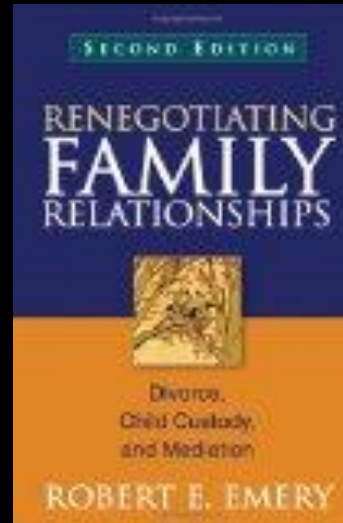
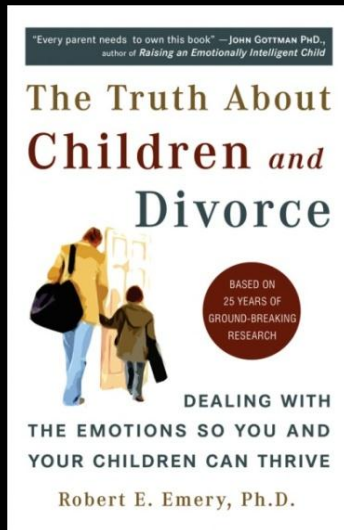


**Child Custody Mediation:
*Negotiating Agreements and
Renegotiating Relationships***

Robert E. Emery
University of Virginia
FIU, January 2012

Custody/Divorce Mediation

- **Recommended Resources**



Custody/Divorce Mediation

- **3rd party helps parents negotiate**
 - **Mental health pro, lawyer, team**
 - **Meet parents together, separately**
- **Settle divorce disputes**
 - **Children**
 - **Legal and physical custody**
 - **Parenting and co-parenting**
 - **Money**
 - **Child support**
 - **Alimony**
 - **Property division**

Custody/Divorce Mediation

- **Mediator facilitates doesn't decide**
 - **May make suggestions**
 - **Evaluative vs. facilitative style**
 - **Med-arb(itation)**
 - **For example, parenting coordination**
- **Mediation generally is confidential**
 - **May be more protected than therapy**
 - **If not confidential, really is med-arb**
- **Recommend parents seek legal advice**
 - **Before signing *Memorandum of Understanding***
- **Signed agreement to mediate detailing this**
 - **Sample agreement available**

Custody/Divorce Mediation

- **Two Broad Rationales**
 - **Clogged courts/procedural justice**
 - **Most common reason for legal action**
 - **Have voice in process (and keep agreement)**
 - **Well-being of children (and parents)**
 - **Law: *Children's Best Interests***
 - **Research: Conflict, co-parenting, parenting predict children's well-being**

Mediation Is One Of Many ADR Alternatives

Dispute Resolution Funnel

Pro se divorce (negotiate at kitchen table)

Divorce education

Mediation

Collaborative law

Adversary attorney negotiations

Guardians ad litem/child advocates

Early neutral custody evaluations

Full custody evaluations (arbitration?)

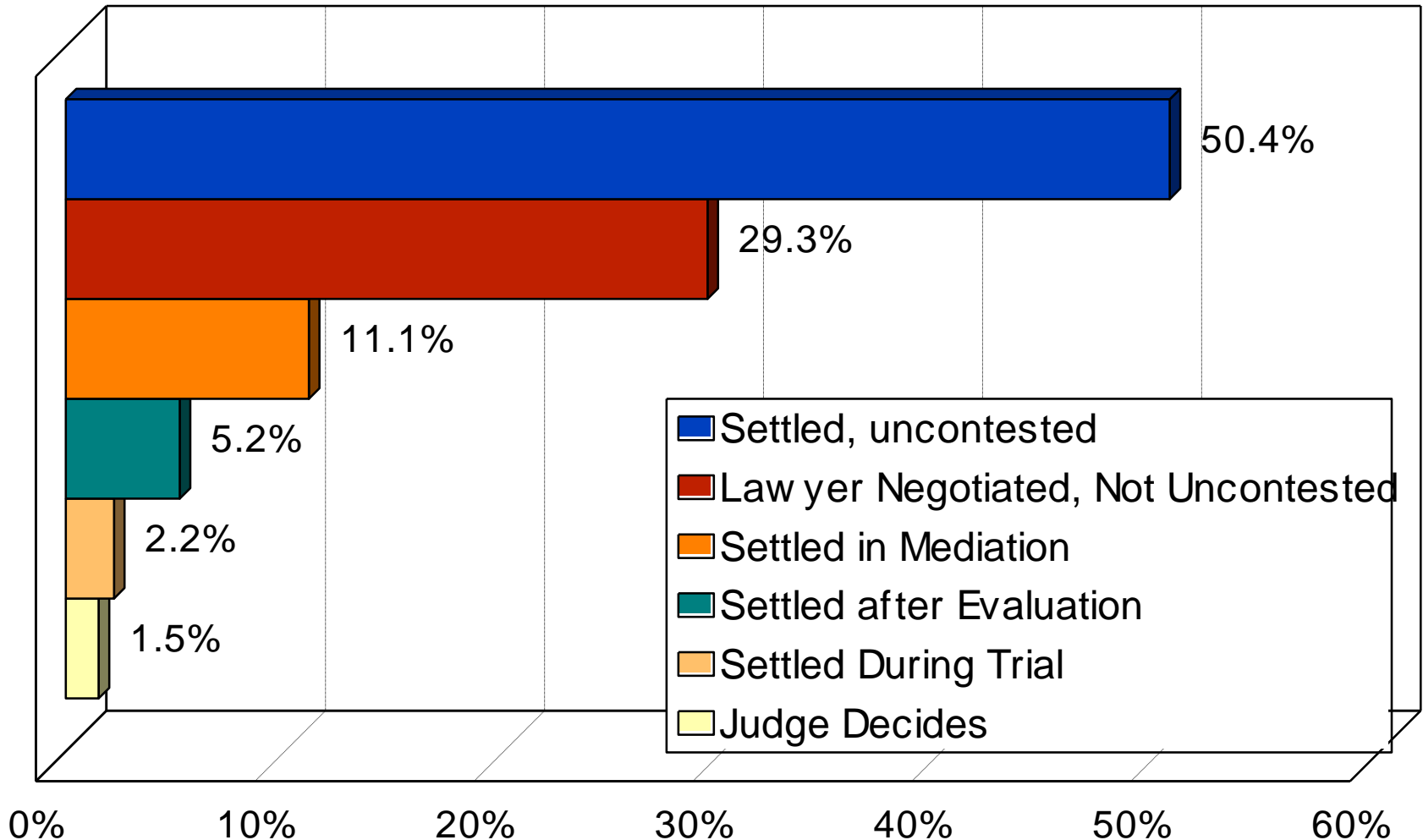
Arbitration, mini-trials

Judicial decision making

Parenting coordination



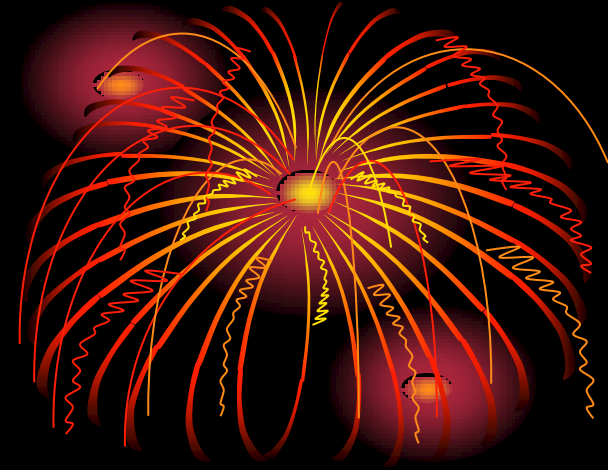
Settlement Methods for 933 Custody and Visitation Issues in California (Len Edwards) Court



