

FAMILY COURT REVIEW: AN INTERDISCIPLINARY JOURNAL

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EDITORIAL NOTES

FCR's goal is to provide cutting-edge interdisciplinary perspectives on family dispute resolution to an audience capable of incorporating these perspectives into the daily work of family courts. The articles in this issue meet that goal in diverse program areas.

OVERNIGHT VISITATION FOR INFANTS: THE CONTINUING DEBATE

Family courts face a no more vexing problem than developing residence and access plans for infant children when divorcing and separating parents live apart. The numbers of parents who divorce when their children are very young seems to be growing, and everyone involved with families and courts is deeply concerned about the long-term impact of continuing conflict on the emotional development of infants. This issue continues *FCR*'s discussion of this controversial problem.

Is the emotional development of infants benefited or burdened by spending frequent overnights in the separate residence of each parent? Judith Solomon and Zeynep Biringen critique Joan Kelly and Michael Lamb's article on that subject in *FCR*'s July 2000 special issue on child custody evaluations. In their article, Kelly and Lamb argue that the available empirical research base generally supports overnight visitation for infants because it strengthens the child's relationship with both parents. In this issue, Solomon and Biringen disagree. They contest Kelly and Lamb's interpretation of the research results and suggest that overnight visitation should be avoided through the third year of life "when parental conflict is high and parent communication is low."

Kelly and Lamb respond to Solomon and Biringen's critique and are not persuaded by it. They conclude that Solomon and Biringen's guideline of delaying overnight visitation "at least through the third year of life" is "absolutely unsupported by empirical evidence and . . . run[s] the risk of severing relationships that could constitute important short- and longer-term emotional, social, and financial resources for young children."

Jonathan Gould and Philip Stahl then add a brief commentary on how child custody evaluators should take the different perspectives of Kelly and Lamb and Solomon and Biringen into account. They argue that research results should be thoughtfully integrated into the forensic evaluation for a particular family and that infants and parents should not be subjected to a "cookbook" solution for overnight visitation.

Readers will, I am sure, find these sophisticated, comprehensive, and yet accessible discussions of the needs of infants enmeshed in their parents' separation and divorce stimulating and an excellent source of references for further research. Whatever they conclude, readers will be grateful to the authors for helping advance our understanding of how best to mesh the needs of very young children with the actual parenting plans developed by family courts.

COURT-AFFILIATED EDUCATION

FOR PARENTS

JoAnne Pedro-Carroll and her colleagues Ellen Nahhnikiam and Guillermo Montes describe and evaluate the A.C.T.–For the Children Program of Rochester, New York. A.C.T. is a model court-affiliated educational program for parents that combines a carefully thought-out skills-based educational program and rigorous evaluation research. The authors present their model and data in clear and compelling terms, demonstrating how much good parent education programs actually do for parents, children, and the courts.

This is JoAnne's first *FCR* article. I am especially pleased to welcome her to our community of authors because of her distinguished background in research and development of both school- and court-based prevention programs for children of divorce and separation. JoAnne was awarded the Stanley Cohen Distinguished Researcher Award at the AFCC convention in May 2001 for this work. (I confess to having nominated her.) I have worked with JoAnne for many years in the development of court-affiliated educational programs in New York. She was an enormous help in the early development of P.E.A.C.E. No one I know gives more generously of their time and expertise for the benefit of families and children. I hope this article will be the first of many that she and her colleagues will bring to the readers of *FCR*.

FOR CHILDREN

Educational programs for children are emerging as an important complement to programs for parents, for good reason. Divorce and separation can create a crisis for children. Children are often confused and scared by their parents' divorce or separation and do not have access to advice and perspective on their families' reorganization. Children need information about what is happening to them and their parents and skills to cope with a forbidding legal system that can determine their fate. Programs in schools are wonderful, if they exist. Many children, however, are reluctant to participate in school-based programs for fear of embarrassing themselves in front of their peers. Furthermore, many schools do not have the resources to create support groups for children of divorce and separation.

Robyn Geelhoed, Karen Blaisure, and Margie Geasler continue to expand our knowledge of court-affiliated educational programs by reporting on the first national survey of programs for children. This able team of researchers from Western Michigan University identifies the elements of a model program, discusses common solutions to administrative problems, and describes evaluation research. The information presented can enable any court that wants to start a program for children.

MEDIATION

Professional articles and student work in this issue continue *FCR*'s focus on family and divorce mediation.

CONFIDENTIALITY

I am delighted to welcome back to *FCR*'s pages its former editor and my good colleague, Hugh McIsaac. Hugh's article, based on testimony he gave to the California legislature, is a

concise and persuasive argument for the importance of confidentiality in mediation. He advocates elimination of the legislative permission granted to court-based mediators in California to make recommendations for parenting plans if mediation fails. Hugh describes why mediator and evaluator are generally a bad mixture in a single individual. He argues that, far from saving resources, this role combination actually makes both the mediation and the evaluation less efficient and useful to families and the courts. More important, a recommending mediator does not provide good service to the participants who focus more on adversarial gamesmanship during the mediation process than developing their problem-solving attitudes and skills.

MEDIATION WITH INDIGENT AND LOW-INCOME FAMILIES

Judith Caprez and Micki Armstrong present an evaluation study of a mediation program in Kansas for low-income and indigent parents sponsored by the Family Development Services Committee, a collaborative effort between community professionals and the social work and sociology faculties of Fort Hays State University. Caprez and Armstrong received a grant from the Kansas Supreme Court Dispute Resolution Council to organize and evaluate the program. Their conclusion is that mediation in child custody and visitation disputes is effective for indigent parents. Caprez and Armstrong recommend that mediation for indigent parents should become the norm and that particular attention should be paid to developing programs for nonmarried parents.

NATIONAL SURVEY OF STATUTES AND COURT RULES

The *FCR* law student staff makes two significant contributions on mediation. One contribution is the first state-by-state survey on family mediation statutes and court rules published in recent years conducted by Tondo and colleagues. The student staff hopes that readers will find the survey useful in providing a picture of the state of legal authorization of family mediation at the beginning of the 21st century. The student staff encountered significant research difficulties in developing this survey, as many local court rules authorizing mediation programs are not easily available. They are grateful to the AFCC members in each state who helped them find the necessary information.

As described in the foreword to the survey, however, readers should recognize that it is a work in progress. *FCR* hopes to update and correct it regularly, as well as include information about family mediation statutes and court rules in countries outside the United States. We will surely be asking our friends in Canada, Australia, the United Kingdom, New Zealand, and elsewhere for help.

MEDIATION IN GRANDPARENT VISITATION DISPUTES

Michael Ratner of the student staff publishes a note on mediation in grandparent visitation disputes. This note was inspired by the opinions in the U.S. Supreme Court's recent grandparent visitation decision, *Troxel v. Granville*.¹ Both Justice O'Connor's plurality opinion and Justice Kennedy's dissent emphasize that "a domestic relations proceeding can itself be 'so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated.'" ² Justice Kennedy also states,

If a single parent who is struggling to raise a child is faced with visitation demands from a third party, the attorneys fees alone might destroy her hopes and plans for the child's future. Our system must confront more often the reality that litigation can itself be so disruptive that constitutional protection may be required.³

While the justices are thus aware of the pitfalls of the adversary system to resolve grandparent visitation disputes, they do not mention that mediation may offer a way to reduce families' emotional and economic transaction costs and allow families to heal their divisions. The rights and wrongs of most grandparent visitation disputes are difficult for a court to determine with great certainty, and one party who is deeply concerned about the child will nonetheless be the loser in a courtroom contest. Given these realities, Ratner makes a strong case that grandparents and their children should be required to mediate their disputes before bringing them to court for resolution.

SUPERVISED VISITATION

Barbara Flory, Jerry Dunn, Marla Berg-Weger, and Marguerite Milstead provide an empirical study of a court-community partnership for supervised access and custody exchange—Heritage House, established by the St. Louis City Family Court in collaboration with a private mental health agency. Their research demonstrates that program participation dramatically increases the frequency and consistency of noncustodial parents' access to children and decreases interpersonal conflict. Of particular interest to me is the authors' finding that family members often do not understand the language in court orders for supervised access and that potentially contemptuous behavior is thus often based in a disagreement about the order's interpretation. Staff assistance to parents in interpreting court orders apparently decreases contempt charges and reduces returns to court. While Flory and her colleagues recognize that their research is preliminary and should be replicated, their results do offer hope that projects like Heritage House can provide help to courts in dealing with violence in families while court proceedings are pending.

FORENSIC CHILD CUSTODY EVALUATIONS

William Austin continues his series of articles on the organization and structure of child custody evaluations, which he conceptualizes as an exercise in identifying and evaluating risk to the child. There is a no more difficult and important problem for custody evaluators than assessing the impact of partner violence when making a recommendation to parents and the court. In his latest article, Austin describes how custody evaluators can systematically undertake a differential diagnosis of the problem, giving weight to both safety and the possibility of false or exaggerated allegations. Austin differentiates between types of partner violence and argues that its frequency and type should be a significant determinant in a custody evaluation. His comprehensive procedure and overview of the research literature should be a significant benefit to custody evaluators and courts everywhere.

BOOK REVIEW

The final entry in this issue and this volume of *FCR* is Janet Johnston's review of Philip M. Stahl's recent book, *Complex Issues in Child Custody Evaluations*.

A PERSONAL NOTE

The student staff and I placed the final touches on this issue at a time of great sadness, displacement, and determination in our community because of the tragedy our nation and the world experienced in September, 2001. We are grateful for the support we received from AFCC members around the globe. In our time of trauma, it is important for us to know that we are not alone.

The student editors and I look forward to working with *FCR*'s editorial board, contributors, and readers in Volume 40.

—Andrew Schepard
Hempstead, New York

NOTES

1. 530 U.S. 57 (2000).
2. *Id.* at 75 quoting 530 U.S. at 101 (Kennedy, J., dissenting)
3. *Id.* (dissenting opinion of Kennedy, J).

THE DEBATE CONTINUES . . .
OVERNIGHT VISITATION FOR INFANTS
Editor's Note

The following three articles continue the ongoing discussion of the controversial problem of whether the emotional development of infants is benefited or burdened by spending frequent overnights in the separate residences of each parent following divorce or separation. Judith Solomon and Zeynep Biringen critique Joan Kelly and Michael Lamb's article in *FCR*'s July 2000 special issue on child custody evaluations on that subject. In their July 2000 article, Kelly and Lamb argue that the available empirical research base generally supports overnight visitation for infants because it strengthens the child's relationship with both parents. In this issue, Solomon and Biringen disagree. They contest Kelly and Lamb's interpretation of the research results and suggest that overnight visitation should be avoided through the third year of life "when parental conflict is high and parent communication is low."

Kelly and Lamb respond to Solomon and Biringen's critique and are unpersuaded by it. They conclude that Solomon and Biringen's "guideline" of delaying overnight visitation "at least through the third year of life" is "absolutely unsupported by empirical evidence and . . . run[s] the risk of severing relationships that could constitute important short- and longer-term emotional, social, and financial resources for young children."

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Readers will find these sophisticated, comprehensive, and yet accessible discussions of the needs of infants enmeshed in their parents separation and divorce stimulating and an excellent source of references for further research.

Whatever they conclude, readers will be grateful to the authors for helping advance our understanding of how best to mesh the needs of very young children with the actual parenting plans developed by family courts.

ANOTHER LOOK AT THE DEVELOPMENTAL RESEARCH
Commentary on Kelly and Lamb's "Using Child
Development Research to Make Appropriate Custody
and Access Decisions for Young Children"

Judith Solomon and Zeynep Biringen

Kelly and Lamb (2000) recently provided a summary of the attachment literature and a set of guidelines for visitation and custody for young children in divorced and separated families. Here, Solomon and Biringen review the same literature with an eye to critically evaluating these guidelines, especially the suggestion that more, rather than fewer, transitions between parents are appropriate for very young children. Three types of empirical findings raise questions regarding the appropriateness of Kelly and Lamb's guidelines. These include differences in the development of infant-mother and infant-father attachments, young children's sensitivity to overnight separations from the primary caregiver, and the possibility of infant preferences for primary versus secondary caregivers in times of stress. The authors argue that considerably more rigorous research is required before submitting Kelly and Lamb's suggestion to social policy.

