Hidden Cost Of Conflict: An Interdisciplinary Examination Between Family Law, Therapeutic Jurisprudence, Justice, and Work Productivity for Employed Adults

Lisa M. Burton
University of Miami, lisaburtonworkitoutnow@gmail.com

Follow this and additional works at: https://scholarlyrepository.miami.edu/oa_dissertations

Recommended Citation
https://scholarlyrepository.miami.edu/oa_dissertations/1359

This Open access is brought to you for free and open access by the Electronic Theses and Dissertations at Scholarly Repository. It has been accepted for inclusion in Open Access Dissertations by an authorized administrator of Scholarly Repository. For more information, please contact repository.library@miami.edu.
UNIVERSITY OF MIAMI

HIDDEN COST OF CONFLICT: AN INTERDISCIPLINARY EXAMINATION
BETWEEN FAMILY LAW, THERAPEUTIC JURISPRUDENCE, JUSTICE, AND
WORK PRODUCTIVITY FOR EMPLOYED ADULTS

By

Lisa M. Burton

A DISSERTATION
Submitted to the Faculty
of the University of Miami
in partial fulfillment of the requirements for
the degree of Doctor of Philosophy

Coral Gables, Florida

December 2014
HIDDEN COST OF CONFLICT: AN INTERDISCIPLINARY EXAMINATION BETWEEN FAMILY LAW, THERAPEUTIC JURISPRUDENCE, JUSTICE, AND WORK PRODUCTIVITY FOR EMPLOYED ADULTS

Lisa M. Burton

Approved:

Steven Ullmann, Ph.D.
Professor of Management

Bernard Perlmutter, J.D.
Professor of Law

Kele Stewart, J.D.
Professor of Law

M. Brian Blake, Ph.D.
Dean of the Graduate School

Eva Szeli, Ph.D., J.D.
Senior Lecturer Psychology
Arizona State University

Adjunct Professor of Law
New York Law School
There is limited understanding of the experience of adults going through the court system to obtain a divorce. Linking the legal process of divorce for employed adults to workplace productivity has not been researched. The method of adjudication of divorce has not been linked to health or occupational outcomes. Results could have compelling implications for corporate work/life programs and public policy. Individuals experiencing heavy demands by either family responsibilities or work demands are at risk for poor mental and physical health outcomes. The role the legal system plays in the variability of stress reactions is unknown. Interdisciplinary knowledge may be useful to clarify the correlation among multiple variables to illuminate the variability in the divorcing response. Family friendly workplaces research has informed as to the cost of stress on employees’ physical and mental health outcomes. Recognizing that the probability of substantial rates of divorce will continue to affect society, this inquiry seeks to suggest the need to employ an interdisciplinary design to inform threats to occupational performance.
Dedication

This dissertation is dedicated to my husband, Richard. He keeps me warm, sane, safe, and fed. Thank you for doing the laundry, washing the floors, cooking dinner, doing the shopping, the 30 pages of references and never getting angry. Your love for me and our family, coupled with your dedication to our happiness, is our lottery. The presence of your love has proven to be unconditional, you are all I need or want. The “h” in Ph.D. is for husband. By the powers vested in me, by the state of my mind, I award you an honorary Ph.D. via osmosis. To my daughters, please do not wait till my age to receive your Ph.D. I want you to define your own pinnacles and climb. Thank you for making your lunches Sandy, thank you for not running away from home and helping me with my homework. Theresa, thank you for coming home safe and strong (and wiser). Danielle, thank you for being my Editor-in-Chief. You bring “home” with you, wherever you are. To Chris, thank you for taking care of my baby so I don’t have to worry (much). Treasure your marriage and each other. All of you have made this achievement possible for me.

To Jen, Nicole, Stephen, Nate, Jodi, Brooke, Zach and Christopher, I truly love you.

Girls, you will surpass my achievements. I set the bar high because I know you can reach it. Learn from my mistakes. Reach high but early in your lives. It’s hard to leave your babies to go to class. I missed many moments. You never held it against me.

To Mom, thank you for giving me strength, limitless love and encouragement, I get my ability to endure all things through you. To my sister and brother, thanks for staying together forever a family. I love you and yours.

To Daddy... I did it... I miss you. I feel you watching
Acknowledgments

Dr. Ullmann, for your commitment to my success, enviable editing, taking my calls (twelve years) and introducing me to Interdisciplinary Scholarship. I fit in everywhere, happily.

Special thanks to Jaquelinne Biver, for all these years of patience with a smile.

To Professor Perlmutter, for your genuine interest in my success, allowing me in your classes, welcoming me to the study of the law and stepping up to help me without hesitation. I am in awe of your wisdom. I was lucky to have you.

To Professor Stewart, for your positive energy, thoughtful critique, allowing me in your class and patience in my process. I always felt supported. Your insight cleared the path and helped me to the finish line. Thank you for welcoming an outsider.

To Dr. Scandura, for your guidance in the first half of my journey and creation of my doctoral blueprint. You opened a new field of inquiry for me.

To Dr. Szeli, for helping I believe I could do this, for years of help from miles away, for never saying no and allowing me to intrude on your vacations. You are my idol.

Dear Bruce, I am eternally grateful for your invitation to join you in your mission to make the law what it should be. This accomplishment started with our conversations. Your visions were contagious. No one will be shackled around me. You are gone but live on through your students, and your work will always guide others.

To Dr. Bedeau, for the structure and access to resources via The Graduate School. It helped me feel connected. The time you spent helping me stay on course was invaluable.

To Bryanna, my IT & WORD 2013 Angel. You saved my soul. You will go very far in life.
# TABLE OF CONTENTS

## CHAPTER ONE: INTRODUCTION

- Background .................................................................................................................. 1
- Purpose ......................................................................................................................... 5
- Conceptual Framework ................................................................................................. 6
- Outline of the Organization of Presented Research ..................................................... 7

## CHAPTER TWO: DESCRIPTION OF THE PROBLEM

- Emotional Responses to Divorce .................................................................................. 11
- Psychiatric Symptoms, Psychiatric Illness, and Work .................................................. 13
- Variability in Divorce Adjustment ................................................................................ 16

## CHAPTER THREE: NEED FOR EXPLORATORY RESEARCH AGENDA

- Define the Research Needed ......................................................................................... 21
- Deficits in the Literature ............................................................................................... 22
- Family Policy Concerns ............................................................................................... 22

## CHAPTER FOUR: SOCIAL SCIENCE RESEARCH

- Demography of Families .............................................................................................. 24
- Trends in Family Structure .......................................................................................... 24
- Trends in Marriage ....................................................................................................... 25
- Trends in Divorce ......................................................................................................... 28
CHAPTER FIVE: THE STUDY OF JURISPRUDENCE ............................................................. 31

Family Legal Theory .................................................................................................. 31

Therapeutic Jurisprudence ....................................................................................... 31

Application of Therapeutic Jurisprudence to Family Law ......................................... 35

Learning from TJ applications ................................................................................... 37

Role of Justice in Conflict Resolution ...................................................................... 40

Justice and Affective Response ................................................................................ 43

The Lawyer-Client Relationship .............................................................................. 44

Legal Regulation of the American Family .................................................................. 47

Contemporary Family Law Practice ......................................................................... 50

Public Policy Interests and Constitutional Scrutiny .................................................. 53

Federal Initiatives and the Family ............................................................................ 53

Law Reform .............................................................................................................. 56

New Legal Theory .................................................................................................... 56

Dissolution of Marriage ............................................................................................ 57

Professional Guidelines ........................................................................................... 58

A Vinculo Matrimonii ............................................................................................... 58

Adversarial Litigation ............................................................................................... 59

Mediation .................................................................................................................. 66
Work-Family Conflict and Health .................................................................................. 106
Adverse Life Event and Health Outcomes .................................................................. 107
Measuring the Cost of Conflict: Stress ....................................................................... 110
Mental Illness in the Workplace .................................................................................. 113
Risk Factors .............................................................................................................. 114
Work Function Impairment ......................................................................................... 115
Mental Illnesses Prevalent in the Workplace ............................................................. 116
Impairment of Productivity ......................................................................................... 118
Absenteism .................................................................................................................. 119
Presenteeism .............................................................................................................. 120
Distraction Factor ...................................................................................................... 121
Cost of Conflict to Employer ...................................................................................... 122
Cost Savings Variables Protective Factors ................................................................. 123
Human Resource Services .......................................................................................... 124
Pre-Paid Legal Plans .................................................................................................. 124
Human Resource Initiatives ......................................................................................... 125
Employee Assistance Programs .................................................................................. 126
CHAPTER SEVEN: DISCUSSION ................................................................................. 128
Integrative Principles ................................................................................................. 132
CHAPTER ONE: INTRODUCTION

Background

As an institution, marriage continues to be popular in the United States with an estimated 85-90% of adults getting married at least once during their lifespan (Karasu, 2007). Unfortunately, in an average year, 1.2 million Americans will also divorce (Krider & Fields, 2002). The National Center for Health Statistics predicted that one out of every two marriages will end in divorce (Copen, Daniels, Vespa, & Mosher, 2012; Bramlett & Mosher, 2002), and demographic experts calculate the divorce rate at 43% to 50% for first-time marriages (Manning, Brown, & Payne, 2014; Schoen & Canudas-Romo, 2006; Kennedy & Ruggles, 2014). This increase in the divorce rate is a recent societal development because until 1974, the leading cause of the end of a marriage was death (Pinsof, 2002).

As our society becomes increasingly more litigious and adversarial, the demand for court services is at an all-time high. Families have become increasingly litigious and adversarial in resolving their disputes. Domestic-related case filings in the civil courts, including juvenile matters, exceed 7,000,000 filings annually (Rubin, 1998). Intra-familial disputes have become a public policy and public health issue; some even go so far as to indicate that it is a public health crisis (Schepard, 1998).

Marital conflict precedes separation and divorce. Once a separation or divorce proceeding is initiated, uncertainty looms on the horizon. In light of the epidemiological evidence of the prevalence of mental illness combined with stressors of social-relational
and socio-economic changes, this population is particularly susceptible to mental health problems (Wang, & Amato, 2000; Adler, 2006).

Family roles and employment represent the core of adult identity. During divorce proceedings, family roles are in a state of flux. Economic need is a reality in most families, with most adult family members needing to participate in the workforce, either as an employee or as self-employed. Conflict with family roles that interferes with work is studied as Family Work Conflict (FWC). This concept is defined as “a form of interrole conflict in which the role pressures from work and family domains are mutually incompatible in some respect” (Greenhaus & Beutell, 1985). One can infer that the family court filings must include adults in the workforce although the number of employed adults going through divorce is unknown.

The divorce experience is entangled with the laws and proceedings of family court. Emotionally in transition, litigants must make sense of the legal system that is foreign, rigid, and the personal stakes are high. Keeping in mind, that while chartering this new territory the litigants are attempting to remain employed. This is not a linear experience for most individuals. Dissolving a marriage is more complicated than a simple algorithm of legal steps. Litigants that are employees are a financial drain on organizations; research points to a higher incidence of mistakes, decrease in efficiency, and negative emotional spillover to co-workers and customers (Andrews, 2005). Few divorce studies focus on the separation process or transition out of the marriage (Amato, 2010; Sassler, 2010; Carr & Springer, 2010) or the work-life interface. Similarly telling, the field studying WFC ignores a life course perspective. Life course perspectives address the employee’s well-being and organizational identity from the stage of life they
are experiencing (Allen & Finkelstein, 2014). The absence of this point of view from two distinct yet overlapping fields is a critical flaw in our understanding of the functional aspects of divorce.

As employees become litigants, the effect of involvement in the legal system adds a source for FWC. I suggest the employee/litigant cohort is an underexplored ‘linked life’ between corporate and legal arenas because the influence of both systems may be bi-directional. The need to integrate business needs and involve business leaders in supporting improvement in the model for resolving family disputes has been identified by only one Family Law Scholar, Rebecca Kourlis (2012). Meanwhile, others are identifying how profoundly the system is broken.

Family Law Scholar, Claire Huntington (2014), describes the family law dispute process as poorly matched with the intimate, personal nature of family attachment. The title of Huntington’s recent work, Failure to Flourish: How Law Undermines Family Relationships, suggests the law may be part of the fracture in the status of our unions. Litigants, in pursuit of a dissection of the spousal relationship, are subjected to jurisprudence, which may lead to a “complete rupture” of family connection. The civil law approach adds adversarial tactics to fragile families in the midst of their efforts to seek help to resolve disputes. It is, therefore, no surprise that for decades, major life event researchers have cited divorce as the number one life stressor (Holmes & Rahe, 1967, Dohrenwend & Dohrenwend, 1974; Lazarus & Folkman, 1984).

During the divorce process, adults may potentially begin to show signs of emotional and physical wear and tear. Emotionally exhausted and financially drained, many are at risk of underperforming at work at a time when employment is especially
precious. Despite the known threat of the adversarial nature of dissolution litigation, empirical studies have not addressed obvious chronological overlap of the well-being of the individual and the workforce. WFC research has not considered variables that reflect the relationship between the process of divorcing, employee productivity and evidence of work-family culture and legal means of divorcing.

Employee behavior of the litigant during this major life transition is unstudied. I suggest there is an unmet need for the litigant to take their “oxygen first.” I use this familiar phrase (heard when flight attendants are instructing on the emergency use of oxygen masks) to demonstrate the emergency status of families experiencing severe turbulence. Struggling to redefine their lives, most divorcing parents are justifiably concerned about their children, perhaps before taking care of themselves. Current research does not address the litigant’s health care behavior, self-care behavior, support systems or consider the workplace as a potential source of support or the identifiable source of “oxygen”.

Little has been done to investigate how an employee navigates through the divorce process while maintaining job responsibilities. When does the process begin? When is it over? Separated women and men make the transition to divorce from their first marriage within five years. Among women, about one-half of the studied population were divorced from a first marriage within one year of separation, 79% within three years and 86% within five years. Among men, 65% were divorced within one year, 81% within three years, and 87% within five years. (Copen et al., 2012). Anywhere from one year to five years is a long time for an individual to be in a state of limbo. Prolonged separation leading to divorce is the rule, and the period of the separation status is open-ended. There
are various phases of litigation in which stress may be linked to the litigant’s court docket and court outcomes. Intermittent, long-term stress has been associated with a variety of psychological and health behavior outcomes that increase chronic disease risk, a factor that may affect the overall financial well-being of employees (Hill, et al., 2014).

Most divorce studies have focused on antecedents or predictors and consequences of divorce in adults and children (Peterson & Bush, 2013; Fincham & Beach, 2010). Distinguishing between the legal process and psychological, physical health, as well as occupational performance during the transitional period is an important gap that requires further research. Further research is imperative in assisting corporations in addressing employee mental health needs during marital dissolution; however, corporate policy must be guided by measurement of cost and return on investment. Studies such as the Work Outcomes Research Cost-Benefit (WORC) project the cost of depression and the cost benefit of early detection and is therefore able to analyze return on investment, from the employer’s perspective (Hilton et al., 2008). What is the organizational cost of intra-family conflict?

**Purpose**

This dissertation is interdisciplinary by design and the spirit of inquiry. The study of human behavior is inherently linked to an infinite number of factors. The theoretical perspectives of a myriad of disciplines are necessary to understand the complex problems of the divorcing adult. The boundaries of each single discipline need to be expanded as each overlap and complement the other. The sciences explaining mental and physical health, social and psychological response, economics, and legal realities are disparate
disciplines. I suggest these disciplines be studied in tandem, for that is the lived experience of adults going through divorce.

The practice of family law and the family court process are fixed, separate, variable and inescapable systems that intersect with life of the litigant/employee. Work is conceptually a fixed reality though a variable experience for all adults. Recognizing that family life is being redefined; family responsibilities are being redistributed, the existence of the family remains a reality yet the employee/ litigant cannot fully anticipate what is ahead.

This dissertation looks at the literature for evidence of empirical understanding regarding the range of distress during the divorcing. Identifying the causal or protective factors within the individual, the legal experience, and the work culture are potential immunization against employee functional decline. The systems of court and industry simultaneously make demands on the employee/ litigants. Responding to these demands may not be optional causing employees’ distress.

By discussing the findings and difficulties in these systems, other unidentified problems can emerge and thus, an exploration can begin. Ultimately, the goal is to find and prioritize new research questions and begin to develop an interdisciplinary conceptual framework.

*Conceptual Framework*

The adversarial climate of the law is emerging as a variable associated with stress and participant dissatisfaction. Therapeutic Jurisprudence and Procedural Justice are part of
the Comprehensive Law Movement involved in Legal Reform. Wexler and Winick (1991), co-founders of Therapeutic Jurisprudence (TJ), describe TJ as follows:

Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent. It is an interdisciplinary enterprise designed to produce scholarship that is particularly useful for law reform...it explores how, consistent with principles of justice, the knowledge, theories, and insights of the mental health and related disciplines can help the development of the law.

Examining the family law process by utilizing this framework of legal scholarship may offer insight as to how the judicial process impacts individuals therapeutically or anti-therapeutically. Industry experts recognize the current system of resolving disputes is in need of examination for reform. The role of a lawyer is also conceptually changing. The practice of law, once fiercely rejecting outsiders, has evolved to involve multiple disciplines.

Outline of the Organization of Presented Research

The overall aim of this study is to begin a conceptual formulation of the experience of the litigant employee by the review of the literature of multiple disciplines. Broad review of disciplines most involved in the study of divorce may identify opportunities to expand our current knowledge regarding the divorcing working adult in the United States. This work will report on the status of the empirical work regarding the relationship between the process of divorce and employee work functioning. What follows is a review of specific areas of the literature: health care including psychiatry: mental illness in the workplace; psychology: resilience, stress and, occupational health care; and health care economics.
This concept formulation starts with the known demographic research and population studies to evaluate the state of coupling and uncoupling today, and the relationship between conflict and emotions. The next part of this dissertation describes issues under the broad category of family law jurisprudence: identifying emerging legal theory; procedural justice and alternatives to divorce; conflict resolution, and the history of family law and practice. Discussion of the problems with the family legal system includes current challenges to the image of the legal profession, relevance of attorney-client relationships and critical stressors affecting the legal system. Next, topics from Organizational Psychology and Work Family Life scholars inform of the difficulty of work-life interface, work-life balance, work conflict, and the importance of the organizational culture.

Following this discussion, I will review research from the occupational health and psychiatric epidemiology fields, specifically the impact of stress on health; the effect of marital status on employee health, the incidence of mental illness and the subsequent costs to society and the organization. Topics addressing employee productivity; human resources management and useful employee benefits will be shared. Interdisciplinary efforts towards improving family law will be reviewed. Finally, a synthesis of the findings, ideas for additional reform and a future research agenda will be proposed.
CHAPTER TWO: DESCRIPTION OF THE PROBLEM

Research has not considered variables that examine the relationship between work productivity and the subjective experience of justice related to the legal process of obtaining a divorce. Previous research does not address occupational costs of the legal effort to pursue, enforce, or avoid family rights and responsibilities.

Throughout this dissertation, I suggest health care analogies for another perspective on these issues. The fields of medicine and nursing use research methods that if duplicated, may be used as a guide for legal studies. Examples include Cost of Illness Research, (COI); Comparative Effectiveness Research, (CER); and Patient-Reported Outcome Measures, (PROM). These methods now fall under Dissemination and Implementation Science, a new branch of science aimed at translating knowledge into practice (Hastings-Tolsma, Matthews, Nelson, & Schmiege, 2013). Cost-of-illness research methods quantify incremental direct and indirect costs of illness. Comparative effectiveness research (CER) addresses health care decisions based on costs, utilization, and efficacy as compared to other available treatment options (Feudtner, Schreiner & Lantos, 2013; Hastings-Tolsma et al., 2013). Examined indirect costs may include presenteeism, absenteeism, quality of life reductions, and premature death. Direct costs include inpatient and outpatient services as well as injectable and prescription medications. The results of an analysis inform third party payers, society, employers, and patients on efficacy and cost benefits. The usefulness of the drug as a product is based on clinical as well as economic value. Health care providers have recognized that consideration of patients' experience is essential for optimal decision-making. The term "Patient-Reported Outcome Measure" (PROM) addresses a particular process. De Souza
et al., (2014) developed a PROM examining the financial distress experienced from the patient's perspective by determining a comprehensive score for financial toxicity (COST) of cancer treatment. By understanding the correlation between financial toxicity and quality of life or survival in cancer patients, clinicians and patients can make life and death decisions by being better-informed. Some decisions in family law have a life or death magnitude of importance for the litigant (e.g. custody and relocation decisions).

Family law procedures are similar in that they are interventions; Alternative Dispute Resolution (ADR) methods are a product with similarities to medication or surgical methods. Should litigants base the choice of interventions and alternatives on the efficacy of legal outcomes? Which divorce alternative, e.g. ADR outcome, is superior based on the systematic evaluation of costs, benefits, and risk vs. reward? Currently, outcome research has yet to be addressed sufficiently in the legal context. This shortfall is significant for both the litigant and organizations. The litigant's experience changes the indirect and direct cost of medical care for themselves and their families. Costs are passed down to organizational payers in terms of employee benefits. Family-work conflict is bidirectional. Work issues have been linked to depression and threatened emotional well-being (Wang, Afifi, Cox & Sareen, 2007; Cooper & Robertson, 1989; Grant-Vallone & Donaldson, 2001) and poor physical health (Brisson et al., 1999). Indirect workplace costs of depression account for more than half of the economic burden of depression and has the greatest adverse effect on work performance (Kessler et al., 2008). More empirical attention from disciplines that cross the path of divorce is needed to understand and optimize the litigant's experience, consider resources and the litigants' health and wellbeing. To date, there is no evidence of empirical research linking methods
of divorcing, levels of acrimony, or presence of a work-family culture to positive or negative work performance or effectiveness trials permitting comparisons of all alternatives to obtain divorce. What would be needed to determine a comprehensive score for financial toxicity of legal care?

Emotional Responses to Divorce

Years of evidence from social and epidemiology sciences associate more mental health problems for divorced adults than those who are married. Recent work by Symoens, Velde, Colman, & Bracke (2014) confirms previous results and furthers the science. Using data from The European Social Survey (n= 18,376) Symoens et al. assessed respondents from more than 25 European countries in 2006 and 2007. Results found that divorce was negatively related to all dimensions of mental health measured for both sexes (Symoens et al., 2014). This study is unique in that the subjects were assessed using positive and negative indicators. Most studies have not looked at the potential positive effects of divorce. Researchers isolated evidence of personal and social well-being by using dimensions measuring depression, self-esteem, autonomy, and competence.

Current employment indicated stronger mental health benefit for divorced subjects as compared to married subjects. Identifying employment as a potential moderator for mental illness is significant to this dissertation. The need for further research identifying moderating or preventive factors to maintain mental wellness, prevent or improve mental illness, and work life stress during marital dissolution is crucial.
Anxiety and depressed moods are common signs of psychological distress and may rise to subclinical and clinical psychiatric illness. Marital dissolution involves change in how, where and by whom the family’s basic needs are met. Emotional effect can be devastating, dependent upon a number of variables including: level of acrimony, presence of mental health or substance abuse issues, domestic violence, support systems and timely resolution of legal matters (Firestone & Weinstein, 2004). From an employer perspective, emotional reactivity is not limited to the role of the spouse. Employees are also third parties in roles as grandparents, nieces, nephews, or friends. The significant negative impact on children further complicates the Family to Work Conflict, in addition to the often less examined Work to Family Conflict in the literature, (Bianchi, & Milkie, 2010) family factors have “simultaneously disruptive effects on both spheres” (Byron, 2005, p. 190).

The World Health Organization has recognized mental health problems as a global problem with depression accounting for 40.5% of the disability caused by mental disorders, noting “the burden of mental and substance use disorders increased by 37·6% between 1990 and 2010” (Whiteford, 2014, p.1576). Anxiety disorders rank as one of the most prevalent of all mental illnesses (Cuijpers et al., 2014). Anxiety represents an economic burden estimated to be between $42.3 and $46.6 billion annually in the United States (DuPoint et al., 1996; Greenberg et al., 1999). The National Comorbidity Survey estimated Anxiety Disorders represent a 1-year prevalence of 17.2% and a lifetime prevalence of 24.9% (Kessler et al., 1994). Excessive worry, fear, apprehension, ruminating, obsessive thoughts are symptoms of an anxiety disorder (Arikian & Gorman, 2001).
Patients with anxiety disorders often have physical symptoms, comorbid general medical conditions, and other psychiatric disorders. For example, individuals with an anxiety disorder also may present with physical symptoms such as heart palpitations, nonspecific gastrointestinal, genitourinary, musculoskeletal, or somatosensory complaints (Arikian & Gorman, 2001). The estimated comorbidity rate between anxiety disorders, major depression, or dysthymia can be as high as 70% (Kessler et al., 1999). Medical conditions that co-exist with anxiety are common, and include conditions such as diabetes, hypertension, acute myocardial infarction, asthma, irritable bowel syndrome, and dermatitis (Kessler et al., 2001b; Kessler et al., 2001a; Noyes 2001). Due to the high prevalence of anxiety disorders with the high rate of comorbidity with physical symptoms of general medical and psychiatric conditions, it is not surprising that the medical condition of anxiety is extremely costly for society. The sequelae from mental health problems become part of the costs of doing business for employers and organizations.

*Psychiatric Symptoms, Psychiatric Illness, and Work*

Individuals with a psychiatric disorder have a greater number of days during which they are unproductive or unable to function at full capacity compared with those who do not have a psychiatric disorder (Kessler & Frank, 1997; Dewa & Lin, 2000; Dewa et al., 2002; Stewart et al., 2003). There are workplace costs such as disability and productivity, which are critical for employers and insurers. Research has shown that most employees of certain occupations experiencing illnesses are usually present at work (Aronsson, Gustafsson, & Dallner, 2000). Jobs such as teachers or caregiving roles (with difficulties finding replacements while they were out) went to work, evidencing impaired
functioning. Illness-related presenteeism (suboptimal work performance) is a significant productivity and performance cost to industry (Scuffham, Vecchio & Whiteford, 2014). Findings in Scuffham’s (2014) study confirmed early studies that associate higher “mental illness presenteeism” than “physical illness presenteeism” (Aronsson et al., 2000). Mental health problems are in the top 10 of all health conditions incurring health related costs to employers (Hilton et al., 2008). Work performance reported is substantially reduced (Stewart et al., 2003). Clearly, there are economic implications from diminished work performance: risks and costs from reduced concentration, fatigue, errors and job turnover costs, commonly categorized as indirect costs, especially relevant with Bipolar Depression (Cocker, et. al; 2014; Montejano, Goetzel, & Ozminkowski, 2005). Depression related to presenteeism is considered more of a productivity drain as it is more prevalent and more costly than absenteeism (Stewart et al., 2003).