Based on Maccoby and Mnookin 1992

Overview of Workshop

- **Research on mediation**
 - **Highlighting my research**
- **Research on children in divorce**
- **Understanding emotional and relationship dynamics of divorce**
- **Mediation techniques**
- **Alternative, developmentally appropriate parenting plans**



Research on Mediation and Litigation 12 Years Later

A RANDOMIZED TRIAL

Study Design



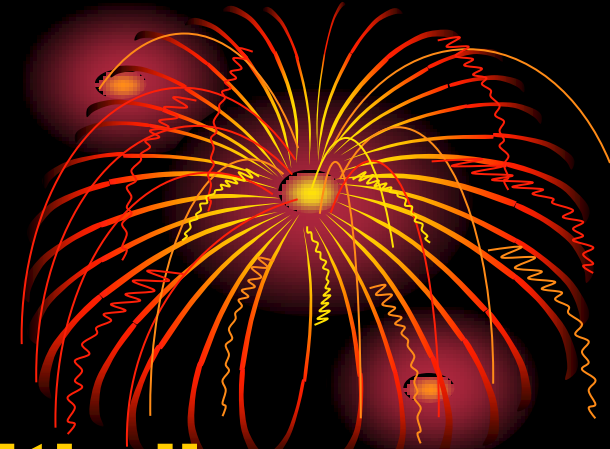
- **Random assignment to mediation/litigation**
 - Initial study and replication (combined for f/u)
 - 36 litigation families; 35 mediation families
 - 18 month and 12 year follow-ups
- **High conflict families**
 - All filed for contested court hearing (worst 10%)
 - Low income, racial diversity
- **Short-term, problem-focused mediation**
 - Average of 3 two hour sessions
 - Male-female co-mediators (6 different pairs)
- **Focus on children's issues**
 - Addressed custody, visitation, and child support

Emotionally-Informed Mediation



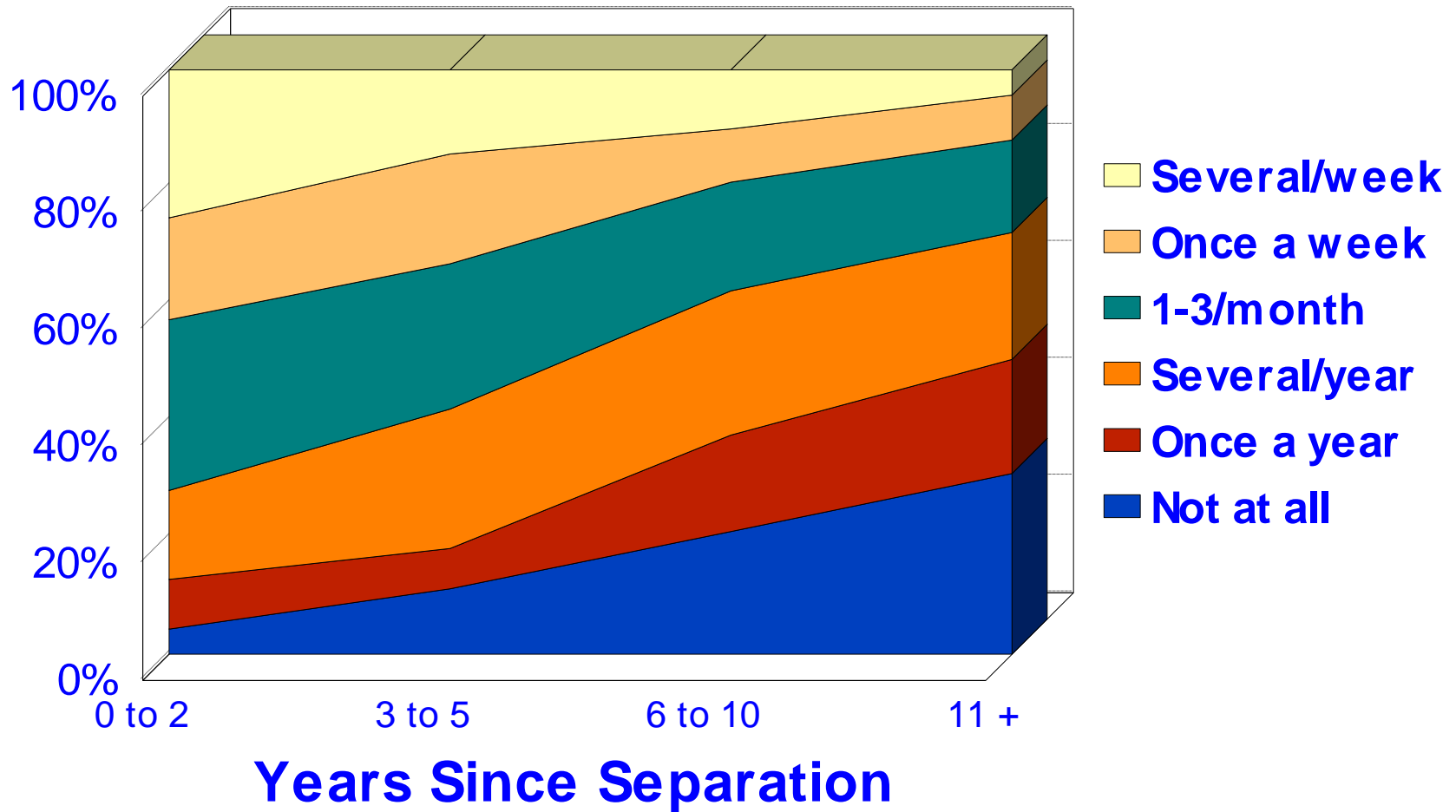
- **Problem solving informed by emotions**
- **Agreement focused but includes**
 - **Education about own emotions and referrals**
 - **Education about parenting, co-parenting**
- **Use middle role to understand child's position**

The Basics



- **Relationships don't end with divorce, so they need to be renegotiated**
 - **True for parents and children, and also for former partners who remain parents**
- **How do people ordinarily handle the hurt, shame, guilt, tension, and complications of lost love?**
 - **Too many divorced parents do what everyone does...**

Father-Child Contact After Separation: By Length of Time Since Separation



The Emotions

- **Real, powerful, and painful feelings**
- **If you can't be angry in middle of a divorce, when can you be?**
- **But much conflict and anger is emotional not rational – Example?**
Stubbing your toe
 - **Hurt → anger**
 - **Love → anger**
 - **Fear → anger**
 - **Grief → anger**
 - **Guilt → anger**