Kelly and Lamb (2000) recently presented in this journal a summary of the development of child-parent attachment and a set of guidelines for custody and access decisions, with particular attention to the special needs of the youngest children of divorce. In describing these guidelines, they make the provocative claim that

to be responsive to the infant's psychological needs, the parenting schedules adopted for children under age two or three must involve more transitions, rather than fewer, to ensure the continuity of both relationships and the child's security and comfort during a time of great change. . . . To minimize the deleterious impact of extended separations from either parent, there should be more frequent transitions than would perhaps be desirable with older children. (p. 304)

As researcher-clinicians in the field of attachment and parent-child interaction, we agree with Kelly and Lamb on the need to focus attention on this topic of great significance for children and families. There has been very little public attention paid to this crucial and timely issue in our society and woefully little research. Here, we examine the same topics, also through the lens of attachment theory and research. Our reading and understanding of the child development research lead us to different conclusions and recommendations, however. To tailor a commentary, we (a) review the development of attachment to mother and to father, detailing similarities and differences in the development of these parent-child processes based on the available child development research; and (b) examine the Kelly and Lamb thesis that more transitions rather than fewer transitions are in order for infants and young children of divorce. Our goal in this commentary is to stay within the confines of the available research in child development and to point out where we do not have answers to important questions. In this vein, we provide extensive citations from empirical research in the field.

THE DEVELOPMENT OF ATTACHMENT TO MOTHER AND FATHER

In evolutionary terms, the attachment system in human infants is the same as (homologous with) similar systems in all higher primates. Analogous systems are widespread among birds and other mammals (Hinde, 1982; Polan & Hofer, 1999; Suomi, 1999). This system, which at the most concrete level functions to keep the immature young in proximity to caregivers, is believed to have evolved to provide protection from harm of many sorts, including illness, predators, and aggression from others. The analogy of a thermostat is frequently invoked to explain how the attachment system functions. Changes in ambient temperature relative to the setting of a thermostat turn on the furnace until the temperature setting is reached. Analogously, the child's experience of fatigue, illness, anything threatening or frightening, and most especially, separation from the attachment figure results in strenuous efforts to approach the attachment figure or to bring him or her close. Chronic frustration of this cycle inevitably leads to feelings of anxiety and distress and over time can cause the child to develop both adaptive and maladaptive internal defenses and behavior, which are often described as differences in the security of attachment relationships. We will review this literature shortly. (For the most in-depth explication of Bowlby's attachment theory, we recommend Bowlby, 1969/1982, 1973, 1980; for excellent recent overviews of theory, see Cassidy, 1999; Marvin & Britner, 1999). We note that the construct of attachment is not synonymous with love and does not comprise all of the important functions of parent-child relationships. Attachment is generally believed, however, to constitute an essential building block for the young child's social and emotional development.

To say that attachment behavior has a biological basis does not minimize the important effects of learning and experience. Children are not born knowing who their parents are—they cannot be said to be attached at birth. They are equipped at birth or soon after, however, with a number of perceptual mechanisms and species-characteristic learning biases that help to identify or select attachment figures and organize their behavior to parents appropriately. The exact nature of the underlying learning mechanisms have yet to be studied in detail, but there is general agreement that attachment bonds develop from familiarity with particular individuals in the context of predictable interactions (Waters, Kondo-Ikemura, Posada, & Richters, 1991).

Another way that experience influences attachment is with respect to the security of the relationship. Differences in the security of attachment typically are captured in attachment classifications. These classifications represent the distinct ways that infants cope with the moderate but cumulative stresses of an unfamiliar room and playmate and two brief separations and reunions in the laboratory-based "strange situation" (Ainsworth, Blehar, Waters, & Wall, 1978). These patterns are best understood as reflecting the infant's or child's adaptation to differences in caregiver sensitivity. When a caregiver is sensitive and responsive over time, the infant develops a secure attachment. That is, the infant shows that he or she can readily use that caregiver as a haven of safety when distressed and a secure base from which to explore the wider environment. When a caregiver is cool and distant, the infant is likely to show an insecure and avoidant pattern of interaction. When a caregiver is inconsistently available and tends to emphasize negative affect and dependency in interactions, the infant is likely to develop an insecure and ambivalent pattern of interaction. When an infant is unable to form an organized view of the relationship with the attachment figure, the infant is said to be disorganized/disoriented in attachment to that particular caregiver. The first three attachment categories (namely, secure, insecure/avoidant, and insecure/ambivalent or resistant)

were developed in the context of child development research by Ainsworth and her colleagues (1978). The last attachment category (namely, the disorganized form) was recognized by Main and Solomon (1984, 1990).

It has been found that infants and children who are insecure but organized in their attachment to parents (avoidant or ambivalent) appear less competent in a variety of spheres in their current and later lives (Cohn, 1990; Matas, Arend, & Sroufe, 1978; Thompson, 1999; Wartner, Grossmann, Fremmer-Bombik, & Suess, 1994; Weinfield, Sroufe, Egelund, & Carlson, 1999). Interestingly, the disorganized form of attachment has been associated with many severe difficulties in the family, including parental psychopathology, child maltreatment, or other forms of trauma (Lyons-Ruth, 1996) and in some cases is believed to result from the infant's experience of the parent as frightening (Main & Hesse, 1990; Main & Morgan, 1996). Disorganized attachments have also been reported to be common among adopted children who have experienced extreme early deprivation in orphanage environments (Chisolm, Carter, Ames, & Morrison, 1995; Marcovitch et al., 1997). It is also the disorganized infants and young children who are most likely to show early signs of psychopathology in their social behavior, especially high levels of aggression at home and at school (Lyons-Ruth, 1996) and evidence of psychopathology in adolescence (Carlson, 1998; Ogawa, Sroufe, Weinfield, Carlson, & Egelund, 1997). Disorganized attachments may later become organized, as indeed, insecure attachments may later become secure—or the reverse—as a function of changes in the quality of caretaking. Yet, the factors associated with disorganization in infants give us pause for thought when we consider the implications of this attachment category for a child's welfare in the future. Nonetheless, it is important to point out that not enough is known about what predicts disorganization and what disorganization may mean in different circumstances.

Although we have reviewed what caregiver qualities may be predictive of different types of attachment categories, we have not yet made a differentiation between mothers and fathers. It is important to point out now that most of the research in child development is with mothers. The relation between maternal behavior and child-mother attachment is consistent across a voluminous literature, albeit moderately strong (van IJzendoorn, 1995), indicating that other factors in addition to maternal behavior affect the infant-mother relationship. Such additional factors have included social support to the mother (Crockenberg, 1981), the mother's reflectiveness about her own family-of-origin attachments (Fonagy, Steele, Steele, Moran, & Higgitt, 1991), and the infant's temperament (van den Boom, 1989).

In child development research to date on mothers, it is believed that most infants and young children form an attachment to the mother, be it secure or insecure. Although the quality of mother-infant interaction largely determines the attachment category (secure, insecure/avoidant, insecure/ambivalent, or disorganized), there is nonetheless an attachment whenever the infant has spent a reasonable amount of time in the care of the mother. Only under extreme environmental circumstances (e.g., experiences in orphanages, complete lack of time with a caregiver) do infants fail to develop attachments.

What about the relationship with the father? Kelly and Lamb are correct in pointing out that the "time spent interacting is not the only factor in the development of attachments" (p. 300). Kelly and Lamb state, and we agree, that in intact families, infants show evidence of attachment to fathers despite the fact that fathers often spend very little time interacting with them. Such thinking is supported by the child development literature. For example, Ainsworth (1967), in her pioneering home observations of attachment in Uganda, observed that infants were clearly attached to their fathers by the end of the first year of life, although contact with the father was irregular (fathers did not reside in mothers' homes) and never

involved actual caregiving activities. Several more recent studies have shown that the time the father spends with his infant is unrelated to his child's attachment security with him or is related to security only when the quality of father-infant interaction or the level of family stress and marital conflict are taken into account (Cox, Owen, Henderson, & Margand, 1992; Easterbrooks & Goldberg, 1984; Volling & Belsky, 1992). Indeed, when interparental conflict is high, the time that fathers spend with their young children is negatively related to attachment security (Cox et al., 1992; Volling & Belsky, 1992). We note as well that the above studies report that not only the time the father spends with the infant but also the extent to which the father engages in actual caregiving activities (e.g., feeding, changing, putting to sleep, etc.) are unrelated to the security of the infant's attachment to him.

The research also indicates that father-infant interaction and mother-infant interaction are independent (Main & Weston, 1981); for example, the infant is as likely to be securely as insecurely attached to the father, regardless of security with the mother. It is also fair to say that paternal sensitivity is not as straightforwardly predictive of father-infant attachment as is the case for maternal sensitivity. A recent meta-analysis indicates that many studies report no links between father sensitivity and father-infant attachment and that some studies report moderate links (van IJzendoorn & DeWolff, 1997). There is some evidence to indicate that fathers' sensitivity affects infant attachment indirectly (Belsky, 1996). Das-Eiden and Leonard (1996) found, for example, that a father's alcohol abuse may interact with maternal depression to affect the mother's sensitivity and the security of the infant-mother attachment. Other research on parent-child interaction also indicates that fathers are more aggravated about their toddlers if their wives are working full-time out of the home (Cox et al., 1992; Easterbrooks & Goldberg, 1984), again suggesting that a family system perspective appears to be important when we are trying to understand father-child interaction and father-child attachment. It is important to note again that all of the above findings have been drawn from studies of intact, dual-parent families. Conceivably, family systems effects might have less impact, and the father's sensitivity to the infant might have greater or more direct impact on the security of the infant's attachment to him in separated and divorced families, where the mother's active "gatekeeping" function (Parke, 1995) is more restricted. In Solomon and George's (1999a) study of infant attachment in separated families, however, which we discuss again later, interparental effects remained very important even in maritally separated families. Low communication between the parents about the infant was strongly associated with disorganized father-infant attachments in all family groups, that is, in maritally intact and separated families whether or not the father had overnight access to the infant.

EFFECTS OF SEPARATION

Drawing on work on maternal deprivation in institutional settings, which usually also meant paternal deprivation, Bowlby (1973) stated that the best dose of separation for young children is zero. His approach to social policy was conservative in this respect, yet his theoretical writings make clear that he understood the complexities of young children's responses to separation. Although children ages 1 to 3 or 4 can be traumatized (in the technical meaning of this term) by separation of several weeks from their primary caregivers under adverse conditions, continuing work has made clear that separation does not need to have such negative effects if the child is left in the stable care of other responsive and affectionate adults (Bowlby, 1969/1982, 1973, 1980; Heinicke & Westheimer, 1965; Robertson & Rob-

ertson, 1989; Rutter, 1972). Recent research on the effects of day care has indicated that daily separations are not associated with greater likelihood of insecure attachment (NICHD Early Child Care Research Network, 1997), although they can be associated with heightened insecurity when day care quality is poor and maternal sensitivity is compromised. Similarly, in Israel, kibbutz children, who spend long periods away from parents, do not differ from non-kibbutz children in security of attachment (Sagi et al., 1995). Interestingly, however, kibbutz children who spend nights away from their parents are more likely to be insecurely attached than children who are away only during the day (Sagi, van IJzendoorn, Aviezer, Donnell, & Mayseless, 1994). Such empirical evidence suggests some need for caution about nighttime arrangements.

The kibbutz does not exactly parallel the nighttime caregiving in divorced families where one parent is fully physically and psychologically available. Nevertheless, there is other evidence to suggest that caution should be exercised by courts when recommending frequent nighttime separations from the primary caregiver. In the only empirical study thus far to examine infant/toddler-parent attachment in divorced families, Solomon and George (1999a) found that 12- to 18-month-olds who spent overnights with father were more likely than those in the comparison group (infants who did not have overnights or who lived in intact families) to be disorganized or unclassifiable in attachment to their mothers. When toddlers were 2 years old, those participating in overnight plans were more likely than those who did not to be very angry and inconsolable with the mother for an extended period following a laboratory separation from her (Solomon & George, 1999b). Of importance for our present discussion is the fact that attachment to the father was not affected by access arrangements in the same way as attachment to the mother. Although disorganized attachments to the father were unusually common among infants in separated families, the overnight visitations themselves did not have a positive or a negative effect on infant-father attachment. This finding is consistent with the literature that we discussed earlier that showed that the amount of time spent with the father is unrelated to the security of the infant-father attachment. Thus, the available evidence, albeit scarce, indicates that separations from the mother should still be viewed with caution, particularly where nighttime separations are concerned and until more empirical evidence is gathered. This is not to say that frequent nighttime separations from the mother are necessarily ill fated but that we should tread lightly on territory that has not been explored through rigorous research in the field.