Cocker et al., (2014) reviewed costs from an international perspective. In their article, “Depression in working adults: Comparing the costs and health outcomes of working when ill,” Cocker concluded: “Internationally, this equates to an estimated 35.7 billion USD (Stewart et al., 2003), 15.1 billion UK pounds (Cox, Ness & Carlson, 2010) and 12.6 billion Australian dollars annually” (La Montagne et al., 2010).

Demographic research often do not isolate the “separated” marital status when screening for adult at risk for depression, other mental illness or psychological distress; yet, the risk to organizations may be significant as a silent risk (Hilton et al., 2014). As part of the larger from Work Outcomes Research Cost-benefit (WORC) Project, Hilton recruited employees from over two hundred large government and private companies for a resulting sample size of 60,556 full-time employees. Hilton used the highly validated
Health and Performance at Work Questionnaire, which has an embedded psychological distress scale, to assess mental health symptom severity.

Employers did not expect mental illness or psychological distress in their workforce. Hilton discusses pervasive upper management denial of the presence of mental illness within their organizations:

Exhaustive large-scale mental health epidemiological studies such as the National Comorbidity Survey and its replication in the US, Mental Health Supplement to Ontario Health Survey (Canada), The New Zealand Mental Health Survey, The Australian National Survey of Mental Health and Well-Being, The Netherlands Mental Health and Incidence Study, have unanimously concluded that mental health problems are highly prevalent in society with a 12-month prevalence of between 19% and 30%.

High psychological distress was present in 4.5% of full-time employees, and across all employee types. An alarming 31% of the studied workforce showed evidence of high psychological measures of distress yet did not recognize the need for help.

Authors concluded that the psychological distress remained largely untreated finding further minimization of mental health issues (19% of the studied population), pre-existing mental illness, and reports that this was unable to resume treatment due to their high levels of distress. Hilton cautioned employers and managers to be proactive:

Management should not accept the anachronistic dogma that their specific patch of employees is shielded from mental health problems. This information is, hopefully, orexigenic building an appetite for a more proactive approach to employee mental health. Thus, we posit that employee screening may an appropriate mechanism to detect mental health problems, and these employees could be encouraged to engage or re-engage with a mental health professional.

Essential to this dissertation study, Hilton's results indicated marriage or cohabitation was "associated with the lowest psychological distress prevalence rates whereas being
separated is associated with the highest prevalence rates for males and second highest prevalence for females" (Italics added for emphasis).

Variability in Divorce Adjustment

Identifying an expected recovery time informs both the individuals and organizations in forecasting the availability of supportive work-family cultures. The literature reports variability of the divorcing experience (Brown & Harris, 1989) with 30 to 40 percent of reporting an increase in emotional distress expressing depression and anxiety.

Hetherington’s (2006) work points to a two year heightened conflict period and that by year six, both ex-spouses have disconnected. At year six, the ex-spouse relationship, which had played a significant role in adjustment in the first two years, had faded dramatically in importance for both sexes (Hetherington, 2006). The influence of high conflict, marital problem-solving, and parental acrimony negatively impacted both the ex-spouse and children's adjustment (Hetherington, 2006). Johnston and Campbell (1985) propose an eighteen-to-twenty-four month period of post-separation adjustment that begins and ends the majority of personal and interpersonal turmoil for the divorcing couple. Previous research also identifies the first two years, as the most difficult time. After these two years, life appears, for most, to become more stable and satisfying (Hetherington, 2006).

The adjustment research suggests variable factors influence the severity and duration of adverse divorce effects. For example: the adjustment period is different for men vs. woman; (Amato, 2010) woman with or without children (Williams & Dunne-Bryant, 2006); initiators; (Baum, 2003, Wang & Amato, 2000), infidelity; (Atkins, Baucom, &
Jacobson, 2001; Gordon, Baucom & Synder, 2004); individuals over fifty years old; (Brown & Lin, 2012; Hayes, Anderson & Blau, 1994) and financial stability (Forste & Heaton, 2004; Hayes et al., 1994). Some lives improved more rapidly such as those from seriously dysfunctional marriages (Amato & Hohmann-Marriott, 2007). The benefit derived is thought to be from the "relief to escape". Ironically, marriages without serious distress had longer recovery periods. Authors postulate the stressors of divorce were unexpectedly hard, or the complexity of single lives with responsibilities unshared was underestimated. Barret (2000) found worsening recovery periods for second divorces vs. first ones. There is documentation in the literature that mental health does eventually improve returning to equivalent status of the married (Amato & Booth, 1991a, 1991b).

Pre-dissolution issues for litigants are needed in the family and law literature. Resilience to depression and anxiety during divorce is not well understood from the perspective of adults, with more research focused on resilience in children and post-divorce (Frisby et al., 2012). None of the studies reviewed addressed transitional work function impairment during separation or before divorce. Marital transitions are comprised of both a stressful event mixed with a period of chronic strain that is time limited. Stress precedes and follows the events each of which may have affected health and distinctive ways. Descriptions identifying the way that divorce/separation are linked with physical and mental health are needed.

Empirical research has demonstrated clear support for adverse changes in health status following marital dissolution (Amato & Booth, 1991a, 1991b; Menaghan & Lieberman, 1986; Gerstel, Riessman & Rosenfield, 1985). The status of one’s family is a powerful influence on health, as our family is our piece of the world; our nucleus. Any
threats or blessings are powerful contributors to our emotional and physical condition. Families do not remain static. If you are breathing, you are changing. Researchers have made progress in entangling whether the association between marital stress and health reflects social causation i.e. marriage provides health enhancing resources for selection of partner; or i.e. persons in the best shape are most likely to marry and remain married. So much for "in sickness and health".

Significant gains are anticipated due to the robust longitudinal data collected over the past decade putting our social scientists in the best position to plow through the data. The ability to track individual health changes as one experiences marital transitions have opened up empirical heaven" (Carr & Springer, 2010).

Despite the usefulness of existing studies, the findings do not address what factors promote or impair divorce adjustment among working adults. There is a need to synthesize research from the last decade from multiple disciplines. The physical and mental health of the entire family is affected by the course of a divorce. There has been a vast amount of research on families. The research over the past decade includes the additional disciplines of sociology, psychology, epidemiology, medicine, nursing, gerontology and social work. The analysis of longitudinal data over the past 10 years documented that adverse effects of marital transitions are partially due to stressful factors that precede, accompany, or follow the change. For example, Sun (2001) found that adolescents with parents who subsequently divorced experienced more psychological and behavioral problems even before the divorce. Parents’ divorce characteristics affect both the divorce risk and children's health accounting for part of the causal link (Furstenberg & Kiernan, 2001).
Researchers have made progress untangling what the association between marital stress and health reflects. Longitudinal surveys collected over the past decade have enabled researchers to track individual health changes as one experiences marital transitions. Classic studies of divorce presume that all the solutions were stressful and deleterious to mental and physical health (Holmes & Rahe, 1967). Contemporary research however revealed a marital dissolution does not have uniformly harmful consequences.

In a review of the advances in family and health research, Springer's analysis focuses on families, health, and research published between 2000 and 2009. In Carr and Springer's (2010) article describing the advances in family and health research in the 21st century, she emphasizes her finding that health was the single most important indicator of overall well-being. The impact on employee health worsening during divorce proceedings is absent in this vast body of literature.
CHAPTER THREE: NEED FOR EXPLORATORY RESEARCH AGENDA

Examination of critical health risk factors is a common consideration in medical care. The costs and benefits of wellness and prevention programs are standard workplace economic variables that are of considerable interest in industry. The value of the health and wellbeing of the workforce is a well-accepted tenet of healthy organizations. Employees are encouraged to exercise, eat right, and make healthy choices. Family factors that profoundly influence the wellbeing of the employee are not considered or measured for impact. Given the prevalence of divorce, identification of resiliency factors may be an important aspect of planning organizational support efforts (Greeff & Van Der Merwe, 2004). Hypothesized variables that predict an employee’s ability to maintain productivity could be health related, interpersonal, organizational, or related to one’s legal course. Seemingly, perpetual research questions surrounding the family and causes of divorce appear in social science literature. The growing discontent with the present divorce process has given birth to various alternatives in obtaining a divorce.

Alternative Dispute Resolution (ADR) methods are now commonplace in dissolution proceedings. The links between work performance and work-family conflicts during this time are not linked to variability of the legal course. The role the legal system plays in the process is an unknown.

Work life scholars and divorce scholars need to explore the following question; what conditions, such as which occupation and legal intervention (e.g. ADR), resulted in what outcome for whom? For example, do teachers using mediation services experience more or less physical, mental and professional distress as compared to teachers using
collaborative divorce services? Does a positive corporate culture, flexible leave time and paid time off policies act as a moderator? These issues have yet to be examined.

In medicine, clinical trials are painstakingly executed to determine efficacy and risks before obtaining the prized FDA approval. If "getting divorced" is the "bacteria", the choice of antibiotics are the ADR and traditional litigation methods. There is a need to identify and then clarify the correlation among multiple variables to illuminate the variability in the divorcing response. The variability of distress may be linked to the dissolution method or court system experience. Since there is no alternative to getting legally divorced, research aimed at understanding success rate, "side effects", and the cost benefits analysis of alternatives is needed to develop sound policy.

Define the Research Needed

This initiative will assemble research findings from a variety of disciplines that specialize in work and family issues from the employee and workplace perspectives, plus psycho-legal research from family court systems on family issues and potential types of divorce services. Integrating scientific knowledge from diverse areas of social science is necessary as background to support the proposal of public policy initiatives. The intersection of how different dimensions of work and family act independently and interact to affect the health and well-being of workers from numerous disciplinary perspectives is unknown. Study of the social impact of these forces has involved decades of empirical efforts from multiple disciplines that have yet to prevent, mitigate or alleviate the devastating consequences of divorce.
Deficits in the Literature

The primary focus of scholarly work over the last ten years has revolved around who gets divorced (prediction), the emotional status of the children, the relationship with the former spouse and outcome of interventions for divorcing (Amato, 2010). Divorce is linked with elevated risk for a range of psychological and physical illnesses in spouses and children. The legal system may perpetuate the expected stressors of divorce, thus exacerbating or creating psychiatric or psychological illness or health. The variables that connect marital separations to important health outcomes are under-researched. The use of alternative divorce processes is an important variable to consider, from the standpoint of which process is the most beneficial for the health and well-being of workers, their families and children, and the workplace. Choice of method of divorce resolution (i.e. collaborative divorce, mediation versus litigation) and the impact on individual health and work productivity is unknown.

Family Policy Concerns

All working families ("intact", separated, divorced and single) face challenges relating to employer work-family policies, employee paid leave for illness and family obligations. Existing federal and state laws impacting family law and work policies are thought to be inadequate for all families. Implications for the use of understanding the occupational cost of family conflict may illuminate pathways for changing workplace policies and practice. Current workplace interventions used to accommodate the divorcing employee are barely reported in the literature. The challenge of today's legal (divorce) system is to utilize and incorporate the psychological, legal, and occupational
research in a manner that helps society limit the spillover adverse effects of litigation on health, productivity, and mental health. Exploring business policies targeting legal alternatives for family interventions for the prevention of interpersonal problems and resulting mental illness may lead to significant psychosocial and economic benefits for business and society. This dissertation is the first to examine the literature connecting the occupational impact on productivity during separation while comparing various methods of the attainment of a divorce.

This work supports the need to integrate research focused on the costs of mental illness to employers due to: greater absenteeism; decreased productivity when at work (i.e., presenteeism); lack of engagement; more accidents; more interpersonal conflict (with supervisors, co-workers, subordinates, and customers); lower morale; and increased workforce turnover (leading to increased recruiting and retraining costs for replacement workers).

By incorporating relevant domains of work, family, health, and mental well-being research with current legal perspectives and practices, we can begin to identify the specific workplace issues that become barriers for employees going through the divorce process. The goals of organizations seeking to improve industrial outcomes may be strengthened by knowledge of what employees deal with when intersecting with the family law system. Family law scholars, policymakers, work-life professionals, and employers share in the successful outcome of the people they serve. The investment of this inquiry can lead to identifying the best workplace policies for employees engaged in the divorce process. Results of this proposal are potentially significant, as these topics have been neglected in the conversation about divorce.
CHAPTER FOUR: SOCIAL SCIENCE RESEARCH

Demography of Families

The social science literature in the last decade has exploded in scope, diversity, and methodology. Research is dispersed amongst several overlapping yet very different disciplines. The results of empirical demographic study have been advanced by the access to longitudinal data and funding from the Bush Marriage Initiative (Fincham & Beach, 2010). A brief overview of current trends in cohabitation, marriage, divorce, and remarriage will be discussed.

Trends in Family Structure

The past fifty years have seen a profound change in family structures. The concept of “what is family” in the United States has changed dramatically. Glendon (2006) describes the process as “a quake” starting in the mid-1960’s in North America, Europe and Australia, erupting the whole set of demographic indicators. Birth rates and marriages fell while divorce rates, birth of children outside of marriage and the rate of nonmarital cohabitation escalated (Glendon, 2006). We are shifting from rigid family structures to quite flexible family structures. The menu of what constitutes a family has changed. Changes include freedom to divorce, gay marriage, multi-racial households, and children born to unmarried parents, scientific reproduction, and people living alone. It is not a constitutionally protected right to form families in the United States yet there is a constitutional right to marry. The only federal “legal family” in America remains heterosexual (traditional Mother and Father). The Defense of Marriage Act (DOMA)
defined "marriage" as between a man and a woman for purposes of federal law. DOMA was overturned in 2013. As of October 10, 2014, eighteen states and the District of Columbia legally allow same-sex marriage: California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont and Washington (Smith, 2014).

_Trends in Marriage_

Whatever family one is part of, legally recognized or not, these are our neighbors, our employees, and co-workers. Laws affect us all. The cumulative discussions involving family law, i.e. same-sex marriage issue, custody of the outcomes from assisted reproductive technology, and the increasingly complex custody and relocation debates suggests, family law policy should continue to spark national debate for years to come (Elrod & Spector, 2013).

Marriage rates are on a steady decline. In 1960, approximately seventy percent of Americans were married. Today fifty percent will marry. Twenty percent will marry between the ages of eighteen and twenty-nine as compared to 1960, when that figure was sixty percent. Currently, American women are waiting six more years to get married than in 1960 (20 vs. 26 years old). The reasons why people marry have changed over time. People are now expecting personal fulfillment instead of, or in addition to, other goals such as property control or financial gain (Coontz, 2005). Couples are choosing to cohabitate instead of marrying. Half of first marriages in America are preceded by cohabitation. Fines (2012) report a fivefold increase in cohabitation from 1978 to 1998.
More than seven million couples cohabit (Smock, 2000). Cohabiting families give birth to close to fifty percent of children born "out of wedlock". Estimates are that nearly 40% of cohabiting couples have children (Bumpass & Hsien-Hen, 2000; Manning, Smock, Dorius, & Cooksy, 2014).

Schoen and Standish (2001) estimated that for all first marriages, half would end in divorce. They found substantial differences in marriage stability by age, race, and educational level at marriage. Marital dissolution is nearly 50% higher for black women than for white Non-Hispanic women (Mosher, 2002). Divorce rates for college-educated couples fell during the time those with a high school education rose. College-educated couples are more likely to stay married, with sixty percent of first marriages among women who did not graduate high school vs. thirty -six percent of college graduates ending in divorce (Schoen & Standish, 2001).

Researchers call this social-demographic change "the marriage gap". The marriage gap is generating a society of “greater inequality”, says National Marriage Project founder and co-director, David Popenoe. "America is becoming a nation divided not only by education and income levels, but unequal family structures" (Popenoe & Dafoe-Whitehead, 2006).

Marriage among the higher, more educated socio-economic classes is still strong. By age 30, women in the top five to 10 percent of income ranges are more likely to marry than in 1970. In contrast, those who marry before the age of twenty-two will have the greatest risk of divorce. Results from the latest National Marriage Project, State of Our Unions Report (2010) indicate marriage is becoming more of an elitist institution. The research supports other findings that the college educated; wealthier person is more likely
to get and stay married than those without a college degree. The lower middle class, those without college degrees, are more likely to have a child outside of marriage, have lower incomes, poorer health, and shorter longevity.

Family researchers predict sixty percent of marriages that began before the age of twenty end as well as forty percent of those that occurred after the age of twenty-two (Schoen & Standish, 2001). Concurring estimates are found in the State of Our Unions report by Rutgers' National Marriage Project (2006, 2010). The National Marriage Project is a nonpartisan, nonsectarian and interdisciplinary initiative found at Rutgers, the State University of New Jersey. They report the American divorce rate today is nearly twice that of 1960, but has declined slightly since hitting the highest point in our history in the early 1980s. They agree with other estimates that the average couple marrying for the first time in recent years has a lifetime probability of divorce or separation ranging between 40 and 50 percent.

According to the U.S. Census Bureau report, Marriage and Divorce: 2004, the average length of first marriages is about eight years. The average period between those deciding to divorce and then remarry was approximately three and a half years. In 2004, 12 percent of men and 13 percent of women had married twice, and 3 percent each had married three or more times. Reports of the incidence of remarriages indicate for every 100 marriages close to one-half are remarriages (Coontz, 2010).

Divorce crosses all races and the adult lifespan. Racial differences exist for both marriage and cohabitation. Researchers Schoen and Standish (2001) reported that seventy percent of all marriages to black women will dissolve, forty-seven percent of white women's marriages; and blacks are half as likely as whites to marry their cohabiting
partner. Divorce in second order marriages was 2.5 times greater than first marriages. This reinforces Amato's (2000) finding that nearly 50% of current marriage involve second or higher marriages for one or both of partners.

Brown and Lin's (2010) article "The Gray Divorce Revolution" reported the rate of divorce for middle-aged and older adults has doubled between 1990 and 2010 reflecting significant change in the stability of marriage for those over 50 years old. Breaking it down statistically, roughly one in four divorces in 2010 occurred to persons aged 50 and older compared with one in ten divorces in 1990. They noted remarriages were 40% more likely to divorce than first marriages. Kreider & Ellis (2011) report that baby boomers have the greatest number of marital events with at least one marriage and two divorces in that generational cohort.

Trends in Divorce

The National Survey of Family Growth (NSFG) provides information on how long first marriages last. The probability of first marriage reaching its 20th anniversary was 52% for women and 56% of men between 2006 to 2010 (NSFG, 2012).

Historically, the period between 1880 and 1890, the US experienced a 70% increase in divorce. In the 1920s, divorce rates rose sharply until the stock market crash resulting in the Great Depression. Divorce rates then dropped. The divorce rate increased steadily from the 20th century (except for the post-WWII period). With the threat of World War II, Americans again picked up matrimonial rates followed by another spike, with one in three marriages ending in divorce. Reaching the 1950s, America embraced the idea of white picket fences, and family became the center of the universe. Perception of
marriage in the United States shifted from a social obligation to a decision based on personal fulfillment. "The origins of modern divorce patterns date back more than 200 years, to the invention of the idea that marriage should be based on love and mutual affection" (Coontz, 2006).

Divorce began to be more socially acceptable. Reflective of the times, sociologists Ernest Burgess and Harvey Locke (1963) rationalized the rising divorce rates were due to making "the wrong choice". Divorce was the "white out". No-fault divorce was the deregulation of this "wrong choice". Many believe the revolution of divorce was due to the "no-fault" law that changed in 1970, and peaked around 1980 at fifty percent of first marriages (Amato & Booth, 1996; Bumpass 1990; Cherlin, 1999; Furstenberg, 1990; Waite, 1995).

Before 1970, divorce was granted on a "fault basis" including adultery, cruel and inhuman treatment, and abandonment. Sadly, “fewer than half the states accepted cruelty as a valid reason for divorce, but the cruelty had to reach extreme levels" (Coontz, 2007). Divorce laws gave social permission for people to get divorced at will, only needing to report "irreconcilable differences." California initiated one of the most radical changes in divorce law by becoming the first state to change to a no-fault system in 1970. The historical change to states adopting no-fault divorce laws loosened the grip of women and men from failed marriages. Today, no-fault divorce is the norm with every state in the country allowing for no-fault divorce with some variation. Aspirations for the no-fault system to eliminate the need for partners to engage in accusations that would need to be proven in court is accepted as a significant benefit from the change. Changes in unilateral divorce laws have also been attributed to a decrease in suicide rates, spousal homicide,
and potentially the incidence of domestic violence. Investigators report an 8 to 16 percent reduction in female suicide rates, a 30 percent decline in domestic violence, and a 10 percent reduction in female homicide (Cáceres-Delpiano, & Giolito, 2012).

Ironically, there is still a way to blame your spouse for the demise of the marriage or prevent a fleeing spouse from freedom. Three states, (Louisiana, Arkansas, and Arizona) allow those game-changing rules to be reintroduced based on parties’ voluntary election of a “covenant marriage” contract. The statutorily protected premarital contract limits the grounds for divorce. Parties would need to prove allegations of serious fault, such as adultery, conviction of a felony, abandonment for one year, or physical or sexual abuse of a spouse or a child. In covenant marriage contracts, the parties do not create their terms; instead, the contract terms already exist as drafted by the state legislature (Jules & Nicola, 2014). The parties contract by just committing to an agreement. Unique to Louisiana, legislation imposes upon the parties some of the terms customarily left out of standard prenuptial agreements, marriage obligations other than dissolution rights.

For example, the Louisiana statute provides that parties must agree to “mutual love and respect, mutual residence, decision-making in the best interest of the family, mutual duty for household management, and the teaching of children in accordance with their capacities, natural inclinations, and aspirations” (Jules & Nicola, 2014).

The price for this freedom is still debated, some blaming the change to no-fault divorce as the beginning of the demise of marriage.
CHAPTER FIVE: THE STUDY OF JURISPRUDENCE

Family Legal Theory

This section’s topic, family law scholarship, will inform the past and present history of family, federal, and state law litigation, and the current family law system. Historical perspectives on marriage and divorce, attorney attitudes, and the interface between psychology and law will be reviewed. There are several identified problems that are relevant to this dissertation: access to justice, the damaging effects of litigation, public satisfaction with family law and lawyers, emerging theories in family law, alternatives to dispute resolution, divorce litigation, mediation, and collaborative law practices, and current ongoing reform. The current divorce system will be viewed through the lens of therapeutic jurisprudence. The chosen adjudication method to end a marriage is not a concern of the workplace or employer. However, there is a growing recognition that the linkage between work and non-work process has a significant impact on the workplace process.

Therapeutic Jurisprudence

Therapeutic Jurisprudence (TJ) scholars have been striving to change awareness of the adversarial impact of the law. TJ explores the psychological ramifications of a legal solution for the client. Lawyers review the legal impact and financial ramifications of any decision. TJ argues that a third set of factors, the emotional impact of the decision, should be a factor (Kupfer Schneider, 1999). I suggest there is another variable, the
ramifications of litigation on employee health and work productivity, that should be considered.

I suggest the “non-work” process of divorce adjudication is “linkage” to the workplace. Looking through the lens of TJ, everything that happens, all the players in that parallel legal universe have a therapeutic or non-therapeutic impact. The TJ view maintains that all the legal procedures, substantive laws and legal actors and those involved in the system (quasi-legal actors) play important roles in the therapeutic effects of the law (Bryant, 2006).

Exposure to family court has been described as destructive (Firestone, & Weinstein, 2004). Parents regard their lawyers as making hostility worse (Pruett & Jackson, 1999). Family law scholars have echoed the similar judgment, finding attorneys raise the level of conflict (Braver & O’Connell, 1998; Emery, 1994, 1999).

TJ is particularly relevant in its application to family law due to the concern about the emotional impact of judicial decisions. That impact is of particular importance in family law due to the lifelong consequences for the family. Looking through “the lens” of TJ, how can the procedures of family law decisions be positive? How is it unnecessarily negative? TJ is not a method or a policy; it is a choice on the legal menu that is a “school of thought” (Daicoff, 1999). The role of the lawyers, court procedure judges, and rule of law may seem a rigid, inflexible structure. The way in which any one of those legal actors delivers the services for which they have been trained can vary vastly. There are no two identical snowflakes and no such thing as identical family law experiences. This leaves an opportunity for “man-made” improvements to the delivery of
legal services. This particular field of law has been growing in a direction toward less adversarial methodology.

If individual reaction to judicial decisions is anti-therapeutic, the result may cause distancing or posturing family dynamics that have a high risk of negatively impacting the emotional health of the participants. In family law, current adjudication in custody matters seeks “the best interests of the child”. Seeds are sown for whomever will triumph. Which parent will win? A child does not “win” when adversarial methods feed the fire of high conflict. This is a zero sum game. One parent “wins” and one parent “loses” in the end. However, what happens during the process? When does the process start? What happens to each parent’s resources such as time, energy, physical and financial reserves? Much of family law conflict is centered on custody, access, and financial responsibility. If a parent chooses to fight, do they understand what is ahead? How do they know what resources they need? As each parent fights to win, what are the ramifications of losing? They are both still parents needing to co-parent the children into adulthood. Parents can add to the conflict as they are in a transitioning period themselves. Often their legal arguments are psychologically driven and reflect what they believe they are entitled to receive (Kelly, Lamb & Fabricius, 2003) or what they are led to believe which may be “the end is worth the means”.