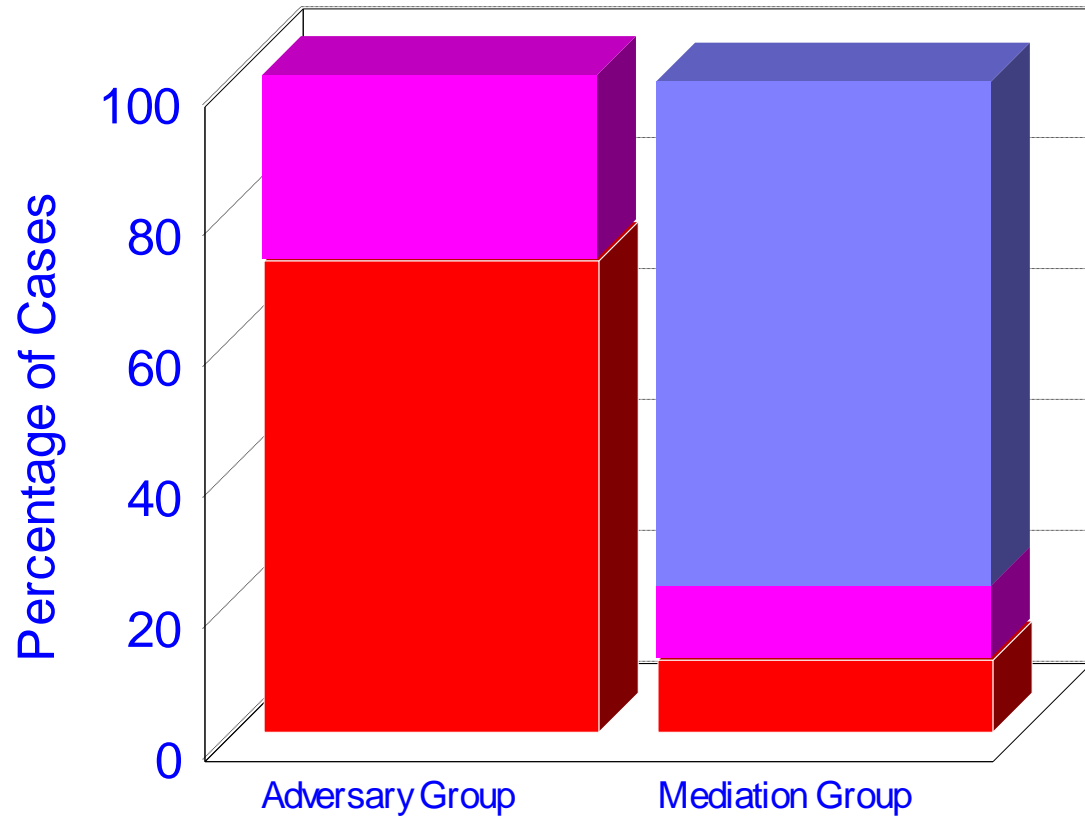
Process Themes

- **Dealing with underlying emotions**
 - **Quick case example**
- **Exploring creative options (brainstorming)**
 - **Quick case example**



Case Settlement Following Random Assignment

- Mediated Settlement
- Attorney Settlement
- Custody Hearing



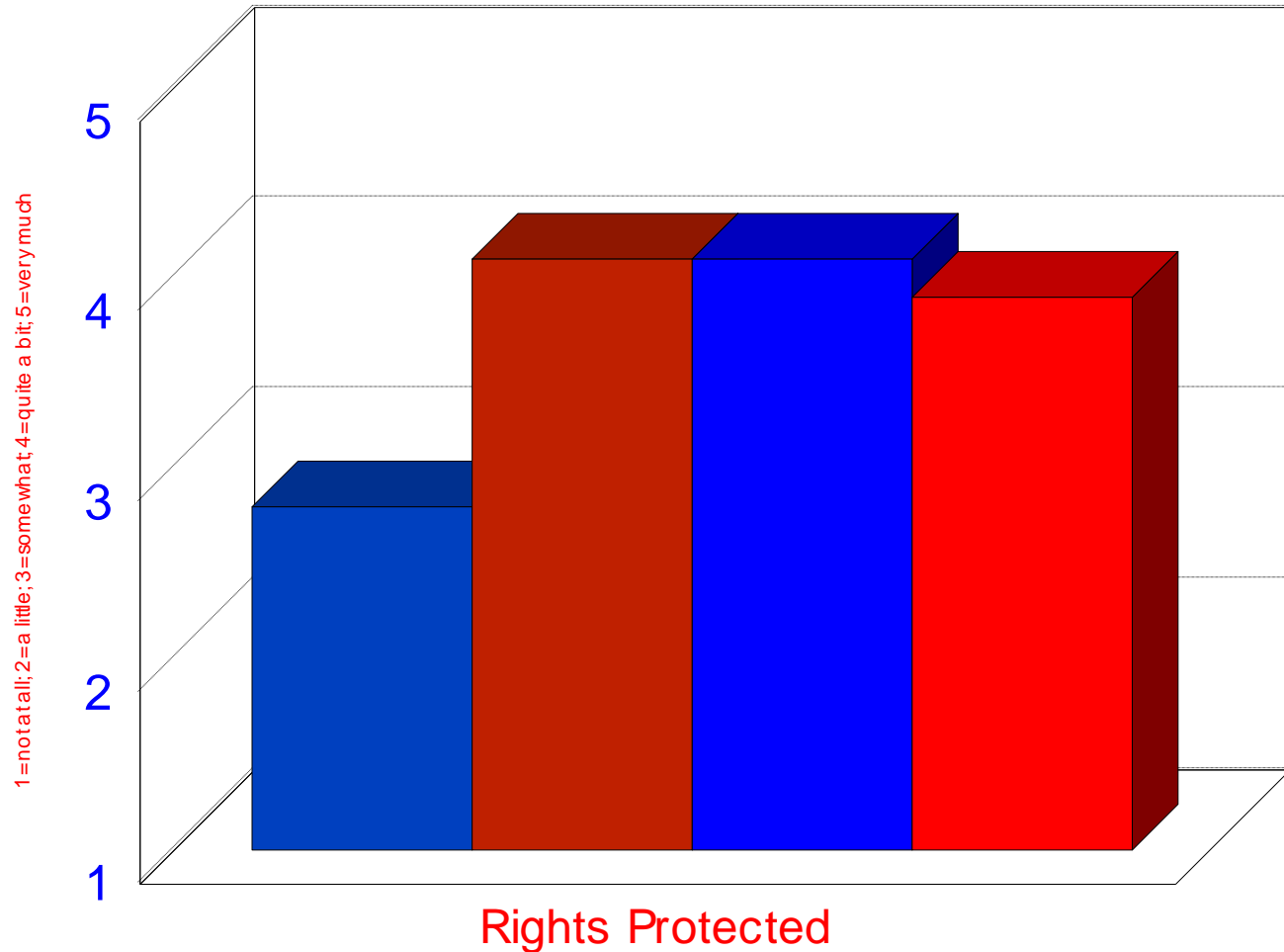
Mediated vs. Litigated Agreements Similar



- **No spousal support or property division**
- **Primary mother custody is most cases**
- **No difference number of days with parents**
- **No difference in child support**
- **More joint legal in mediation**
 - **But still a minority of cases**
- **Today's agreements very different**
 - **More joint legal and physical (less) custody**
- **Agreement rate range other work: 40-80%**
 - **Emery (2011); Emery, Sbarra & Grover (2005)**
 - **Mediation mandatory in many states (e.g., CA) and countries (e.g., AU)**
 - **Caution: "mediation" = 1 hr with untrained worker in some courts**

