

**Background and research question:** Motivated by research which shows a strong correlation between paternal contact and support (Nepomnyaschy, 2007), new proposals being considered at the federal level would require states to establish access and visitation for noncustodial parents in all initial child support orders. The statutory purposes of the child support program would also be revised to help parents support and *cooperate* to care for their children. It is estimated that about one-quarter of the nation's children participate in the child support program, a large number of whom are now living in "fragile families" (Sorensen). Since most unmarried parents are assumed to have informal rather than legal custody and visitation agreements, this would represent a major policy shift, the implications of which are unknown.

Although unmarried parents and their children are now the focus of considerable research and policy attention, surprisingly little research has examined how they view questions related to legal visitation and custody. This paper analyzes data from focus group interviews with 40 low-income, unmarried mothers and fathers in New York to examine their perceptions of engaging the legal system to establish parenting rights and responsibilities. It also explores how parents view new proposals to increase noncustodial parents' access and visitation, by including parenting time provisions in the child support establishment process.

**Previous research:** When parents initiate a legal process of divorce, they must reach decisions about custody, child support, alimony, and the division of property (Cancian & Meyer, 1998). It is also common for divorcing parents to set up a visitation agreement at the same time. In contrast, when parents do not legally marry, the mother is often considered to be the custodial parent until legal paternity is established. An unmarried father can seek custody or visitation with his child after a paternity establishment agreement is in place, but is much more common for unmarried parents to establish a legal child support order than a legal agreement regarding custody or visitation (Pearson and Price, 2002). Establishing a custody and visitation order is assumed to be fairly burdensome for noncustodial parents since this typically requires them to take separate legal action.<sup>1</sup> Moreover, unmarried parents in some states may have limited access to the legal system because of their inability to afford a lawyer or pay court filing fees (Pearson & Price, 2002). However, there have been few attempts to directly investigate parents' perceptions of engaging the legal system to establish custody and visitation agreements.

Carol Stack's (1974: 89) classic study, *All Our Kin*, provided early insight into these questions by documenting how impoverished, African American families operated within both a folk and legal system when rights to children were in dispute. Although Stack observed that mothers used the legal system to establish child custody rights in some unusual circumstances, these actions were strongly discouraged within the community which resisted efforts by the courts and other outside authorities to control their children. More recent research suggests additional reasons that low-income families are reluctant to use the legal system, such as feelings of impotence, concerns about their children's well-being, and the risk of incarceration (Goffman; 2009; Sandefur, 2008; Roy, 1999; Waller, 2002).

While Stack's work told us a great deal about community expectations regarding "childkeeping" within kin networks, it did not address the role of the legal system in resolving disagreements which arose between the biological mother and father. Children born outside of marriage are now as likely to live with a single father as with relative caregivers (Cork and Voss, 2006). We also know that the number of unmarried parents involved in the legal child support has increased significantly since the creation of Child Support Enforcement program in

---

<sup>1</sup> Most states do not allow a legal connection to be made between child support and custody due to concerns that noncustodial parent could refuse to pay child support if their access to children was limited or, similarly, that the custodial parent could limit visitation if they did not receive child support (Mnookin and Kornhauser, 1979).

1975. More research is therefore needed about how unmarried mothers' and fathers' perceive the advantages and disadvantages of using the legal system to resolve critical issues of where children will live and how much time they will spend with each parent.

**Data and methods:** This project draws on data from focus groups with 40 low-income, unmarried mothers and fathers in two New York counties. I conducted two focus groups with unmarried mothers (n=21) and two groups with unmarried fathers (n=19) in June through August of 2012. Participants were drawn from Cooperative Extension programs, nonprofit agencies, announcements on community listserves, and direct recruitment from neighborhoods.