SPECIFIC CRITIQUE OF KELLY AND LAMB

Although we admire Kelly and Lamb for tackling this important and controversial topic, we believe that their treatment of this topic is also controversial, for three reasons. First, the article tends to seamlessly weave together empirically tested findings on attachment and divorce with the authors' opinions, making it difficult for the nondevelopmentalist to evaluate the findings. Second, the bulk of the citations in the article are to review articles or thought pieces by the authors themselves. Third, and most important, Kelly and Lamb make recommendations for custody and access with a provocative claim that has no empirical foundation.

One of the central suggestions for custody and access scheduling made by Kelly and Lamb, and one that we believe is subject to controversy, is that the best schedule for infants and toddlers includes frequent transitions between the mother's and father's households. Kelly and Lamb suggest that daily transitions would be ideal for children younger than 2 and

that time with each parent should include the full range of parent-infant activities (feeding, diapering, soothing, putting to bed). Thus, a correlate to frequent transitions, in Kelly and Lamb's view, are alternating overnight stays at the home of each parent. This piece of advice is premised on two beliefs. First, that young children under age 2 need to be in daily or almost daily contact with a parent in order to maintain an attachment. Second, that attachments develop from experiences of specific kinds of activities between parent and child, of which nighttime caregiving is said to be an essential part. Underlying each of these premises, which Kelly and Lamb assert but do not provide empirical justification for, are two more premises: first, that the development of and quality of infant-parent attachments are linked to the amount of time or frequency with which parent and child are together; second, that infants experience all of their attachments with the same quality and intensity and that any preferences they may have for their primary caregivers disappear by the time they are 18 months of age. As a consequence, separation from both parents is equally painful and "the length of time with each parent needs to be adjusted to minimize the length of time away from the other parent" (p. 300). This is attachment as a zero-sum game.

We have already discussed the evidence regarding amount or frequency of time together and the importance of engaging in particular caregiving activities. There is no empirical evidence for this claim. The failure of studies to find links between amount and type of involvement for fathers and infant secure attachment is consistent with what has been found for mothers and with the general perspective of attachment theory. As with many kinds of love, attachments require time or, perhaps it is better to say, opportunity to develop. They do not develop out of any particular kind of interaction (e.g., caretaking). Rather, it seems that the quality of time together—as influenced both by the father's sensitivity and by the indirect effects of the interparental relationship—has the greatest effect on the young child's ability to use the father as a secure base and haven of safety. On the other hand, we know from conversations with fathers in both research and clinical contexts that, for some fathers, frequent access to their children and the opportunity to engage in caretaking (as opposed to play and learning) activities are fundamental to their definition of themselves as good parents. We believe that these wishes should be honored and supported whenever possible. We should be as precise as possible, however, about whose needs are primarily being met in this regard.

The issue of an infant's preference for a single caregiver as a primary attachment figure remains an empirical question about which it would be helpful to know a great deal more. Clearly, if attachment figures are not all equal in the eyes of the very young child, then we must be concerned about the effects of repeated disruption of the primary attachment to the development of attachment. Young children who have undergone major separations show more intense and long-lasting negative reactions to mothers than to fathers immediately upon reunion and for some time thereafter (Bowlby, 1969/1982, 1973; Heinicke & Westheimer, 1965; Robertson & Robertson, 1989). In Lamb's studies of Swedish families in which the father had been the primary caregiver for a substantial period of time, infants still showed clear preferences toward their mothers as attachment figures (Lamb, Frodi, Hwang, & Frodi, 1983). In his studies of American infants, preference for mother was evident under stress through 18 months of age (Lamb, 1976a, 1976b, 1977). He found that evidence of mother preference was much diminished by 24 months, but this was in a laboratory assessment that is no longer stressful by that age, making interpretation difficult. In the Efe culture in Africa, where babies are mainly cared for, even nursed, by multiple caregivers from the first moments after birth, Tronick, Morelli, and Winn (1987) reported that 1-year-olds show a preference for their mothers, marked especially by strong protest at separation. These findings on the hierarchy of attachment figures, which indicate an overall preference for mothers

in the early years, are not presented in support of a gendered view of parenting but to present group data on families. Ainsworth (1967), whose pioneering observations remain the most detailed and authoritative available, believed that infants come to prefer the caregiver who is most sensitive and responsive to them, regardless of who spends the most time with them. If her hypothesis were borne out by further study, we have no doubt that in some families it would be the father who is the preferred attachment figure.

CONCLUSION

We agree wholeheartedly with Kelly and Lamb that the literature has often been misunderstood and misused. It has very unfortunately served to exacerbate maternal protectiveness, on one hand, and encourage a rigid and often wholly unnecessary exclusion of fathers from the lives of their young children, on the other. Furthermore, mothering is not synonymous with good parenting. Our view, however, is more circumspect with respect to repeated overnight separations from the primary caregiver. The data currently available suggest that repeated overnight separations present a greater challenge to the development of organized primary attachments than do daytime separations. Furthermore, it is known that especially in high-conflict separations, frequent transitions can exacerbate interparental conflict (Amato & Rezac, 1994; Emery, 1982; Hess & Camera, 1979; Johnston, Kline, & Tschann, 1989). The added challenge to the primary attachment relationship presented by frequent overnight transitions might be worth considering if it were balanced by a greater likelihood of security in the father-infant relationship. The research evidence thus far indicates, however, that neither overnight access nor frequent transitions has a positive effect on father-infant attachment. We would be more cautious than Kelly and Lamb before we submit this thesis of frequent separations for social policy. As an alternative, we have suggested elsewhere (Solomon, 2001; Solomon & George, 1999a) that when parental conflict is high and parent communication about the child is low, overnight separations from the primary caregiver should be avoided at least through the 3rd year of life. Conversely, we believe that a variety of overnight access schedules can work when parent communication is high and parents are able to work flexibly together on the care of their young child. Even separations of a few days from the primary caregiver seem to be well tolerated when conditions are supportive. We emphasize that these conclusions are based on group data. There will always be a place for clinical judgment in individual cases to help families make decisions that are most appropriate to their children and their circumstances. In contrast to this more nuanced approach, we are concerned that Kelly and Lamb's guidelines may result paradoxically in different kinds of misunderstandings about the needs of the very young child, thereby provoking rather than helping to resolve the interparental conflict and inflexible decision making that all too often characterize custody and access decisions.

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**USING THE EMPIRICAL LITERATURE TO
GUIDE THE DEVELOPMENT OF PARENTING
PLANS FOR YOUNG CHILDREN
A Rejoinder to Solomon and Biringen**

Michael E. Lamb and Joan B. Kelly

Most infants form attachments to both of their parents at roughly the same age. These relationships are consolidated by continued interactions, ideally in a broad array of contexts, whether or not the parents live together. The mechanisms underlying the formation and consolidation of relationships with both parents appear to be similar, although most infants establish preferential relationship with the persons who take major responsibility for their care. When parents separate, children often experience distress, and their adjustment is adversely affected when the relationship with one of their parents is severed. This can be avoided by developing parenting plans that continue to ensure that children have regular interaction with both parents in a broad array of contexts. Overnight periods provide opportunities for many important interactions.

We appreciate the opportunity to provide a brief response to Judith Solomon and Zeynep Biringen's (2001 [this issue]) critique of our article (Kelly & Lamb, 2000) summarizing the implications of the research literature for decisions regarding time distribution and parenting plans for young children whose parents are separating or divorcing. We continue to believe that our summary of the scholarly literature was accurate and that we generalized appropriately and cautiously from the literature. Readers are referred to our earlier article for a full articulation of our position, but we briefly restate both our logic and conclusions in this rejoinder because we do not want readers to misunderstand what the evidence shows and what our article stated.

As in the original article, we refer readers to integrative scholarly reviews rather than individual studies, whenever possible. We believe that the practitioners who constitute the bulk of this journal's readership will find such references most helpful and most accessible to them. In addition, it is important to pay close attention to the pattern of results across multiple studies, particularly when individual studies involve unrepresentative and rather small samples. Findings that are consistent across multiple studies and are theoretically interpretable obviously deserve greater respect than results that do not complement the larger picture.

Like us, Solomon and Biringen underscored the heuristic and interpretive value of attachment theory and thus the disagreements between us derive not from different theoretical orientations but from differences in attention to the empirical literature. Most important, Solomon and Biringen appear wedded to Bowlby's early notion of monotropy—the presumption that infants form a single relationship, before all others, that remains preeminent. This notion has never been supported empirically and is in no way central to attachment theory (Rutter, 1995). Nevertheless, the notion has retained credibility in popular mythology and has continued to mislead judges, clinicians, and custody evaluators.

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In this regard, although Solomon and Biringen take us to task for failing to review the literature exhaustively, they themselves refer only glancingly to the research literature on the development of infant-mother and infant-father attachments. In fact, systematic and extensive research since the early 1970s shows that the vast majority of American infants in two-parent families form attachments to both parents at roughly the same age, despite the fact that most infants spend much less time with their fathers than with their mothers (for recent reviews, see Lamb, 1997, in press-a; Thompson, 1998). From these studies, we know that most infants in the first year of life develop preferential relationships with their primary care providers (usually their mothers) but that the amounts of time that infants spend with their two parents do not affect the security of either relationship.

Although some studies of both infant-mother and infant-father attachment fail to reveal significant associations between the quality of parental behaviors and the security of infant-parent attachment, meta-analyses reveal that, in both cases, the quality of parental behavior is reliably associated with the security of infant-parent attachment (DeWolff & van IJzendoorn, 1997; van IJzendoorn & DeWolff, 1997). The association between the quality of paternal behavior and the quality of infant-father attachment appears to be weaker than the parallel association between maternal behavior and the security of infant-mother attachment, however (DeWolff & van IJzendoorn, 1997; van IJzendoorn & DeWolff, 1997). In neither case does the quality of parental behavior explain more than a small proportion of the variance in the security of attachment (DeWolff & van IJzendoorn, 1997; van IJzendoorn & DeWolff, 1997), suggesting that there is much we have yet to learn about the factors that affect the security of attachment. Nevertheless, the quality of maternal and paternal behavior and the quality of both mother-child and father-child interaction remain the most reliable correlates of individual differences in psychological, social, and cognitive adjustment in infancy as well as in later childhood (Thompson, 1998). Not surprisingly, therefore, children in both two- and single-parent families appear better adjusted when they enjoy warm positive relationships with two actively involved parents (Amato & Gilbreth, 1999; Emery, 1999; Hetherington, 1999; Lamb, 1999, in press-b; Thompson & Laible, 1999). Because infant-mother and infant-father attachments typically develop at the same time, it is hard to assess their independent impact on the capacity to regulate affective response tendencies. The results of a recent longitudinal study on the transition to day care, however, showed the emergent influence of infant-care-provider relationships over time, clearly documenting that relationships with individuals other than mothers play formatively significant roles in early development (Ahnert, Porges, Lamb, & Rickert, 2001).

Many researchers have demonstrated that intense marital conflict is harmful to children, whereas marital harmony positively affects their adjustment and development (for reviews, see Cummings & Davies, 1994; Cummings & O'Reilly, 1997; Kelly, 2000). High levels of marital discord affect the behavior of both mothers and fathers, including those features of their parental behavior that affect the security of infant-parent attachments. Indeed, the beneficial effects of spousal support on the quality of mothering were noted by Bowlby (1951, p. 13) a half-century ago. Since then, many researchers have documented that the warmth, sensitivity, and attentiveness of both parents are affected by their material and social circumstances. For the vast majority of parents, conflict declines substantially following divorce (King & Heard, 1999), and continued involvement by both parents does not lead to increased parental conflict (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, in press; King & Heard, 1999). Furthermore, divorce education, custody mediation, and mediation/arbitration interventions for parents in high conflict are often effective in reducing conflict and promoting

communication between parents during and after separation or divorce (Emery, 1994; Emery et al., in press; Johnston, 1999; Kelly, 1996, 2001).