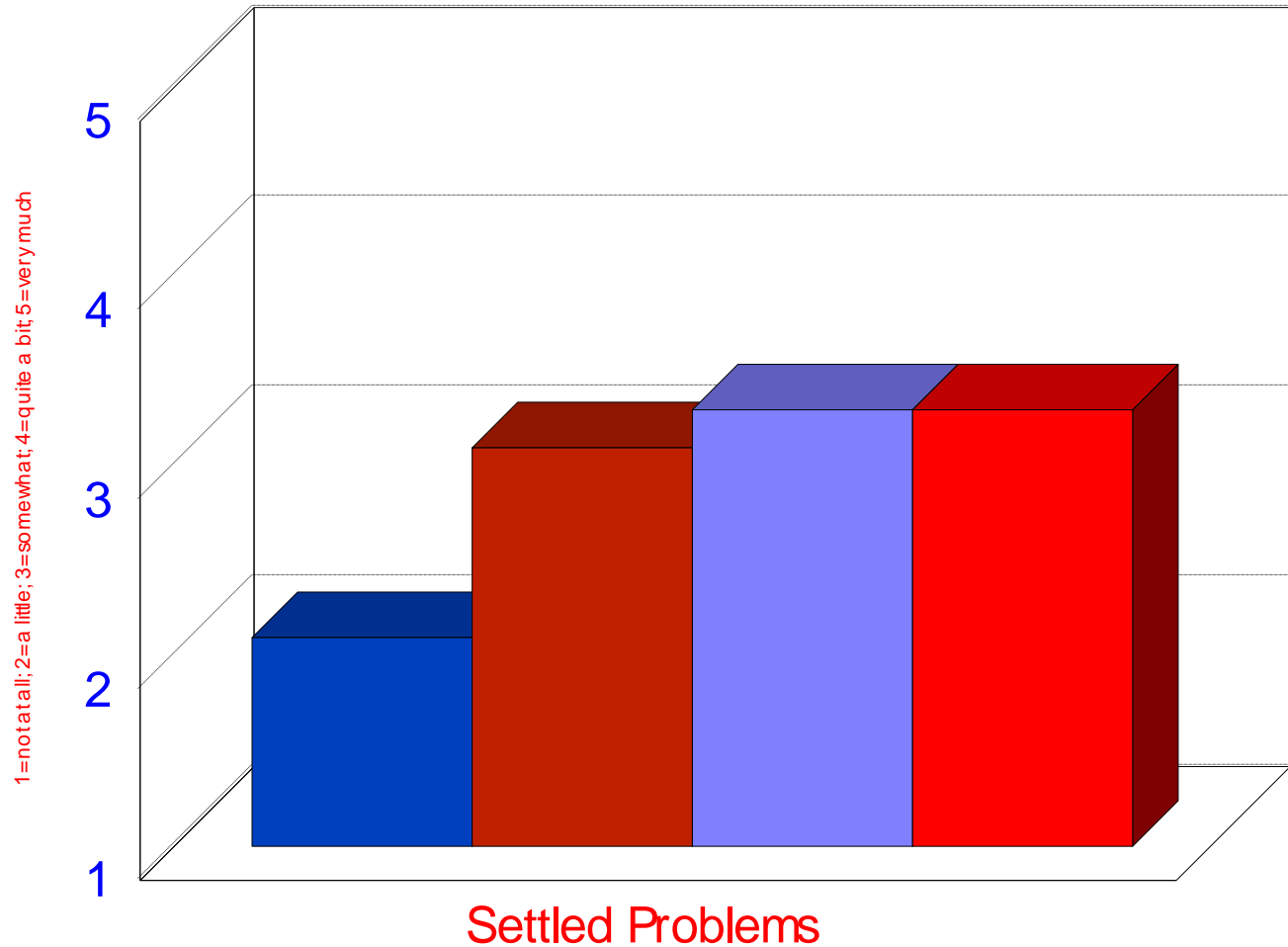
Mothers and Fathers Satisfaction with Mediation and Adversary Settlement

