the better outcomes. But a number of the studies ruled out conflict, income and quality of parent-children relationships as possible causes — which lends stronger support to the argument that JPC in and of itself is beneficial for children. Second, not all 60 studies are of equal quality. Still, the findings are very consistent which lends more credibility to the results. Third, because the data come almost exclusively from mothers, it is possible that the benefits of JPC are greater than what is being reported since mothers tend to be more opposed to JPC, at least initially, than fathers.

Finally, even though differences between JPC and SPC children’s outcomes are statistically significant, the effect sizes are generally small to moderate. Several things must be understood, however, about effect sizes. Small effect sizes are common in social science studies — which includes studies on parental conflict. More importantly, small effect sizes in social science and in medical science have important implications for large numbers of people. Indeed, many public health policies and mental health treatment protocols are based on studies with weak effect sizes.

Then too, we need to consider the risks versus the benefits before dismissing small effect sizes as trivial. For example, if there is a weak but statistically significant link between JPC and teenage drug and alcohol use, we should attend to those results because the consequences can be serious, life-threatening or even fatal.

Moreover, JPC effect sizes are much larger in certain samples or for certain types of problems. For example, in Baude’s meta-analysis, effect sizes were four times stronger for behavioral problems than for emotional ones, five times

stronger in school samples than in national samples, and five times stronger when JPC children spent 50 percent time with each parent than when they lived 35 - 49 percent time.

#### CONCLUSION : NO WOZZLING ALLOWED

Woozling is the process where research findings are manipulated and distorted in order to support just one point of view—either by exaggerating or reporting only part of the data, or by excluding certain studies, or by interpreting ambiguous data in only one way.<sup>21</sup> To avoid woozling, I want to clarify several points about the 60 studies.

These studies are not saying that being constantly dragged into the middle of parents’ conflicts has no negative impact on children—or that JPC is more beneficial than the quality of parent-child relationships—or that family income has no impact on children. What the studies are saying is that even when conflict is high—absent physically abusive conflict—and even after considering family income and the quality of parent-child relationships, children still benefit more from JPC than SPC. It is an injustice to children, and to the researchers who have conducted these studies, to frame the situation as if one single factor—conflict, income, JPC or quality of parent-child relationships—has to be the sole winner of some imaginary contest. Our goal should be to provide children with as many situations as possible that have been linked to their well-being after their parents separate.

JPC is generally linked to better outcomes than SPC for children, independent of parental conflict, family income, or the quality of children’s relationships with their parents. Parents do not need to have a low conflict, communicative coparenting relationship or mutually agree to JPC at the outset in order for children to benefit from JPC. Nor is there reliable evidence that children under the age of four are harmed by or do not benefit from JPC or frequent overnights. These 60 studies reflect the consensus of an international group of 110 scholars and mental health practitioners and a group of 12 renowned researchers: JPC is in children’s best interest, absent situations such as substance abuse or violence, which pose a danger to children even when their parents are still together.<sup>22,23</sup>

\* Due to space restrictions, references for the 60 studies and for the other studies summarized in this article could not be included. All citations and the results of each of the 60 studies are available upon request from the author: nielsen@wfu.edu. *FLR*



*Linda Nielsen is a Professor of Adolescent and Educational Psychology at Wake Forest University in Winston Salem, NC. She is an internationally recognized expert on shared physical custody research and father-daughter relationships. In addition to her seminars for family court and mental health professionals, she is frequently interviewed on the topic of shared parenting by journalists, including the New York Times, Time magazine and the Wall Street Journal. nielsen@wfu.edu www.wfu.edu/~nielsen*



## Endnotes

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STATE BAR OF GEORGIA

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