Much of the negotiations in family law are accomplished by “private ordering”. This means parties with or without lawyers can author their terms. However, the “law of the land” still impacts individual decisions as many parties have information as to what their “worst day in court” might look like. Termed “bargaining in the shadow of the law” (Mnookin & Kornhauser, 1979); the result may reflect appropriate statutory guidelines
for asset distribution, parenting time, and alimony. However, there is no empirical research regarding what influences the process or outcome. Situations involving unequal power distribution or “how much justice can you afford” may be reflected by benefit of the skill of experienced attorneys vs. self-representation.

There are many factors that impact these decisions. The judicial system is complex and fragmented, and the behavior of individual attorneys is likely part of the “shadow” or the “light” of the law. Medical care providers may perform the same procedure but are evaluated individually for safety and success scores. Attorneys as individuals are not evaluated for outcomes. TJ training may assist attorneys in guiding behavior, both theirs and the party they represent. Negotiations in the “best interest of the child” or any segment of the dissolution dispute need not be adversarial. TJ guides towards an approach that “will do no harm”. This is as much of a mindset as it is a legal alternative. Legal scholars suggest utilizing an interest-based approach to problem-solving isolates the dispute as a joint problem (Menkel-Meadow, 1984).

The lack of looking through a therapeutic lens, adopting an adversarial problem-solving approach and violations to procedural justice contribute to critically poor results for families in crisis. Family law practice and procedures are rife with judicial discretion; statutorily created and bolstered by the relative lack of appellate review and accompanied precedent. Life changing decisions are made by judges based on often inaccurate or inadequate information (Schepard, 1998; Buss, 2014). Critics claim legislatures intentionally create systems for adjudication of disputes over child custody and visitation, distribution of marital assets, spousal support and even child support that provide judges with vast amounts of discretion upon which to base their decisions after consideration of
the facts presented and the character of the parties presenting those facts (DiFonzo, 2014; Weinstein, 1997; Maccoby, 1992). The current legal system may perpetuate the expected stressors of divorce, thus exacerbating or creating psychiatric or psychological health or illness. The ripple effect is most powerful for the families; yet, society and organizations are not immune from toxicity spewing from malcontent or tears of a parent.

Although the past twenty-five years have yielded vast research on the emotional outcomes and effects of divorce on children, many issues have yet to be adequately studied (Amato, 1991, 2001; Kelly, Lamb, & Fabricius, 2003). The research on how the legal process to divorce affects family outcomes is limited and insufficient to guide all parties (Pruett et al., 2005). Our country seems obsessed with protecting marriage as an institution. Protection does not follow the people, just the institution, or the image of the institution.

Application of Therapeutic Jurisprudence to Family Law

TJ principles, if applied, could be to family law what “universal precautions” was to the spread of infection in medicine. The goal of “universal precautions” could protect from infecting an already ill family with the disease of conflict.

Recognizing the inadequacy of the increasingly complex and overlapping judicial system, legal communities created the concept of the unified family court systems. The Problem Solving Court (PSC) model reflects the core values inherent in TJ principles applied to the court structure. The PSC model delivers paradigm inclusive of rehabilitative principles. These courts address the underlying problems that cause or contribute to the reason for legal intervention. PSC addresses legal issues while employing a multidisciplinary approach to addressing the root of the problem to ensure
therapeutic outcomes along with the application of due process. PSC adjudicates cases involving mental illness, addiction, and domestic violence (Wexler & Winick, 2003). There are multiple variations of the structure of unified family court systems, the basic concept of a unified court is (1) that it has jurisdiction over all issues involving each family status or children and (2) that it is part of the "therapeutic justice" movement, which "evaluates the legal system by applying mental health criteria and (3) case management and judicial assignment to one judge (Babb, 2014). UFCs provide onsite court services for families in crisis and are often based on principles of therapeutic jurisprudence (Babb, 2008).

The UFC can respond to families in a holistic manner by incorporating interdisciplinary approaches that are family focused. Family issues are kept to a one-judge-one family model that allows for continuity of decisions involving that family unit. Existing family courts are encouraged to model a unified family court (UFC) paradigm. The American Bar Association approved policy in 1980 recommending that state court systems establish UFCs (Babb, & Danziger, 2008). Twenty-four of the 38 U.S. jurisdictions that have implemented a Unified Court System. (Babb, 2008).

The current family law process is in crisis due to many factors (Daicoff, 2011). The dysfunction in the family court system has been the focus of legal scholars and policy makers for decades. Renowned scholars have been making advances in areas such as alternative dispute resolution, education, additional court services, law school curriculum changes and the establishment of Unified Family Courts, and other problem-solving court methodology. In the words of Barbara Babb, (2014 p.639):

Family courts are not likely to disappear as they currently constitute the largest proportion of trial court filings in most states. It appears as though
family courts have become an emergency room for family problems. Thus, we need to enhance our efforts to improve the family justice system. In order to revamp family courts most effectively, there must be a focus on the creation of unified family courts that are grounded in therapeutic jurisprudence and the ecology of human development. This framework allows for a more responsive and holistic approach to families' legal and underlying non-legal needs. The goal of a unified family court is to aim to improve the lives of families and children through judicial action, informal court proceedings, alternative dispute resolution, and the provision of appropriate social services.

*Learning from TJ applications*

Petrucci’s (2002) study of a domestic violence court found that the judicial interaction that encouraged shared respect between a judge and the defendant may be the basis for promoting a defendant's compliance with the court program. The judicial approach she observed was “caring, genuine, and consistent but firm.” Her observations were described and included “actively listening to defendants; seldom interrupting them when they spoke; body language that demonstrated attentiveness; speaking slowly, clearly and loudly enough to be heard, while conveying concern and genuineness” (Petrucci, 2002). The judicial interaction involved explaining, negotiating, giving positive encouragement, confronting, cautioning, warning, thanking and referring to the defendant's both current and anticipated progress. Petrucci’s work emphasized the manner in which defendants were treated, specifically “with respect, enabling them to present their case, carefully listening to them and taking what they say into account in making a decision”. Petrucci (2002) notes that the judge in the domestic violence court assumes multiple roles such as being an “authority, motivator, problem-solver, and monitor”. The positive judicial presence can act as a role model for families in dispute.
Previous procedural justice research has demonstrated parties are more likely to respect the legal authority responsible for the decision and to comply with their orders (Tyler, 1984; Tyler, Casper, & Fisher, 1989). Similar findings from research in the family violence context supports better compliance when procedural and interactional justice behaviors’ were evident (Paternoster et al., 1997). For example, The Milwaukee Domestic Violence Experiment studied all cases of domestic violence cases in one year (n. =1200). Each case was randomly assigned to one of the three conditions: warning with no arrest; arrest with short detention time; arrest with longer detention time. Researchers found that when police interacted with perpetrators according to procedural justice guidelines, the rate of subsequent family violence was less than when they did not. Results did not vary according to a more favorable or negative outcome (warning vs. short detention vs. arrest). Researchers suggest the procedural process improved recidivism (Paternoster et al., 1997).

Utilizing motivational interview techniques is another approach suggested by therapeutic jurisprudence. Motivational interviewing is defined as a directive, non-judgmental counseling style to explore and resolve ambivalence about behavior change (Miller, 2013). This method mirrors a TJ concept of the “psycho-legal soft spot” which is the psychological bag and baggage that often accompanies legal moves and measures (Wexler, 2011). TJ suggests the attorney provides anticipated expert legal counsel while offering the client an assessment of risks and/or rewards to psychosocial well-being. The attorney demonstrates respect for the client by asking permission. Proposing review of potential legal issues, the attorney initiates “change talk.” Addressing behavior that has legal consequences allows for communication of information in a neutral, informative,
and nonjudgmental manner. The attorney empowers the clients to make more informed decisions about changing a problem behavior.

In addition to establishing the goals in the case and estimating if the goals can be achieved, TJ proponents explore the psychological ramifications of a legal solution for the client. Lawyers are retained to review the legal impact and financial ramifications of any decision. TJ argues that a third set of factors; the emotional cost of the decision; should also be considered. The lawyer should attempt to create the most beneficial and emotionally satisfactory solution for a particular client's interests and unique circumstances. One would assume emotionally satisfactory legal solutions are logically therapeutic and vice versa. That is not always the case. Analyzing the traditional adversarial system and the emotionally critical issues of family law, TJ practitioners would seek to limit the toxicity of proceedings without sacrificing legal doctrine. TJ practitioners are aware of the contributions of the social sciences and explore interdisciplinary perspectives. In matters specific to family law; i.e. the best interest of the child, the timing of these decisions may be disadvantageous due to the psychological basis upon which people make decisions in times of conflict.

TJ was originally developed in the field of mental health law. Winnick and Wexler began judging the mental impact of the law on mental health patients. This area of law involves clients subjected to legal procedures for civil commitment and involuntary treatment, which raised traumatic vs. therapeutic issues (Wexler, 1996). Since then, TJ scholars have reevaluated legal doctrines such as “the insanity acquittee, conditional release hearing, health care of mentally disabled prisoners, the psychotherapist-patient privilege, incompetency labeling, competency decision-making, juror decision-making in
malpractice and negligent release litigation, competency to consent to treatment, competency to seek voluntary treatment, standards of psychotherapeutic tort liability, the effect of guilty pleas in sex offender cases, correctional law, health care delivery, "repressed memory" litigation, the impact of scientific discovery on substantive criminal law doctrine, and the competency to be executed (Perlin, 2000, p.412).

Proponents of TJ argue that a "clinically insightful" lawyer could help her client at a variety of stages in the legal process. Understanding the emotional impact of the law could affect drafting documents and planning, choices if there is a legal dispute, and the very design of rules and procedures to be applied in the future.

Role of Justice in Conflict Resolution

Academic inquiry of justice began with an examination of equitable distribution with the concept of distributive justice most often attributed to Adams’ (1965) equity theory. Adams discussed fairness in terms of a social exchange framework. The idea is that people are primarily concerned about the fairness of outcomes as opposed to the outcomes themselves. People evaluate the fairness of results by first calculating the ratio of their inputs to the outcomes they received. They then compare this ratio to their perceptions of others’ ratios. This comparison determines the fairness.

The next wave of justice inquiry was procedural justice, introduced by Thibaut and Walker in 1975. Thibaut and Walker stressed the importance of examining the fairness of the process leading up to the outcome. The body of procedural justice literature typically considers procedural justice from the perspective of the disputants or litigants. Previous research has shown the importance of the process.
Interactional justice, introduced by Bies and Moag (1986), focuses on the way in which people are treated and communicated with during the processes. There is considerable disagreement among researchers as to whether interactional justice is a distinct type of fairness or whether it is a dimension of procedural justice (Brockner, Ackerman, & Fairchild, 2001; Cropanzano et al., 2001). Colquitt et al., (2001) found that all three types of justice, although related, contribute to overall perceptions of fairness. There is a wealth of support on both sides of the debate (Cropanzano et al., 2001; Lind & Tyler, 1988). This assumption is based on the idea that procedural justice perceptions are based on various interactions with people from the system while distributive justice perceptions are based on a one-time distribution of assets/equity.

Justice scholars believe adhering to rules of justice leads to cooperation. Cooperation between divorcing spouses is impossible to court order. Social Justice Scholar, Tom Tyler proposes that adhering to justice rules allows for and enables cooperation. He believes there are three “socially beneficial tasks”; making allocations and resolving conflicts, legitimizing authorities and helping institutions to function. Consensus regarding justice rules allows parties to cooperate in a more advanced form with collectivities (Tyler, 2012).

Tyler identifies three factors to support this belief. First, when justice rules are open and shared, personal interactions have better outcomes and adherence. When institutions are jointly endorsed, they are empowered to offer solutions freely and use their problem-solving abilities. Two attributes allow for this, neutrality and expertise or training. Parties can benefit from shared resources of the institution and the relief from conflict. Action taken by authorities is legitimized when the third party is neutral. Authorities can
adapt distributive justice rules and create distribution applying need, equity, and equality rules. Following interactive, procedural and justice rules lend to the feeling the decision is legitimized. Relational based authority (judicial figures, lawyers, etc.) is believed to allow for acceptance of the decisions.

Court systems (and families) create environments based on justice rules. Cooperation allows collectives (couples, organizations, courts) to create and maintain conditions to coexist. Problems in modification of behavior are seen when, in pursuit of satisfaction of personal goals, one cannot successfully cooperate. Tyler proposes one may want to be cooperative but may not have the tools. Identified rules of justice facilitate a way to step back from the pursuit of self-interest.

Distributive justice is applied to the equal division of resources and allows for the structure needed. People value justice, will enforce cooperation, and punish those that do not follow those group rules even at a cost to themselves. Studies show when clarity is created; the result is less self-serving behavior. People are satisfied when they receive what they are entitled to receive. Self-interest may be modified by motivation to be fair when resources are defined. Abstract rules do not allow for conforming to structure or defining accountability. Relational issues help with the acceptance of justice. The way in which sanctions, punishments, or allocations are decided and communicated strengthens the basis for the future relationship. Providing explanations and creating trust allows disputed decisions to be legitimized.

This is useful when conceptualizing mediation, facilitating parenting plans or assisting parents in custody conflicts. If the authority figure communicates with respect, avoids abstract rules, provides information and neutrality is evident, cooperation
(according to Tyler) is more likely. “Procedural justice research in a number of domains has shown that when people experience procedural justice and to a lesser extent, distributive justice, that they engage in the group, adhere to its norms and respect the group's demands in their conduct” (Winick, Wiener, Castro & Georges, 2010 Pg. 423).

Justice is a multidimensional construct composed of three dimensions—distributive justice, procedural justice, and interactional justice that are of considerable importance to litigants. Distributive justice applies to equitable distribution of marital assets and alimony. Before no-fault divorce laws, either spouses behavior could influence distribution. In theory, states adhere to the division without regard to marital misconduct. The rules governing marital property are reflective of community property or common law state statutes. Complicated by a vague absolute judicial approach, (the judge’s discretion) financial allocation decisions can lead to fierce battles and protracted litigation. Procedural justice applies to litigants’ perceptions of the formal procedures that are used to determine the rewards. Interactional justice refers to litigants’ perceptions of the fairness of how the procedures are put into action. Perceived inadequate or perceived violations of any of the domains of justice elicit an affective response. Conflict during divorce is highest when divorcing spouses are unable to agree on terms of the divorce settlement (Hetherington, 1993).

**Justice and Affective Response**

Seeking a therapeutic effect from the law involves the need to correlate the relationship between emotion and perceived justice. The emotional response is linked to individual evaluation of the variables associated with the event, such as perceptions of
procedural justice (Krehbiel & Cropanzano, 2000). The valence of an emotional reaction is determined by the primary appraisal of outcome favorability. Emotional responses, such as anger or sadness result from the evaluation of perceived procedural fairness. For example, an event with an unfavorable outcome that was achieved by a decision making process that favored another person is predicted to result in feelings of anger whereas an unfavorable outcome reached via a procedure that favored the self would lead to sadness (Krehbiel, & Cropanzano, 2000; Cropanzano et al., 2001). Litigants expect an outcome from court events. Whether the outcome is negative or positive, it will be the goal driven (child support, access, visitation, etc.). If the procedure is fair, justice research predicts acceptance. However, the outcome may not fall into that category. Often, court decisions on crucial issues become anticlimactic, or the decision maker defers. The court system is notoriously inefficient due to being grossly overburdened and underfunded. The Honorable Roger K. Warren speaks to the relationship between procedural justice and public trust citing the results from the National Center for State Court’s 1999 survey (Warren, 2000.) The areas of public dissatisfaction reported were access to justice, expedition and timeliness, equality, fairness, integrity; independence and accountability. The physical and emotional cost of the named dissatisfaction must have a price for the litigants.

The Lawyer-Client Relationship

The quality of the attorney’s relationship with the client is a critical component. Professor Bruce J. Winick (2000) emphasized how important rapport is to the process:
The attorney-client interview and in subsequent meetings, the attorney needs to be sensitive to the client's psychological state...to create a climate in which the client can feel comfortable in discussing highly personal and sensitive matters that produce intense emotional reactions. The attorney should explain the attorney-client privilege and the cloak of confidentiality that covers communications occurring within the professional relationship...Clients need to be made to develop their interpersonal skills...to listen attentively...to develop their emotional intelligence and be effective lawyers.

The principles of Therapeutic Jurisprudence may inform the legal profession in terms of lawyer-client relationships. In studies involving workmen's compensation cases, the negative correlation between clients and their lawyers is thought to be due to lack of lawyer engagement (Schuman, 2009). Findings suggested the attorney might inflict harm on their clients by communicating poorly (Schatman, 2009). Elbers, van Wees, Akkermans and Bruinvelds (2012) studied responses of 21 traffic accident victims about their experiences with their lawyer. The study explored the lawyer-client relationship from the client’s perspective. The authors explored the literature from procedural justice and therapeutic jurisprudence to validate the hypothesis of identifiable, desirable attorney characteristics. Five characteristics were identified: communication, empathy, decisiveness, independence, and expertise. Suggestions for recovery focus on the quality of the lawyers’ attitude and communication with clients.

Attention to procedural justice and therapeutic jurisprudence have historically informed the importance of client involvement and the need to be heard. The Procedural Justice perspective identifies the litigant’s subjective view of justice that is determined more by the procedural process and the way in which a decision is reached than by the outcome itself (Thibaut & Walker, 1975). Perceived fairness of the judicial processes is critical to satisfaction. Fairness is felt when the litigant has the opportunity to have a voice and participate; and whether they are treated with dignity and respect by the
authoritative decision maker. Trust in the decision makers is directly tied to procedural justice (Tyler, 1992). Conflict resolution scholars validate these principles calling for the informational justice and interactional justice perspective. Other factors were added to the tenets of procedural justice: (a) The rules are applied consistently to persons and time, (b) decision makers are neutral, (c) the procedure is based on accurate information, (d) appeal procedures exist, (e) all subgroups are heard, and (f) the process adheres to ethical standards (Leventhal, 1980). Interactional justice embodies the impact of interaction and communication on the perception of fairness (Bies & Moag, 1986). People want to be treated with dignity and respect. Bies and Moag identified four criteria for interactional justice: (a) explain the basis for the decisions, (b) be truthful and candid, (c) be respectful and polite, and (d) refrain from improper remarks or prejudicial statements. Informational justice requires explanations to be reasonable, timely, and specific if they are to be perceived as fair (Shapiro, Buttner, & Barry, 1994).

These principles are routinely taught in mediation, which involves a neutral decision maker vs. the judge or personal attorneys. These expectations have not been generalized to apply to the attorney-client relationship (Tyler 1992). Approaching the problem from the Therapeutic Jurisprudence viewpoint, the authors looked for evidence of psychologically minded interview techniques such as listening, trust, and evidence of rapport. “Based on the justice and therapeutic jurisprudence literature, it was hypothesized that, in order to be satisfied, plaintiffs would want their lawyers to communicate well, to show dignity and respect, to provide information, to listen, and to involve them in decision-making” (Nieke et al., 2012). The authors decided to use a qualitative approach via semi-structured interviews. Additional factors, previously
unidentified, were revealed. The results were consistent with those previously identified in the Procedural Justice and Therapeutic Jurisprudence literature i.e.: communication, providing information, involvement in decision-making, and empathy (synonymous with dignity and respect). Other factors identified were decisiveness and independence. Independence was linked to the need for clients to believe their lawyers were above board, ethical and immune from professional peer pressure.

This is of interest when looking at this in concert with Sternlight & Robbenolt’s (2008) work reporting that ‘clients may sometimes suspect that lawyers recommend a particular course of action because they are friends with the opposing attorney, afraid to take a case to court, afraid of hurting their own relationship with the opposing client, or seeking to aggrandize their own reputation’ (Sternlight & Robbenolt, 2008). Empirical research is adding to the knowledge of how the law can avoid being non-therapeutic and improve well being is applicable to virtually all specialties of legal services.

**Legal Regulation of the American Family**

Substantive family laws, via the States’ prerogative, govern the entrance and exit from marriage and all related ancillary issues, e.g. marital property division, spousal and child support, child custody, visitation, parental fitness and child protection (Tribe, 2000). The Tenth Amendment to the U.S. Constitution secures this authority for the States.

Families are bound by the governing of the court that has personal and subject matter jurisdiction (Abrams et al., 2012. pg. 953). With the mobility of families today, jurisdictional issues can become complicated due to geographical and legal domicile laws
that may limit certain legal options. Access to the Federal Courts is restricted for subject jurisdiction based on the "domestic relations exception" which applies to divorce, custody, and alimony disputes (Cruz, 2011). One hundred years ago, the U.S. Supreme Court reiterated that "the whole subject of domestic relations of husband and wife, parent and child, belongs to the laws of State" (Elrod, 1999). Federal Courts can abstain from exercising diversity jurisdiction, dismiss for lack of subject jurisdiction, allow for "very extraordinary or narrow cases" (Ullman, 1983) or exercise federal diversity of citizenship jurisdiction in cases that cross state lines and involve sums greater than $75,000 ( 28 U.S.C § 1332(a); Abrams et al., 2012, pg. 950).

There is debate as to whether there is the basis for the domestic relations exception; if rules are consistently applied and if the rationale is outdated and contemporary issues should be considered (Ullman, 1983). In a case where domestic issues were not the current subject matter, the District court ruled the Missouri Court of Appeals made an error denying Federal subject matter jurisdiction in a case involving tortious acts of sexual abuse, battering, and intentional infliction of emotional distress against abused minors (Ankenbrandt v. Richards, 504 U.S. 689, 716 , 1992).

This debate is of interest to this dissertation in that the average American in a complicated domestic dispute is not of interest to the Federal Court. The federal and state share powers by virtue of our legal system. Nationally, the question of who can marry whom has been the subject of public policy and the highest court debate. Family matters are a contentious political minefield. The Federal Government is indeed involved in the affairs of husbands and wives as parents and has jurisdiction over their child (ren). The legal community, political parties, and religious groups all take aim at shaping and
protecting the institution of marriage and family. The family is viewed in society as an institution charged with the expectation of responsibility for legally binding relationships.

Family Law grapples with contemporary, significant societal issues encompassing the policies and doctrines regulating familial and intimate relationships in American society, thus, forming or at the very least, impacting society’s acceptable norms. As the fundamental institution in society caring for the inevitable dependency needs experienced by all individuals, families are a critical social force.

Federal involvement in complicated disputes translates into law and social policy. By defining the constitutional parameters of family relationships, the Supreme Court has given Americans rights for equal protection under the law. Granting rights inherently communicates permission. For example, fundamental issues such as: permission to marry (Zablocki v. Redhail, 434 U.S. 374, 383-87 (1978); to marry outside one’s race (Loving v. Virginia, 388 U.S. 1, 12 (1967); to work while pregnant (Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639-40 (1974); to define family members (Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977) and the right to privacy(Griswold v. Connecticut, 381 U.S. 479, 486, 1965); were disputes in the family arena that concerned the Federal Courts. The fact that the states exercise authority over family law does not mean that federal law has no role in governing the family (Meyer, 2008; Estin, 2007).

The spirit of family law today mirrors decades of ever changing family policies. America (the world) is redefining marriage and family, the law is charged with acknowledging the rights and responsibility of the roles and expected functions of its
members. Family Law Scholar, Jill Hasady (2014) speaks to the gravity of this area of law:

Family law is extraordinarily consequential, whether measured in terms of impact on people's lives, volume of litigation or monetary, psychological, and cultural goods at stake. Family law shapes social organization, economic status, intergenerational relationships, intimacy, childhood, maturity, and everyday experience. It reflects and influences how Americans think about gender, race, class, sexual orientation, and other divides and helps determine how those categories will impact people's opportunities, choices, rights, and constraints. Family law contributes to structure both the details of daily existence and the overreaching features of society.

Contemporary Family Law Practice

Family law defines, regulates and supports the relationships that constitute legal families. These include, most importantly, the relationships between intimate adult partners in committed unions and the relationships between parents and children. Although traditionally marriage was the only legally sanctioned family, modern family law recognizes and regulates non-marital families, including same-sex and opposite-sex cohabiting couples and families in which parents are not married. The legal regulation and rights of families and individuals within them are broader than marriage and divorce.

Family law encompasses areas such as the meaning of motherhood, parenthood, paternity, domestic violence, and children in the legal system, dissolution of property, trusts and estates, adoption, and juvenile justice. Contemporary family law issues address remarriage and stepfamilies, unwed fathers, third-party visitation, nontraditional partnerships, and assisted reproduction. The laws that apply to the dissolution of families have historically focused on the financial impact of dissolution, such as equitable distribution of assets and debts, alimony, and child support.
Regulating the laws of child custody, visitation, and post-dissolution conflict are the "meat and potatoes" of family courtrooms, yet; these issues are becoming more complicated. Civil law, contract law, torts, and even criminal questions of law may cross issues related to the dissolution. Domestic relations cases constitute about one-third of the civil dockets of the state courts. Over the past fifty years, the practice of Family Law has been transformed. Clearly driving the transformation of family practice is the dramatic and often complicated family constellation. The demand for the services of a family law professional has predictably risen in relation to the divorce rate. Americans continue to be politically divided about the definition of family and marriage; however, the stigma of divorce has lessened. Divorce itself has become commonplace. Adapting family law to our current family landscape is a necessary and timely endeavor. It may take daedal skills to meet the needs of American families in the future.

Domestic Relations caseloads are typically dominated by divorce/dissolution cases. With the divorce rate in the U.S. estimated to be 50 percent, many adults are initiated into the judicial system in these cases. Due to the serious, personal, and sometimes contentious nature of divorce cases, both the litigants and the courts find them difficult and resource intensive. Further, data from some states suggest that domestic relations matters, more so than any other category of cases, are the most likely to re-enter the court after an initial disposition as reopened cases, possibly several times, to revisit custody or support issues (http://www.courtstatistics.org/DomesticRelations/20124Domestic.aspx).