- Court Men
- Mediate Men
- Court Women
- Mediate Women



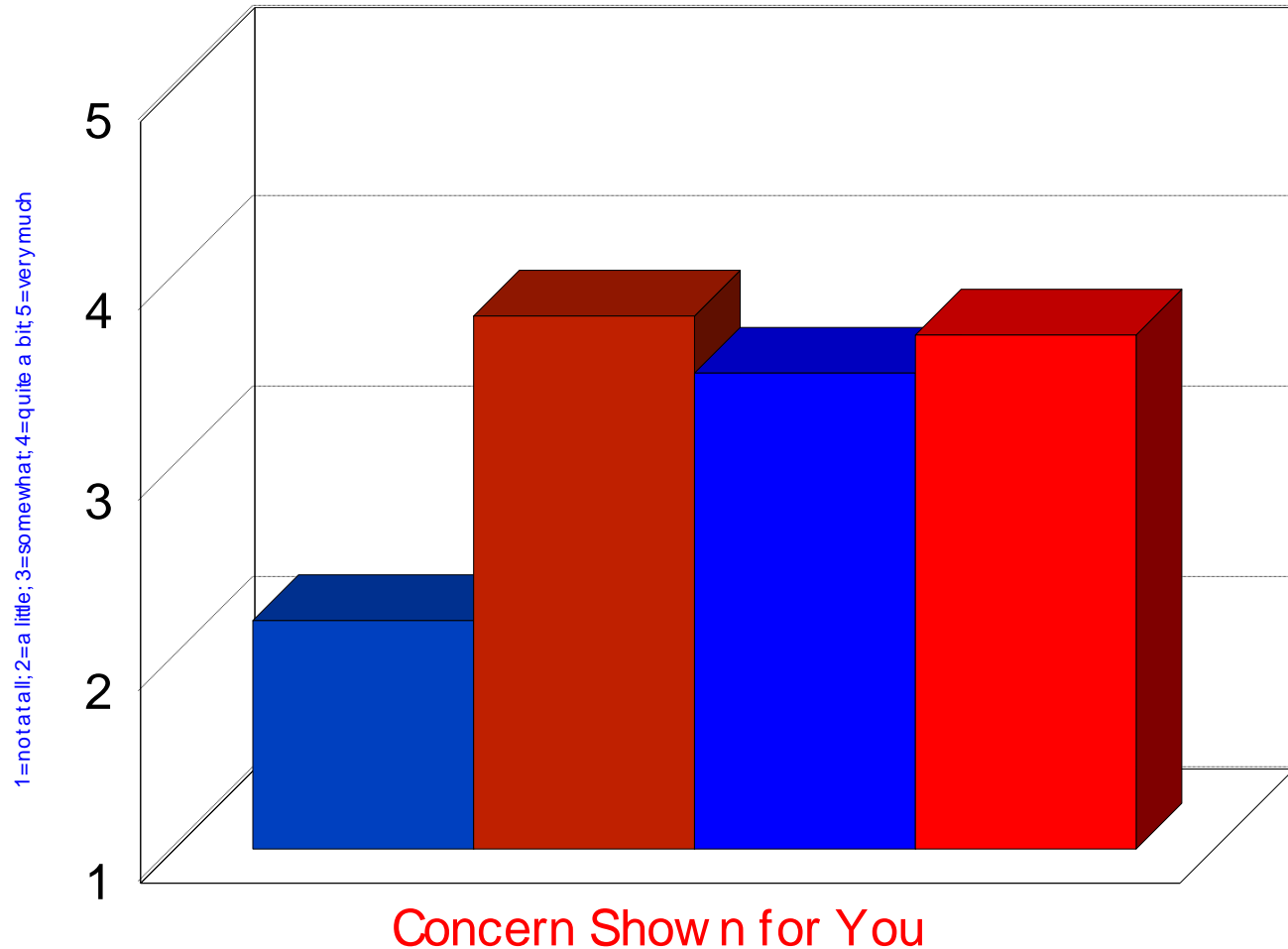
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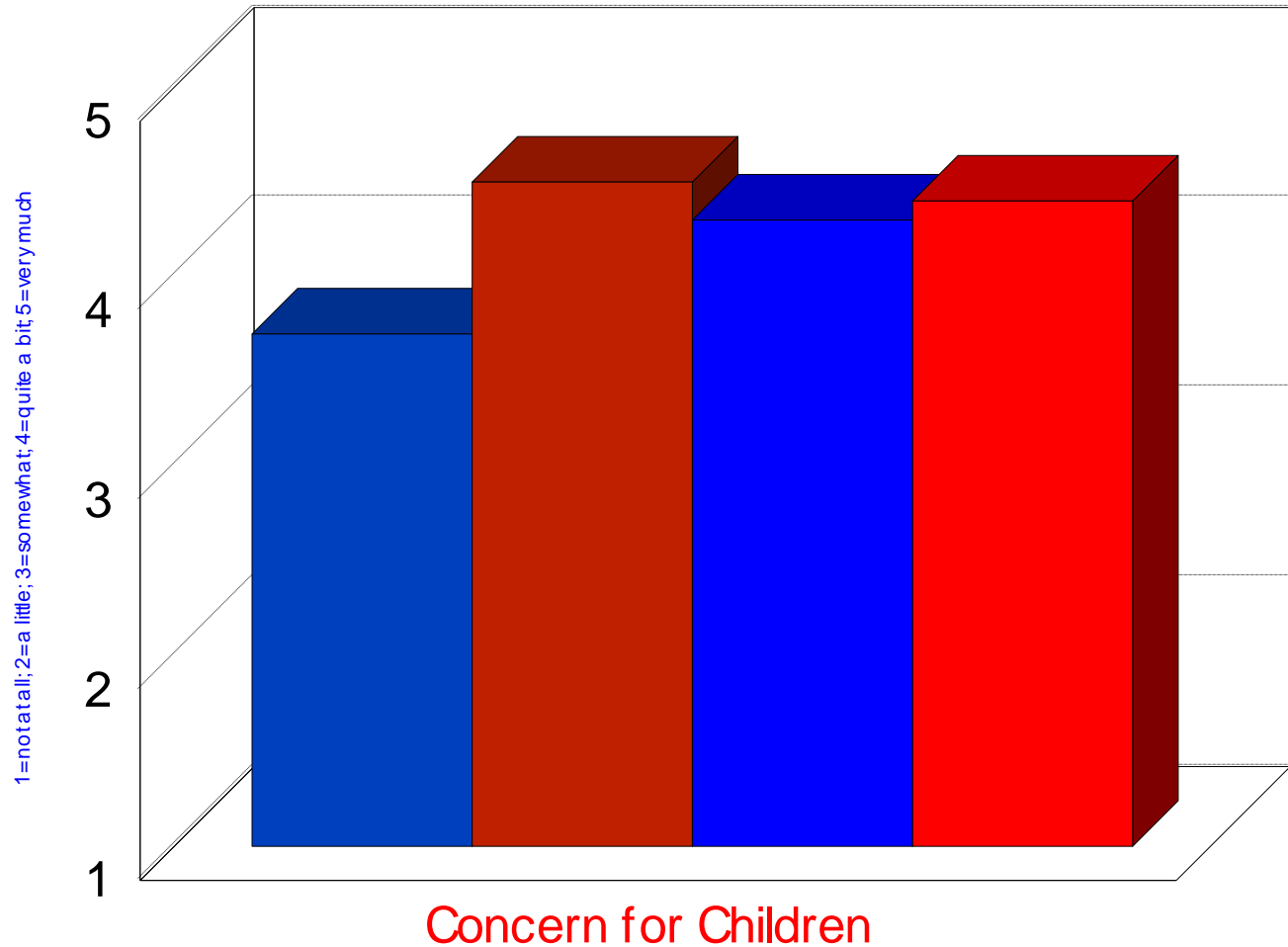
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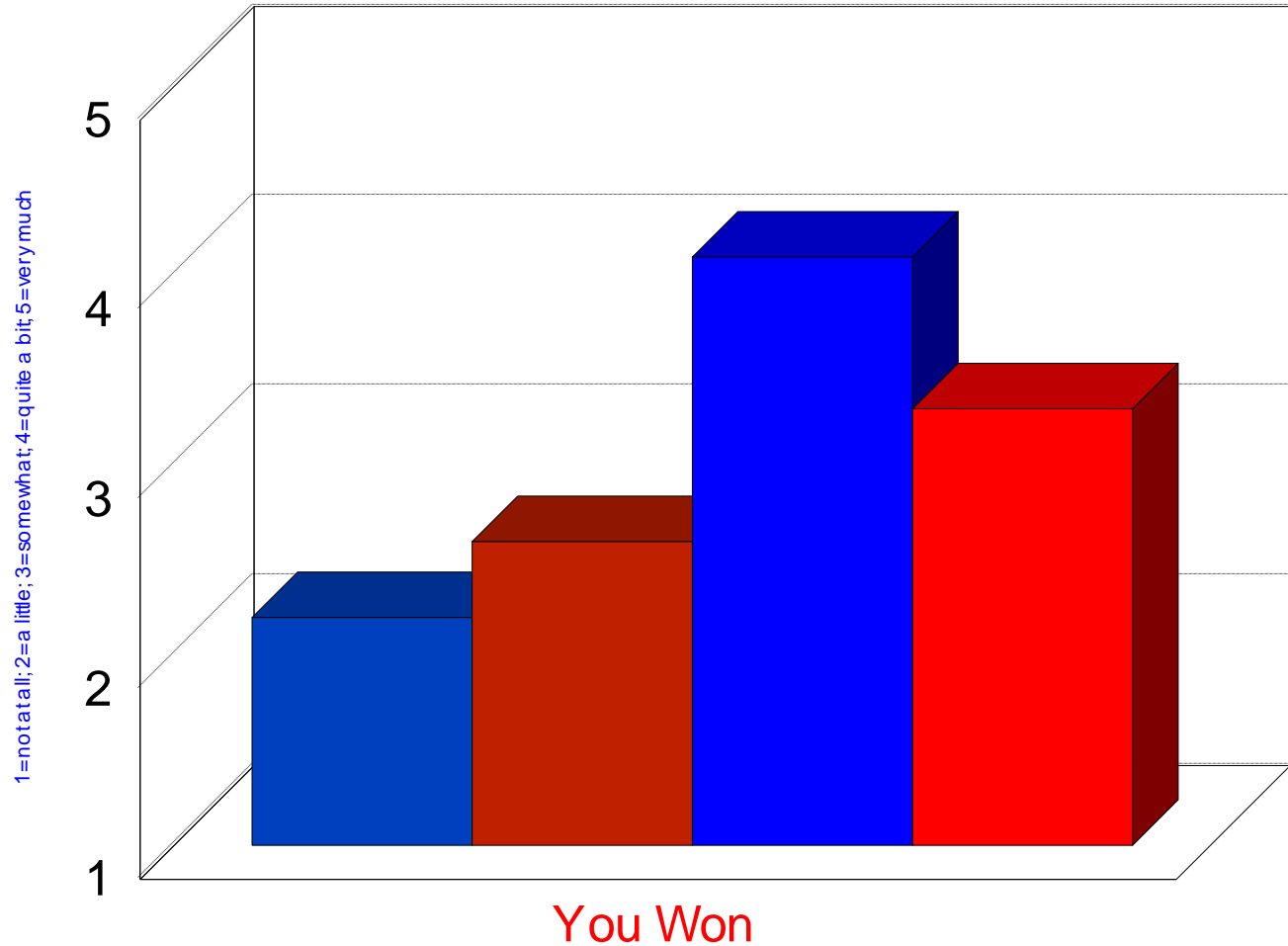
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Win-Win or Win-Lose?