To make the sample comparable with the population of parents participating in the child support program, eligibility for study was limited to parents who: 1) were never married to the other parent of at least one child, 2) were currently living apart from this other parent; and 3) had household incomes less than 185% of the FPL. Two parent groups were primarily White, and two were primarily African-American, reflecting the race-ethnic composition of the county in which they took place. Each group included a mix of parents who had and had not engaged the legal system to establish custody and visitation agreements. Overall, about 48% of the sample was African-American, 43% was White, and 10% was of another race/ethnic group. About 55% percent of parents had Family Court experience with these issues and 45% did not. The majority of parents (53%) had a high school degree or less. About 45% of parents were under age 34 and 55% were over 34.

Focus groups are an appropriate method for understanding the natural process of how people form and express opinions within a group (Morgan, 1997). As such, focus groups are more likely to capture parents' public discourse on visitation and custody, and to be influenced by interactions that take place within the group. The following analysis highlights issues that were emphasized across groups and across individuals within the same group, as well as topics that generated significant energy and enthusiasm (Morgan, 1997).

**Disadvantages of engaging the legal system:** Four themes emerged about why unmarried parents thought it was disadvantageous to engage the legal system to establish legal custody and visitation agreements.

First, going to Family Court was often thought to have **emotional and financial costs** for parents and children. Parents described Family Court as a "place of anger and pain" where terrible things were said about each parent and "no one walk[ed] away happy." The long, drawn-out process, could lead to considerable stress for parents and children. This process could also become a financial hardship to parents who are required to take time off from work to make frequent court appearances.

Second, parents believed that going to Family Court also **increased family conflict**. Rather than keeping the focus on the best interest of the child, the process of establishing a legal custody and visitation was compared to a "game" in which each team had a lawyer who used whatever tactics necessary to win. Although it was acknowledged that some parents initiated Family Court actions to retaliate against each other, playing this game was thought to increase animosity between parents even further and made it less likely they would be able to communicate with each other.

Third, parents often felt they **lost control** of the process. It was judges and lawyers, rather than parents themselves, who were perceived to have "all the power" in Family Court. After the situation got "out of parents' hands," they were faced with people who "don't know you or your situation" making decisions that could have a profound impact on their families, and even threaten the safety of their children.

Finally, parents expressed a strong **fear of involving government agencies** in their family disputes. There was a strong disinclination – especially by African American parents—to let other people get “into your business.” Of particular concern was the involvement of Child Protective Services (CPS), who many parents believed could remove your child from the home without substantiated evidence. As one mother said, “I was a young mother, I’m a minority, I’m below the rich standard...they say young mothers get the most attention from social services, and now because you want to...play those cases with the court, now I have to go through this.” Parents also expressed concern about the consequences of courts “pulling up their background,” including a history of drug problems or incarceration. One father commented, “the judges and the prosecutors...they scare me...because I know their job. Their job is to throw my ass in jail.”

**Benefits of engaging the legal system:** Conversations with parents pointed to three situations in which they perceived potential benefits from engaging the legal system to establish custody and visitation.

First, some parents were **incapable of coming to an agreement** about where their child should live and how much time they should spend with each parent, or respect informal agreements that had been established. This was particularly likely when parents were unable to communicate, or when the situations that were previously deemed acceptable to both parents changed. For example, parents were more likely to formalize agreements when serious arguments emerged over the frequency or logistics of visitation, or new partners started taking on parenting responsibilities.

A second situation in which parents wanted to engage the legal system was when they needed to **clarify their legal rights and agreements**. Because they had a child outside of marriage, some parents believed their parental rights were ambiguous until they had a legal agreement. For example, they thought there was more opportunity for one parent to take the child against the wishes of the other parent, or withhold visitation. It was also hoped that a legal agreement could also clarify how and when visitation would take place.

Finally, mothers who had experienced intimate partner violence felt they could **protect themselves and their children from harm** through legal mechanisms, like restraining orders, supervised visitation, or sole custody orders. As one mother said, “My daughter’s father ... he’s been through abusing me, threatening to abuse my daughter...so it’s like I have to use the court... that’s the only way to keep us safe.” In some cases, mothers felt they had little choice in this matter, because their children could be removed by CPS if they did not maintain a physical separation between themselves and the father.