The function of family law was viewed as the government’s role to support the institution felt to be the core of one’s identity. The government has a stake in the stability of traditional marriage. The presumption was the law was needed as the guardian or
custodian of marriage. In contrast, legal scholars from The American Law Institute (ALI) reject the government’s current function. In the report “…Principles of the Law of Family Dissolution: Analysis and Recommendations (Ellman, Bartlett & Ganz – Blumberg, 2002), ALI promoted "the central purpose to protect and promote family diversity". The function of family law defines the role of family law. This discussion parallels the degree of government involvement in family life. In a review of the issue, Linda McClain's (2013), article suggests adopting the perspective of family law scholar Carl Schneider. He framed the laws function as the "channeling function of the family law". Quoting from Professor Carl Schneider's (1992) article "The Channeling Function in Family Law" where he posts the five functions family law serves. The first identified function is "protective". The protective role often is necessary, when there is the threat of harm from dangerous relationships is needed while simultaneously sheltering children. Family laws provide a structure protecting against financial exploitation through the form of property dissolution laws. The second, " facilitative function" is "offering people the law's services in entering and enforcing contracts, by giving legal effect to their private arrangements.” The third, “arbitral function" of family law helps people "resolve disputes". This is seen in the law of divorce since "divorce courts primarily adjudicate conflicting claims to marital property, alimony, and child custody. “ The fourth, “expressive function" works by "deploying the law's power to impart ideas through words and symbols." This function has two related aspects: "first, to provide a voice in which citizens may speak and, second, to alter the behavior of people the law addresses." Schneider has argued that listing grounds for a fault-based divorce law expresses an ideal of proper marital behavior: good spouses are faithful, not cruel, and live together. The
fifth, the "channeling function" states "when the law creates or (more often) supports social institutions that are thought to serve desirable end" (Schneider, 1992).

Public Policy Interests and Constitutional Scrutiny

Landmark cases that had changed the history of family law involved cases when the state powers infringed upon individual or family liberties. Constitutional principles such as finding that state laws discriminated against illegitimate children as quasi-suspect class violated the Equal Protection Clause of the US Constitution were struck down. The argument over how the government should help families and which families it does not recognize have continued to reach the Supreme Court. The Defense of Marriage Act struck down § 3 as unconstitutional (United States v. Windsor, 133 S. Ct. 2675 (2013). Justice Kennedy concluded:

DOMA could not survive under the principle that the Constitution’s guarantee of equality must be at the very least mean that a bare congressional desire to harm a politically unpopular group cannot justify disparate treatment of the group.

The Obama administration via Eric Holder, Attorney General concluded §3 of DOMA "as applied to same-sex couples which are legally married under state law', violates equal protection" (Release, Dep't of Justice, Letter from the Attorney General to Congress on Litigation Involving the Defense of Marriage Act (Feb. 23, 2011).

Federal Initiatives and the Family

Government policy aimed at improving the lives of American families’ spans decades of Presidential footprints. President G. W. Bush promoted the institution of marriage by launching The Healthy Marriage Initiative in 2002 which was included in the Personal
Responsibility, Work, and Family Promotion Act of 2003 (H.R. 4) (Horn, 2005). The initiative provides federal government funding for marriage education for low-income couples. The goal was to encourage responsible fatherhood and healthy marriage. The Obama administration supports the Healthy Marriage Initiative and continues funding that dates back to the Bush administration (McClain, 2103). Conversely, President Bush vetoed The Family, and Medical Leave Act twice. The Family and Medical Leave Act protect the employee's job if there is a chronic illness or the need to care for a family member. Recognizing “a direct correlation between health and job security in the family home and productivity in the workplace”, President Clinton signed the bill in 1993 (McClain, 2013). President Obama is calling for a change in Americans access to paid family leave. Supporting the passage of “The Federal Employees Paid Parental Leave Act” Obama seeks to correct policy providing a legal requirement which would require four weeks of paid parental leave. “As the only Western country without paid maternity leave, the U.S. ranks among just three countries worldwide that lack the policy altogether, according to a recent U.N. study” (Haven, 2014).

The Full Faith and Credit Clause—Article IV, Section 1, of the U.S. Constitution—provides that the various states must recognize legislative acts, public records, and judicial decisions of the other states within the United States. It states "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The statute that implements the clause, 28 U.S.C.A. § 1738, further specifies, “a state's preclusion rules should control matters originally litigated in that state."
Child custody and child support issues were state regulated before the 1970's. This was an incentive for a dissatisfied parent to kidnap a child and move to another state in order to petition for custody. In response to this situation, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Child Custody Jurisdiction Act (UCCJA) in 1968. By 1984, every state had adopted a version of the UCCJA. In 1980, Congress passed the Parental Kidnapping Prevention Act (28 U.S.C.A. § 1738A), which aids enforcement and promotes finality in child custody decisions by providing that valid custody decrees are entitled to full faith and credit enforcement of other states. The Violence against Women Act of 1994 (Pub. L. No. 103-322 [codified in scattered sections of 8 U.S.C.A., 18 U.S.C.A., and 42 U.S.C.A.]) extends full faith and credit to the enforcement of protective orders, which previously were not enforced except in the state where they were rendered. This gave a new measure of protection to victims who moved to a different state after obtaining a protective order in one state. Federal laws were enacted to govern the tax treatment of alimony, bankruptcy regulations protecting child support as a domestic obligation, protection of the rights of children born out of wedlock, the long arm of child support obligations, abortion legalization, and social security benefits post-dissolution. The Violence against Women Act (1994) defines benefits and protections for family members across state lines. Laws such as the Child Support Recovery Act protect the family structure. In “The Contractualization of Family Law in the United States”, Jules & Nicola, 2014 state there are over a thousand federal laws in which "federal rights and benefits are conditioned on marital or spousal status.” In the area of child support, the federal government takes an aggressive role, through federal legislation requiring states to identify parents and create
state child support guidelines. Further, efforts of the Uniform Law Commission to establish uniform laws among the states have resulted in various draft of legislation, some of which the states have adopted.

Law Reform

In the legal profession, a number of shifts began to occur. First, lawyers, mediators and judges began experimenting with new forms of legal practice, alternative dispute resolution and adjudication-including collaborative law, holistic law, transformative mediation, restorative justice, community courts, and interdisciplinary problem-solving courts (Grossman & Okun, 2003). In 1976, Derrek Bok, the former Dean of Harvard Law School and former President of Harvard University (1976) predicted future variations in resolving disputes:

Over the next generation, I predict, society's greatest opportunities will lie in tapping human inclinations towards collaboration and compromise rather than stirring our proclivities for competition and rivalry. If lawyers are not the leaders in marshaling cooperation and designing mechanisms that allow it to flourish, they will not be at the center of the most creative social experiments of our time.

The legal community has made Bok’s prediction correct, as alternatives to the legal approach translate into changes in legal theory.

New Legal Theory

Changes in response to dissatisfaction with the law have been occurring for decades with multiple alternatives for practicing law with a holistic and healing approach (Daicoff, 2005). Using "The Comprehensive Law Movement" as a working title for this movement in 2000, Susan Daicoff (2005) identified nine developing new approaches to
law, lawyering, dispute resolution, and adjudication. In addition to therapeutic jurisprudence, these were: preventive law (similar to preventive medicine), holistic law (similar to holistic medicine), procedural justice (social science research on litigants' satisfaction with and perceptions of the fairness of legal processes), creative problem-solving, collaborative law (a non-litigious means for resolving divorce and custody cases with two attorneys, two clients and possibly an interdisciplinary team of experts), transformative mediation (dispute resolution focused on moral growth of the parties), restorative justice (an approach to crime focused on healing through conferencing between victims, offenders and society), and problem-solving courts (such as drug treatment courts, courts for homeless persons, domestic violence courts, etcetera). Daicoff refers “to these as 'vectors' because, like the spokes of a wheel, they all share a common hub and, being innovative, they all represent forward movement in the law” (Daicoff, 2005, p.3.) In “Non-Adversarial Justice:” King et al., (2014) suggest additional vectors: identified participatory justice, proactive law, comprehensive law, visionary law, diversion, indigenous courts, and managerial justice.

Dissolution of Marriage

In family matters, the predominant legal intervention needed is to adjudicate the failed marriage, ultimately end the marriage, and redefine the family unit. The judicial remedy is a divorce. In most jurisdictions, a divorce is an actual lawsuit in which one partner of an intimate partnership sues the other partner for divorce, custody, property division, and support. Consequently, there are plaintiffs, respondents, hearings, discovery, depositions, subpoenas, trials, and appeals. A system that determines the
damages from the breach of a contract between a corporation and a vendor is the same system that dissolves a family relationship (Stansbury, 2012).

Professional Guidelines

The American Academy for Matrimonial Lawyers initially published guidelines for the professional conduct of lawyers in 1991, which were then expanded in 2001. Charles C. Shainberg, the Academy's President explains "The Bounds of Advocacy first published in 1991, has been widely recognized by bench and bar for its enlightened aspirational goals regarding the practice of family law and has been a reference source for many state and local bar associations to elevate their own standards of conduct (2001).”

There is distinction in attorney representation due to the special role of the family and divorce lawyer addressed by the Bounds of Advocacy (1992):

The emphasis on zealous representation [used] in criminal cases and some civil cases is not always appropriate in family law matters (p.2) and that public opinion increasingly supports other models of lawyering and goals of conflict resolution in appropriate cases.

A Vinculo Matrimonii

Adjective: pertaining to or noting a divorce that absolutely dissolves the marriage bond and releases the spouses from all matrimonial obligations: a divorce. a matrimonii


That is a very pretty Latin word for divorce; an ugly process. I will review the current alternative methods for obtaining a vinculo matrimonii.
Adversarial Litigation

Traditional family jurisprudence has revolved around adversarial practices thought to be “zealous representation” of one’s client. Proponents of the adversarial process believe it to be the best system. “Litigation is our best fact finding tool and in the matters of child custody we're seeing a clear and accurate picture of the family is the most critical of importance and the adversarial litigation system should be retained by American family law courts” (Rotman, Tompkins, Schwartz & Samuels, 2000. Pg. 3). The choice of utilizing adversarial litigation is believed to be the “Hallmark of American Justice” (King, 1999). Speaking as a judge, the Honorable Arline Rotman (2000) believes

The adversary process remains the best mechanism for fact-finding. The litigation system is premised on the well-tested principle of truth as well as fairness is the best discovered by powerful statement on both sides of the question. Pg.3.

Strier (1996) supports the adversarial system based on the representation of partisan advocacy, as both sides of the case will best promote the ultimate objective that the guilty be convicted. However, Strier (1996) recognizes the deficits of the trial, as methods do not encourage truth telling; failing in the objective. Echoing early jurist, Roscoe Pound, Strier states:

In the American trial, there is an illusion, and there is a reality. One pervasive illusion is that of an adversary system optimally suited to the discovery of truth. In reality, the adversaries of our trial proceeding are just as likely to hide or corrupt the truth. If the adversarial trial is optimally suited for anything, it is fomenting hostility and rancor.

Rotman et al., 2000, defends adversarial methods positing that rules of evidence and procedure serve to protect the integrity of the fact-finding process; believing the formal
adversarial process allows the best position to determine fact. Rotman et al., (2000) views the litigation process an effective truth and justice-seeking vehicle. Stating:

Despite its procedural and psychological dangers the adversarial system with its formal rules of procedure evidence pits skilled opposing counsel under the unbiased eye of the learned judge is still the best method of determining issues of fact. In cases involving child custody, litigation gives us the best chance that the critical issues will be presented in a fair and proper manner to a judge trained in the interpretation of such evidence. The judge will be in the best position to view a true and accurate picture of the family to ascertain what is in the best interest of the child and ultimately to determine which parents receive custody of the child and then decide guilt, innocence, liability, negligence and damages.

Still others believe the benefits of the litigation process are in functioning as a fact finder that is a critical role in custody disputes (Pearson, 1999). Supporters claim the adversarial system has therapeutic benefit. The therapeutic strengths of the traditional adversarial process are the standard, relatively predictable, and fairly transparent pattern that it follows, and the emphasis on certainty and finality (Sparta & Koocher, 2006). This satisfies people's need to feel in control of themselves and their circumstances. The uncertainty of the future due to the transitional time in the lives of the litigant may add to the heightened need to feel in control of the process. Professor Daicoff (2005) has examined developing dispute resolution alternatives to the adversarial method. Daicoff is a strong advocate for legal actors to consider factors beyond strict legal rights and duties, which include needs, resources, goals, morals, values and beliefs. Daicoff seeks to bring "extra-legal' concerns about legal practice so issues that consider "extra legal concerns" such as psychological matters, personal well-being, human development and growth, interpersonal relations, and community well-being" (Daicoff, 2005, p. 4) are considered. Daicoff acknowledges that the emotional devastation can result from traditional
adversarial litigation. However, Daicoff identifies that legal problems can call for litigation:

The power of the adversarial methods uncompromising position and legal force can themselves be healing, and they use these methods in achieving their goals (p. 8). Litigation itself, however, can at times be therapeutic. In cases that present a significant power imbalance between the parties, such as a sexual harassment suit where the employer is intractable, arrogant, and self-righteous and where the employee has a long history of victimization, litigation may be the most therapeutic process for both parties. It could allow the plaintiff to assert him or herself, perhaps for the first time. It would also give the employer a terrific "wake up call" that might force it to reassess his treatment of its employees and make some positive changes (p. 17).

In *Non-Adversarial Justice*, King et al., (2014) recognize that the developments are occurring both within and outside the justice system. They attempt to soften the dichotomy by positing adversarialism and non-adversarialism as being located along a continuum (King et al., 2014). “We prefer to conceive of adversarialism and non-adversarialism as a continuum, a sliding scale upon which various legal processes sit, with most processes combining aspects of adversarial and non-adversarial practice to varying degrees” (King et al., 2014, p. 5). Rotman et al., (2000) states:

Despite the well-documented psychological concerns regarding children involved in a messy trial, it is the opinion of this author that the long-term benefits of accurate fact-finding in litigation outweigh the present dangers of psychological damage. All this may be a hard equation to balance; gathering the right facts to place the child; the best parent should be the court’s priority and should supersede the possible psychological dangers of exposing children to litigation. Seeing the family picture clearly and therefore answering the questions of custody correctly, frees children from the inevitable future psychological problems of having been raised by an inadequate caregiver. In this case, the future benefits of a trial at way the current fear of exposing children to the adversarial system. Accordingly, the American adversarial system can flesh out the actual findings better than any other way and mattered matters of disputed custody.
The great majority of legal communities are adamant about the dangers of litigation. They might question Rothmans’ opinion based on the reality of their experience. The idea that a judge can have enough facts to determine the “best” parent is and what constitutes an “inadequate caregiver” speaks to the very depth of this conflict.

The authority for intrusion into family lives has already been given by the American legal system. One might argue, the parties themselves choose this path. Rotman, et al, (2000) points out in custody litigation, “parents had the opportunity to make these decisions for themselves; stating it is only by default of their ability to decide for themselves for the court to decide” Pg. 23. I argue, the course of life is complicated and without directions. Parties married in good faith, and/or had children (planned or unplanned), most often when these adults were behaving quite differently.

Families (forced into the system) describe feeling they "are on autopilot, directing their lives with little or no input from the participants themselves” (Ezzel, 2001). Reporting results from the United States Commission on the Family Welfare, Parenting Our Children: In the Best Interests of the Nation (1996), Ezzel (2001) relays the complaints of parents that family courts are rigid and bureaucratic. He reports findings that fifty to seventy percent of the participants find the process impersonal, intimidating and intrusive. Likewise, this research demonstrated that parents feel the process of the litigation is "too long and never finalized, too costly, inefficient, and taking control of their lives ". These findings indicate that litigation falls short of satisfying many of the emotional concerns involved in domestic relations cases (Ezzel, 2001).
Kourlis et al., 2013, in *Commentary on IAALS' Honoring Families Initiative: Courts and Communities Helping Families in Transition Arising from Separation*, addresses the issue from the family view:

Although adversary procedures are rooted in due process of law and perform essential social functions, they do not meet the needs of many reorganizing families who look to the courts for solutions. The adversarial process required for judicial fact-finding, and enforcement of judicial orders bears with it significant emotional and financial costs. The process by which "bad" behavior and "deficient" parenting is alleged by one parent regarding the other in an effort to buttress his or her position in court exacerbates existing hostility and engenders long-term mutual distrust. Pg. 354.

The typical family law case is different from other types of the legal system cases in our legal system. It involves many phases and a complex mixture of procedures. These systems become complicated, mediation to negotiation, litigation to judicial conferences, and social service reports to the court, etc. Some believe that litigation leaves the parties in worse shape than they started. Litigation involves such concepts as case law, precedent, a rebuttable presumption, and the burden of proof. These are unfamiliar concepts to common laypeople and family law litigants. Litigation participants may have limited or no support during this very stressful time. The courts do not assess parties' support systems or resources; there is no "well-family checkup".

Methods used are thought to be destructive to the present day functioning of the family; as courtroom disputes are argued by attorneys and monitored by judges, most of whom have no training in mental health issues, family conflict, or alternative dispute resolution methods. The litigation process involves pointing out faults and weaknesses of the opposing party (spouse) in an adversarial manner. This will further polarize a divorcing couple. The court rules of procedure (i.e., attorney positioned next to the client, unable to speak directly to each other), which may aggravate conflict, are inherently
divisive and partisan. Identifying how the rules of procedure of family dissolution could be anti-therapeutic is an example of therapeutic jurisprudence. Discovery demands (if aggressive), communication restrictions (such as not speaking to spouse), legal representation (which interferes with being able to speak for yourself), formal, intimidating court environments, evidence, interrogatories, and witnesses, all in a public forum leave little hope for a future amicable relationship (Schepard, 2001).

The environment of legal proceedings can contribute the lack of congeniality. Is it a rule somewhere that all parties cannot sit at a round table? Positioned as opponents, ex-spouses are posturing, for the fight. It is unnatural for social beings and barely meets natural codes of civil conduct. The parties, once intimate, are now strangers, often even to themselves.

While the rules of court are fixed, the behavior of the legal actor (attorney/judge) is a choice. Lessons from our partners in justice research point to rules of interactional justice impacting satisfaction. Winick speaks of the work of Tom Tyler, *The Psychological Consequences of Judicial Procedures*, teaching that a person being treated with "respect, politeness and dignity" enhance treatment efficacy (Tyler, 1992).

Psychological experts believe the complexity of litigation with many individuals feeling damaged by the process, overwhelmed and distant. The snowball effect takes over with a consortium of players, intertwined with lawyers; judges, guardians ad litem; social workers, custody evaluators, and court clerks. Others feel the debate is unnecessary as the adversarial court system is already essentially gone as a dispute resolution system. Ninety-eight percent of all litigated cases settle without trial (Refo, 2004).
One of the major detriments to the adversarial system is the cost of legal services. The financial investment is unknown due to the current structure of hourly billing of attorney fees. Opportunity costs are rarely considered or conceptualized. Opportunity costs are expenses incurred (not in currency) such as personal time, missed earnings and emotional energy. Out of pocket costs and expenses should be calculated for travel, childcare, etc. Weighing these factors and understanding the greater financial output and risk should be fully understood by the client. Comparative empirical research focused on family law dispute options; outcomes (legal, personal, occupational, and financial) are an opportunity for future studies.

Nationally, domestic cases are the fastest growing body of state civil court cases. Domestic relations cases are included as a type of civil court cases. Types of domestic relations cases include dissolution of marriage; domestic violence; visitation; adoption; paternity; child support; child custody; and paternity. Court volume has increased by 70% between 1984 and 1999. Estimates are that domestic relation litigation constitute between 25 to 50 percent of all civil litigation (Pearson, 2000). One-fifth of all divorce cases return to court at a later date to re-litigate disputed issues.

Domestic Relations Courts are overburdened. State judges struggle to keep up with their ever-growing dockets. Trends have left courts in the position of encouraging, at times mandating the use of Alternative Dispute Resolution (ADR) for participation in domestic relations cases. Courts across the country have turned to alternative dispute resolution as a way to reduce litigation, streamline the legal process, and simplify matters of disagreement between participants (Schepard, 2001; Pearson, 1993). Alternative dispute resolution has been fully integrated, with varying guidelines, into the dispute
resolution systems of most jurisdictions. Methods of ADR include mediation, collaboration, arbitration, and what has been called "cooperative law" (Lande & Herman, 2004).

**Mediation**

Mediation is a process by which parties in family law litigation negotiate and resolve (hopefully) their disputes through the assistance of a neutral, third-party facilitator who does not have authority to impose binding decisions upon the parties; the parties ultimately must agree to any decision (Schepard, 2001) In an effort to encourage the use of mediation in resolving family law disputes, many states offer dispute resolution services through the court system at a reduced rate to make mediation affordable for most litigants. Often, courts order parties to mediate before proceeding to trial (Beck & Sales, 2000).

Typically, mediators meet certain mandated requirements in terms of training and experience, but mediator requirements vary substantially from state to state (Beck, Anderson, O'Hara, & Benjamin, 2013). Mediation is acceptable to both parties and legal community as “the workhouse of family dispute resolution” (Ver Steegh, 2008).

The American Bar Association House of Delegates approved the model standards of practice for family and divorce mediation in 2001. These principles are designed to guide family law mediators. Model standards of conduct for mediators were prepared by The Joint Committee of the American Arbitration Association under the section of dispute resolution, and the Association of Conflict Resolution provide guidelines (2005). Mediation is a multi disciplined arena. Lawyers and varied mental health professionals
are required to receive specific and additional training in family conflict and dispute resolution skills. The Bounds of Advocacy advises the divorce lawyer that the welfare of the children is considered (1992, 2002).

In representing a parent, an attorney should consider the well-being of children”. Model Rules of Prof'l Conduct R. 2.23 cmt. (1992). and again in 2002 “An attorney representing a parent should consider the welfare of, and seek to minimize the adverse impact of the divorce on, the minor children (Model Rules of Prof'l Conduct R. 6.1 cmt. (2002).

Advocates of mediation maintain there are multiple important benefits to litigants: feelings of empowerment and self-determination, avoidance of adversarial experience, more freedom in authorship of parenting plans, less costly, and are more centric to individual family structure (Ver Steegh, 2008; Lande & Herman, 2004; Kelly, 1996; Schepard, 2001)

Supporters of the mediation process claim mediation "enhances disputant's choice, lessens disputant's hostility, honors family privacy, promotes the adjustment of children and, will work better (Bryant, 2006). Mediation is also purported to be quicker, more private; with better outcomes in child support payments, long term and sustained relationship improvement between parents; agreements are more satisfying to both parties (Kelly, 1990a, 1990b, 1996; Mnookin & Kornhauser, 1979; Pearson, 1993; Pearson & Thoennes, 1984a, 1984b, 1985a, 1985c, 1986, 1988a, 1989; Pearson et al., 1982).

Deemed a problem-solving approach, the process aims towards identifying shared "needs, desires, concerns, and fears as opposed to “positional stances”. The benefits of this approach are that when shared interests identified, parties can creatively author solutions they are more likely to follow.
There are significant criticisms and debates of mediation that are ongoing within circles of legal scholarship. Mediation critics believe mediation is primarily a cost saving measure and question if constitutional rights are violated, particularly if court ordered (King, 1999). Some see mediation as less beneficial in family court vs. civil court. Family law cases are different from other civil law cases, in that, coordination is often needed; they are likely to incorporate several forms of ADR; they often require extensive court monitoring long after disposition; and they may require coordination with various social service and mental health agencies. Mediation is not a linear process (King, 1999) to a solution at the end of that line.

In many jurisdictions, divorcing couples are court-ordered to participate in mediation to resolve parenting plan disputes before the court allowing a case to proceed to trial. Historically, a significant number (40-80%) of these divorcing couples enter this highly stressful legal process having experienced violence and abuse within the relationship (Pearson, 1997). Academics, policy-makers, and practitioners debate the appropriateness of mediation, (especially court-ordered mediation) in situations where intimate partner violence exists or potentially exists (Holtzworth-Munroe, 2011). Mediation presumes parties come to the negotiation table with equal bargaining capabilities, free from the control of the other party, clearly a situation thwarted by the presence of violence within the relationship (Beck et al., 2013).

Two major works examine mediation outcomes with litigation processes. The Divorce and Mediation Project (1983) investigated the effectiveness of a comprehensive divorce mediation intervention as compared to litigated adversarial approach to divorce, which was the norm. Pearson & Thoenne’s (1984, 1989) study of divorce mediation
while in progress compared court-connected child custody mediations with litigation processes for custody disputes. Empirical research comparing different dispute resolution methods focus mainly on resolving custody or divorce disputes, and empirical research remains quite limited (Kressel & Pruitt, 1989; Pearson & Thoennes, 1989). The other focus represents findings related to child custody mediation in the court setting (Emery & Jackson, 1989; Emery & Wyer, 1987; Kressel, et al., 1989; Pearson & Thoennes, 1984, 1989; Slaikeu et al., 1985).

The Divorce and Mediation Project was the first empirical and longitudinal research to compare the effectiveness of an integrated, comprehensive mediation process encompassing all divorce-related issues (child and spousal support, assets and liabilities, property, custody, visitation, parenting) with an adversarial divorce process parallel in scope. The task-focused, problem-solving comprehensive mediation model studied (Kelly, 1991a, 1996b; Kagen & Kelly 1991) differed from custody mediations along a number of dimensions: the larger number of sessions required to reach agreement, the scope and complexity of issues mediated, and the voluntary, non-court-connected setting. The study compares the interactions and perceptions of the parent subsample from the larger longitudinal study, as assessed immediately after final divorce, and at one and two years post-divorce. The amount of conflict, contact, communication, and cooperation reported by parents in each divorce intervention sample are compared, as are their perceptions of each other with respect to involvement in parenting.

With the increasing use of non-adversarial dispute resolution procedures with divorcing parents, there are various models of mediation. Parents meet with trained mediators for a variety of timed sessions. Sometimes there are several hours-long
sessions, usually lasting from two hours in court run programs or six to nine hours when private mediators are used. Mediators are not necessarily attorneys, but all have training in psychotherapy, counseling, law, or conflict resolution. Sometimes mediators also meet with children. The assumption underlying mediation is that if both parties are satisfied with the final agreement, then they are more likely to cooperate following divorce (Douglas, 2006; Sbarra & Emery, 2008). Before bringing disputes to trial, mediation has become a standard practice and can be made mandatory at the discretion of the judge.