When parents separate, the best interests of children are typically served by (a) avoiding psychological separation from either parent, because this is both a source of psychic pain and a factor that places children at risk psychosocially, and (b) striving to maintain positive relationships with both parents. A minority of parents, both mothers and fathers, appear incapable of providing development-promoting experiences for their children, and in these cases, it seems preferable to concentrate on strengthening children's relationships with the more competent of their parents. Unfortunately, however, too many parents, particularly fathers, who have played or are capable of playing significant roles in their children's lives find their roles minimized by traditional legal and judicial decision making after the dissolution of their marriages (Braver & O'Connell, 1998; Kruk, 1993; Wallerstein & Kelly, 1980). Many of these fathers respond by drifting out of their children's lives, often failing to take advantage even of the limited opportunities for visitation afforded to them (Furstenberg & Cherlin, 1991; Kruk, 1993; Maccoby & Mnookin, 1992; Selzer, 1991), and the quality of the resulting father-child relationships suffers as a result (Zill, Morrison, & Coiro, 1993). This is less likely to happen when fathers feel that their status as parents is recognized after separation and divorce, and they are able to play active parental roles in the care, supervision, and guidance of their children (e.g., Braver & O'Connell, 1998; Gunnoe & Braver, 2001; Seltzer, 1998). Instead of meeting only fathers' needs, as Solomon and Biringen suggested, overnight visits help keep fathers involved in their children's lives (e.g., Maccoby & Mnookin, 1992), and this has positive implications for their children's well-being.

Writing on behalf of 18 nationally recognized experts on the effects of divorce and custody arrangements, Lamb, Sternberg, and Thompson (1997) wrote,

To maintain high-quality relationships with their children, parents need to have sufficiently extensive and regular interaction with them, but the amount of time involved is usually less important than the quality of the interaction that it fosters. Time distribution arrangements that ensure the involvement of both parents in important aspects of their children's everyday lives and routines—including bedtime and waking rituals, transitions to and from school, extracurricular and recreational activities—are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children. (p. 400)

Attachment theory suggests that both child-mother and child-father attachments are enriched and strengthened when the adult and child interact in a broad array of functional and social contexts. This enhances family members' familiarity with one another and maximizes the breadth and strength of their relationship. Other studies confirm that active paternal involvement in various aspects of the child's life and schooling is associated with more positive adjustment and better academic performance (Amato & Gilbreth, 1999; Nord, Brimhall, & West, 1997), and there is no reason to expect that these benefits would not accrue to younger children as well.

Consequently, it is important that time distribution arrangements following parental separation and divorce facilitate the active involvement of both parents in their children's lives, provided, of course, that the parents have adequate parenting skills or the capacity to learn them. Concretely, this means that the relationships with both parents benefit, and child adjustment is thus enhanced, when both parents are involved in discipline and limit setting, recreation, feeding, the supervision of contact with peers, homework, and such everyday but important contexts (especially for young children) as bathing, bedtime stories, putting chil-

dren to bed, responding to night terrors, and getting children up, fed, and dressed in the morning. Clearly, overnight periods provide opportunities to engage in types of interactions that simply are not possible in their absence, and they thus play an important role in fostering the maintenance of parent-child relationships.

This conclusion, which flows from a growing body of research on the formation and significance of early parent-child relationships, runs counter to the recommendations that have been offered to courts and custody evaluators for many years (e.g., Garrity & Baris, 1994; Hodges, 1991). As Warshak (2000) pointed out recently, however, these recommendations were wholly based on social presumptions and inferences from discredited psychoanalytic theory and early versions of attachment theory rather than on the basis of empirical evidence. In fact, as noted above, as well as in our target article (Kelly & Lamb, 2000) and Warshak's (2000) comprehensive analysis, the evidence suggests that overnight separations from one parent in order to be with the other strengthen rather than harm attachment relationships. In addition, it is also clear that brief regular separations from mothers do not foster insecure infant-mother attachments (Lamb, 1998; NICHD Early Child Care Research Network, 1997).

Solomon and Biringen take issue with our conclusions and recommendations, however, citing the results of a recent study by Solomon and George (1999a, 1999b). Although we made reference to this study in our article, we do not believe that it is appropriate to base recommendations to judges, special masters, and custody mediators on these results, as they do not support the recommendations offered by Solomon and Biringen. Specifically, Solomon and George observed no difference between the proportions of secure infant-mother attachments in the groups of infants who did and did not have overnight visits with their fathers. In addition, Solomon and George provided no evidence that overnight visits affected infants or toddlers and preschoolers differently, although such differences should exist if overnight visits are to be denied to some children solely on account of their age. Furthermore, although Solomon and George deserve credit for undertaking so complex and extensive a study, its value and informativeness are severely limited by the fact that many of the infants in the divorce/separated group had never lived with their two parents, there was no evidence that they had formed attachments to their fathers before overnight visits commenced, and an unusually high number of infants had disorganized attachments to their mothers. Obviously, different steps need to be taken when the goal is to promote the formation of attachments as opposed to maintaining and strengthening existing relationships. Furthermore, even when there were overnight visits, some of the infants "experienced repeated and sometimes prolonged separations from their fathers" (Solomon & George, 1999a, p. 27). As we have tried to make clear, overnight visits are valuable as components of comprehensive parenting plans that foster the active, positive, and regular involvement of both parents in their children's lives. Prolonged separations place relationships under stress, as attachment theory has long emphasized.

Solomon and Biringen also question our conclusion that younger children would benefit from more frequent transitions than would older children because these minimize the amounts of time that children are separated from either of their attachment figures. Our recommendation was based on the well-established and widely recognized notion that younger children have a poor conception of time, only recognize in toddlerhood that other people and objects exist independent of themselves, have limited verbal abilities to assist in their understanding of separations, and thus have greater difficulty tolerating extended separations from attachment figures (Bell, 1970; Piaget, 1927/1969). This reasoning is widely applied to decisions regarding separations from mothers, and there is no evidence that it does not and should

not apply equally to separations from fathers. Even when fathers are “secondary” attachment figures, child-father attachments are affectively meaningful to young children. It is also important to distinguish transitions between the care of two attachment figures from transitions between the care of an attachment figure and the care of a less familiar person. Great distances between the parents’ homes, which make the journeys unpleasantly long, may be a more important concern for children, parents, and decision makers than the children’s ability to thrive psychologically in two loving homes.

Finally, we need to emphasize that we did not provide guidelines that should be followed mindlessly whenever the parents of young children separate or divorce. Rather, we attempted to provide a framework for evaluating the needs and interest of young children experiencing their parents’ separation. To this end, we argued that the majority of children would benefit from opportunities to maintain relationships with both parents and that special steps may often be necessary to protect and foster relationships between young children and their two parents. Custody evaluators and judges should, of course, look closely at the specific child’s prior experiences with the two parents and at the child’s temperament when deciding how best to promote the child’s welfare following her or his parents’ separation and divorce. We also believe that existing guidelines—like Solomon and Biringen’s (2001) recommendation that overnight visitation be delayed “at least through the 3rd year of life” (p. 361)—are absolutely unsupported by empirical research and, for reasons articulated in our earlier article and summarized above, run the risk of severing relationships that could constitute important short- and longer-term emotional, social, and financial resources for young children.

In sum, both the research literature and attachment theory provide strong support for the recommendations offered in our target article. As in all areas of research, of course, there is a clear need for additional research that might help refine our understanding of child development and of the factors that affect child development and adjustment during marriage and following separation. In light of the extant literature, however, it is unlikely that future studies will lead scholars to revise the conclusion that children benefit from warm supportive relationships with actively involved mothers and fathers, regardless of whether those parents live together.

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NEVER PAINT BY THE NUMBERS
A Response to Kelly and Lamb (2000), Solomon
and Biringen (2001), and Lamb and Kelly (2001)

Jonathan W. Gould and Philip M. Stahl

As the debate continues on ways of thinking about access between separated and never-married parents and their very young children, the authors suggest a way that child custody evaluators can integrate this discussion into their evaluations. They conclude that evaluators must pay attention to family dynamics and all of the research when making specific recommendations to parents and the courts regarding the access and residential arrangements of very young children.

In recent issues of this journal, there have been ongoing discussions and proposed new ways of thinking about access between separated and never-married parents and their very young children (Kelly & Lamb, 2000; Warshak, 2000; Whiteside, 1998). As is obvious in the article by Solomon and Biringen (2001) and the response by Lamb and Kelly (2001) in this issue, the debate continues. As the guest editor for the issue on child custody evaluations who solicited the original Kelly and Lamb article (Stahl), and as child custody evaluators who have written about and trained others in the art and science of child custody evaluations (Gould, 1998, 1999a, 1999b; Gould & Bell, 2000; Gould & Stahl, 2000; Stahl, 1994, 1999), we wanted to share our thoughts about how child custody evaluators might integrate these ongoing ideas into their work.

The thoughtful article by Kelly and Lamb (2000) and the comments on that article by Solomon and Biringen (2001), as well as the follow-up comments offered by Lamb and Kelly (2001), are continued examples of the diversity and complexity of our fields of study. Since its publication, we have found the Kelly and Lamb (2000) article useful in designing recommendations for young children in child custody evaluations. When we have taught workshops over the past 2 years, we have referred to the Kelly and Lamb article as necessary reading for all involved in child custody evaluations, along with an earlier article by Whiteside (1998) and the article by Warshak (2000) on this topic.

Solomon and Biringen (2001) challenge Kelly and Lamb (2000) on several important issues, among them the research support for the recommendation that children younger than 2 years of age will profit from overnight parenting by the noncustodial parent. Lamb and Kelly (2001) argue that the research is indeed strong enough to support their recommendations for overnight contact between very young children and their noncustodial parents.

As we read the articles, we were struck by the high quality of professional exchange and the need for such dialogue in all areas of child custody evaluation. We observe that it is likely that different professional orientations might contribute to the different interpretation of the research. We recall that Emery (1999) suggested that those who read research must pay attention to the samples (size and heterogeneity), hypotheses, and biases of the researchers when they reach conclusions and discuss their findings. Ultimately, as consumers of these research articles and practitioners who use their recommendations, we are struck by the need

to figure out how we can understand such divergent interpretations of the research and integrate them into our work.

We also believe that sometimes practitioners become confused when there is controversy over research findings and that they tend to shy away from using newer findings because of the lack of clarity in the research. Often, this results in practitioners' making recommendations that are not based on current research but on their pet theories about human behavior.

Clinical experience and research are not parallel or equivalent. It is research that helps us to frame questions about relevant child custody factors in deciding how to apply the research to a particular case. Research should guide the application of that concept to a particular family system. A good evaluator knows how to interpret and use the research. A critical distinction is between applying research to individual cases in contrast to deciding when to apply the research and when to ignore it. Many practitioners ignore research when the controversy over its meaning is unclear. That is, too many practitioners appear to decide to ignore research rather than consider how to apply the particular research to a particular family system.

A properly crafted evaluation entails knowing the relevant research and applying that research to individual cases. We would never support the second option of deciding when to apply research and when to ignore it. Research lays the foundation for our ability to explain human behavior within the context of science.

We believe that what is needed is a discussion about how child custody evaluators can use the research while embracing the differences in interpretation of the research in their custody recommendations. We suggest that decision rules about how to use the research apply to both positions represented in this interesting and important debate. We propose a multipart analysis to deal with these issues.

First, when evaluators are asked to consider the best residential and access arrangements for a very young child, they need to look at the parenting history of the child. Whether one believes that very young children are able to have overnight parenting time with each parent, as suggested by Kelly and Lamb (2000), or that they need to have stable, single-night placement, as suggested by Solomon and George (2001), there is no substitute for researching the particular parenting history of the family being evaluated.

If the child has had a history of joint caretaking and has shown little, if any, difficulty being parented and cared for by each parent while the family was intact, then one might look closely at continuing the parenting arrangement that existed prior to the separation. That is, if both parents were actively involved in the infant's, or toddler's daily care and nighttime rituals, it might be developmentally appropriate to continue to foster the relationship between the young child and each parent by including overnight parenting time with the mother and father. If there has been one primary parent, and that parent has done the majority of caregiving, it might be more appropriate to continue the primary relationship while gradually encouraging the other parent to increase his or her involvement with and parenting of the child.

A second dimension that the evaluator needs to critically examine is the attachment history between the infant and each parent. The evaluator needs to critically explore the skills that each parent brings to the task of parenting the infant or toddler. It might be necessary to assess parenting skills across different caretaking domains to understand what access and living arrangements are best. This might include assessing both daytime parenting and caretaking behaviors as distinct and separate from nighttime parenting and caretaking rituals. This will help evaluators consider the different (or relatively equal) styles between parents and their children across both daytime and nighttime dimensions.