Correlations for Mothers' and Fathers "Won" Ratings

 Litigation group = - .47** (Win-Lose)

 Mediation group = + .33* (Win-Win)

Other Research



- **Higher satisfaction with mediation found consistently**
 - **Both men and women**
- **Some evidence that mediated agreements followed more**
 - **Emery: Better child support payment**
- **Compliance critical for courts**
 - **But returning to mediation good not bad**
 - **Expect (and welcome) change!**

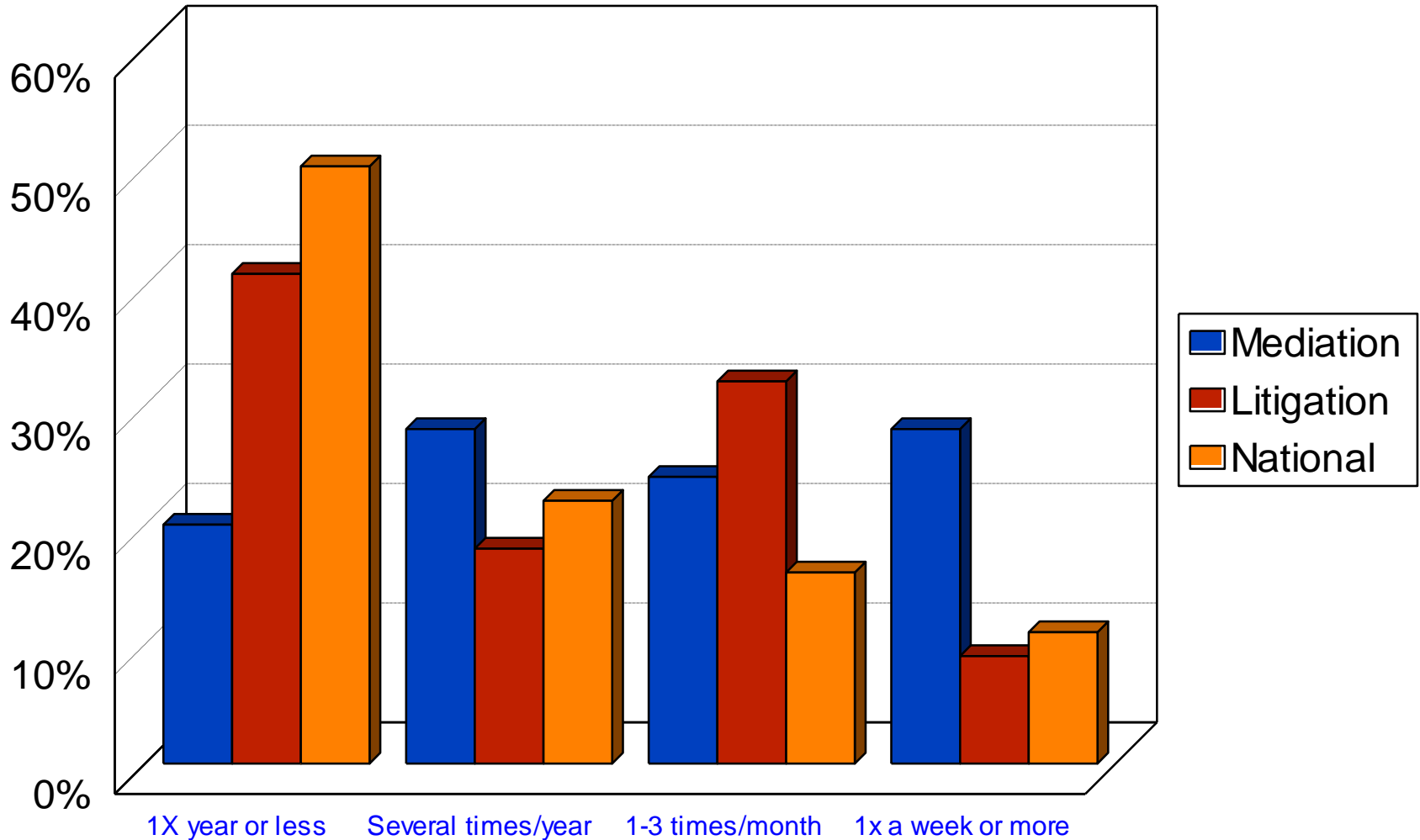
Long-Term (12 Year) Follow-Up



- **Few happy endings in mediation**
- **Hope to plant a seed for future...**
- **Do we?**

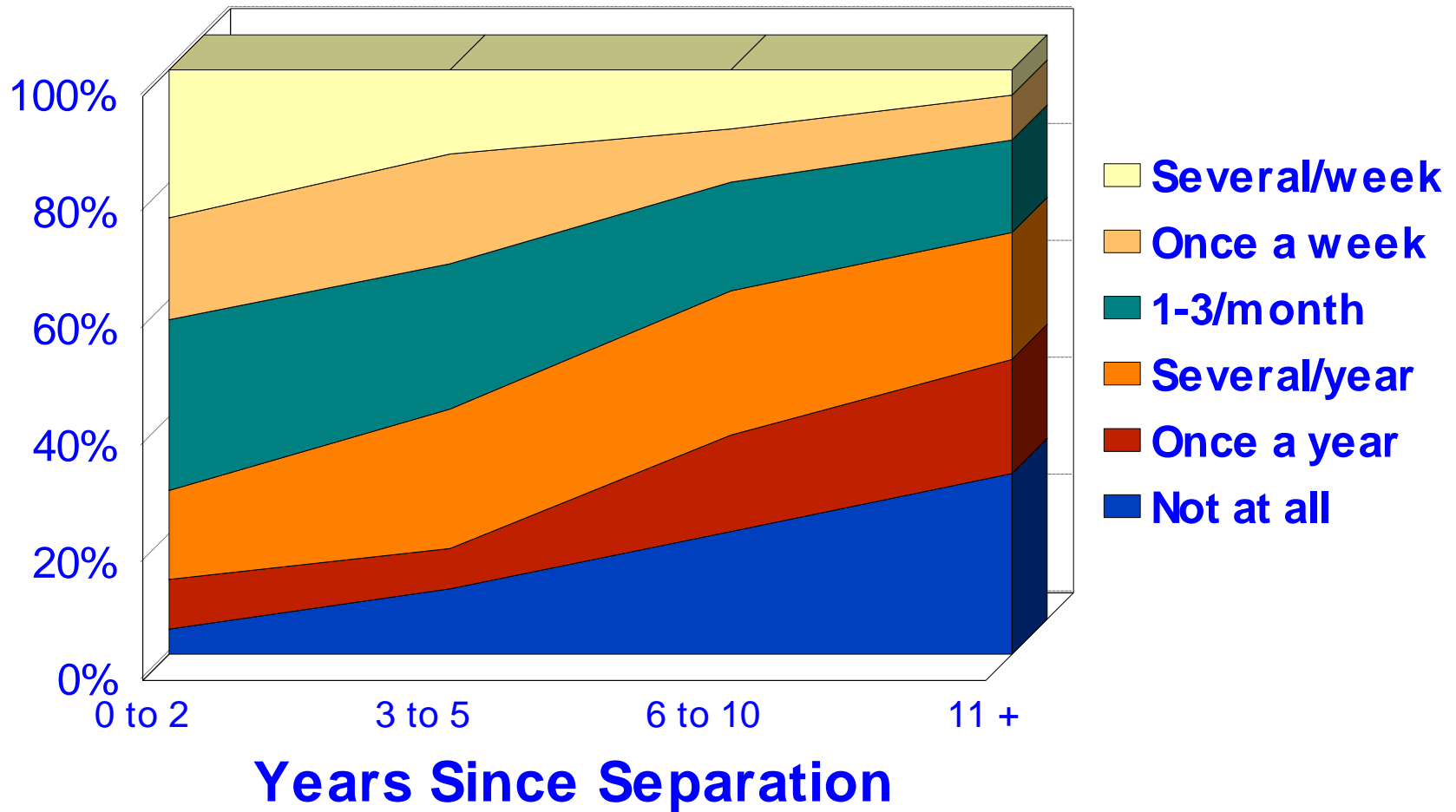
12 Year Follow-Up:

Outcomes of Mediation and Litigation



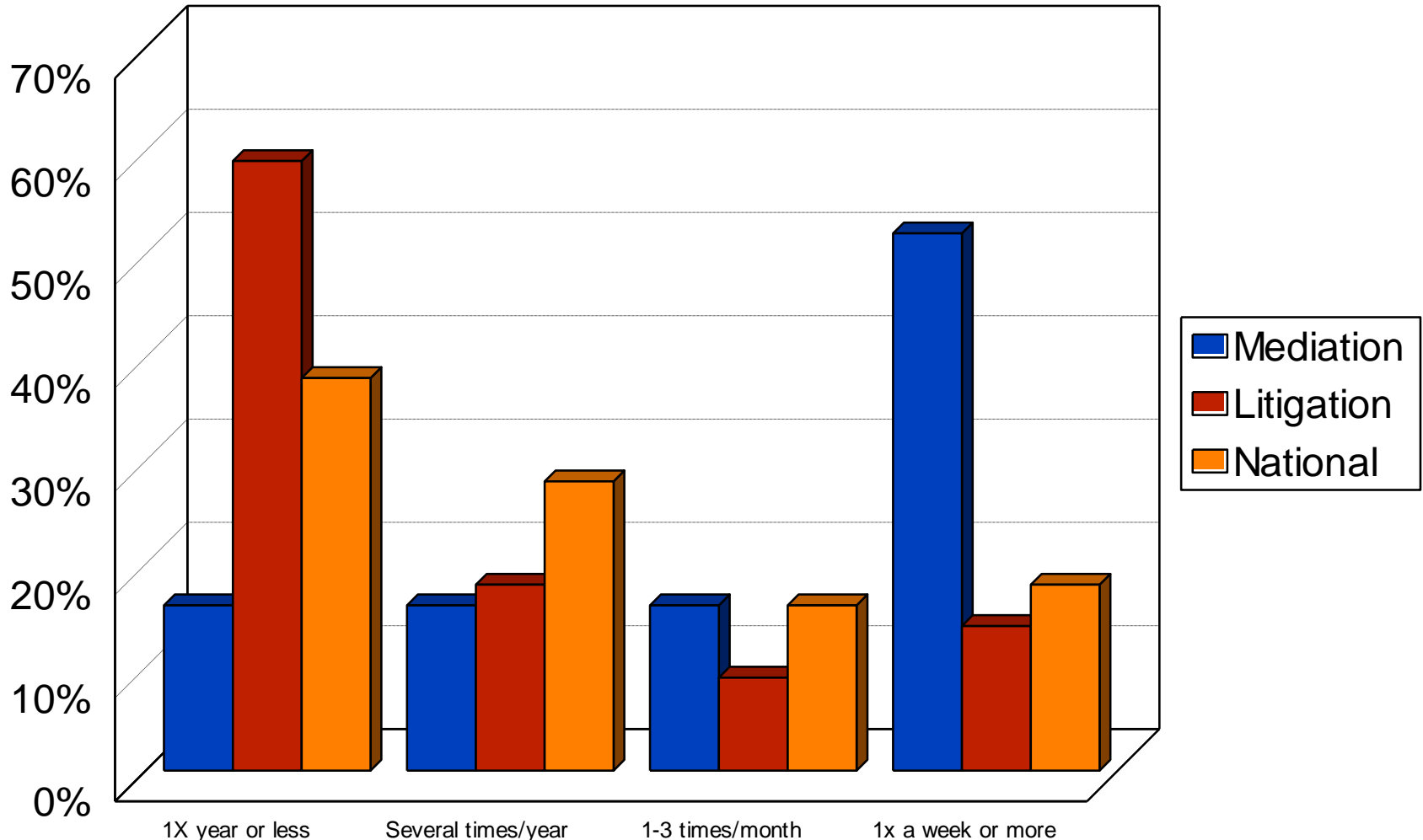
Contact with Nonresidential Parent

Father-Child Contact After Separation: By Length of Time Since Separation



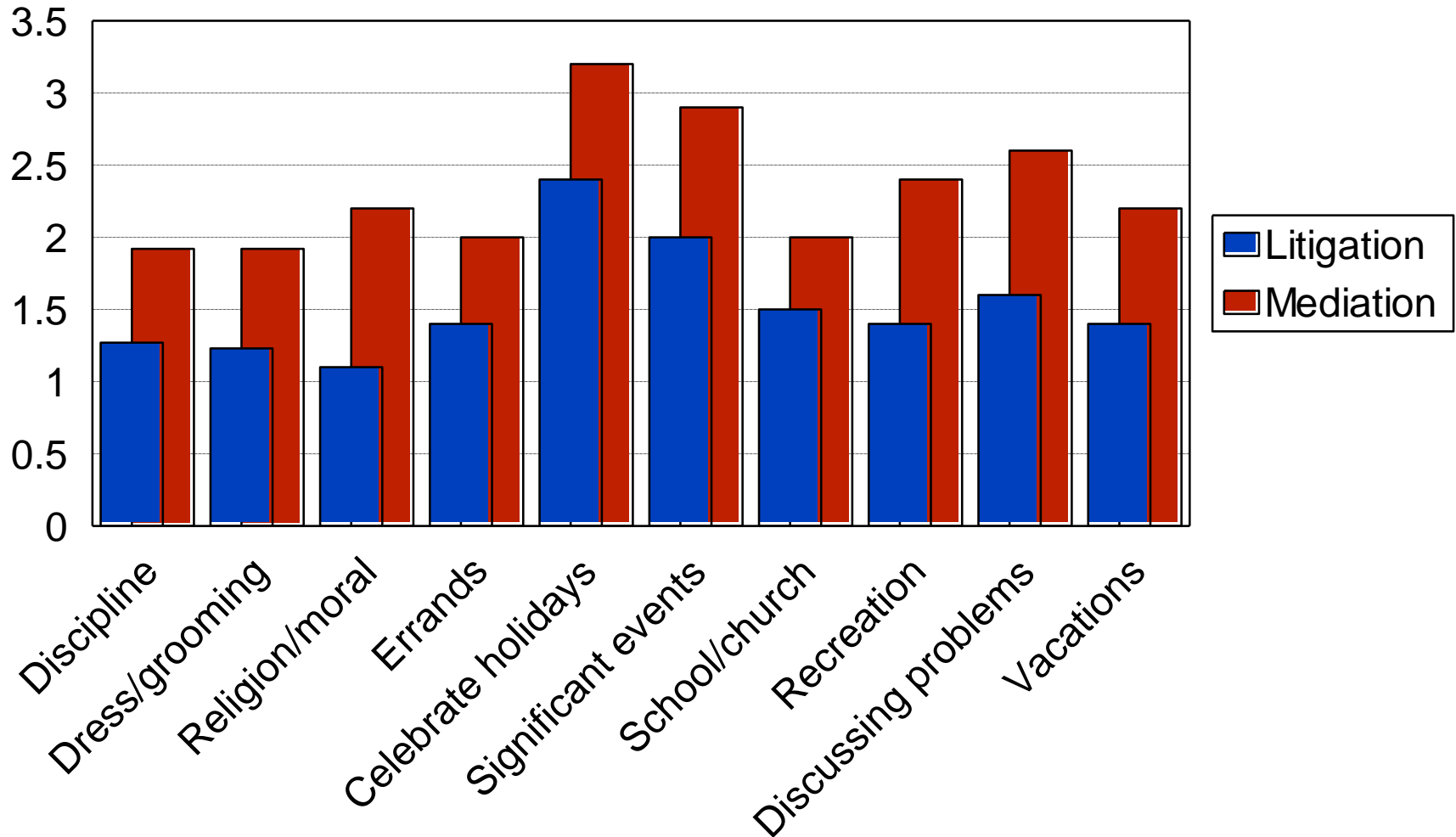
12 Year Follow-Up:

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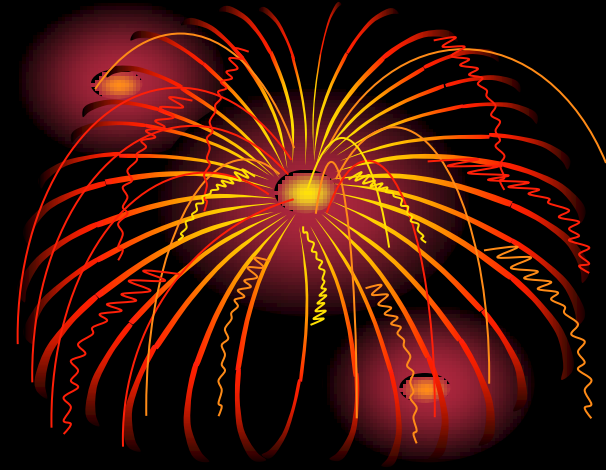
Telephone calls

Nonresidential Parent-Child Involvement



Based on residential parent report

AMAZING!!!



or

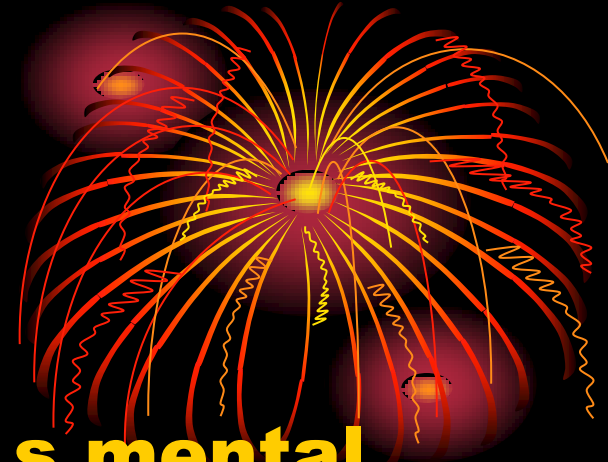
Duh...

Other Findings at 12 Years



- **Mediation**
 - **Less parent conflict despite increased parent contact**
 - ***Increased* ambivalence about ending marriage**
- **Mediation**
 - **More changes in children's living arrangements**
 - **But only about 1 in 12 years (essentially 0 litigation)**
 - **Aren't such infrequent changes normal? Healthy?**
 - **A parenting plan can be a "living agreement"**

More Findings at 12 Years



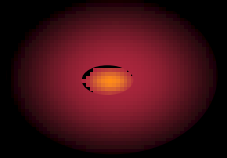
- **No differences in children's mental health**
 - **Trend for differences to favor mediation**
 - **Statistically significant when few cases with 4 or more changes removed**
- **Two ways to end conflict**
 - **Children's adjustment predicted by family relationships in mediation group**
 - **Not related in litigation group**

Other Research

- **No other long-term studies**
- **McIntosh – Australia**
 - **Child *inclusive* mediation better than child *focused* mediation**
- **Need more research!**



Why Did So Little Mean So Much?



- **Timing is everything**
 - **This is the time**
- **The right path (the road less traveled...)**
 - **Not just that mediation is “good;”**
 - **The alternative can be... disruptive**

Why Did So Little Mean So Much?



Not the decisions reached (they were the same) but the process.

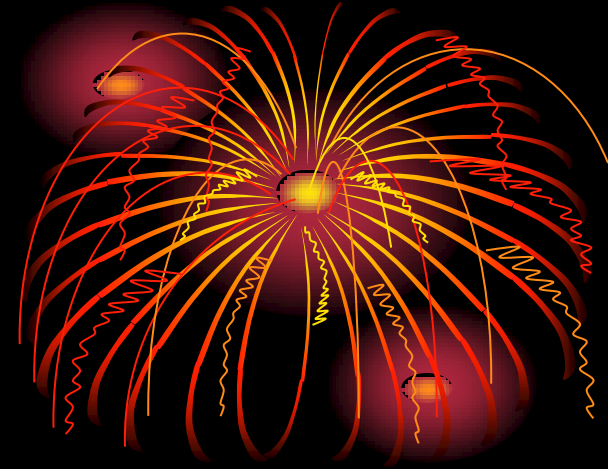
- **Much more than “getting agreements”**
- **Recognizing grief and how it causes anger**
- **Parents having a voice**
- **Learning about children’s needs & co-parenting**
- **Taking the long view**
- **Parents working together as parents**

Why Did So Little Mean So Much?



- **Commitment and enthusiasm for mediation and ADR generally**
 - **Allegiance effect**
- **We constantly need to renew and remind ourselves of the importance of what we do, because this makes us better mediators (or better lawyers, social workers, psychologists, judges)**

Mediation is Emotionally *Wrong*



- **The usual way to end a relationship is...**
 - **“I never want to see you again!”**
- **Anger serves many functions**
 - **Covering up pain, fear, longing, guilt, and grief**
- **Can parents to break up differently?**
 - **For their children’s sake**
 - **Love their kids more than they hate their ex**
- **Mediation makes separation harder**
 - **More ambivalence, more pain**
- **But it is the right thing and it can work!**

For More Information

- **Emery, E.E. & Wyer, M.M. (1987). Child custody mediation and litigation: An experimental evaluation of the experience of parents. *Journal of Consulting and Clinical Psychology, 55*, 179-186.**
- **Emery, R.E., Matthews, S., & Wyer, M.M. (1991). Child custody mediation and litigation: Further evidence of the differing views of mothers and fathers. *Journal of Consulting and Clinical Psychology, 59*, 410-418.**
- **Kitzmann, K.M. & Emery, R.E. (1994). Child and family coping one year following mediated and litigated child custody disputes. *Journal of Family Psychology, 8*, 150-159.**
- **Emery, R.E., Laumann-Billings, L., Waldron, M., Sbarra, D.A., and Dillon, P. (2001). Child custody mediation and litigation: Custody, contact, and co-parenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology, 69*, 323-332.**
- **Sbarra D.S. & Emery, R.E. (2005). Coparenting conflict, nonacceptance, and depression among divorced adults: Results from a 12-year follow-up study of child custody mediation using multiple imputation. *American Journal of Orthopsychiatry, 75*, 63-75.**
- **Sbarra, D.S. & Emery, R.E. (2008). Deeper into Divorce: Using Actor-Partner Analyses to Explore Systemic Differences in Coparenting Following Mediation and Litigation of Custody Disputes. *Journal of Family Psychology, 22*, 144-152.**
- **D'Onofrio, B., Turkheimer, E., Emery, R., Slutske, W., Heath, A., Madden, P., & Martin, N. (2005). A genetically informed study of marital instability and its association with offspring psychopathology. *Journal of Abnormal Psychology, 114*, 1130-1144. (twin study)**
- **Sbarra, D.S. & Emery, R.E. (2005). The emotional sequelae of non-marital relationship dissolution: Descriptive evidence from a 28-day prospective study. *Personal Relationships, 12*, 213-232. (grief study)**
- **Laumann-Billings, L. & Emery, R.E. (2000). Distress among young adults from divorced families. *Journal of Family Psychology, 14*, 671-687. (pain study)**