In a review of the literature on mediation, Kelly (2004) reported that couples reach agreement between one-half and three-fourths of the time. Evaluation studies indicate that mediation decreases the likelihood that couples will pursue litigation, lowers the cost of divorce, and increases parents' satisfaction with the outcome (Douglas, 2006). Emery, Sbarra, and Grover (2005) conducted one of the most rigorous studies of mediation by randomly assigning couples to mediation and non-mediation groups and followed these parents for over a decade. The researchers found that mediation resulted in greater satisfaction with post-divorce outcomes, contact between nonresident fathers and children, more communication between divorced parents and less conflict between divorced parents. Despite these beneficial outcomes, most research on mediation continues to be plagued by methodological limitations. Still, it has promise as a means to prevent further family dynamic complications. By modeling communication and problem-solving, mediators encourage families’ parental ability to continue to make decisions as co-parents, rather than by a judge.
Collaborative Family Law

Collaborative Family Law (CFL) is a practice that also seeks to avoid the litigation process. Minnesota lawyer Stu Webb first introduced the concept of collaborative law approximately eighteen years ago. Disgusted with his family law practice, Webb was determined to find a way to redefine the way family disputes were settled. With collaborative input from similarly minded attorneys, Webb proposed a choice for dissolution that required a commitment to settlement (Webb & Ousky, 2011). CFL is a continuation of the trend to offer litigants a method to avoid the adversarial divorce process that began with, and shares many of the principles of, mediation (Slovin, 2004). CFL provides a structured approach to divorce that addresses many of the concerns not addressed by the traditional court system. CFL is the formalization of a new settlement model requiring lawyers to learn client-centered communication and conflict resolution skills to achieve their clients’ legal goals (Slovin, 2004). The case focus is on the nature of the conflict, and the paradigm is shifted to identify the structures needed to determine and manage the conflict jointly transforming it into collaboration.

The CFL process replaces rules of evidence and procedure with specific protocols and boundaries. Clients are given significant opportunity to own both the process and its outcome. The empirical research on collaborative law found generally high levels of client and lawyer satisfaction with the process and that negotiation under collaborative law participation agreements are interest based rather than those in the more traditional adversarial framework (MacFarlane, 2010). The distinctive feature of collaborative law is, however, the disqualification requirement; the enforcement mechanism that parties create by contract to ensure that problem-solving negotiations occur. The disqualification
provision enables each party to penalize the other party for unacceptable negotiation behavior if the party who wants to end the collaborative law process is willing to assume the costs of engaging new counsel. Each side knows at the start that the other has similarly tied its hands by making litigation expensive. By hiring two Collaborative Law practitioners, the parties send a powerful signal to each other that they truly intend to work together to resolve their differences amicably through settlement (Slovin, 2004).

Both collaborative law and mediation offer parties the benefits of the process to promote agreement through private, confidential negotiations, the promise of cost reduction, and the potential for better relationships. Both mediation and collaborative law encourage voluntary disclosure and an ethic of fair dealing between parties. Parties in both mediation and collaborative law are likely to experience greater voice in the process of settlement than in a judicial decision (attributed to self-determination) and are more likely to be satisfied with the process as compared to litigation. All fifty states have adopted alternative dispute resolution statutes or regulations.

In an effort to standardize the practice of CFL, the Uniform Collaborative Law Rules/Act regulates the use of collaborative law. The Rules/Act standardizes the most important features of the collaborative law process (ABA, 2014). The UCLA has been enacted in three states: Utah, Nevada, and Texas. The legislatures in Nevada and Texas unanimously approved the UCLA. Several other states have introduced the UCLA, including Alabama, Hawaii, Massachusetts, and District of Columbia. A number of states have enacted statutes of varying length and complexity, which recognize and authorize collaborative law (Cal. Fam. Code 2013 (West 2004 & supp. 2009); N.C. Gen.
Over the past decade, mediation of custody and visitation disputes and the majority of marital dissolutions are achieved through mediation (Bryant, 2006). Bryant describes problems with mediation that include lack of formal discovery, lack of research validating claimed improvement in hostility, questionable conservation of resources, and continued power imbalances. “Although mediation may honor family privacy, it does so at the expense of substantive fairness and respect for legal rights” (Bryant, 2006).

**Arbitration**

Arbitration is a process whereby parties in conflict agree to the substitution of a third-party in place of the judge with jurisdiction over the subject dispute and by agreement vest this third-party with the authority to hear evidence and decide the dispute, in a decision that will bind the parties. Parties would agree to use arbitration in order to control the timing of their litigation and the identity of the decision-maker, not necessarily to control the substance of the resolution (ABA, 2014).

**Pro Se Litigants**

An individual's statutory right to self-representation in court was initially recognized by the Judiciary Act of 1789, Task Force on Pro Se Litigation, Guidelines for Best Practices in Pro Se Assistance (2004). In all courts of the United States, parties may plead and conduct their cases personally. Additionally, the constitution or statutes of many
states either expressly or by interpretation provide for the right to self-representation in court.

Pro Se (not represented by lawyers) or Self-Represented Litigants (SRL) litigants represent a large share of family court faces. The range of SLE participations varies dramatically by region, both parties having an attorney reported ranges from 12 percent in Washington, DC, 47 percent in Iowa and Connecticut (Mather, 2003).

Divorcing parents do not have a constitutional right to counsel. Legal aid is limited to those below the poverty level, and the caseload is triaged for abuse cases. Legal fees may be prohibitive. Overall, 80% of all family law cases involve one pro se litigants. Greacen (2014) studies report self-represented individuals may have started out with an attorney. Survey interview results indicate “that most SRLs did not spurn legal representation; rather the traditional legal system failed them” (Greacen, 2014). Additionally, he reports that over fifty percent of respondents ran out of money or did not feel their lawyers’ service was beneficial (Greacen, 2014).

The legal community has mixed opinions of the influx of SRL. Some think they “clog up the courts”. Some judges feel they do not get the same results as attorneys. Greacen’s research shows they take half the time that attorneys use and get to the resolution quicker. Some are using attorneys for part of the case. This is called “unbundling” or limited scope representation.

In Greacen’s (2014) latest review in the Family Court Review, he refers to .the work of Richard Zorza (2004) and provides an excellent list of recommendations for judges to be successful working with SRL. In his writings, Zorza (2004; 2009) has shown that judicial neutrality is not synonymous with judicial passivity. Judges can be both neutral
and engaged with litigants to ensure that all evidence and point of view bearing on the matter come to the judge’s attention. This perspective is incorporated into a set of best practices that have been developed for dealing proactively with SRLs in the courtroom. They have been embodied in a bench book for judges in California and the curriculum for judges first presented to teams of judges from thirty-eight jurisdictions at Harvard in 2007. Zora’s (2004) list (provided below) appears to echo the views encouraged by therapeutic jurisprudence. The best practices are:

- Framing the subject matter of the hearing
- Explaining and guiding the process that will be followed
- Eliciting needed information from the litigants by
- Allowing litigants to make initial presentations to the court
- Breaking the hearing into topics
- Asking questions to obtain information needed for a fair decision
- Obviously moving back and forth between the parties
- Paraphrasing
- Maintaining control of the courtroom
- Giving litigants an opportunity to be heard while constraining the scope and length of their presentations, and
- Giving litigants a last opportunity to add information before announcing a decision
- Engaging the litigants in decision making
- Articulating the decision from the bench
- Explaining the decision
- Summarizing the terms of the order
- Anticipating and resolving issues with compliance
- Providing a written order at the close of the hearing
- Setting litigant expectations for next steps
- Using nonverbal communication effectively

Public Opinion of Legal Profession

Each year more than 2 million Americans get divorced, and most of them use a lawyer. Of all of the agents of the dispute transformation, lawyers are probably the most important. This is, in part, the result of the lawyer's central role as gatekeeper to legal
institutions and facilitator of a wide range of personal and economic transactions in American society (Parsons, 1962). It is obvious that lawyers play a central role in dispute decisions. The most recent Gallup Poll (2013) asking Americans to rate the “honesty and ethical standards of people in different fields” report rates for judges (45) less trustworthy than day care providers. Lawyers (20) were tied with TV reporters (20). Americans continue to see nurses (82) as a profession having the highest ethical standards since 1999 along with pharmacists (70) and schoolteachers (70).

A 1993 survey by the American Bar Association found that 40-63 percent of the public viewed lawyers as 'greedy', charging 'excessive fees', 'lacking the necessary ethics to serve the public' and 'not honest or ethical'. Only 19-35 per cent believed lawyers were 'caring and compassionate', 'honest and ethical', or a 'constructive part of the community'. While 78 per cent of respondents liked their medical doctor, only 45 per cent liked their attorney. Only seven per cent disliked their doctor, while 16 percent disliked their attorney. A 1991 public opinion poll found that 22 percent of the public thought that lawyers had 'high honesty or ethical standards', compared to 62 percent for pharmacists, 50 percent for doctors, college teachers, members of the clergy, dentists and engineers and 35 per cent for funeral directors, bankers and journalists. Lawyers fell between newspaper reporters (24 percent) and building contractors (20 per cent), realtors (16 per cent), advertisers (12 percent) and car salesmen (six per cent).

The most recent Gallup Poll (2013) asking Americans to rate the “honesty and ethical standards of people in different fields” report rates for judges (#45) less trustworthy than day care providers do. Lawyers (#20) were tied with TV reporters (#20). Americans continue to see nurses as the profession having the highest ethical standards since 1999.
A 1993 survey by the American Bar Association found that 40-63 percent of the public viewed lawyers as 'greedy', charging 'excessive fees', 'lacking the necessary ethics to serve the public' and 'not honest or ethical'. Only 19-35 per cent believed lawyers were 'caring and compassionate', 'honest and ethical', or a 'constructive part of the community'. A 1991 public opinion poll found that only 22 percent of the public thought that lawyers had 'high honesty or ethical standards'.

Family law practice today represents one of the fields of practice with the highest rates of disciplinary complaints and malpractice actions. Galanter (1994) suggests a long list of potential reasons for the disdain for attorneys. The public perception of lawyers benefitting financially from the pain and misery of their clients, resentment for the high cost of legal services, the adversarial and zero-sum quality of legal work, the animosity of those who are destined to lose, and the perception of frivolous litigation.

In closed-door conversations between lawyers and their clients, strategy is planned, tactics are devised, and the emotional climate of the divorce is established. Do lawyers contribute to the pain and emotional difficulty of divorce by escalating demands and encouraging unreasonable behavior? Do they take advantage of clients at a time of emotional difficulty? Can and should clients trust their lawyers to look out for their welfare and advance their long-term interests? The family law literature is replete with acknowledgments that the current legal system regarding divorce is costly in terms of families' (particularly the children's) emotional and economic well-being (Sarat & Felstiner, 1995).
Felstiner & Petit (2003) review of the sociolegal research identifies three problematic themes: paternalism; the actuality of power; and the neglect of clients by lawyers. Historically, the paternalistic approach is justified in that “the "imposing of constraints on an individual's liberty is for the purpose of promoting his or her own good”. (Thompson, 1980). There are many interpretations of paternalism with a central theme of substitution of attorney judgment for the benefit of the client mixed in with the influence. The problem is based on the lawyers’ view of the problem and presented in a way the attorney believes the client will understand. Lawyers provide the information the lawyer feels is relevant. Whether the attorney educates persuades/influences/coerces the client to see, the wisdom of the opinion is arguable. Although there is an attempt to determine what the client truly wants, the client’s autonomy is disregarded, and power imbalance is perceived (Spiegel, 1997). Others feel autonomy is overvalued, and clients need their help to make decisions (Gordon, 1988, Gordon & Simon, 19992). Others propose a client-centered approach (Binder & Price, 1977). Attorneys believe their job is to make those legal judgments. After all, that is what they are hired to do. Some argue there is a power differential (attorney or client), which renders persuasion close to coercion. The synonyms for coercion are: “pressure; force; compulsion; duress; oppression; enforcement; harassment; intimidation; threats; arm-twisting (Webster).

The rules of conduct do not support coercive behavior. Attorney personality, general demeanor or client bias may influence the perception of coercion. Research indicates clients are more satisfied when procedural justice tenets are present (Lind & Tyler, 1988). Specifically, principles of interactional justice speak to the reported difficulty with how
lawyers behave interpersonally. Interactional justice focuses on the way in which people are treated during interpersonal decision-making processes (Bies & Moag, 1986).

Empirical research has established that the way in which individuals are treated in the course of a decision-making process is at least as important as the outcome (Fondacaro Dunkle, & Pathak, 1998; Fondacaro, 1995; Lind & Earley, 1992; Thibaut & Walker, 1975; Tyler, 1989).

Galanter's book, *Lowering the Bar: Lawyer Jokes and Legal Culture (2005)*, is the culmination of much of his work on American law:

Jokes provide a rough gauge of common attributions of traits to various social groups and perceptions of the stature of various sorts of "juxtaposed with other outcroppings of as expressed in surveys; the discourse about law among political, media, and business elites; and the portrayal of law and lawyers in the media." The enduring themes are that (1) lawyers are corrupters of discourse, who "lie incorrigibly," (2) lawyers are greedy economic predators who do not produce anything of value but rather live off of productive members of society, (3) lawyers are allies of the devil, (4) lawyers are aggressive, competitive hired guns, incurably contentious, unprincipled mercenaries who foment strife and conflict by encouraging individual self-serving and self-assertion rather than cooperative problem solving," and (5) lawyers are enemies of justice [who] are indifferent to justice and willingly lend their talents to frustrate it.

According to Lande, 2008, attorney jokes portray (1) lawyers as opportunistic betrayers of the trust not only opponents, but also clients, partners, friends, and family, (2) lawyers as morally deficient, lacking normal human feelings and decency, (3) lawyers as objects of scorn, despised because of shared social contempt for them rather than for their deeds or character, and (4) celebration of the death or absence of lawyers, who constitute a social affliction. Galanter (2005) uses the jokes and other data to illustrate his thesis that in recent decades, social and business elites have cultivated a "jaundiced view"
of the legal system. Galanter (2005) describes the justice system as “widely condemned as pathological and destructive, producing untold harm. Lawyers, as the promoters, beneficiaries, and protectors of this pathological system, held pride of place among the culprits responsible”.

Public opinions on the legal system and attorneys may come from frustration with the excesses of the adversary system. Deborah Tannen (1998), in *The Argument Culture: Stopping America's War of Words*, argues that the adversarial structure of the legal system forces lawyers and their clients to adopt extreme modes of the warrior-like behavior. Attorneys are encouraged to be zealous advocates for the clients. She pointed out that in “law, journalism, and politics, an adversarial approach persists despite evidence that this approach is not the best satisfactory for the client”. There is empirical evidence that that the involvement of lawyers can be therapeutic (Pruett et al., 2005). Unexpectedly, Pruett’s research showed maternal psychological symptomatology had indirect beneficial effects on child behavioral outcomes when mothers used an attorney in their divorce (Pruett, Insabella & Gustafson 2005). Mothers experiencing psychological symptoms were less likely to have hired an attorney, which correlated with greater internalizing problems in their children. Mothers that had less psychological symptoms appear to have utilized attorney expertise (Pruett et al., 2005). The result was increased protective behavior directed towards their children. Negative reaction to the stress of going through the divorce process was more contained. In contrast, those mothers without attorneys showed more evidence of taking the stress of the divorce process out on their children. Controlling for socioeconomic status did not affect the findings, suggesting that the choice of using an attorney may not be primarily an economic
decision. These results have important implications for the role of attorneys in a collaborative divorce model (Pruett et al., 2005). Additional findings from Pruetts study suggest many divorcing parents determine their interests and the interests of their children with the aid of legal counsel. This research suggests that when mothers who experience increased psychological vulnerability work with an attorney during the divorce process, the attorney may help absorb some of the negative effects of that vulnerability on child functioning, primarily as the parent's stress increases during the legal process. Pruett et al. (2005) points out the introduction of an attorney into the process may impact psychological and legal outcomes and has significant implications in the decision for the ways in which people choose to conduct their legal process. Pruett's study has not been replicated. The empirical research focusing on the subject of lawyers’ relationships with clients is underdeveloped

High Conflict Divorce

In about 15% of divorce cases, parties are unresponsive to formal and alternative dispute resolution measures (Kelly & Johnston, 2001), and up to 25% of divorce cases can be characterized by strong hostility manifest in legal conflict (McCoby & Mnookin, 1992). These cases are generally referred to as “high conflict”, and the situation often involves a child or children expressing negative feelings and beliefs toward one of their parents (usually the non-custodial parent) (Bala, 1999).

Within the framework of family law, such a scenario is considered a problem of “access” as opposed to “custody”, and is not typically resolved by a separation and divorce agreement/consent order (Blank & Ney, 2006). From a legal standpoint, access
disputes are considered one of the more difficult and complex issues. One of the most contested area of custody and modification of parenting plans is the existence of Parental Alienation Syndrome. Parental Alienation Syndrome (PAS) is the most well-known and referenced post-divorce “condition”. In 1987, Dr. Richard Gardner, a New Jersey psychiatrist first presented the concept of PAS. Gardner defines PAS as a diagnosable disorder seen when there are significant conflicts and resistance with a child refusing visitation with a parent. There is an ongoing debate as to the validity of parental alienation syndrome, however, unanimous agreement that alignment exists in warring families. PAS has not earned the rank of being listed as a “syndrome” in the psychiatric bible of nomenclature describing and classifying psychological behaviors and psychiatric illness namely The Diagnostic and Statistical Manual of Mental Disorders (DSM –5).

Nonetheless, the “syndrome” has entered into the case law of the courtroom. The admissibility of PAS is developing a long history of controversy. To date, the research on PAS is anecdotal, and there have been no studies that demonstrate the reliability in the measurement of PAS. Legal and psychological scholars criticize it. Kelly and Johnston’s formulation of “the alienated child” are more accepted as a description of a “pathological response”. Judges, practitioners, forensically sophisticated mental health experts, as well as academic commentators agree about very little in relation to PAS (Levy, 2006). One thing most agree on is “that the standards governing judicial determinations of post-divorce custody of children is the most difficult and unresolved legal conundrum. Commonly, parental conflict increases when parents are negotiating their rights and obligations (e.g., economic, co-parenting) through the legal system (Bala, 1999).
The divorce process within the institutional context of the judicial system can be described as a culture of litigation in which parents’ opposing positions becomes exacerbated by the adversarial process (Birnbaum & Moyal, 2003). The system augments family struggles that have neither clear facts nor standards on which to base decisions when two parents have differing viewpoints. The result is a metastatic process in which conflict spreads and feeds on itself, sustaining or increasing the negative family dynamics the divorce was intended to dissipate (Wallerstein & Kelly, 1980; Beckmeyer, Coleman, & Ganong, 2014; Bohannon, 1996).

Regardless of parents' marital status, a high level of marital conflict experienced during childhood has been linked to more depression and other psychological disorders in young adults, (Birnbaum & Moyal, 2002) as compared with those reporting lower levels of family conflict during childhood (Wallerstein, & Kelly, 1980; Ahrons, 2007; Kelly & Emery, 2003).

Procedures necessary to obtain dissolution of marriage are always coupled with a parallel emotional process. Therapeutic interventions utilizing mental health remedies are often appropriate. The goal of the court system historically rejects responsibility for a therapeutic outcome. A successful case is a case that does not come back to court. That fact does not necessarily translate into the elimination of conflict.
CHAPTER SIX: HEALTH AND MANAGEMENT SCIENCES

This next chapter addresses the fields of work and family research. This field grew as women entered the workforce in the 1960’s, which forever changed the demographic landscape. Some attribute the change in marriage and divorce rates with the change in gender roles and the women’s movement (Aughinbaugh et al., 2013). The American labor force changed dramatically with an unprecedented number of wives and mothers working. Those figures rose from 38% in 1980 to 62% in 2000 and interest in work-family conflict issues rose as well (Szafran, 2002). Research in social and family epidemiology continues to inform our understanding of the association between the competing commitments of work and family. This field also addresses how stress impacts physical and mental health including studies of marital dissolution. Volumes of academic effort link marital dissolution with bidirectional emotional and social issues, causing work-family issues to “mushroom” (Szafran, 2002).

Included in the unprecedented changes in the workforce are the changes in the rate of divorce that have caused changes in utilization of the legal system. Exposure to the legal system is not known to enhance one’s well-being. Divorcing families comprise the largest consumers of court-related family services. Domestic related case filings in the civil courts, including juvenile matters, exceed 7,000,000 filings annually (Rubin, 1998). There is no cross-referencing research that links these major forces. The impact of the combination of these legal forces and psychosocial issues in employee's function and work performance is unknown. Efforts are attempting to bridge the perspectives of work and family demand the benefit of the perspectives from multiple disciplines. In response, scholarly publications such as The Work and Family Handbook: Multidisciplinary
Perspectives and Approaches (Pitt-Catsouphes, et al, 2006) including 63 work-family scholars from social work, psychology, organizational behavior, human resources, management. The 2009 publication *The Handbook of Families and Work, Interdisciplinary Perspectives* (Crane & Hill, 2009), boasts 44 professionals from business, economics, human development, sociology, statistics, women’s studies leadership, family studies, medicine and psychology (Hill & Crane, 2009).

Organizational Psychology: Focus on Family

Organizational psychology topics include work-life studies and balance, corporate citizenship, workplace, and flexibility. Productivity and costs associated with presenteeism, absenteeism, and career advancement will add to this discussion. Current research initiatives have expanded from working mothers to evaluating the impact of gender-neutral family disruptions and demands on work and the ability to fulfill important life role obligations. The corporate response to employee personal crisis and work stress are wellness programs to address work-life balance.

Scholarship in this area over the last decade addressed issues of gender, time, and division of labor; amount of paid work; maternal employments’ impact on children; bidirectional work and family conflict; health issues related to stress and work; and work-family policy (Bianchi & Milkie, 2010).

As family researchers attacked the issues facing the changing family dynamics, work-family researchers struggled with work trends, balancing family, work-family policies and organizational culture. Work and family were expected to remain compartmentalized, expecting workers to “leave personal problems at home”. Family researchers shifted their
focus, as a review of the family research literature topics narrowed in on various aspects of marriage and divorce, including history (Ahrons, 2007), trends, causes, consequences for adults and children (Amato, 2003; Amato, 2000, Parejko 2002, Cameron, 2003; Diefenbach, 2007; Grossbard-Shechtman, 2003; Gruber, 2004; Mechoulan, 2005; Sigle-Rushton, 2005). Concurrently, scholarly interest in work-family issues surged with changes in family structure, diversity in the workplace and organizational change (Pitt-Catsouphes, 2007). There has been a three-fold increase since 1970 to 2000 in articles focusing on the intersection of work and family issues; seven-fold in psychology, and twelve-fold in sociology (Pitt-Catsouphes, Kossek & Sweet, 2006). The continued level of divorce rates stimulated substantial scholarly interest in the consequences of divorce with over 10,000 articles written in the 1990’s alone (Amato, 2000).

*Work and Family Conflict*

Work - Family Conflict (WFC) research explores the stress of balancing work and family demands and how family responsibility affect work and vice versa. Work- family conflict (WFC) is now thought of as bi-directional and can occur when efforts to fulfill family demands or work demands causes stress limiting one's ability to fulfill either role (Allen et al., 2000).

Marriage research, although plentiful, is reported to be handicapped even with the best methodological studies. One explanation offered is due to the obvious inability to perform experimental research utilizing double blind cross-over studies (Karasu, 2007). Studying the process of divorce may also be limited by the inability of experimental research due to the impossibility of controlling setting as researchers cannot impose when
or how a person divorces through blind control groups. Divorce research in the work-family arena is scattered and intertwined with stress or seen as a variable when correlated with negative work environments.

Organizational research has acknowledged the correlation between employee mental illness and costs to the organization. Is there a cost to an organization when there is a marital status change? Identifiable costs may include changes in employee benefits such as health care coverage. Other possible costs could be greater absenteeism, decreased productivity when at work (i.e., presenteeism), more accidents, more interpersonal conflict (with supervisors, co-workers, subordinates, and customers), lower morale, and increased workforce turnover (leading to increased recruiting and retraining costs for replacement workers). Increase in utilization of health care benefits is likely, given the increase in emotional and physical complaints associated with family-work conflict (Kiecolt-Glaser & Newton, 2001).

What do we know about the employee in this transitional stage? Not enough. Length of time in recovering from mental distress following divorce is inconclusive. The change in mental health has not been studied from the perspective of time in the legal system. Pre and post-divorce studies are underrepresented in the literature (Lucas, 2005). Gender differences have been under-explored (Diedrick, 1991). Employment performance while divorcing has not been studied despite recognizing the obvious chronological overlap of the adult experiences. Thus, social science research is challenged to understanding of the interplay between these dual experiences. Issues of the well-being of the workforce are captured in WFC research. The bi-directional relationships between work and family life research recognize the spillover between the two spheres. However, the spillover during
the process of divorce is not the focus of any empirical research. Employed adults in the process of divorce experience conflict between work and family demands largely unexplored in the family research literature (Paul, 1990). Divorce shows up as a moderator, as part of the demographic variable and as a risk factor correlated with stress in major life event research (Holmes & Rahe, 1967). Divorce is lumped in with work-family conflict and as psychosocial stressor and linked with depression and mental illness (Frone, 1992). The variability of the experience of process of divorce as a moderator that may affect the relationship between WFC and productivity calls for examination of other variables to enrich our understanding of those going through the process of divorce while maintaining job responsibilities. Hypothesized variables that predict an employee’s ability to maintain productivity could be intrapersonal, organizational, or related to one’s legal agenda.

Economics of Employee Illness

Current knowledge regarding the cost of mental illness will be reviewed. Specific disorders are identified to concentrate the information on conditions that most likely impact employee well-being and productivity. The ultimate goal of this initiative is to investigate the occupational impact of divorce in terms of lost productivity.