Third, evaluators must always recognize that parents have different strengths and weaknesses in their parenting. When living together, many parents tend to complement each other in various ways. An analysis of parenting skills may determine that the mother is competent in some areas in which the father is less skilled, whereas the father is more competent in some areas in which the mother is less skilled. When living apart, there is no complementary relationship for the child. Instead, each parent is asked to fulfill the responsibilities of both parents during the time that the child is in his or her care. This often results in more apparent weaknesses, with the child having to make adjustments to routines, rituals, schedules, and habits.

With this in mind, a competent evaluator needs to critically examine the complementary fit that existed during the marriage in order to understand the advantages and disadvantages each parent brings to the infant or toddler when parenting the child alone. Understanding the previous complementary parenting relationship might help shed light on the nature and quality of parenting that the infant or toddler will be exposed to during the separation. We propose that when there are significant differences in competence, the evaluator work to craft parenting recommendations that allow each parent to have care of his or her young child in a way to maximize the strengths and minimize the weaknesses of each parent and parent-child interactions.

A fourth dimension to be considered by the evaluator is the temperament of the child. Some children, regardless of the parents' relative strengths and weaknesses, may have a temperament that requires more stability and consistency and a routine that is primarily with one parent. Other children, who are more flexible and easygoing, will be able to move more easily between households as long as both parents are relatively equal in their daytime and nighttime parenting abilities.

A fifth dimension to be considered is the communication between the parents. Even if parents cannot discuss their child very well because of a high level of conflict, they can still use a parent book or some other mechanism to discuss important issues about their child. Parents who share information about a wide array of developmental issues (such as medications and illnesses, developing language, soothing techniques, sleeping and eating routines) are usually more successful in sharing their child than are parents who do not. When making recommendations, evaluators will want to explore how parents communicate about their child and which parent is more likely to be obstructing such communication. When there are problems in the communication, evaluators can recommend ways to enhance communication about the child, regardless of overnight access.

A final dimension to consider is the care being given to the child by a caregiver (or more than one caregiver) other than the parents when both parents are unavailable. If parents use a nanny to go back and forth between each parent's home with the child, and if parenting competencies are relatively equal, it is more likely that the child can successfully spend relatively equal time with both parents. Because children potentially develop multiple attachments with multiple caregivers (both parents and one or two daytime caregivers), an analysis along this dimension will help the evaluator when considering access and residential arrangements.

In conclusion, it seems to us that regardless of whether one agrees with the position that infants and toddlers are able to accommodate overnight parenting arrangements with each parent or that they need a single, stable overnight placement, the art of child custody evaluations is applying the results from aggregate research results to the specific, ideographic (and idiosyncratic) needs of a particular family. Research results are important in their ability to guide our thinking about how specific results might be relevant to a particular family system.

However, there is never any substitute for exploring the parenting history and relevant dynamics of a particular family and then integrating that data with current research. Of course, evaluators will include collateral contacts along with interviews and direct observations in evaluating the above dimensions.

Then, evaluators can discuss, often in the evaluation report or in direct testimony, how the research may or may not apply to the particular family system under examination. The evaluator should also be clear, both in the report and in testimony, to distinguish between clinical judgments, research-based opinions, and philosophical positions (American Bar Association, 2000). Evaluators need to work toward understanding all of the research on divorce (Kelly, 2000) and the risk factors related to parenting (Ellis, 2001) and to consider a risk assessment model that speaks to the psychological best interests of the child (Austin, 2000). We suggest that evaluators should never blindly apply research drawn from group data and presume that research will automatically apply to a particular family system or reject research simply because it does not fit one's bias or because it is confusing. That is why, in our recent article, we talked about the art and science of child custody evaluations (Gould & Stahl, 2000). The research and the family data are our brushes, but the evaluator is in charge of their application. We paint the canvas. Evaluators never paint by the numbers. We always need to consider the best application for each family we assess, integrating all of the research into our understanding of the particular family and the particular child's needs.

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ASSISTING CHILDREN THROUGH TRANSITION

Helping Parents Protect Their Children From the Toxic Effects of Ongoing Conflict in the Aftermath of Divorce

JoAnne Pedro-Carroll, Ellen Nakhnikian, and Guillermo Montes

The negative effects of prolonged interparental conflict on children are well documented. This article describes a preventive intervention designed to help separating parents to (a) reduce the stress of a breakup on their children and (b) learn skills for protecting them from the toxic effects of ongoing conflict. Assisting Children through Transition (A.C.T.) For the Children is based on a risk and resilience model emphasizing skills training and effective parenting practices. Post-program results from 609 participants indicate that the majority of male and female participants reported an increased awareness of the deleterious effects of interparental conflict on children and learned skills for protecting children from ongoing conflict. Most participants reported firm intentions to continue to use skills for reducing conflict with a former spouse and to support their children's healthy relationship with both parents. Study limitations, directions for future research, and implications for legal and mental health practitioners are discussed.

Marital disruption is not a single event but a series of transitions and family reorganizations modifying the lives of children and parents. Divorce entails a myriad of changes, ranging from emotional (e.g., changes in family relationships) to economic (e.g., a decline in standard of living). This undeniably stressful process is magnified when accompanied by ongoing hostility between parents. Indeed, children rate the conflict between their parents as one of the most stressful aspects of divorce (Wolchik, Sandler, Braver, & Fogas, 1989).

Most children experience considerable distress during the first year after the parental breakup. Although sadness, anxiety, anger, resentment, confusion, loyalty conflicts, guilt, and somatic symptoms are all frequent reactions in the early stages of postdivorce adjustment, longer term outcomes are more variable. Long-term outcomes depend on such factors as how effectively parents can renegotiate their relationship, encapsulate their conflict, effectively parent, and use supportive resources. Such stabilizing factors, as opposed to ongoing conflict and impaired parenting, increase the likelihood that children's resilience and adaptive coping will occur.

In all too many cases, however, children are innocent bystanders, casualties in divorce wars fueled by ongoing hostility between parents and acrimonious legal battles. Such children are at risk for a lifelong negative legacy of divorce, including higher rates of school dropout, out-of-wedlock pregnancy, marriage during adolescence, reduced life satisfaction, and eventual disruption of their own marriages. Longitudinal studies have documented this increased risk, showing that parental divorce may create vulnerabilities that resurface long after adolescent sons and daughters come of age and face the roles of spouse and parent (Werner & Smith, 1992). Thus, the psychological effects of parental divorce can extend into adulthood and interfere with the establishment of strong bonds of commitment and intimacy for a significant minority of men and women (Wallerstein & Blakeslee, 1989).

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Even so, it is important to emphasize that enduring, traumatic effects of divorce are not inevitable. Many studies have identified protective factors that promote resilience and adaptive coping in children over time. These factors have important implications for the development of preventive interventions designed to foster healthy outcomes for children and families. In this article, we will discuss the conceptual foundation, development, implementation, and initial evaluation of a preventive intervention, *Assisting Children through Transition (A.C.T.)-For the Children*, designed to provide information and skills to help parents reduce the stress of marital breakup on their children.

BACKGROUND

As divorce rates increased dramatically during the 1970s, the toll on children's emotional health became an increasing national concern, based on the reality that behavioral and school-related problems are 2 to 3 times more prevalent in children of divorce. The challenge to mental health and educational systems was how best to respond to these children's need for help. This need fueled the development of the Children of Divorce Intervention Program (CODIP), a school-based preventive intervention, developed in 1982, to enhance children's capacity to cope with the challenges they face in the wake of divorce (Pedro-Carroll & Cowen, 1985). CODIP is based on research indicating that timely intervention for individuals going through stressful life changes can offer important protective benefits. CODIP facilitators seek to create a supportive group environment in which children can share experiences, establish common bonds, clarify misconceptions, and learn skills that enhance their capacity to cope with the stressful changes posed by divorce. Wallerstein's (1983) concepts of specific psychological tasks confronting children of divorce are reflected in the program's primary objectives. Four different curricula have been developed and evaluated to date, tailored to the developmental needs of children of different ages and sociodemographic backgrounds (Pedro-Carroll, 1997).

Since its inception in 1982, many studies have documented the benefits to children who participate in CODIP. Specifically, program children, compared to a control group of nonprogram children of divorce, reported greater decreases in anxiety and increases in positive feelings about themselves and their families, and were more confident about their ability to deal with family changes. Parents corroborated these findings, reporting that program children were less moody and better adjusted at home and communicated more with them. Teachers also reported improvements in children's school-related competencies and decreases in behavior problems (Pedro-Carroll & Alpert-Gillis, 1997; Pedro-Carroll & Cowen, 1985). These benefits endured over a follow-up period, during which time teachers (who were blind to condition), parents, and the children themselves reported that improvements in children's adjustment were still clearly evident 2 years after participating in the program (Pedro-Carroll, Sutton, & Wyman, 1999).

Although the preceding outcomes are encouraging, it is clear that children's long-term health and well-being are profoundly influenced by aspects of postdivorce family relationships, especially interparental conflict and the quality of parenting (Black & Pedro-Carroll, 1993; Hetherington, Bridges, & Insabella, 1998). Existing data strongly support the conclusion that high interparental conflict is linked with greater psychological difficulties among children (Emery, 1982, 1988; Grych & Fincham, 1992). Amato and Keith's (1991) meta-analysis examined the empirical support for the following three theoretical perspectives used to account for the effects of divorce on children: interparental conflict, parental

loss, and economic deprivation. Of these, the conflict hypothesis was the one most strongly supported.

Studies have identified specific aspects of interparental conflict that are detrimental to children's adjustment, including frequent conflict (Davies & Cummings, 1994); hostile, intense conflict, especially if it is physically aggressive (Buehler, Krishnakumar, Anthony, Tittsworth, & Stone, 1994); and child-related conflict, especially if the child internalizes blame for the conflict (Davies & Cummings, 1994; Fincham, Grych, & Osborne, 1994). Moreover, the toxic effects of conflict may erode parent-child relationships and negatively affect parenting practices, specifically communication, discipline, and monitoring of the child's behavior (Emery & Forehand, 1994).

Some studies suggest that cooperation in parenting and coordination of child-rearing efforts can protect children, even when parents are not in accord on their marital issues (Camara & Resnick, 1989). Also, children of divorcing parents with poor problem-solving and communication skills have more difficulties than those whose parents have better parenting skills (Capaldi & Patterson, 1991; Forehand, Thomas, Wiersen, Brody, & Fauber, 1990). It is clear that children fare best when parents are warm, supportive, and communicative, exert firm, consistent limits with positive discipline, monitor their activities, and minimize or encapsulate ongoing parental conflict.

The preceding empirical evidence provided a framework for designing a preventive intervention for separating parents. The A.C.T.-For the Children Program model is based, in part, on the Hofstra University Parents Education & Custody Effectiveness (P.E.A.C.E.) Program (Schepard, 1993), with similar overarching goals and mental health and legal components. However, A.C.T.-For the Children is based heavily on a risk and resilience model (Pedro-Carroll, in press) that seeks to both avoid the negative parental behaviors that increase children's vulnerability, and to teach best practices that promote resilience in children over time. With those goals in mind, the program provides information and training in skills that target the many ways in which parents can reduce the stress of a breakup on their children. Before providing a more detailed description of A.C.T.-For the Children, we first review briefly the literature on court-connected educational programs.

COURT-CONNECTED EDUCATIONAL PROGRAMS FOR SEPARATING OR DIVORCING PARENTS

Court-connected educational programs for separating and divorcing parents have proliferated in the past decade. As of 1994, more than 500 counties in the United States offered such programs (Blaisure & Geasler, 1996). That number tripled by 1998 (Geasler & Blaisure, 1998). Interest in these programs has grown, and several states (e.g., Arizona, Connecticut, Delaware, Hawaii, Iowa, Utah, and Vermont) have passed legislation enabling judges to mandate attendance.

A nationwide survey of court-connected divorce education programs (Geasler & Blaisure, 1998) gathered information about many aspects of these programs, including written standards, goals and content, length and number of sessions, and evaluation activities. The five recommendations made as a result of this survey are all elements of A.C.T.-For the Children.

1. "Programs should serve all parents of minor children who are litigating child issues such as support, custody, or parenting time irrespective of marital status." This recommendation was

made because some programs are available only to parents who have been legally married. A.C.T.-For the Children serves parents who are married and may be divorced or divorcing as well as those who never legally married.