**Views of new access and visitation proposals:** Parents were also asked to discuss their views of new proposals that would make parenting time provisions part of the child support establishment process. As the following examples suggest, parents’ perceptions of the advantages and disadvantages of using Family Court to resolve custody and visitation disputes colored their reactions to this proposal.

**Negative responses:** Indigent parents in New York have access to assigned counsel in custody and visitation cases. Rather than viewing their access to Family Court as restricted, parents said that having limited financial resources meant it was actually more likely they would have to use this court. As one mother said, “A lot of two parent families can afford proper representation and can avoid the courts altogether...single income families have to use the courts because we have no choice.” For example, a child support case was automatically opened when women applied for TANF, and low-income parents typically could not hire a private attorney to negotiate agreements or enter mediation outside of court. One concern was that new proposals would result in **increased Family Court involvement**, and the emotional costs, family conflict, and government surveillance that came along with this. As one father stated, “What if you’re not satisfied with the visitation order?...it’s just a quicker way to the chopping block.”

Second, mothers who believed the law currently provided important protections for women and children in cases of domestic violence were concerned that these **protections would be weakened** if visitation and custody did not remain legally separate from child support. As such, they believed fewer women would establish child support order, and even apply for needed benefits if this put their children at risk. As one mother who had experienced severe violence in her relationship with the father stated, "...going to child support for the little money that he probably won't pay is not worth the threats...I absolutely would not go if I was forced to see him more often." Rather parents believed highly "sensitive issues" involving the safety of children be handled on a case by case basis.

Finally, a third group of parents believed that passage of this proposal would **make no difference** because of the difficulty enforcing legal visitation agreements. These parents argued that a legal agreement about parenting time was meaningless if the custodial parent was not willing to grant access to the child or the noncustodial parent was not interested in seeing the child.

**Positive responses:** Other parents felt new proposals could be helpful in clarifying fathers' legal status vis-à-vis children and simplifying the process of establishing a legal agreement. In particular, some fathers argued that noncustodial parents who paid child support should have a legal right to see their children. Even in the absence of legal enforcement, these parents recognized the symbolic value in establishing a non-custodial parent's rights and responsibilities. As one father stated, "At least they're giving you the idea that y'all both have can come to an agreement...You're not going to sit here and debate on whose turn it is to visit somebody...You've both got that right...and if you don't [visit], you're pretty much giving up your rights."

**Group differences:** Some differences in parents' responses also emerged which were related to the gender and racial composition of participants. In particular, both male and female groups were likely to place blame for their custody and visitation problems on the other gender, and fathers were more favorably included to new access and visitation proposals than women. The group consisting primarily of white men talked more about gender biases within the law, while the group of primarily African American men talked more about mothers using the legal process as a weapon. Similarly, the group consisting mainly of white women brought up more concerns about domestic violence, and the group of largely African-American women more often emphasized concerns about CPS involvement.

**Discussion:** These findings partially support Stack's observations over 40 years ago about the importance of the folk system for assigning rights and responsibilities for children, and families' fear of outside involvement in these decisions. Parents also emphasized the emotional costs to families, the likelihood of increased family conflict, and the loss of control they experienced in this process. At the same time, unmarried parents seemed to view their parenting rights and responsibilities "within the Shadow of the Law" even if they had informal agreements (Mnookin and Kornhauser, 1979). In other words, parents were often aware of the legal rules and protections, and viewed Family Court as a "last resort," when the safety of their children was threatened or informal agreements were highly unsatisfactory. Indeed, some parents in this study felt they had little choice but to "use the courts" if they had limited incomes.

Parents' perceptions of Family Court also colored their views of new federal proposals to increase noncustodial parents' access and visitation, by making provisions for parenting time part of the child support establishment process. As discussion of this proposal moves forward, it will be important to take into account how unmarried perceive the advantages and disadvantages of adjudicating decisions about parental access and visitation within the legal system.