Stress and Health

How stress affects health has been studied extensively. Stress is defined as” negative emotional experience accompanied by predictable biochemical, physiological, cognitive, and behavioral changes that are directed either toward altering the stressful event or
accommodating to its effects” (Baum, 1990). Unhealthy behaviors may be used to cope with stressful life events. Stress is positively associated with unhealthy behaviors, including tobacco use, alcohol consumption, sleep dysregulation, and weight gain, — perhaps via decreased physical activity, and increased consumption of energy-dense foods. During the last several decades of stress research, the field has advanced from anecdotal evidence to current multivariate, integrative, longitudinal models that drive research efforts. Findings suggest early life environment affects health outcomes that may stretch into adulthood. An emerging perspective focuses on the accumulation of interacting dysregulations in multiple physiological systems that compromise the systems’ abilities to respond flexibly to stressful circumstances (Taylor, 2010). Research explores: the antecedents of these processes, including genetic predispositions, the harshness of the early environment, and their interaction; the mediating roles of neural regulation in the brain and psychological and social resources; and health-related outcomes, such as metabolic functioning and inflammatory processes. Taken together, then, these studies indicate that there are indeed links from the early environment to psychosocial resources, to biological functioning, and ultimately to health-related outcomes. Findings provide support for a general model of the effects of stress on health outcomes across the lifespan (Taylor, 2010).

Marital Stress and Associated Health Problems

Stress occurs during the marriage as well. Chances are; the employee is experiencing stress before divorce while going to work every day. The presence of pre-dissolution martial stress also increases the risk of post-dissolution depression. While marital stress
has been linked to psychiatric illness and a higher incidence of major depression, the impact of long-term marital stress may inform post-dissolution mood and affective responses.

**Marital Stress, Illness, and Work**

An important study examining spillover between marital distress and work is the work analyzing data from the National Comorbidity Survey (Forthofer et al., 1996) identifying cognitive distortions or “hot thoughts” that are part of marital discord, which may crossover to the workplace. Loss of workdays and productivity was recognized and acknowledged as possibly being a weak report due to self-reporting methods. There was support for the hypothesis of crossover of marital discord to work productivity.

This study is important as it built on the previous studies beginning to examine the concept of work-family research (e.g., Barnett, 1994; Straus & Gelles, 1990). The investigators expressed doubts regarding causation results and identified this as a deficit in the study. There was support for the hypotheses associating marital problems with loss of productivity identified particularly in the first ten years of marriage.

Based on the average earnings of participants, work loss associated with marital problems translates into a loss of approximately $6.8 billion per year. These findings suggest that family interventions targeted at the prevention of marital problems may result in substantial psychosocial and economic benefits for business and society (p.605).

Greater understanding of the possible impacts of long-term marital stress is a significant factor in the study of wellbeing and health during and after the divorce process. Long-term marital stress may be linked to adverse emotional health by negative emotional response (Lapate et al., 2014). Objective research is difficult to quantify as
most studies utilize self-reports to gather data on depression. The application of psychophysiological tools has begun to inform psychological study. Lapate utilized a well-validated corrugator EMG to provide an objective study of participants’ affective state. Utilizing psychophysiological measures including temporal resolution and facial electromyography (EMG), physiological results were collected over examination of reactivity of the corrugator supercilii muscle (Lapate et al., 2014). Measurement assessing individual response to positive (pleasant) and negative (unpleasant) pictures indicated a lack of sustained positive affective response.

The study recruited participants from the results of a blend of data from the national longitudinal Midlife In The United States (MIDUS) that surveyed the health and well-being of over 7,000 Americans ages 25-74. Together with laboratory-based assessments of affective responding, Lapate (2014) found long-term marital stress correlated with a diminished response to positive stimuli. The findings suggest a link with depressive symptoms such as lack of pleasure or anhedonia. Lapate’s study participants (N = 116; 59 males; 39–84 years) were recruited from MIDUS study.

Family demands have been long associated with stress and risk of poor mental health (Melchior, Berkman, Niedhammer, Zins & Goldberg 2007). There is less evidence of the relationship between stresses from marital disruption as resulting in high risk of psychiatric disorders. A recent study published in Canada, (2007), tests the hypothesis that those are experiencing the breakup of marriage or cohabiting relationship experienced a depressive episode. Subjects (aged 20 to 64) were selected from the National Health Survey (NPHS). Subjects were without evidence of a history of depression and agreed to be interviewed every two years for six cycles. Response rate
ranged from 86% to 77.4% with a sample size of 20,095 to 17,276. Interestingly, men were reported as having a higher incidence of depressive symptoms when no longer living with their children and decrease in social support systems. Minimal depressive symptoms persisted for up to four years post-breakup. Methodology issues include lack of inter-rater reliability and no discussion of the alternative explanation of findings. Still, the evidence of the persistent symptoms, even sub-clinical, lasting for four years, identifies potential loss of productivity and threats to well-being

**Divorce and Stress**

The impact of divorce is studied as a stressful “life event”. Life events are a mixture of life’s chapters and transitions. Separation and divorce may also affect health care utilization. Stressed individuals report fewer preventive doctors visits, reduced prescription medication adherence, 16% delayed preventive care, and delays seeing a doctor.

Listening to those affected by divorce describe their life trajectories, “before the divorce” and “after the divorce” often serve as markers of this life event. All divorcing individuals must experience the legal system concurrently with responsibility. Work issues exist independently for single, separated, widowed, married, and divorced adults.

Academically, there has been a lack of attention towards the trajectory from separation to divorce. Divorce should be viewed as a process involving a series of events and changes in life circumstances rather than as a single event (Hetherington, 1979). That view has delayed the social science community from adequately adding to our understanding. The process and the productivity of an employee while at work are under-
researched. There is a risk of either a psychiatric illness or behavioral changes resulting from ongoing emotional factors. Continuing with the running comparison to medical care, if the patient is in a debilitated, weak, or immune-compromised state, restrictions and warnings are a standard of care. There is no “standard of care” or “algorithms” in the decision-making alternatives from the legal community. Outcome research linking the possible variables is critical to validating interventions.

Previous studies have indicated that married people have lower mortality rates and are healthier. Most previous studies have been cross-sectional and few studies investigated the effect of marital transition on health. With a prospective design and repeated measures of variables, researchers sought to analyze the temporal relation between marital transition and change in health behaviors (Neilson, Nete & Monk, 2014). Following 80,944 women aged 46–71 for 4 years (1992–1996), using the longitudinal data from the Nurses’ Health Study; researchers examined the association of marital status on a range of health behaviors and risk factors. Measures included change of Body Mass Index (BMI), physical activity, smoking, alcohol intake, and food intake. Researchers were looking for both health damaging behavior and health promoting behavior. Results indicated smoking relapse, increased drinking, and poorer diet. Health promoting behavior was reported by showing an increase in exercise. Conversely, remarriage is associated with health-promoting behaviors. Findings point to potential mechanisms underlying the previously observed relationships between marital transitions and other health outcomes such (Nielsen, Nete & Monk, 2014).

Another study analyzing divorce and risk of hospital-diagnosed infectious diseases was performed using a nationwide cohort including all Danish men and women (n≈5.6
million) alive from January 1982 or later. Researchers followed them for infectious
disease diagnosed while in the hospital (Lee, Cho, & Grodstein et al., 2005). Results
indicated increased risk for infection for the divorced, which incrementally increased
with history of additional divorce, early age of the initial marriage, and short-term
marriages. This supports the theory of a chronic strain model as researchers indicated this
immunological risk lasted into the future for approximately 15 years.

In contrast, consistent with a chronic strain model, a longitudinal study by Johnson
and Wu (2002) found that the decline in psychological well-being following divorce did
not improve until people remarried. Waite et al., (2009) found mixed support for both
models, depending on the outcome and the degree of marital happiness before disruption.

Lorenz et al., (2006) also found support for both models depending on the
outcome. In their study, divorce was followed by an increase in psychological distress
among mothers that later declined, presumably because of the crisis-like features of the
event. In contrast, physical health problems (which take longer to emerge) were elevated
a decade later, possibly because of years of dealing with chronic strains associated with
single motherhood.

Given the continuing support for both the crisis and chronic strain models, it seems
likely that each contains some truth. Presumably, divorce can have either short-term or
long-term consequences, depending on a variety of moderating factors. This conclusion
is consistent with longitudinal research by Hetherington (2003), who reported that
divorce was followed by short-term declines in psychological, social, and physical well-
being of parents. After a few years, most individuals had adapted well to their new lives,
although a significant minority remained seriously troubled.
There is new effort to work from a life course perspective to assess the impact of marital status and marital transitions on subsequent changes in the self-assessed physical health of men and women. Results suggest three central conclusions regarding the association between marital status and marital transitions. First, marital status differences in health appear to reflect the strains of marital dissolution more than they reflect any benefits of marriage. Second, the strains of marital dissolution undermine the self-assessed health of men but not women. Finally, life course stage is as important as gender in moderating the effects of marital status and marital transitions on health. The number of depressive symptoms reported by the twice-divorced is significantly higher than that of the singly divorced (Barrett, 2010).

Research identifies marital disruption as a precursor for poor mental health but is unable to discount the potential selection effect of poor mental health leading to marital disruption. Data from nine annual waves of the British Household Panel Survey was used to examine social selection and social causation as competing explanations. Mental health was measured using the general health questionnaire to measure mental health indicators. Measurements were assessed at multiple time points before and after the marital transition through separation or divorce. All groups transitioning out of marriage showed a higher prevalence of poor mental health afterward but for those separated or divorced, poor mental health also precedes marital disruption, lending support to both social causation and social selection processes.

A relationship was found when researchers examined if divorce was associated with the presence of a psychiatric disorder. Longitudinal data (n = 703,960) from register-based cohort study of all married or divorced individuals aged 45-54 in Sweden in 2006
reviewed for the presence of a diagnosed psychiatric disorder. Authors measured data by calculating psychiatric inpatient care, outpatient care, and use of psychotropic medication. Marital trajectories were taken into consideration. Data were analyzed using Poisson regression. Divorced women and men had a higher risk for psychiatric inpatient care compared to married subjects. The longer the marriage, the lower the risk for psychiatric disorders. Lower educational level increased the risk for psychiatric inpatient care. This work significantly adds to the literature due to establishing causation by linking reports of the recent divorce to increased psychiatric disorder for both women and men.

An investigation as to whether or not organizational policies influenced an employee’s divorce process is important in factoring the allocation of human resource benefits. Study of the method of divorce and correlation to employee productivity measures can help to support the choice of one method over the other. Organizations can benefit from the knowledge of which method of divorce is less stressful and in coming closer to knowing if the cost of that stress is measurable, predictable, or avoidable. Exploring business policies recognizing interpersonal crisis (divorce), the need for recovery and re-stabilization during the process of obtaining a divorce may result in important psychosocial and economic benefits for business and society. The period of separation, subsequent divorce and the year following divorce are a risky time for employee productivity. Mueller’s (2005) examined divorce and labor supply consequences. He found the most statistically significant decline was in the first year following a divorce. Actual time working dropped sharply, as did measures of productivity, and annual hours and hours per day in the period spanning the separation
through divorce. Mueller found declines were significant, both statistically as well as economically. However, the analysis did not measure cost of lost productivity.

*Health Implications of Marriage and Divorce*

Major contributors over the last 30 years to the subjects concerning marriage acknowledge there are substantial holes in the literature regarding the covariates of divorce. One identified critical area is health. Health has been viewed from the perspective of researching health and the risk of marital dissolution. Although essential, the need for understanding health and divorce needs to be expanded to the separation transition. The study of this time period is important as it can apply to the lived experience of this population. Poor marital quality can lead to declines in both physical and emotional health and vice versa. Good marital quality leads to improvement in physical and emotional health. (Umberson, Williams, Powers, Chen, & Campbell, 2005; Umberson, Williams, Powers, Liu, & Neeham, 2006; Wickrama, Lorenz, Conger, & Elder, 1997; Williams, Sassier, & Nicholson, 2008). Causality may be bidirectional.

Previous research has claimed that married adults are happier and healthier than single cohorts with evidence of improvement in the major health indicators (see Kiecolt-Glaser & Newton, 2001, for a review). Life satisfaction, better cardiovascular health, and less depression have been reported in numerous studies. Marital dissatisfaction significantly increases the risk for a major depressive episode. Past epidemiological studies have shown that, after controlling for prior depression, history of marital discord was strongly linked etiologically to psychiatric illness, particularly major depression (Whisman & Bruce, 1999).
Health of Family and Employee

Teachman (2010) examined work-related limitation by using the discrete-time event history model to examine the relationship between work-related health limitations and marital dissolution. Looking through 25 years of data from the 1979 National Longitudinal Study of Youth (n=7919), he found when white males who were higher educated experienced work-related health limitations; the incidence of divorce was significant. The same effect was not present for a woman. In addition, this relationship was moderated by education that varies according to race. For White men, education exacerbated the effect of health limitations, but for Black men, education diminished the effects of work-related health limitations. Black men who were higher educated did not experience the incidence of divorce as did white males. Higher education attenuated the effect of health limitations on marital dissolution. For white men, higher education strengthened the effect of health limitations on divorce.

This information may inform the occupational science literature as a risk factor for divorce. Identifying an employee who suffers from work related health problems might be at a greater risk for divorce. What is unknown is how the individual divorce process affected their illness, as well as their ability to function at work.

Contagious Stress and Family Health

It is widely accepted that stress predictably takes a toll on children (Saad, 2006). Marital conflict is a more significant predictor of child adjustment than is divorce itself or post-divorce conflict (Lampe, 2007). Regardless of parents' marital status, a high level of marital conflict experienced during childhood has been linked to more depression and
other psychological disorders in young adults, compared with those reporting lower levels of family conflict during childhood (Depner, Cannata, & Ricci, 1995; Pruett & Bailey, 1998). Long-term sequelae of these stresses are variable. Meta-analytic research of 67 studies conducted throughout the 1990s involving children across a broad range of ages (preschool through college age) reveals that disparities in academic achievement, psychological adjustment, and self-concept among children with divorced and married parents have increased since the 1980s (Amato, 2001). Studies of older children have consistently reported adverse effects of divorce on children's and adolescents' behavior, social interactions, psychological well-being, and academic performance (Amato, 2001). Older children may be at a lower risk for long-term social and emotional adjustment problems than younger children (Zill, Morrison, & Coiro, 1993). Consistent with this finding, meta-analysis (Amato, 2001) showed stronger negative effects on academic achievement for primary school than secondary school children did and weaker effects for the younger children on psychological adjustment variables.

Conversely, contradicting outcomes were reported from the National Institute of Child Health and Human Development Study of Early Child Care, which assessed over 1,000 children from ages 0–3 years from intact, never married, separated, and divorced families (Amato & Gilbreth, 1999). Parent and child functioning were assessed before and after marital disruption. When maternal education and family income were controlled in statistical analyses, children from divorced, separated, or never married parents performed more poorly across age groups on tests of cognitive ability (Clarke-Stewart, Vandell, McCartney, Owen, & Booth, 2000). Marital status was not predictive of poor outcomes for the child. Significant links to maternal depression, anxiety, and
stimulation/support of the child were found to be negative predictors (Amato, 1994, Emery, 1999, Hetherington, 1999, McLanahan & Teitler, 1999).

Interestingly, recent studies with more sophisticated methodology, report smaller differences between these two groups (married vs. unmarried parents) than did earlier studies, and the magnitude of the differences is small (Clarke-Stewart & Hayard, 1996). There is great overlap between groups of divorced and never divorced children, with the majority of children of divorce falling within the average range of adjustment on standardized measures (Clarke-Stewart, Vandell, McCartney, Owen & Booth, 2000) that two critical factors negatively impacting children of divorce are marital and parental conflict and destabilized parent-child relationships (Kesserlring & Bremmer, 2006).

Many families experience hostile post-divorce interactions requiring court intervention. Frequently the legal reasons for the court actions centered on money and access to children (Cline & Westman, 1971). Commonly observed family dynamic patterns included (a) hostile interaction between divorced spouses over the parenting roles; (b) continued conflict between divorced spouses, but not involving the children or extended family; (c) perpetuation by the children of interaction between their divorced parents; (d) individual alliances between one parent and child against the other parent; and (e) continued interaction of divorced partners, perpetuated by the extended family (Kirkland, 2003).

Work and Family Research Variables

Work-family culture refers to an organization’s family-supportive behaviors (Mauno, Kinnunen, & Pyykko, 2005). Evidence of work-family culture such as availability of
work-family arrangements when utilized may lead to an employee experience of
corporate compassion during periods of interpersonal stress, such as, during an
employee's divorce. For example, employers that alter expectations of their workforce
while going through major family changes may be associated with positive employee
wellbeing (Mauno et al., 2005). Employee benefits packages may include Pre-Paid Legal
Plans that may be supported by a reduction in other health care and absenteeism
costs. This research is needed to determine the extent to which each variable affects
employee productivity with the goal of determining and validating supportive work-
family cultures.

The assessment of what resources employees are need and what is available are
referred to as “Work–family fit” (Karimi & Nouri 2009). There is no research on this
subject that relates to marital dissolution. There is a need to add to the empirical
understanding and the literature examining divorcing from the view of productivity,
evidence of work-family fit, work-family culture and legal means of divorcing. Little
evidence has been linked to the beneficial aspects of the trend towards ADR methods of
divorce. Economic empirical research may demonstrate a decrease in costs associated
with employee stress. The incentive to invest in assisting employees to cope with the end
of marriage is consistent with organizational wellness program initiatives.

Hypothesized variables that predict an employee’s ability to maintain productivity
could be health related interpersonal, organizational, or related to one’s legal
course. Given the prevalence of divorce, identification of resiliency factors may be an
important aspect of planning organizational support efforts (Greef et al., 2004). Current
scholarship on employee performance report problematic mental health status
“responsible” for a significant reduction in employee productivity (Hilton et al., 2008). Measuring the cost of components of employee productivity indicate that lack of mental wellness is explicitly tied to absenteeism (not being present at work when scheduled) and presenteeism (decreased on-the-job performance due to health problems) (Brouwer, Koopmanschap & Rutten, 1999, Aronsson & Gustaffsson, 2005).

A recent study published in Canada, (Roteman, 2007), tests the hypothesis that those experiencing the breakup of marriage or cohabiting relationship experienced a depressive episode. Subjects (aged 20 to 64) were selected from the National Health Survey (NPHS). Subjects were without evidence of a history of depression and agreed to be interviewed every two years for six cycles. Response rates ranged from 86% to 77.4% with a sample size of 20,095 to 17,276. Interestingly, men were reported as having a higher incidence of depressive symptoms when no longer living with their children and decrease in social support systems. Minimal depressive symptoms persisted for up to four years post-breakup. Methodology issues include lack of inter-rater reliability and no discussion of the alternative explanation of findings.

Greef and Van Der Merwe (2004) presented a study on variables associated with resilience in divorced families. Citing McCubbin and Patterson (1983), the variability of responses is related to “the buildup of stressful events; family’s current and new adaptation resources, the families’ perception of stressors and individual resources”, (p.60). The three resources include personal, internal, and social support. Buffers that were important are reported to be economic, parental involvement and community resources. Utilizing a cross-sectional survey design assessed through self-report questionnaires with a sample of 98 families, Greeff and Van der Merwe administered
instruments to evaluate these characteristics thought to be representative of resilience by administering the following instruments: a biographical questionnaire, The Relative and Friend Support Index, The Social Support Index, The Family Crises Personal Evaluation Scales and The Family Hardiness Scales. Results were consistent with previous research indicating support systems as a significant resilience factor.

Organizations can learn from resiliency research to attempt to become a resource for employees going through personal crisis. The trend in the changes in family structure has called for changes in human resource policies and employee benefits. The trend impacts the greater need for organizational support services. If one accepts these trends in marital dissolution as a reality, the impact of divorce on employee’s mental health may require attention if parents are clinically vulnerable.

Family dynamics mixed with entanglement in the divorce process and legal system may represent a risk for a weak link in a vulnerable employee. Separated and divorced adults consistently report greater psychological distress than married or never married adults (Pruett et al., 2005). In turn, depression and anxiety can lead to a diminished capacity to perform at work.

An important study examining spillover of marital distress and work is the work analyzing data from the National Comorbidity Survey (Forthofer et al., 1996). The study identifies cognitive distortions or “hot thoughts” that are part of marital discord, which may crossover to the workplace. Loss of workdays and productivity was recognized and acknowledged as possibly being under-reported due to self-reporting methods. There was support for the hypothesis of crossover of marital discord to decreased work productivity. This study is important as it built on the previous studies beginning to
examine the concept of work-family research (Barnett, 1994; Straus & Gelles, 1990). The investigators expressed doubts regarding causation results and identified this as a deficit in the study.

There was support for the hypotheses associating marital problems with loss of productivity identified particularly in the first ten years of marriage. Forthofer (1996) suggests:

> Based on the average earnings of participants, work loss associated with marital problems translates into a loss of approximately $6.8 billion per year. These findings suggest that family interventions targeted at the prevention of marital problems may result in substantial psychosocial and economic benefits for business and society (p.605).”

*Work and Family Conflict Research*

Recognizing that the probability of substantial rates of divorce will continue to affect society, this inquiry seeks to suggest the need to capture economic ramifications to organizational performance. Suggested measurement of organizational costs likely to be impacted by employee transitional state may consider studying indicators of absenteeism and presenteeism. Absenteeism and presenteeism are often cited as a significant indirect cost to employers (Burton, 2005).

Productivity losses stemming from absenteeism and decreased productivity while at work (presenteeism) account for the largest share of the total costs of depressive and anxiety disorders, with estimates ranging between 70% and 85% for depression. One study on the prevalence and costs of disorders of the brain within the European Union showed that the estimated annual costs of work absenteeism and lost productivity while at work in the European Union due to mood disorders were estimated to be 72 billion dollars for depression, and 128 billion dollars for anxiety disorders. The costs for anxiety
disorders were lower, because anxiety disorders have less impact on activities at work. Employers absorb productivity costs.

Work Performance

Work performance is a broad term, often subjective. Work-family literature recognizes the enormous task and the associated difficulties in measuring employee performance with methods that are valid, reliable and unbiased (Coens & Jenkins, 2000, Ilgen & Pulakos, 1999, Kossek & Nichols, 1992). Measuring productivity includes measures of work performance and behaviors; performing core tasks, task performance, and organizational citizenship are all differing aspects of measuring employee work performance (Hyland & Jackson, 2006, p533). Combination approaches include self-ratings and behavioral measures such as absenteeism (Kossek & Nichol, 1992, Bates, 1999). The highest level of absenteeism is in public administration (52%) and financial services (49%). Moreover, the current economic crisis also demonstrated an increase in presenteeism (39%); employees tend not to call in sick, out of fear of losing their job, but are less productive at work because of health problems. These high absenteeism and presenteeism levels impose a substantial economic burden on society as a whole and employers in general.

Williams, Haldeman and Cramer (1996) introduce yet another dimension to evaluating productivity. Citing Choice and Exchange Theory developed by Nye (1978), which identifies a network of associations between the construct and identified variable that predicts worker productivity. The financial concerns that an employee is experiencing were demonstrated to have a relationship with absenteeism and decrease in
work productivity. Williams cites Bruer (1995, p. 71) in identifying “the theme is a minimized distraction for maximum output”. Employees who have worries about career advancement, finances and work-life balances do not perform to capacity. This is yet another layer in understanding the divorcing individuals’ journey as financial insecurity is often a part of a divorce. Preoccupation and worry about the unknown may have a correlation with absenteeism and decreased measured performance.

*Work-Family Conflict and Health*

Recent WFC research indicates a correlation between workers with high levels of WFC with at least one mental disorder (Wang et al., 2007):

There is a substantial costs of mental illness to employers, through either due to greater absenteeism, decreased productivity when at work (i.e., presenteeism), more accidents, more interpersonal conflict (with supervisors, co-workers, subordinates, and customers), lower morale, and increased workforce turnover (leading to increased recruiting and retraining costs for replacement workers.

In evaluating correlation between WFC, work productivity and the process of divorcing, work productivity instruments are available. Lofland (2004) reported findings of a comprehensive review of all health-related work productivity instruments that measured an estimation of absenteeism and presenteeism that were published in peer-reviewed scientific journals. Future research may benefit from using these tools to measure productivity.

Examining the link between work productivity and the process of divorce may illuminate opportunities for organizational support or evidence of workplace culture. Understanding how the legal system impacts an individual divorce experience may stimulate policy changes, adaptations in the workplace or more informed choices. This
research is needed to determine the extent to which each variable affects employee productivity with the goal of determining supportive work-family culture.

Corporations and other large institutions have shown increased responsiveness to the family needs of their employees. Workplace policies and practices that are concerned with mental health-impacting productivity, performance, and absenteeism among their workers in the process of divorce are scarce. Exploring business policies recognizing interpersonal crisis (divorce), the need for recovery and re-stabilization during the process of obtaining a divorce may result in important psychosocial and economic benefits for business and society.

*Adverse Life Event and Health Outcomes*

The impact of divorce has been studied as a “life event”. Life events are a mixture of life’s chapters and transitions. Kaplan and Damphousse (1997) define life events as “occurrences that either reflect or lead to the loss, addition or redefinition of the roles associated with social positions”. This particular life event serves as a historic marker of transition from a couple to a single entity. This change in legal status results in stressors impacting lives socially, economically, and psychologically.

Once a couple is divorced, the parties often punctuate their life trajectories with “before the divorce” and “after the divorce”. From the vantage point from Adverse Life Event (ALE) research, one of the most frequent events causing stress i.e., divorce, end of a romantic relationship, causes as much stress as the death of a loved one (Keller et al., 2007; Holmes & Rahe, 1967; Lazarus & Folkman, 1984; Kreiger et al., 1993; Dohrenwend & Dohhrenwend, 1974).
Research shows that adults experiencing high levels of stress are at risk for physical and mental illness. The stress of divorce is linked to specific symptoms meeting the criteria for a Depressive Disorder such as sadness, appetite loss, trouble concentrating, guilt, fatigue, psychomotor retardation, and hypersomnia and insomnia. Many investigations have found a correlation between the occurrence of stressful life events and the subsequent onset of an episode of major depression (Kendler et al., 1999; Paykel, 1978; Brown, Harris, 1978; Costello, 1982; Miller et al., 1986; Bebbington, Stuart, Tennant, Hurry, 1984). Insights learned from the research of stressful life events informed psychiatric epidemiology to examine correlations between stressful life events and mood disorders, particularly depression. Kendler (1999) suggests variables such as genetic vulnerability and cause of a stressful event are relevant variables. Dependent stressful life events (an event not caused by the individual) were more strongly linked to depression than independent stressful life events. Causality impacted the severity of the depressive episode however personal stressful life events were associated with the greatest odds for onset of a major depression.