2. "Program providers should adopt more active teaching strategies to assist parents in learning coparenting and communication skills." Fewer than half of the program providers in Geasler and Blaisure's (1998) survey reported active involvement of parents in skills practice, although increasing parental communication and improving parenting skills were among the most frequently cited program goals. Because research findings point to the importance of skills training in program effectiveness (Arbuthnot, Poole, & Gordon, 1996), A.C.T.-For the Children provides opportunities for participants to practice skills in role-plays with audience participation and in small group practice sessions.
3. "Courts should offer a children's program or establish a collaboration with a provider or school that can offer such a program." Such programs are widely available, for example, the school-based preventive CODIP intervention described above (Pedro-Carroll, 1997). Also available to program participants are community-based groups for children of divorce. These services are listed in a Resource Manual for Parents and highlighted by presenters during the program.
4. "The courts should adopt written standards to guide the implementation of programs and ensure quality control." A.C.T.-For the Children incorporates four elements that address program implementation and quality control. The first is that program content is based on empirical research. Second, all presenters are trained in program facilitation. Third, presenters complete measures describing session activities and objectives. Fourth, a detailed Handbook for Presenters outlines comprehensively and specifically what is to be covered and how to ensure program consistency and fidelity.
5. "The courts should document program effectiveness through various evaluation activities." Ongoing program evaluation, an integral part of A.C.T.-For the Children, has provided valuable information to refine program practices and effectiveness. Moreover, the interdisciplinary commitment to the program from psychologists, judges, lawyers and mediators, and an economist with research expertise has provided multifaceted input to program development and evaluation. Thus, A.C.T. contains all of the elements recommended by Geasler and Blaisure (1998) as best practices for an effective preventive intervention for separating parents.

WHAT IS A.C.T. - FOR THE CHILDREN?

A.C.T.-For the Children is an interdisciplinary, educational, and prevention program designed to reduce the stress of separation or divorce on families. It is a collaborative effort of the Children's Institute of the University of Rochester and the Seventh Judicial District of New York, as well as the mental health, judicial, legal, and mediation communities. The A.C.T.-For the Children advisory board provides ongoing guidance and program support with the honorable Evelyn Frazee and the first author as cochairs.

The program is centered on a message of hope and empowerment of parents to engage in behaviors that will promote their children's resilience and sound adjustment. To that end, A.C.T.-For the Children provides information about the following five topics:

1. Children's developmental needs and emotional reactions.
2. The legal process.
3. The many ways in which parents can reduce the stress on their children (e.g., by reducing conflict and keeping them out of the war zone).
4. Strategies for renegotiating the parents' relationship and developing skills for effective communication, creative problem solving, anger control, and conflict management.

5. Strengthening parent-child relationships and effective parenting practices for promoting healthy families and a positive relationship between the child and both parents.

A.C.T.-For the Children encourages participants' involvement through role-plays that demonstrate techniques for renegotiating relationships from those of former spouses and lovers to that of business associates with a vested interest in their children. Specific skills for conflict reduction, effective communication, and creative problem solving are taught with a focus on protecting children from the toxic effects of ongoing hostilities and giving them the gift of a loving relationship with both parents. Moreover, the program provides information about children's emotional reactions to parental breakup, and the specific ways in which parents can provide support and best address the needs of children of different ages. Presenters encourage parents to assume responsibility for creating a postdivorce environment in which their children are a top priority, while emphasizing that the program is not mediation or counseling and not designed to give advice on specific cases or to resolve individual disputes.

Although A.C.T.-For the Children emphasizes that in most cases it is in the best interests of the children that parents engage in cooperative postdivorce parenting, it recognizes that it is not appropriate in all cases. Situations involving domestic violence and child abuse are referred to more appropriate services.

PROGRAM OVERVIEW

The program format consists of two separate 3½-hour sessions, scheduled 1 week apart. Two mental health professionals (e.g., psychologists, social workers, family therapists) with extensive experience with children and families are the core presenters and facilitate the program's skills-training component. The legal component is conducted by a judge and a lawyer specializing in family law. A 55-page *Handbook for Presenters*¹ provides details of the program curriculum, including time to be spent on each segment, role-plays, instructional notes to presenters, and summaries of video segments. Presenters receive this manual at a training session before they lead an initial program session, so that they have time to read and become familiar with its content. Program presenters were recruited through presentations to mental health organizations, the family law section of the local Bar Association, newsletters, and personal contacts. A more detailed account of actual program sessions follows.

SESSION I

Session I begins with introductions by presenters, who explain their involvement in and support for the program. Caveats concerning domestic violence are included in this introduction, specifically, that the program does not recommend coparenting for victims of domestic violence. Safety of children and parents must always be a priority. Next, participants are engaged in a discussion of the range of strong feelings and reactions that adults experience in the process of marital dissolution. It is then explained that at this vulnerable time, when parents are dealing with their own emotional issues, children are grappling with the transitions and strains in family relationships. A central message of this discussion is how difficult, yet important, it is to listen to children's distress at a time when parents and children are both feeling upset. A video, *Listen to the Children*,² is used as a catalyst to discuss the range of

feelings (e.g., sadness, anger, fear, rejection, confusion, worries about the future, guilt, and longing for the protection and love of both parents) that children may experience.

Children's general responses and age-specific reactions to separation and divorce are outlined. Common losses and reactions that children of all ages may experience are described, as are prevalence data on long-term adjustment problems. To heighten parents' awareness of children's emotional needs, presenters provide examples of warning signs that indicate the need for professional assistance. Time is then spent discussing age-specific reactions and what parents can do to provide support for children during each developmental stage, so that parents feel empowered rather than overwhelmed.

How parents can best support their children's positive adjustment and reduce the stress of breakup (e.g., taking care of themselves physically and emotionally so that they, in turn, can take care of their children) is a central feature of the program emphasized in both sessions. A 68-page *Parent Handbook* was developed to link participants with area resources and sources of support. The handbook serves both as a resource that reminds parents about program content and as a guide to community help that can be used after the program ends.

Topics covered in the handbook include counseling services, self-help support groups, resources for victims of domestic violence reading lists for adults and children, tips for parents, a glossary of legal terms, and commonly asked questions about the legal process. The handbook also considers issues of parental dating, how to work toward a businesslike parenting partnership, promoting a positive relationship between the child and both parents, the importance of effective parenting and structured family routines, and the critical importance of keeping children protected from parent conflict and being put in the middle of adult issues.

Session I culminates with a dramatic role-play of a child (played by a parent), caught in the middle between angry parents (played by the mental health presenters) at war with each other. Many participants have reported that this dramatic portrayal increases their awareness of the devastating impact of interparental conflict on children. The rest of Session I focuses on communication and anger-management skills that reduce conflict.

SESSION II: TEACHING SKILLS AND INCREASING AWARENESS OF THE LEGAL PROCESS

Session II begins with information about the legal process. Its primary purpose is to reinforce, through the perspective of a lawyer and a judge, the concept that ongoing parental conflict can have negative repercussions for children as well as parents, and that developing a cooperative parenting plan when it is safe to do so is a good way to reduce conflict and retain control over their lives. Parallel parenting is described as an alternative in situations of domestic violence or unabated conflict.

Skills training emphasizing the importance of protecting children from the toxic effects of ongoing conflict is the major focus of Session II. Vignettes are shown from the video *Children in the Middle*, portraying ways in which children are affected by their parents' animosities. Participants are then engaged in problem solving, to produce ways of handling conflict-ridden situations involving children.

Although discussion of skills is helpful, actually practicing and applying them to real-life scenarios is very useful for reducing hostile interactions. Presenters first discuss ways of handling anger and conflict constructively, including communication skills such as active listening, "I" messages, paraphrasing the other person's statements, and clearly stating a pro-

posal or suggestion rather than blaming or accusing. Parents are encouraged to renegotiate their relationships and see themselves as business partners who share the goal of enhancing their children's care, upbringing, and well-being. Steps in decision making and conflict resolution are outlined.

Participants then break into small groups, facilitated by a mental health professional or mediator, to work on "I" messages, problem solving, relating in a businesslike way, and disengaging from conflict. Ideally, each group has a maximum of 15 participants; separating partners are never in the same small group. The goal of the small groups is to provide an opportunity to practice skills and role-play scenarios. Participants, or the presenter, may suggest a problem scenario for volunteers to role-play, using effective communication, problem solving, and conflict-resolution skills.

A.C.T. - FOR THE CHILDREN: THEORY OF CHANGE MODEL

A.C.T.-For the Children is based on a theory of change that identifies three program components intended to promote better outcomes for children, parents, and the community at large. Figure 1 depicts these components.

A.C.T.'s mental health component seeks to inform separated/divorcing parents of the effects of divorce and ongoing conflict on children and, thus, to equip them to avoid harm to the children. Also, concrete information is provided to parents on ways to support children based on research on risk and resilience factors related to divorce. This component is essential for the program's success because awareness of the negative effects of conflict on children and subsequent motivation to avoid harm are theorized to be pivotal immediate outcomes. Learning how to support children is theorized to lead to more effective parenting. The mental health component also provides information on how parents can identify and use supportive resources for themselves and their children.

The program's legal component seeks to increase parents' understanding of the legal process and awareness of alternatives to litigation, which may help them avoid financially and emotionally costly legal battles. The objective of this component is to help separating or divorcing parents stay focused on their children's best interests and, thus, reduce both the conflict to which children are exposed and the financial and emotional impact of lengthy litigation. Avoiding lengthy or repeated legal battles would be a prime source of savings for families and the community.

The program's skill-development component teaches parents effective strategies for defusing conflict with their ex-spouse and for keeping children out of the middle of such conflicts. As an immediate outcome, most participants reported at the conclusion of the program firm intentions to use these conflict-resolution skills. Short-term outcomes are being assessed based on the extent to which parents are actually using program skills at home and with their former partner. Desired longer term outcomes include decreasing children's exposure to conflict, improving parenting, and reducing conflict with the ex-spouse—each of which is known to contribute to children's long-term adjustment.

Theoretically, the program achieves its goals through the following processes:

1. Participants become keenly aware of the potential harm to children of ongoing conflict.
2. As a result, the participants will choose (a) to learn and implement the strategies taught to defuse conflict and (b) to avoid placing children in the middle.
3. Participants may also decide to use strategies to avoid lengthy legal battles.

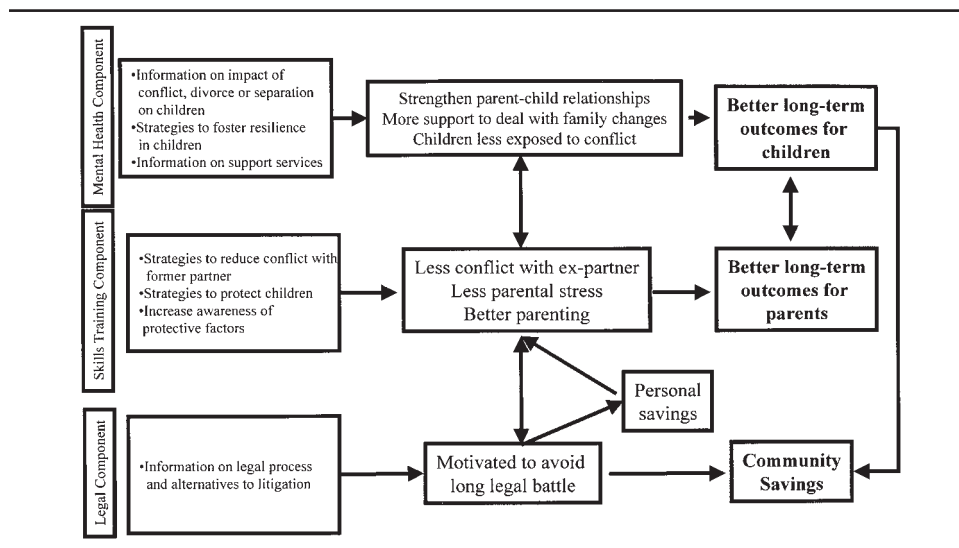


Figure 1. Three components of the Assisting Children through Transition - For the Children theory of change model that are intended to promote better outcomes for children, parents, and the community at large during parental divorce.

EVALUATION METHOD

Participants completed program evaluation measures before Session I and after Session II. Measures were also developed for presenters to provide feedback on specific areas of program content and group process. In addition to questions designed to assess the impact and effectiveness of the program, participants provide feedback concerning the quality of each session, including what they learned and suggestions for improving the program.

PARTICIPANTS

Between February 1998 and December 1999, when the preceding data were collected, 609 parents participated in the program. Participants came primarily from Rochester, New York, and the surrounding Monroe County area.

Study participants were 48% male, 52% female, with the average age being 37 years. Self-identified ethnic backgrounds were 93% White, 4% African American, and 3% Hispanic. The average level of education was 14 years.

Participants averaged 10 years of marriage before separating, and an average of 2 years since marital separation before participating in the program. Eleven percent were remarried. Twenty-two percent had parents who divorced. Program referrals came from the following sources: family court (32%), state supreme court (25%), and other sources including attorneys, mediators, mental health professionals, and self-referrals (43%). Most program participants (62%) rated their relationship with their former partner as one of high conflict, with 26% and 12% reporting medium and low levels, respectively. The program thus served parents of large numbers of children at risk due to ongoing parental conflict. Participants' children ranged from early infancy to adulthood; 51% of the children were under 8 years of age.

QUESTIONNAIRES

PARENT EVALUATION QUESTIONNAIRE

A 16-item program evaluation measure posed questions about changes in participants' attitudes (e.g., "as a result of this program, my attitude toward my former spouse as a parent is more positive"); awareness of children's needs (e.g., "the program helped me understand how children are affected by a breakup"); acquisition of skills for protecting children from conflict; hope for the future; and the likelihood of using alternatives to litigation to settle child-related conflicts. Responses to each item were based on a 4-point Likert-type scale (1 = *strongly agree*, 2 = *agree*, 3 = *disagree*, 4 = *strongly disagree*).

SKILL UTILIZATION QUESTIONNAIRE

This 11-item measure assessed the extent to which participants intended to use skills taught in the program for relating to children (e.g., "I will keep my child out of the middle of arguments") and to the former partner (i.e., "I will use a problem-solving approach to conflict"), using a 4-point Likert-type scale (1 = *definitely not*, 2 = *not really*, 3 = *yes, I think so*, 4 = *yes, definitely*).

RESULTS

Program effectiveness was evaluated on five main domains.

Realizing how ongoing interparental conflict harms children. An overwhelming majority (99%) of participants either agreed or strongly agreed that the program helped them better understand the negative impact of divorce and conflict on children. There were a substantial number of handwritten comments to that effect as well. Moreover, 98% of participants agreed that the program helped them see how children are affected by a breakup.

Learning. Of the participants, 99% reported that they learned skills for keeping children out of conflict, and that they understood why it is important to cooperate with a former partner even when they do not feel like it. In addition, 97% reported that as a result of the program, they were more aware of ways to help themselves; 95% of participants reported that they were more likely to ask for and to use support for themselves or their children.

Implementing conflict-management skills. Asking partners to change communication styles by employing a number of conflict-resolution skills is a tall order. Yet, at the end of the program, nearly all participants were willing to try the new skills: 98% reported that they would make a stronger effort to work with their former partner for the children's sake; 95% reported being more likely to use a time-sharing plan as a way to ensure that children have good, close relationships with both parents. Stated willingness to learn and use these skills was uncorrelated with level of conflict. Thus, even parents in the high conflict group reported that they intended to use the new skills for reducing conflict.

Because almost all participants (99%) stated that they would use these new skills with their former partner, we only report those who stated they would definitely try them. "Definitely," the strongest possible category, was endorsed by 60% of participants who intended to

use “I” statements, 55% reported that they would definitely communicate with their former partner in a courteous, businesslike manner; 62% reported that they would definitely talk with their ex-spouse directly about a concern and ask his/her cooperation; 58% reported that they would definitely listen carefully to what their former partner was saying before responding; 71% reported that they would definitely use a problem-solving approach to conflict, and 80% reported that they would definitely either stick to their agreement or request changes in a businesslike way. Future analyses will address the relationship between participants’ characteristics and the likelihood of using each skill.

Implementing child-protection strategies. After participating in A.C.T., parents reported that they were determined to use the newly learned skills to protect their children from the harm of ongoing conflict. Again, because almost all participants (99%) stated that they would or definitely would implement these new skills, we are reporting only those who stated they would definitely use the new strategies. Thus, 88% of participants reported that they would definitely avoid bad-mouthing their ex-spouse; 90% reported that they would definitely avoid sending messages via children; 78% reported that they would definitely avoid questioning their children about the private life of the other parent; 90% reported that they would definitely be supportive of their child having a good relationship with both parents; and 91% reported that they would definitely keep children out of arguments. A follow-up study will address the important question of the extent to which these stated intentions translate into positive behavioral changes.

Avoiding lengthy legal battles. As a result of participating in A.C.T., 89% of participants reported that they would be more likely to settle disputes with their former partner instead of going to court. Also, 87% reported that they would be more likely to use other alternatives (i.e., mediation or arbitration) to settle disputes. Especially noteworthy is the finding that level of conflict was uncorrelated with outcome, indicating that high-conflict parents were as likely as other groups to report their intention to avoid lengthy legal battles in the future.

Unexpectedly, we discovered that 73% of A.C.T. participants reported their attitude toward the former spouse was more positive by the end of the program. At the beginning of the program, 62% of this sample rated their relationship with their former partner as “extremely high conflict.” Thus, this change in attitude may be an important step toward reducing conflict and obtaining lasting change.

In addition, 94% of parents attending stated that they were more hopeful about the future. Research on resilience has demonstrated that hope for the future is an important variable because it is a strong predictor of children’s adjustment even in the presence of major life stressors.

PARTICIPANT SATISFACTION

Not only did participants report that they were extremely satisfied with program content and format, but they reported being ready to make major modifications in their lives as a result of their participation. The vast majority of participants (99%) stated that the program was worthwhile and, in addition, they would recommend the program to others. The program was well received by all, regardless of level of conflict. One reason for this may be the fact that participants found the program relevant to their families: 99% stated that they believe what they learned in A.C.T. will help them and their children. See the appendix for a detailed description of participants’ responses.

WHAT THE PARTICIPANTS SAY ABOUT A.C.T.- FOR THE CHILDREN

After each of the sessions, parents were asked about the most helpful part of the session. Comments focused overwhelmingly on some aspect of children's concerns. Indeed, 98% of the responses had a child-oriented focus, indicating that participants seem to have gotten the message about the ways in which children are affected by marital disruption and conflict. Typical comments included the following:

Understanding how the kids feel.

Knowing/learning what might be hurtful to my son.

The true role that parents should focus on in their child's life; for me, things were really set into place as far as what I need to do with the time I have with my daughter and not so much on what he [the father] is *not* doing.

How children react at different ages and how parents can help their children.

How hurtful conflict in front of children is, even when we don't intend for that to happen.

A recurring theme of feedback from participants is that they have been seeking such information for some time, and also that A.C.T. - For the Children should ideally be offered as early in the separation process as possible. One parent commented,

I was looking for a class like this 2 years ago. I'm very glad to see one available. I think all parents should be required to attend this class at the beginning of their conflicts. Mine has been going on for 4 years, and my daughter's father and I may not have done things the same way had we had this class available to us years ago. I think this program should be available to everyone with children. I believe it would prevent the damage of divorce on innocent children. Thank you!

Parents' responses to the open-ended questions (i.e., "The most helpful part of this session was . . .?" "What changes would you suggest?") echoed the positive results of the quantitative portion of the evaluation.

Responses to "suggested changes" tended to request more time to cover more questions and concerns, clearly indicating that the participants found the information in the classes useful and, in fact, wanted more of it.

Most of the comments were positive, and many included expressions of gratitude.

The message that we need to love our children more than we dislike our former partners.

Very educational and interesting. God bless you all.

Adopting a businesslike relationship with your ex is excellent advice.

I started out feeling very sad but ended up with hope.

I came with no particular expectations and leave with information that I think will change my life.

There will be two healthier children because of what we have learned here.

DISCUSSION

In sum, much has been accomplished to date, and the responses of parents to the program have exceeded our expectations for this initial study. Parents reported overwhelmingly that they (a) found the program helpful, (b) have increased their understanding of their children's

divorce-related needs and how to meet them, and (c) were planning to put into practice program principles and skills.

With any new program, it is important to monitor and evaluate feedback carefully to best refine practices and promote desired outcomes. The development of A.C.T. - For the Children has been an ongoing process incorporating changes suggested by parents during the process of program evaluation. Specifically, though parents were very pleased with the program, many requested additional time for discussion and skill acquisition. Others expressed the wish that all separating parents could have the benefit of participating early in the process of their breakup to prevent or reduce the damage that occurs with protracted conflict. As a result of this important feedback, we have added an hour to the program and increased opportunities for new skills to be learned and practiced. We are also making a concerted effort to reach out to all separating parents in our community soon after, or at the point of, a breakup to inform them of the program and encourage early participation.

Feedback from judges, lawyers, and mediators indicates that a number of program participants who had been involved in long-term litigation have decided to settle their differences by negotiation rather than by trial. One couple had tried initially to work with a mediator but were unable to resolve their differences and became enmeshed in protracted litigation. After participating in the program, they called the mediator to say they were ready to come to an agreement for the sake of the children. Two other examples illustrate ways in which A.C.T. - For the Children has touched the lives of families. One couple, mired in protracted conflict and court battles, was scheduled for trial on a Monday morning. After participating in the program over the weekend, they appeared before the judge, saying that they had come to recognize the importance of working more cooperatively as parents and that they had reached an agreement and did not need a trial. In another example, a father of four was prepared to return to his native country because of a bitter custody battle. After participating in A.C.T., he decided to stay here to remain connected emotionally and financially with his children. As a result of the program, he and his former spouse worked out a cooperative parenting plan that enables their children to have the gift of both parents in their lives. Although these outcomes are encouraging, many situations of protracted conflict remain, with children caught in the middle. Which policies and procedures might help to prevent such unfortunate consequences?

IMPLICATIONS FOR LEGAL AND MENTAL HEALTH PRACTITIONERS

Attorneys in our legal system have a pivotal role of influence on their clients. They are like primary care physicians with regard to ailing marriages, as they come into contact with many parents whose relationships are dissolving. Not infrequently, they serve as both legal advisor and counselor to their clients. They help their clients navigate the legal system as well as the emotional and financial difficulties associated with divorce or separation. Attorneys can have a powerful influence on conflict levels between separating parents. For divorcing couples in litigation, the atmosphere can quickly become adversarial—sometimes from the outset. By referring such clients to parent education programs as soon as possible in the process, attorneys send an important message about keeping children's needs a top priority.

Likewise, psychotherapists working with a client in the process of a breakup must carefully consider the balance between an individual's emotional needs and his/her role as a parent. Thus, an important therapeutic goal may be to help a client work through anger in a way that enables him/her to deal with intense emotions productively, while establishing clear

boundaries that protect their children from being caught in the conflict. Several mental health professionals have reported that parents who have participated in A.C.T. - For the Children evidenced increased readiness for and better outcomes in therapy. Feedback from multiple sources thus supports the conclusion that the optimal timing for parent education programs is early in the process of a breakup.

WHO SHOULD BE REFERRED?

Programs such as A.C.T. - For the Children are likely to be especially useful to people open to information about their children's adjustment to a breakup. Even couples who rated themselves as being in high levels of conflict with each other benefited from the program. Both male and female participants reported that their participation was beneficial to them and to their children. One caveat, however: parent education programs must be sensitive to issues of domestic violence and emphasize that safety is a top priority. This caveat should be explained to participants throughout the program with presenters emphasizing that coparenting is not recommended when domestic violence or child abuse are present. Information about sources of help for these situations is provided verbally and in a *Resource Handbook for Parents*, given to all participants. Most important, separating partners should never be in the same session when concerns about safety are present. Likewise, attendance lists should be kept confidential, with security personnel available on site.

Finally, it is preferable to give participants some choice regarding which sessions of the program they will attend (e.g., weekday vs. weekend, daytime vs. evening). Having these choices may minimize disruption to the participants' lives and enhance their receptivity to attending and learning.

SUMMARY

In retrospect, as we reflect on the development, implementation, and evaluation of the A.C.T. - For the Children program, it is clear that the successful collaboration of the mental health, legal, and judicial systems has been vital to the program's success. Of course, systems are composed of people, and it is clear that programs of this nature cannot be successfully implemented without the support and nurturance of key people. The Rochester experience testifies to the fact that successful collaborations between mental health and judicial systems can operate as a healthy marriage that fosters the best interests of children and families.