The end of a marriage is associated with a variety of positive and negative outcomes. Although most people are resilient in the face of divorce (e.g. Hetherington & Kelly, 2002), separation experiences are consistently associated with increased risk for a range of negative emotional and physical health outcomes (Ben-Shlomo, Smith, & Shipley, 1993; Kiecolt-Glaser et al., 1987; Lucas, 2005; Tucker, Friedman, Wingard, & Schwartz, 1996). What is not yet known in detail is why and how some people navigate divorce with minimal or transient distress whereas other people become mired in periods of considerable emotional pain and stuck on trajectories. Attachment Theory (Bowlby,
1969, 1973, 1980; Mikulincer & Shaver, 2007) was thought to be a reliable theoretical framework for questioning individual differences in the emotional responses of separated adults. Recent research sought to operationalize a potential behavioral index of attachment-related hyperactivation (Mikulincer & Shaver, 2003, 2005; Shaver & Mikulincer, 2002). The question was what were the behaviors that highly anxious adults use to cope with real or perceived attachment threat? Is their response pattern associated with increased blood pressure? Researchers set up experiments instructing adults to think about their recent separation experience. The results correlated anxiety and high immediacy with elevated blood pressure. The continuation of abnormal cardiovascular function, as evidenced by HBP, is a strong risk factor for serious negative health outcomes. This work points to a potential route through which specific individual differences can increase the risk for prolonged biological dysregulation in the face of divorce (Lee; Sbarra; Mason, and Law (2011).

Using data from the Fragile Families and Child Wellbeing Study (N = 1,975), researchers sought to examine the association between mothers' partnership changes and parenting behavior during the first five years of their children's lives. The study compared coresidential with dating transitions, and recent with transitions that are more distal. Findings indicate that both coresidential and dating transitions were associated with higher levels of maternal stress and harsh parenting; recent transitions had stronger associations than distal transitions. The importance of proximity for understanding the association between family instability and parenting has been considered applying Family Stress Theory (McCubbin & Patterson, 1983). Hetherington (1989) argued that families return to baseline levels approximately two years after a divorce in the absence of
additional stressors. Few studies have focused on timing in a multiple transition framework (Cavanagh & Huston, 2008).

Measuring the Cost of Conflict: Stress

Since the publication of this economical measurement procedure, the SRE, a tremendous increase has occurred in the construction of such measures and quantitative research on relations between inventoried life events and health. For example, a search of the terms life events, life change, stressful life events, and life stress (or a combination of these terms) using PsycINFO (http://www.apa.org/psycinfo) shows an increasing rate of publications on these topics, from 292 in the decade of 1967 to 1976, to 2,126 in 1977 to 1986, to 4,269 in 1987 to 1996, to 3,341 in the truncated 1997 to 2005 portion of the present decade.

Identifying universal variables that measure the impact of stressful life events is needed. Research identifying a correlation between divorce and illness has been an international interest. Crossing continents, in a study of 3023 persons in Singapore, variables of age, gender, and marital status further supports the health significance of life events. Results identified individuals without a spouse (divorced/separated/widowed) as having the highest rate of minor psychiatric morbidity. The association was measured using two well-validated instruments: General Health Questionnaire (GHQ-28) and the Life Events Scale (LES) Ko, Kua, Ng, & Fones, 2001). The authors’ conclusion supported the need for health care services to factor in life stress:

The acknowledgment and recognition of life events as predisposing, precipitating and perpetuating factors in the etiology of illness is needed for clinicians to provide a more responsible delivery of healthcare.
Research is needed to identify the linkage between stressful life events, (specifically divorce), pre/during/post involves variables such as educational level, social and economic level (SES), children, custody decisions, social support, employment (satisfaction), length of marriage, presence of infidelity, work-life policies at work, pre-existing and co-occurring mental and physical conditions, and temperament/coping styles to the health outcomes of divorce.

The research on work-family conflict suggests conflict effects mental and physical health (Frone, 1992). Incidents of work issues have been linked to depression and threatened emotional wellbeing (Wang, Afifi, Cox & Sareen, 2007, Cooper, 1989; Grant-Vallone & Donaldson, 2001) and poor physical health (Brisson et al., 1999).

Brisson et al., (1999) published work that assessed the effect of family and work conflict on physical health by analyzing a cross-sectional sample of 199 white-collar women. Participants were employed in full-time jobs involving varying levels of stress. The results found that women with a university degree and family responsibilities and employment stressors had a greater systolic and diastolic blood pressure than women exposed to only one or neither of these factors. They were unable to function at full capacity as compared to those who do not have a psychiatric disorder (Kessler & Frank, 1997; Dewa & Lin, 2000). There has been much progress in our understanding of mental illness and disability. The World Health Organization has recognized mental health problems as a “global burden of disease,” with widespread depression accounting for most of the disease burden (World Health 2000; Dewa et al., 2002; Stewart et al., 2003). There are direct workplace costs such as disability and productivity, which is critical for employers and insurers. Research has shown that most employees that are
experiencing mental illnesses are usually present at work. However, performance can be substantially reduced (Stewart et al., 2003). Intuitively, there are economic implications from diminished work performance.

Symptoms of mental distress reaching a pathological point are variable. The risk is there. Anxiety disorders are one of most prevalent of mental illnesses (McGlynn & Metcalf, 1989). Anxiety disorders are characterized by symptoms such as excessive worry, fear, preoccupation, obsessive thoughts, and apprehension (Arikian & Gorman, 2001). Anxiety disorders represent a significant economic burden, estimated to be between $42.3 and $46.6 billion annually in the United States (DuPoint et al., 1996; Greenberg et al., 1999). The National Comorbidity Survey estimated a 1-year prevalence of 17.2% and a lifetime prevalence of 24.9% (Kessler et al., 1994). Patients with anxiety disorders often have physical symptoms, comorbid general medical conditions, and other psychiatric disorders.

In a large retrospective, multivariate analysis of institutional cost of treating patients with anxiety disorders, Marciniak, et al., (2005) estimated the medical cost of a diagnosis of any anxiety disorder was $6,475. Those employees with comorbid depression diagnosis added $1,900.00. The patients with the highest medical costs were those with Post Traumatic Stress Disorder, Generalized Anxiety Disorder, and Major Depression or both an anxiety disorder and a chronic health condition such as diabetes or cardiac conditions. Recognizing that anxiety disorders are considered the most prevalent mental illness with an estimated economic price tag of estimated $40 to $46 billion per year in the United States (Dupont, 1996; Greenberg, 1999), the need to address these illnesses in relation to legal experiences should be a critical social priority.
Considering the estimate of the prevalence of major depression; 6.7% of U.S. adults’ population; (NIMH, 2014) an adult may be concurrently experiencing both depression and an adverse life event. Focusing on Major Depressive Disorder (MDD) alone, The National Alliance for the Mentally Ill reports the costs to society for major depression is over $34 billion dollars a year. MDD is further complicated by likely comorbid physical illness. Organizations share in the societal cost as MDD impacts the workforce with comorbidity for chronic physical illness, caregiver burden, increase in utilization of medical services and loss of productivity. Individuals experiencing heavy demands by either family responsibilities or work demands are at risk for poor health. Scholars recognize the need to study families as dynamic systems rather than static institutions. This shift has been spurred by recent demographic trends—high rates of nonmarital fertility, cohabitation, divorce, and multi-partnered fertility—which are associated with decreased stability and increased complexity of family arrangements, particularly among disadvantaged populations (Ellwood & Jencks 2004; Ventura & Bachrach, 2000). Recent studies have suggested that family instability and complexity are associated with adverse child outcomes, and this in turn has fueled concern that the higher prevalence of these experiences in disadvantaged populations may contribute to the intergenerational transmission of inequality in the United States (Amato, 2005; McLanahan & Percheski, 2008). Relatively few studies, however, have assessed whether family instability and complexity influence parental well-being.

Understanding whether and how family instability affects parents is important for two reasons. First, the well-being of adults is important given that society needs healthy,
productive citizens. Partnership dissolution and new partnership formation likely point to associated changes in individual and family circumstances. Such changes may affect an adult’s access to economic and social resources, as well as his or her psychological functioning. The timing of family transitions (exits) is likely to influence adults’ health, productivity, quality of life, and is at risk for less access to social support during the time of changes. Research has demonstrated this increases hardship, parenting stress and subsequent depression (Osborne, Berger, & Magnuso, 2012).

Risk Factors

All divorcing parties must experience the legal system concurrently with family responsibility. Balancing work and family/relationships demands exist independently for adults whether single, separated, widowed, married or divorced. Either independent or dependent stressful events are applicable to divorcing couples. Some partners may feel victimized by the other; perhaps infidelity or betrayal instigated divorces could cause an ongoing provoked response. Psychological distress may be an expected response, with varying degrees of experienced negative symptoms seemingly linked to the toxicity of the experience.

The value of the ability to mitigate the difficulty during this transition is unknown because the skill set or work environment or legal course needed is unknown. Organizations clearly wish to avoid the loss of employee function or productivity, from the cost of health care perspective as well as economic value of the employees’ work. The individual also wishes to maintain economic equilibrium. The court system has a
vested interest in litigants’ financial security, as changes in circumstances bring litigants back to court, and support and alimony payments are tethered to income.

This is an important area to study as research supports the negative physical and mental health consequences of stress; the courts may exacerbate stress thus weakening the immunological strength of the litigant employee when vulnerable.

*Work Function Impairment*

In order to be diagnosed with any mental illness, there must be a decline in the degree of function from the patient’s baseline. Symptoms of major depression that may be linked to function at work include difficulty sleeping, fatigue, negativity, and lack of interest, lack of energy, diminished concentration, and persistent sad mood. Potential for work impairments related to these symptoms can be functional. Individuals may have difficulty with attendance, completing work, forgetfulness, avoidance of co-workers and diminished effectiveness. Anxiety over work issues or performance pressure may perpetuate an already stressed period in employee’s life transition.

The symptoms of the most common and debilitating mental illnesses are largely subjective and often invisible to the employer. Mental illness does not have to reach severe levels to impact work output. Studies have shown that subclinical symptomatology may mirror occupational drain. Mental health issues are historically under reported based on fear of stigma, lack of self-identification and confusion with somatic complaints.

In order to conceptualize how psychiatric conditions may impact workplace outcomes, one must first look at the diagnosis mental illness. How many are
there? There are over three hundred diagnoses in the DSM 5 (2013). Many of the symptoms of one diagnostic category overlap into another where comorbidity is the rule, not the exception. Past research has shown the mental illness conditions of the workplace impact workplace burden, however, which psychiatric symptoms; for which conditions cause the most difficulty for employment?

**Mental Illnesses Prevalent in the Workplace**

Using the Data from the National Comorbidity Survey Reproduction the illnesses identified were Major Depression, Panic Attacks, General Phobias and Generalized Anxiety Disorder (Banerjee, Chatterji & Lahiri, 2014). The symptoms identified are cross-represented for these conditions: insomnia/hypersomnia; indecisiveness, emotional distress (for MDD); and inability to control worry; anxiety and nervousness. Banerjee et al., (2014) aimed to address the lack of empirical evidence linking mental illness to labor outcomes. They report MDD as having the most detrimental effect with GAD the second. Interestingly, only men lost days from work for GAD. Both men and women lost weeks from work from MDE. Insomnia/hypersomnia, fatigue, indecisiveness, and emotional distress were the most critical indicators for debilitating work outcomes. Their findings are consistent with other research indicated MDE as the having the greatest impact on organizational productivity. The authors point out that those who did not meet diagnostic criteria for a psychiatric disorder had similarly poor physical health.

This suggests the need to identify employees for additional screening due to increased risk for occupational impairment. This is important for this inquiry. Many clients will either minimize symptoms or deny signs due to the nature of the litigation. If there is a
child custody decision, for example, a parent will not seek help. Not wanting to be labeled “crazy” or be seen as a “lesser “parent, avoidance of psychological or psychiatric care is common. Perhaps they may share with their primary care provider and receive a medication. Parents avoiding treatment is not yet studied.

This is an area where the philosophy of therapeutic jurisprudence would be beneficial. Professor Winick discusses specifically that “although therapeutic jurisprudence is premised on the notion that, other things being equal, health is a value that law should seek to foster, it makes no attempt to assign relative values to the various other goals of law (Winick, 1997).

Generalized anxiety disorders (GAD) are two of the most frequently diagnosed mental disorders (Carter, Wittchen, Pfister, & Kessler, 2001; Kessler, Keller, & Wittchen, 2001). Many randomized controlled trial studies (e.g., Borkovec & Costello, 1993; Ladouceur et al., 2000; Leichsenring et al., 2009; Linden, Zubrägel, Bär, Franke, & Schlattmann, 2005). With respect to health care utilization, many studies have shown that GAD patients are high users of medical services and that they take medication above the average consumption (Carbone et al., 2000; Greenberg et al., 1999; Katon et al., 1990; Marciniak et al., 2005; Roy-Byrne & Wagner, 2004; Souêtre et al., 1994; Wagner, Silove, Marnane, & Rouen, 2006; Wittchen, 2002).

GAD patients are also associated with considerable disability with respect to participation in social and occupational roles, with high rates of sick leave (i.e., on average 10 days of occupational impairment per month; Wittchen, Carter, & Pfister, 2000). This gives GAD a place in the upper range compared with other mental or somatic illnesses (Erickson & Newman, 2007; Kessler, Dupont, Berglund, & Wittchen,
Impairment of Productivity

Work performance is a broad, subjective term. Work-family literature recognizes the associated difficulties in measuring employee performance with methods that are valid, reliable and unbiased (Coens & Jenkins, 2000, Ilgen & Pulakos, 1999, Kossek & Nichols, 1992). Measuring productivity includes “measures of work performance and behaviors; performing core tasks, task performance, and organizational citizenship are all differing aspects of measuring employee work performance” (Hyland & Jackson, 2006, p. 533). Combination approaches include self-ratings and behavioral measures such as absenteeism (Kossek & Nichol, 1992, Bates, 1999). The correlation between WFC, work productivity and the process of divorcing, requires validated instrument selection to scientifically evaluate employees. Lofetland’s (2004) review of all health–related work productivity instruments that measure absenteeism and presenteeism that were published in peer-reviewed scientific journals provide a choice of validated instruments. Research can begin to measure the employees who have been identified as going through marital transitions without the need to reinvent the wheel from a methodology perspective.

Recent WFC research indicates a correlation between workers with high levels of WFC with at least one mental disorder (Wang et al., 2007). There is a substantial cost of mental illness to employers, either due to greater absenteeism, decreased productivity when at work (i.e., presenteeism), more accidents, more interpersonal conflict (with supervisors, co-workers, subordinates, and customers), lower morale, and increased
workforce turnover leading to increased recruiting and retraining costs for replacement workers). Early identification of employees should be a health care imperative.

Absenteeism

Absenteeism is a commonly studied measure that can be used as a measure of employee performance. Absenteeism is an important measure to organizations and has a cost association in lost productivity.

Previous research in this area historically associated the care of the sick child, missed work for family or personnel-related issue (Hammer, Bauer, & Grandy, 2003) with absenteeism. Allebeck and Mastekaasa (2004) report risk factors for absence to include divorce, the effect of physically stressful work and correlation with low psychological control experienced at work. Attention to factors increasing the risk allow for the recognition of contextual data that should be considered when evaluating behavioral response to stressors such as divorce. Qualifying absent or late behavior during periods of unusual circumstances, locus of control in the workplace and quantifying “heavy“ work or family demands may be an important moderator to include in future research. These variables appear consistent with the employee’s change in family responsibilities.

Results of the most recent Gazel study demonstrated workers with high levels of work and family demands at an increased risk of mental illness related absences, particularly depression (Melchoir et al., 2007). Interestingly, the measure used to determine high family demands were by the number of dependents (children and others). They found rates of psychiatric sick days to be particularly elevated by those
with no dependents but with substantial work demands. The group found to be at greatest risk was that with both heavy work and family demands that could apply to families, with dependents, going through the process of divorce. These research results could be hypothetically applied to this cohort.

Presenteeism

Dr. Bridget Juniper is President of “Work and Well-Being Ltd”, a company that specializes in the measurement of employee wellbeing. In an interview with Harvard Business Review (2012), she describes the productivity problem from different angles:

It is important to note that there are three definitions linked to presenteeism, each of which highlights a different aspect. The conventional definition refers to lost productivity that occurs when employees come to work when they are ill and therefore perform below standard. This can also be termed "sickness presence" or "lost health-related work productivity.

Some commentators expand the term to encompass healthy employees who are just non-productive. No employee is 100% productive all of the time but examples of this type of behavior might include surfing the web for extended periods, making lots of personal phone calls or popping out to the shops on an overly frequent basis. At the other end of the spectrum is the kind of presenteeism that is given over to those that are overly present, i.e., they consistently put in long hours and will not take their full holiday quota. The costs to organizations of presenteeism mostly concentrate on lost productivity through ill health.

A 2004 article in Harvard Business Review (Hemp, 2004) estimated an annual drain of $150 billion on US businesses as a direct consequence of common ailments such as hay fever, headaches, and heartburn. Results from Hemp’s study case showed conditions
such as migraine and depression resulted in 4.9% and 7.6% productivity losses respectively.

Presenteeism has been assessed through self-report with the World Health Organization Health and Work Performance Questionnaire (HPQ). The reliability and validity of the Work Performance Questionnaire has been examined for several occupations and has shown good reliability and convergent validity. Work performance has been assessed with the Individual Work Performance Questionnaire (IPQ). The IWPQ consists of 16 questions in three subscales: task performance, contextual performance, and counterproductive work behavior. The psychometric properties of the IWPQ have been tested, and results have indicated well to excellent reliability, good convergent and discriminant validity (Coffeng et al., 2014).

No empirical research studying presenteeism or absenteeism of employed adults during the divorce process has been conducted. I suspect the results would show evidence of both problems. During the course of obtaining a divorce, many documents need to be faxed, calls returned to an attorney, etc. Usually, these actions occur during the business day. Prime time for work is lost.

*Distraction Factor*

Williams, Haldeman and Cramer (1996) introduce yet another dimension to evaluating productivity. The Choice and Exchange Theory developed by Nye (1978), identifies a network of associations between the construct and identified variables that predicts worker productivity. Williams et al., (1996) found employees with financial concerns had a relationship with increased absenteeism and decrease in work
productivity. Williams cites Breuer (1995, p. 71) in identifying “the theme is a minimized
distraction for maximum output. Employees who have worries about career advancement,
finances and work-life balances do not perform to capacity”. This is yet another layer of
understanding the divorcing individuals’ journey as financial insecurity is often a part of
a divorce. Preoccupation and worry about the unknown may have a correlation with
absenteeism and decreased measured performance. The inability to compete for career
advancement during this time has not been captured in the literature.

Cost of Conflict to Employer

Individuals going through dissolution need time off from work when they are
required to attend hearings, trials, court ordered evaluations and meeting with
counsel. This time is during the workweek. People who have short or long term leave
available may not be able to use it for court. Perhaps they lie and call-in sick. Perhaps
they can take time off but it is not paid. Their absence puts a strain on an organization,
co-workers, and the employee. Perhaps they have additional childcare arrangements to
pay for or miss an important meeting or a deadline either creating stress or losing an
opportunity.

There is no empirical understanding of how court related absence impacts the
individual or an organization. The only guaranteed and protected time off is through
government employment, or if your organization is large enough to be required by
government mandates. The Government approach offers unpaid family leave with job
protection (protection from being fired) for extended absences, paid family leave with or
without job protection for frequent or intermediate-length absences. Paid sick days and
family-care leave that can be used for incidental brief absences to care for ill family members are 14 days (average) per year. Nationally, the Family and Medical Leave Act guarantees employees of large employers 12 weeks of job-protected unpaid leave to care for ill family members, but less than half of U.S. employees are eligible. It is only for “sick time” (Schuster, and Chung, 2014).

Cost Savings Variables Protective Factors

Greef and Van Der Merwe (2004) presented a study on variables associated with resilience in divorced families. Citing McCubbin and Patterson (1983), Greef proposes the variability of responses is related to “the buildup of stressful events; family’s current and new adaptation resources, the families’ perception of stressors and individual resources”, (p.60). The three resources include personal, internal, and social support. Buffers that were important are reported to be economic, parental involvement and community resources. Greff & Van Der Merwe (2003) utilized a cross-sectional survey design assessed through self-report questionnaires with a sample of 98 families, researchers administered instruments to evaluate these characteristics thought to be representative of resilience by administering the following instruments: a biographical questionnaire, The Relative and Friend Support Index, The Social Support Index, The Family Crises Personal Evaluation Scales and The Family Hardiness Scales. Results were consistent with previous research indicating support systems as a major resilience factor. Organizations can learn from resiliency research to attempt to become a resource for employees going through personal crisis.
Human Resource Services

The trend in the changes in family structure has called for changes in human resource policies and employee benefits. The trend impacts the greater need for organizational support services. If one accepts these trends in marital dissolution as a reality, the impact of divorce on employee’s health may require attention if employees are clinically vulnerable. Family dynamics mixed with frustration with the divorce process and legal system may represent a risk for a vulnerable employee. Separated and divorced adults consistently report greater psychological distress than married or never married adults (Pruett et al., 2005). In turn, depression and anxiety can lead to a diminished capacity to perform at work.

Pre-Paid Legal Plans

A recent survey indicated, “57 million full-time working Americans experienced at least one significant legal event in the past 12 months, but only 60% of those who experienced such an event sought out the services of a lawyer to help them” (Decision Analyst Inc., 2012). The Legal Needs of American Families Study (Legal Needs Study)” showed working Americans and their families face a myriad of legal issues on almost a daily basis. The survey was conducted over the internet by a leading marketing research consultant, Decision Analyst. Subjects were 1,000 employed adults between the ages of 18 - 64 identified by Decision Analyst’s database, American Consumer Opinion® Online. Participants were contacted via email to complete a survey via the Decision Analyst’s DAISurvey™ website. Data collection occurred in less than a month (September, 2012). Twenty-five legal issues were identified as frequent needs for legal
advice. Of those, one of the greatest needs identified in the survey was family issues such as adoption and divorce. Legal issues were identified by the rate of 66% across all income levels. The study identified problems with the cost of legal advice, dissatisfaction with access to lawyers and distrust of attorneys. Cost per hour averaged $284 with a quarter paying more than $400 per hour. Seventy-two percent expected that lawyers were not accessible easily by phone, and 63% expected lawyers to be unresponsive. The majority of respondents (74%) dreaded talking to a lawyer and believed that most lawyers will exploit or take advantage of you (72%). The study suggests Americans are legally unprotected due to possibly preconceived negativity ideas regarding attorneys, cost. Interestingly, a majority (nine out of ten) report they would seek legal advice on many issues if available. Overwhelming majority (90%) does not have legal protection or insurance products that could potentially lower legal costs and most were unaware of this option. Of particular interest to this dissertation was the result that more than half surveyed (66%) reported being absent from work during the past year to deal with one or more legal issue.

**Human Resource Initiatives**

Identifying employees that may be vulnerable to family-work conflict may be possible, however, employees may not feel comfortable sharing personal information with supervisors. Chances are if the supervisor is noticing a change in productivity; the employee may have been struggling for some time. As discussed earlier in this dissertation, symptoms may not reach clinical levels to have an impact on work-related variables. For these reasons, the employee benefits package available to all employees, is
a critical variable. Research demonstrates the 50 plus age group is experiencing more divorce that ever before. Conversely, this age group of older employees is projected to increase at nearly four times the rate of the overall labor force in the US (Hill et al., 2014). Organizations understanding that this age group may be experiencing dissolution of their marriage or be a third party to dissolution may have a “family friendly face” that results in improving performance results.

Organizations are very interested in the well-being of their employees. We know this intuitively. The success and performance of the corporation are clearly tethered to the management of costs (Kaupins, 2007). Human capital costs represent a significant allocation of financial resources (Nawakitphaitoon, 2014). Economists predict the US workforce will need to become more competitive due to outsourcing and globalization; firms will become more specialized seeking talent in certain economic sectors (Slottje, 2010). The National Study of Employers (2014) reported “fierce” competition for the needs of a specialized workforce to fill skills gaps.

**Employee Assistance Programs**

Employee Assistance Programs (EAPs) are worksite-based programs or outsourced services for employees in need of assistance while addressing personal concerns. Companies provide EAP services to benefit the employee and the business bottom line, employee’s performance, health, and wellbeing. The National Study of Employee Assistance Programs (2014) report 77% of employers provide Employee Assistance Programs (EAPs), up from 58% in 2008. In addition, over one in five employers (21%)
provide work-life seminars or workshops at the workplace addressing issues of parenting, child development, and elder care.

The Society for Human Resource Management (SHRM) issues a report on the main trends in human resources. The report is authored by “the most experienced thought leaders in the HR field” with “cutting-edge” insights of the key trends. The latest report identifies flexibility and effective work-life strategies as an important broad trend of human resource management (SHRM, 2014). Competitive compensation and rewards are emphasized as companies must compete for top talent. SHRM identifies future focus on wellness and prevention programs to keep the workforce healthy. Work life balance and leave programs are a priority for retention and recruitment efforts. The SHRM 2014 benefits report emphasizes the following benefits: preventive health and wellness benefits, leave benefits; family-friendly benefits (i.e., childcare and eldercare), and flexible working benefits.
CHAPTER SEVEN: DISCUSSION

Collaborating with the social sciences has enriched family law. Psychological research has guided judges charged with making difficult decisions based on both parties representation of facts. The problem lies in that there are two sets of competing facts. Judges must be experts in the legal parameters to apply to the dispute as well as the principles of “normal” growth and development, therapeutic communication and family systems. Judges are trained as lawyers, not as mental health professionals. When faced with issues revolving children's post-divorce living arrangements, parenting plans, parental relocation following divorce, and custody, the literature frequently references the story of King Solomon to illustrate the enormity of the decision. The parents standing before them are not criminals awaiting sentencing. The attorneys will present the evidence that furthers the position of the client. Any evidence that does not favorably reflect on their client will not be provided to the judge. The Judge will, therefore, always receive a slanted version of the truth. Although the same is true for criminal law as the “truths “are presented to the jury. One critical difference, besides the criminal aspect, is that day in court is likely to be the litigants’ last day in court. This not the case in family disputes.

Litigants in all courts tolerate delays and inefficiencies. Somehow, the value of the litigants’ time is less valuable than the courts. Courts are only available during business hours, after hours, or alternative access is the exception, not the rule. Due to these factors, the employee litigant is required to sacrifice income, jeopardize employment position, status, and likely privacy when terminating marriage. If the case is simple, this can be accomplished without excessive absence. However, the issues generally need
judicial intervention bringing a family before a judge is rarely one-shot deals. Years of social science research and legal research do not address these issues. How the employee deals with the struggles inherent in the decision to divorce is of great importance to employee well-being and work productivity. Psychology has made immeasurable contributions to family law by informing the mental health effects on the individual and children and conceptualizing the best interest of the children and developmentally appropriate parenting plans. Therapeutic Jurisprudence has a basis in psychological theory. Future research agenda of this discipline will be reviewed for evidence of occupational function assessment.

There is a multi-disciplinary movement to improve current inadequacies in family law practices. As the nature of the family changes, so should the laws that protect their rights. Clearly, legislative changes have the greatest and most far-reaching impact. Legal scholars are creating innovative, theory-driven programs to assist families through the crisis of their divorce. The Association of Family and Conciliation Courts (AFCC) assigned a task force to identify court-related programs that are accountable and creative. The AFCC Court Services published The Exemplary Family Court Programs and Practices, Profiles of Innovative and Accountable Court Connected Programs in 2005 (Slovin, 2004). The AFCC publication presents profiles of sixty-nine programs, including highlights and contact information. The goal was to foster sharing among courts and AFCC’s multidisciplinary membership about exemplary practices that meet the critical needs of the courts and the people they serve. It is evidence of the strength of the multi-disciplinary and judicial commitment for the future of the family. The literature review of family dispute models has identified the additional mental health roles that may
address the demand for a blended, psychologically informed approach. The following are examples:

Brief Focused Assessment (BFA): an abbreviated custody evaluation is typically focusing on specific, targeted questions. The BFA may be used when a comprehensive evaluation (typically more costly and divisive) is not required. Many courts have implemented BFAs in a variety of formats. BFAs are also used in private-sector evaluations (Yates, & Salem, 2013).

Child Inclusive Mediation: an empirically based process in which the child is interviewed by a child specialist who then participates in mediation with the parents, bringing the child's voice into the room. Child Inclusive Mediation was first developed in Australia by Dr. Jennifer McIntosh and has been replicated with modifications in the United States.

Conflict Resolution Conference: a hybrid process where the neutral meets with the parties over multiple sessions, conducts limited independent information-gathering, and attempts to facilitate settlement in a directive fashion.

Early Neutral Evaluation: a process in which co-evaluators hear from the parties without corroborating the information or conducting further investigation. The evaluators then share with the individuals what they would report based on the information given. Parties then conduct settlement discussions or continue to a full evaluation. Hennepin County FCS first developed Early Neutral Evaluation for family cases in addition to its mediation and evaluation processes.
Impasse-Directed Mediation: a process that combines aspects of counseling, negotiation coaching, and mediation for high-conflict parents. Janet Johnston and Linda Campbell pioneered this resource-intensive and groundbreaking approach in the 1980s in the book Impasses of Divorce (Free Press, 1988). It was one of the early, if not the first, hybrid processes designed specifically for high-conflict, highly litigious families and was adapted for use in the most challenging cases in both court-connected agencies and the private sector.

Parenting Coordination: a process that combines education, mediation, and limited decision-making by a parenting coordinator. It is offered primarily in the private sector but also in some courts, including Florida's 11th Judicial Circuit. Parenting Coordination is typically used in post-decree matters, but it has also been implemented in a wide variety of formats.

Custody Evaluations: One of the most divided debates amongst the legal and psychological community concerns the application of psychological research to custody decisions. Various empirical studies of the impact of divorce in the USA have used multiple methods, techniques, variables and data to produce results that often appear contradictory and at times, counterintuitive (Kirkland, 2003). Judicial decision makers apply psychologically and empirically driven data in deciding the fate of children when circumstances change. Wallerstein's amicus curiae brief on the best interest of the child lead decisions in move away cases. In California's leading case on move away, Marriage of Burgess (1996), the Supreme Court relied on Wallenstein’s findings to accept the idea that the custodial parent’s happiness was critical to the best interest of the child (Johnston
& Roseby, 1997). Many did not accept the idea that only one parent is important, yet this is the core of the Wallerstein argument that the California Supreme Court has endorsed. The principle in Marriage of Burgess falls on the side of viewing children as chattel and only the parents' interests as relevant. Most family law lawyers see children as persons whose interests also need to be considered (Maccoby & Mnookin, 1967).

*Integrative Principles*

There is a wealth of research on how the legal system can be improved. Preventive Law reminds us to plan and assess to be prepared for the process ahead as well as for the unexpected turns in the road. Therapeutic Jurisprudence is a process of thinking that causes one to pause and consider what is going on in a deeper, more personal manner. By blending these respected principles, the outcome may contribute to healing the fractured family. The language of these principles is therapeutic communication. In the family law arena, many opportunities to intervene in a therapeutic manner are lost. Due to the list of highly emotional decisions linked to family court decisions, therapeutic communication is preferred.

Are lawyers and judges typically trained in the process of human communication? For example, what are the factors that influence the process of communication? Can you read between the lines with proficiency in verbal and nonverbal behavior? Nonverbal messages include body movement; voice quality and sounds, personal and social space, and touch. Cultural norms are very powerful. Therapeutic communication techniques are important tools in maintaining a relationship. Facilitative communication skills include
understanding the difference between being superficial and real. Tools for facilitation can be taught. For example, how to respond with respect even when you disagree or are angry and responding with genuineness and respect. Communicating warmly and with immediacy can change the delivery of bad news. Communication skills include the following techniques: empathizing, actively listening, using silence, reflecting, imparting information, clarifying, paraphrasing, checking perceptions, questioning, restructuring, pinpointing, linking, giving feedback, confronting, summarizing and processing.

Lawyers are in an interpersonal relationship with their clients, whether it is therapeutic or anti-therapeutic is based on effective communication. Although many would scoff at the idea of learning “how to speak”, communication skills are part of every nursing curriculum across the country. Nursing has been consistently at the top of the list as the most honest and ethical professions in The Gallop Polls. In contrast, lawyers, car salesmen, HMO managers, and members of Congress are at the bottom of the list (Patry, Wexler, Stolle & Thomkins, 1998). At a minimum, a communication awareness goal may be to “do no harm”.

There are risk factors in the clients’ personal and relationship history that attorneys can “red flag” to raise their awareness for the deliberate use of therapeutic communication techniques. Many of these issues are seen in high conflict cases:

- History of domestic violence (witness, victim or perpetrator)
- History of current or past substance abuse
- History of mental illness (treated or not) of any of the participants
- Presence of chronic physical illness or disability
- Lack of support systems
- Lack of acculturation or recent immigrant status
- Prior criminal record
- History of non-compliance with previously decided legal rulings
• Unemployment of either party
• Chronic, easily triggered hostility between parents (high conflict cases)
• Special needs children or adults
• Suspicion of Personality Disorders
• Multiple change in Representation (chronic malcontent)
• Emotional lability

Amato (2000) called for more research on interventions and strategies for divorced children and adults. Although more work needs to be done, the number of studies in this area increased substantially during the past decade. What changes other than ADR methods have been made as a result of research?

The front line appears to be the employee’s relationships with their attorneys and the resources available. When a divorce attorney is hired, litigants receive variable attention. Some attorneys provide more emotional support clients because they see that as central to their role, whereas others disdain such ‘hand holding’ and prefer to concentrate on the legal aspects. Do clients have an idea of what to expect in “bedside manner”?

The legal system is beginning to acknowledge the need for psycholegal education. Training lawyers to assess their clients for a risk for decompensation may prevent harmful outcomes. Clinically attentive lawyers would approach their clients in a therapeutically communicative manner. This boils down to the lawyers using interviewing and counseling skills. Education of family lawyers and client/attorney satisfaction was identified by the American Family of Conciliatory Courts as a substantial problem necessitating a specialized task force to address educational objectives and practices when teaching family law (Stolle, Wexler, Winik & Dauer, 1999). Improved relationships between attorney and client may lead to the development of trust and
openness. A safe space existing between client and attorney allows the client to feel known and seen. The process of ending a marriage is a time of high vulnerability. The process is dependent on legal guidance, but personal factors must be considered equally important. The clients’ mental health will be affected by negatively perceived judicial outcomes delivered by their attorney, as well as satisfaction levels.

*Problem Solving Ideas*

Systems issues may impact the delivery of court services. Children are the most vulnerable to the problems in the court system by virtue of the decisions that impact them and the stressors on their parents. Family courts have acted as advocates for the children. Emphasis on the timing of court processes as in delays and difficulty with final judgments impact the child. Facilitating an urgent resolution and strict timelines to investigate motions involving the children is a therapeutic application of the law. Children should not need to wait until they have reached another developmental stage before time-sharing and custody issues are addressed. Family court professionals would benefit from training in use of communication skills, motivational interviewing, cognitive therapy principles, and conflict resolution. Lost time from work and other family responsibilities create stress.

Creative alternatives in accessing the court, such as video conferences, Skype, and evening appointments would allow litigant participation with a reduction in stress caused by work absence. Delays that frustrate participants such as cancelation of scheduled hearings should be avoided; ideas to continue the judicial process such as allowing for cross coverage from other judicial officers should be considered. Problems with access
and adherence to parenting plans are clogging up the court dockets. Perhaps parenting plans could be developed with mechanisms to monitoring compliance and include sanctions in the original parenting plan.

Some courts have adopted methods to identify high conflict families based on the use of court services and offer case management services. This might allow for a separate track or classification; however, judicial time is at a premium. Specially trained judicial officers and attorneys could be assigned to this intensive care party. Skills such as being able to address cognitive distortions, conflict resolutions, child development, and behavioral contracts could provide therapeutic structure. Concepts such as restorative justice, peace building and parenting education could be part a” recovery plan”. With this particular population, the role of the judge as the person with the most authority to directly address parties may promote compliance; this may improve well-being by allowing “voice”; if court orders are actually enforced. Identification of court orders that are not enforced is critical as this causes negative emotional responses for litigants and is a waste of resources. Understanding the judicial response to direct contempt of court orders is an area for which research findings would inform practice.

Research Agenda

During the past decade, studies have consolidated and extended prior research on divorce. Studies also have become more sophisticated methodologically with increased availability of multiple longitudinal, nationally representative samples. The timing of transitions and perspectives from life are now on the research agendas of top social scientists. However, despite these advances, many gaps in our understanding remain
unanswered, and the answers need to be timely. The current review ends by suggesting several new questions to direction research:

1. Why do some separated couples reconcile and others divorce?
2. Why do a small percentage of couples remain separated indefinitely?
3. How does the separation (as opposed to divorce) affect the well-being of spouses and children?
4. How does the termination of a non-martial union impact health and daily function?
5. What are the legal difficulties experienced when cohabiting couples with children dissolve their union?
6. Are child support guidelines equally enforced after parents’ cohabitation ends?
7. How can the level of parental commitment be measured for cohabitating couples?
8. Are there any differences in the pursuit of legal intervention in couples that have not married but shared children?
9. How can the Marital Settlement Agreement be redesigned to allow for sanctions that are enforceable without judicial time and expense?
10. How often are court-ordered parenting plans disregarded? What is the emotional and financial consequence?
11. Are pressures from the workplace associated concessions made during mediation or Marital Settlement Agreement negotiations due to fear of losing one’s job?
12. Do employees experience negative work assignments when going through divorce?
13. What factors influence corporate support for the employee experiencing a personal crisis?
14. Are supervisors trained to identify more subtle signs of mental distress?
15. What is the incidence of the use of psychotropic drugs prior to divorce, during separation, after final dissolution and subsequent post-judgment legal proceedings?
16. What is the incidence of hidden psychiatric signs of distress due to fear of legal attack from ex-spouse?

17. What factors support seeking mental health care prior to divorce, during separation, after final dissolution and subsequent post-judgment legal proceedings?

18. What is the amount of debt incurred due to legal cost?

19. What credit rating changes have occurred due to lack of funds?

20. How are divorces legal costs financed?

21. What has changed financially due to legal bills (tuition or retirement savings impacted?).

22. What accommodations in the workplace are untested?

23. What could private industry employers contribute to prevent employee decompensation or underperformance?

24. What flexible working arrangements may be possible in the workplace without impacting workloads of coworkers?

25. How open is the workplace regarding divorce? Do employees share or announce separation? Is it a kept secret?

26. Are current leave policies open to leave without need for illness?

27. Would employer allow for telecommuting, job share, or comp time in lieu of leave without pay?

28. Would employers house mediation procedures?

29. Are Pre-Paid Legal Plans evaluated for satisfaction and benefits?

30. If Pre-Paid Legal Plans are effective, are they affordable for employees and organizations?

31. How can the Family Court extend hours of operation to accommodate employee litigants?

32. Is Federal Protection for attending Family Court proceedings a possibility?
The metaphor of a “perfect storm” conceptualizes the intersection of the interdisciplinary findings reported. The scarcity of research from the Work Family Life literature demonstrates the unknown relationship between litigation, health, and occupational demands. The employee's well-being and productivity is an important organizational concern. The Occupational Health literature identifies the significant cost of mental illness to society and the workforce. Mechanisms for the prevention, early detection, and accessible treatment are not associated with the employees changing marital status. The risk for a parallel process of the emotional distress or mental illness, particularly depression, has not been addressed as a health issue by organizational infrastructures.

Although the intersection of legal events, marital status, and family-work conflict is intuitive, there is a lack of institutional efforts to mitigate emotional damage. Despite the undisputed awareness of the bidirectional comorbidity of physical and mental illness, the legal community has not acknowledged the severe emotional costs of litigation or risks to physical and mental health. There may be a correlation with the continued increased incidence of depression and anxiety with the frequency of adults experiencing divorce. The use of court services for family law has drastically increased as well as the incidence of major depression. The usage of psychotropic medication has skyrocketed. The costs of health care threaten to bankrupt the United States. Extrapolating the steady incidence of divorce rates, the known stressor of litigation, the prediction of rising incidence of
major depression, then add the national economic uncertainty, pre and post-divorce financial health, the national risk for negative health outcomes appear high.

The preceding reports are representative of a mushrooming problem that has not been identified for the seriousness of potential national danger. We categorize hurricanes based on factors that translate into the strength to demolish all in its path. The catastrophic damages occurring within this cohort of the population are not as easily identified which is consistent with the underreporting and unsatisfactory early detection of mental illness. The employee litigants may be impacted in part by stigma for being divorced, although most see divorce as commonplace. That may be true, however, no one is excited, proud or celebrating divorce. One may see divorce as common, divorce may not be statistically underrepresented in the community, but that may not translate into acceptance, compassion or flexibility from a supervisor.

The primary professionals dealing with the adverse impacts of divorce within the legal community have been responding for decades with efforts to offer alternatives in adversarial methods, which is likely the most threatening course of action. What support has been given for these methods by the judicial system, private industry or the government? The problems reviewed here are part of a larger system. The linkage need not be causational to inflict great future damage.

One could argue that lives are being shortened by the physiological impact of stress. What follows an employees death? Expect the next round of loss, grief, and children without parents which has an additional impact on the society, the economy and the workforce.
I present additional concerns surrounding the change in marital status that are not identified in the literature. Although no one would dispute the view that the cost of litigation is prohibitive, it seems to be what the market chooses. The rise of the pro se litigant is linked to both costs as well as the lack of perceived benefit from attorney involvement. Why is that? In contrast to medical care, legal care appears largely unmonitored with no peer review other than malpractice claims. If a litigant were to be dissatisfied, what would it cost to be heard? A formal bar complaint is available, however, is this sufficiently addressing consumer complaints? Judging by the overwhelming dissatisfaction and disrespect for lawyers, it would appear the system has not addressed behavior in a way that has influenced the public’s opinion.

The cost of legal representation is a personal choice that is linked to the complexity of financial and children’s issues. A parent has the right to remain a parent and most will fight fiercely if those rights are perceived as threatened. This need may be met by incurring increased debt via legal financing companies, retirement plans being drained, or college savings plans unfunded. What will the impact of those lost dollars mean to society? Will the government take on more of the cost of caring for our elderly because many years ago families depleted the only savings they had? Will the young adult take on debt she cannot repay to finance a college education that may have been within reach if not for legal bills? Perhaps college will be delayed or abandoned completely. This too costs society in the future. The burdens of financial stress for the employee are known to cause problems with concentration and self-doubt. The options appear to be limited; either one represents themselves, hires a lawyer or does not fight. However, what other options might there be?
Despite decades of well-meaning interventions that may have prevented a catastrophic hemorrhage of the system, ADR, and the PSC appear to be the legal community’s best defense to date. Are there alternatives that may be introduced by introducing other disciplines or agencies that have a vested interest in the successful transitions?

There has been a dramatic growth in the number of cohabiting, unmarried parents, and single-family households. How will termination of partner status impact the families financially and long term responsibility to children? What is the occupational cost to organizations that invest in the career development of their employees when potentially forty to fifty percent of the workforce may go through at least one divorce or be exposed as a third party? Assuming the career path of an employee going through a divorce will encounter at a minimum some stalling in career growth, the cost of opportunity may not be quickly recovered.

The organizational costs of employee absence and presenteeism, early terminations, retraining, errors and lack of engagement are a threat to the solvency of the organization. Increased costs of medical care utilization and psychotropic medications for all affected family members is not associated with an expected cost to the business. The rising costs of providing employee benefits plans, wellness programs and family friendly corporate environments are all proactive measures for the organization, yet participation is dropping while the need is rising. What impact will the lack of services have on the bottom line of the organizational finances?
Organizations recognize the major life transitions of having a baby, taking care of an aged or ill family member, bereavement, and adoption. Interestingly, so does the government. Even the IRS allows deductions for these major life events that are further down on the Holmes and Raphe Richter scale. The costs of hiring an attorney or court costs are not tax-deductible events. Catastrophic damage to personal property is tax deductible. Catastrophic damage to your life is not.

From a Human Resource perspective, paid time off (PTO) to attend court hearings, meet with your attorney, attend court-ordered mediation, parenting classes, supervised visitation, reunification therapy, parenting education or mandated other court issued mandates are not typically included on any human resource lists of excused absences. However, court-ordered jury duty is excused with pay. If one is lucky enough to be granted leave to attend to legal matters, often the time has to be taken as sick time or without pay. Then when the employee is actually sick, they either lose the income or go to work sick. Either way, the organizational cost of presenteeism and absenteeism is a significant financial drain. Looking at our current legal system, the costs of legal representation are often unreachable. Research linking costs, trauma, productivity, and health may provide validation for organizational funding sources or government support. The ripple effect of the web of problems has a monetary and societal cost factor that may be immeasurable.

There are systems in place that may be required to expand their policies to provide potential resources or help. Thanks to Mental Health Parity Laws, insurance companies now legally are, in theory, required to treat mental illness with the same level
of care as physical complaints. However, preventative mental health care is not considered medically necessary. In order to be a covered expense, individuals must meet diagnostic criteria. Below is an excerpt from a national third party insurance carrier:

Interventions will focus on the presenting symptoms and complaints that have led to a decrease in the Covered Individual's usual level of functioning. To qualify, the symptoms must meet the diagnostic criteria for a diagnosis from DSM 5 or ICD 9 covered by the Covered Individual’s plan. All must be present:

1. Specific symptoms or disturbances of mood and/or behavior are present, with functional impairment, which are consistent with the DSM/ICD diagnosis listed, and these disturbances/symptoms are likely to improve with treatment.
2. The Covered Individual demonstrates motivation for treatment and is capable of benefiting from the treatment approach planned.

This model does not assist people in coming from a place of strength, especially if they require pathological evidence of illness. Family therapy is a covered expense, but only if the purpose is to assist the family in care of the identified patients. Reforms in these areas could allow for access to mental health intervention. Understanding how employers decide to provide employee support to employees is important to the businesses that provide families legal and mental health services.

The generational differences will be an important factor when anticipating the needs of employees in partnering transitions. If the Millennials are entering the workforce now and Baby Boomers are entering retirement or changing marital status, corporations may benefit from changing ability for flexibility and “end game” vs. supervision policies. The aging workforce may involve managing multiple caregiving responsibilities for workers, that require flexible work arrangements. Recognizing approximately 70 percent of employees are reporting difficulty with competing interests from work and
non-work demands, interventions are necessary (Schieman, Milkie & Glavin, 2009). The employers that are involved in influencing good “work–family fit” (Karimi & Nouri 2009) will need to change the focus to be inclusive of all family types, including dissolving families.

**Conclusion**

The experts in the family law arena are clearly the legal professionals trained and educated to apply the law. As a trained and educated advanced psychiatric nurse, my professional experiences and the theoretical frameworks guide my professional practice. Family law issues can resonate deeply with anyone exposed to the system. All can identify with being part of a family, therefore, any professional may be influenced by their personal bias and belief systems. In mental health care, professionals are encouraged to seek supervision to deal with emotional triggers that have the potential to impact our professional judgment. There are similarities in the roles of attorney (counselor) vs. therapist. Medical care providers are trained to view communication as an intervention; and view the patient relationship as a critical component of the patients’ recovery. Although attorneys are intimately familiar with the facts of the case and the personality of their clients, there is a lack of training that may contribute to the emotionally dangerous aspect of family law for litigants. For example, the attorney may be naïve to the aspects of personality disorders and may not recognize manipulative behaviors. Any client ending a marriage is likely to be experiencing emotions that may interfere with their legal representation. Attorneys without mental health training may be inclined to rescue the needy client when they need boundaries or set limits for an anxious client when they need
support. From a clinical perspective, understanding what is driving the patients’ behavior is not the goal; rather, the goal is for the patient to understand what is driving their behavior. The therapists’ opinion is used as a tool to assist the patient in recognizing into their part of the problem (insight). In contrast, the attorney is called upon to direct, to lead, and defend the client. In emotionally charged situations, the attorney is primed to react, when, perhaps, intervention may instigate rather than resolve disputes.

The family law system in the United States is in need of scrutiny and assistance from major systems impacting its success. From the review of the literature in this dissertation, the past empirical examinations from the legal community represent clear identification of the systems shortcomings. Changes appear most notably in challenges to adversarial ideology and alternative dispute resolution. The fruits of that labor are expected to be an improvement in the clients’ experience and relational ability in the future. The legal community is actively “self-examining” legal procedures, the education, and training of attorneys and appear open to multiple perspectives from other fields of expertise. The result has already proven to be transformative as in the case of applied Therapeutic Jurisprudence.

As a therapist, I am interested in the “here and now.” The legal system will make incremental improvements; yet, there is an urgent need for immediate changes as well as broader system reform. Other areas of law have been thought to be in crisis, i.e. medical malpractice, tort reforms with changes in limitations on the amount of settlement, attorney’s fees and statutes of limitations (Studdert, Mello, & Brennan, 2004). Lessons learned from the reform efforts in medical malpractice and workers compensation that are
applicable to family law are the emphasis on transparency, accountability, and the power of an apology.

The social benefit and need for Family Law is indisputable, in theory. The system allows for power imbalances and bullying, as litigants are free to bring frivolous, spiteful, and destructive motions. There is a lack of corrective justice for those harmed by the ongoing legal attacks often brought by the party with the financial muscle. Baker’s article, *Even when you win you lose: targeted parents perception of their attorneys* (2010), addresses the irony of defeat after winning in court. Study participants report alarming incidents of the inability of the court to enforce their orders, the extensive disregard for time sharing and marital settlement agreements, the perceived loss of the financial investment made and pervasive evidence of anxiety and depression (Baker, 2010).

Parental Alienation cases are the “intensive care patients” of Family Law. Although this cohort is an extraordinary high user of Family Court Services, the ability for the acrimony to perpetuate for years represents a flaw in the legal system. Lack of meaningful deterrence from engaging in vexatious litigation allows for perpetual interruption in employee productivity and professional growth. Perhaps if ones employer were aware of this behavior, the guilty party may change their behavior. The Court system is not held accountable for lack of efficacy and efficiency. Often the egregious party is not liable for costs, and never for loss of earnings. There are no “pain and suffering” awards in Family Law.
In closing, despite years of academic efforts, the experience of divorce continues to be unnecessarily destructive and disruptive. If viewed as a business problem that we are trying to solve, what information would be needed?

Suggestions for policy changes should begin by exploring potential partnerships between government, Family Courts, and private industry. Efforts analyzing the “bottom-line” cost of marital dissolution must be expanded to include the opportunity and professional development costs.

Organizations and the government must consider the cost of legal representation. There is a lack in the availability of options to finance crucial family legal needs. The ultimate cost of conflict to society, the employee, and organizations is unknown. This data is critically needed to drive better personal and organizational decisions regarding policies and assets required to ensure a healthy workforce.
REFERENCES


Diagnostic and Statistical Manual of Mental Disorders: DSM-5, 2013.


Parejko, J. (2002). Stolen vows: The illusion of no-fault divorce and the rise of the american divorce industry. *Instant Publisher.*


Symoens, S., Velde, S., Colman, E., & Bracke, P. (2014). Divorce and the multidimensionality of men and women's mental health: The role of social