Although the results of the program to date are encouraging, certain limitations of this study bear mention. Namely, the outcomes reported are short-term responses provided by participants immediately at the end of the program. The key question is whether those benefits will endure over time and generalize to better adjustment in their children. To address that question, a follow-up study is under way to determine the extent to which program participants were able to translate their good intentions into behavioral changes that have a positive impact on their children and families. Other aspects of the follow-up will address questions of program efficacy, identifying those for whom the program is most effective.

The results of our research to date demonstrate that carefully implemented and evaluated preventive interventions hold promise for fostering resilience in children. Hopefully, preventive outreach for children and families will become a priority for health care and social policy. Prevention programs that focus on factors known to promote health and resilience are a promising part of that vision of wellness.

APPENDIX
A.C.T. - For the Children Program Evaluation
Questionnaire in Percentages

	Strongly Agree	Agree	Strongly Disagree	Disagree
1. I resented having to attend.	2.2	4.8	29.3	63.7
2. I felt the program was worthwhile.	64.2	35.2	0.2	0.4
3. I would recommend this program to others.	66.9	32.4	0	0.8
4. The information I learned in this program will help me and my children.	65.8	33.5	0.2	0.6
5. The program helped me understand how children are affected by a breakup.	65.1	33.5	1.1	0.2
6. The information I learned will have a positive influence on the decisions I make regarding my children.	62.6	36.6	0.6	0.2
7. Although I may not feel like cooperating with my child's other parent, I now understand why it is important to do so.	60.5	38.2	0.8	0.6
8. As a result of this program, I plan to make a stronger effort to work with my former spouse for the children's sake.	57.4	40.2	1.7	0.6
9. I learned some ways to keep my children out of the middle of conflict in this program.	59.8	39.7	0.2	0.4
10. As a result of this program, I am more likely to use a time-sharing plan that allows our children to have a good, close relationship with both parents.	49.0	46.3	4.3	0.4
11. As a result of this program, I am aware of more ways to help myself if I need it.	48.6	48.2	3.1	0.2
12. As a result of this program, I am more likely to ask for and use support from others for me and my children.	41.9	53.3	4.6	0.2
13. As a result of this program, I feel more hopeful that things will get better for me and my children.	47.6	46.0	5.6	0.8
14. As a result of this program, my attitude toward my former spouse as a parent is more positive.	20.2	52.4	24.7	2.7
15. As a result of this program, I am more likely to try to settle disputes with my former partner instead of going to a judge.	38.4	50.6	9.6	1.4
16. As a result of the program, I am more likely to use other alternatives to settle disputes (mediation, arbitration).	37.1	50.2	11.4	1.4

NOTES

1. Handbooks may be ordered from the first author at the Children's Institute, 274 N. Goodman Street, Suite D-103, Rochester, NY 14607.

2. Victor/Harder Productions, Inc., 5807 W. Maple Road, Suite 171, West Bloomfield, MI 48322.

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STATUS OF COURT-CONNECTED PROGRAMS FOR CHILDREN WHOSE PARENTS ARE SEPARATING OR DIVORCING

Robyn J. Geelhoed, Karen R. Blaisure, and Margie J. Geasler

This article reports on programs for children whose parents are divorcing or separating. Data were obtained from 67 courts and 81 program providers across the United States. Most court systems with children's programs used community providers and encouraged rather than required children's attendance. The average program consisted of one or two sessions, with a length of 4 to 5½ hours. A partial list of commercially available curricula is provided in the appendix.

Separation and divorce expose children to a number of risk factors. Although the majority of children adjust and become socially competent adults (Amato, 1993; Amato & Booth, 1997; Hetherington, Bridges, & Insabella, 1998), up to a quarter of children whose parents divorce may exhibit behavioral and emotional difficulties, as compared to approximately 10% of children whose parents do not divorce (Ahrons, 1994; Hetherington et al., 1998). Children may believe that they caused the divorce and may also hold vivid and painful memories of the physical separation of their parents (Wallerstein & Lewis, 1998). Some research suggests that educational interventions with children may aid their adjustment, specifically in changing misconceptions of their role in the divorce and what divorce means, and offering emotional validation and relief (Emery, Kitzmann, & Waldron, 1999).

Nearly half of U.S. counties have court-connected educational programs for divorcing/separating parents, although a small minority report a program for children. When asked what they would like to change about their divorce services, court personnel overwhelmingly reported a desire to add a children's program (Geasler & Blaisure, 1999). Given this information, one would expect the number of children's education programs to increase. The published literature on children's programs, however, is limited to descriptions of individual educational programs (typically located in schools), a few reports on evaluation efforts, and outcome research on specific programs (Braver, Salem, Pearson, & DeLusé, 1996; Di Bias, 1996; Glenn, 1998; Grych & Fincham, 1992; Kalter, Schaeier, Lesowitz, Alpern, & Pickar, 1988; Kaminsky, 1986; Pedro-Carroll & Cowen, 1987; Pedro-Carroll, Sutton, & Wyman, 1999; Stolberg & Mahler, 1994). The purpose of this study was to document more specifically the availability of court-connected children's programs and to gather detailed data on the implementation of those programs.

Authors' Note: Initial data for this project were obtained during data collection for the 1998 nationwide survey that was part of the Parent Education Programs in Domestic Relations Courts Project completed by the Center for Policy Research in Denver, Colorado, and funded under Grant No. SJI-95-03C-E-034 from the State Justice Institute. The work of many graduate students made data collection possible. Appreciation goes to Donna Lovette, Jerry McLaughlin, Claudia Triestram, and Emily Whisner. An earlier version of this article was presented at the annual conference of the National Council on Family Relations, Milwaukee, Wisconsin, November 1998.

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METHOD

In the 1998 nationwide survey of court-connected programs for divorcing parents (Geasler & Blaisure, 1999), 107 U.S. counties reported offering a program for children whose parents were divorcing or separating. For this study, personnel from courts included in the 1998 study were recontacted by telephone and asked to describe their children's program in more detail. Of the 107 original counties that reported a program for children, 60 confirmed having such a program.

During this current study, data were collected from court personnel from counties originally identified in 1998 and other newly identified counties. In some cases, a county's program also served children from surrounding counties, and in other cases, program personnel knew of programs in other counties and provided contact information. Finally, some authors of nationally recognized program curricula directed us to locations in which their programs were offered. After 15 months of intermittent interviewing during 1998 and 1999, 152 counties¹ with programs for children were identified (see Table 1).

Interviewers followed a telephone interview protocol to maintain consistency among five interviewers and to record obtained information. Two protocols were designed: one for court personnel and one for program providers. Interviewers attempted to gather information from both sources but were often directed to program providers to obtain requested information. By the end of data collection, court personnel from 67 counties and 81 program providers reported data on their programs.

RESULTS

The results reviewed below reflect information collected from court personnel and program providers. Questions regarding court decisions about attendance policies and the process of referral were answered by 67 court personnel. Questions regarding program design, interfacing with programs for parents, curricula, attendance numbers, teaching strategies, program administration, presenter qualifications, and evaluation efforts were answered by 81 program providers.

PROVIDERS OF PROGRAMS FOR CHILDREN

In almost two thirds of the counties with children's programs, court involvement with the program was limited to referral. Of 152 counties with programs for children identified in this study, 25 provided their own programs (i.e., court personnel administer the program), and 127 referred to community programs. Of the 127 counties that referred to community programs, 32 counties appeared to work closely with community providers in collaboratively designing and implementing the program. Sometimes, court personnel maintained close contact with the community providers by being copresenters for the program.

Community providers included public nonprofit agencies, extension services, independent practitioners, private nonprofit agencies, community colleges and universities, religious schools or counseling centers, and school guidance offices. In some cases, court personnel knew the program they wished to have implemented and then sought specific community providers to offer the program or sought bids from community providers to offer the particular program. In other cases, courts referred to community providers that offered a program of the provider's choosing.

Table 1

Total Number of Counties in Study Examining Programs for Children Whose Parents are Divorcing or Separating, Obtained From 67 Court Systems and 81 Program Providers Across the United States

Counties originally identified in 1998 survey	107
Number of original counties confirming programs	60
Number of additional counties identified during study	92
Total number of counties identified as having a program for children whose parents are separating/divorcing	152

PROCESS OF SENDING CHILDREN TO DIVORCE EDUCATION

How do courts come to offer a program for children? Most respondents said that judges recognized the need for children to receive more direct help and decided that a program should be offered. Sometimes, court personnel worked collaboratively with local agencies in initiating the development of the program. In some cases, parents requested programs for children. In at least two cases, private practitioners and local agencies initiated contact with judges and bar associations.

Of the 67 counties in which information was obtained from court personnel, 25 counties required children's attendance at a program, whereas 42 counties encouraged children's attendance.² In some counties, judges required individual parents to enroll their children in a program on a case-by-case basis. Table 2 summarizes attendance based on location of program.

Attendance policies issued by state statute may be interpreted differently by counties. For example, the state of Minnesota has a state statute regarding parent education that has been interpreted differently by Hennepin (Minneapolis) County and Ramsey (St. Paul) County. According to a program provider, Hennepin requires all children of divorcing parents to attend a children's program but only requires those parents who were in contentious situations with one another to attend a parents' program. In Ramsey County, the reverse is true. All divorcing parents are required to attend a program, whereas only those children whose parents are experiencing contentious interactions are required to attend an educational program.

Interviewees noted that in their counties, parents generally did not have a problem with complying with mandatory attendance policies. However, courts could hold parents in contempt or refuse to schedule a trial date or hearing, or to grant a final divorce decree, as potential consequences of children's nonattendance.

If the court system required children's attendance at a program, parents learned about programs when filing a petition for divorce or when meeting with an attorney. If children's attendance was encouraged but not required, parents learned about programs when they attended a parents' education program, when they were sent information about the children's program, or when they received other communication from the court. Attorneys, court personnel, bulletin boards, and newspaper ads were other ways parents learned about programs. In a few cases, courts worked with school districts to offer programs for children, and parents were notified of the availability of programs by either the schools or court systems.

INTERFACING WITH PARENTS' PROGRAMS

Data on the interface between parents' and children's programs were obtained for 26 programs. Sixteen programs held parents' and children's programs simultaneously. In 9 of these

Table 2

Children's Attendance Policies and Location of Program in Study Examining Programs for Children Whose Parents are Divorcing or Separating, Obtained From 67 Court Systems and 81 Program Providers Across the United States

Location of Program	Children's Attendance		
	Total Number	Require Attendance	Encourage Attendance
Court-provided programs	11	7	4
Community-provided programs	56	18	38
Total	67	25	42

programs, parents and children spent some time together, and in 7 programs they did not. Eight programs held sessions for parents and children at different times. One county invited children to attend the parents' 2-hour program, which included watching the 45-minute video, *Listen to the Children*. One county reported having a children's program but no parents' program.

Even if parents' and children's programs were offered at different times, parents sometimes were involved in the children's program. For example, parents may attend the whole program (one county has the mother and father alternate attendance), attend the first and/or last session, or attend an orientation session for parents.

FOCUS OF PROGRAM CURRICULA

Forty-six different program curricula were identified in this study. Just over half of the 81 program providers purchased or obtained a program designed by someone else. In a few cases, they adapted the materials for their own needs. The remainder of providers reported designing their own materials. A sample list of commercially available programs and contact information is noted in the appendix. Some of these programs are copyrighted and some require entering into a licensing agreement.

Of the 81 program providers, 44 described their program goals. Goals for psycho-educational groups can be sorted into the following six categories: (a) facilitation of feelings, (b) development of coping skills, (c) adjustment to changes, (d) provision of information, (e) normalization of the experience, and (f) provision of support (Bloch & Crouch, 1985). Table 3 summarizes children's program goals according to these six categories. Facilitation of feelings refers to helping children identify and express their feelings related to divorce (e.g., grief, anger, and sadness) and receive empathy and validation. Coping skills include communicating feelings, developing problem-solving skills, avoiding "getting stuck in the middle" of parental conflicts, and using strategies to cope with changes (e.g., new living arrangements, flexible schedules). Adjusting to changes in family life includes "accepting new family structures," "changes in family roles and routines," and redefining the family.

Provision of information focuses on education about divorce, children's and parents' reactions to divorce, grief processes, and court procedures. Normalization refers to helping children realize that they are not alone and their experiences are shared by others. Finally, program facilitators offer children support by reinforcing self-concept, building self-esteem, and reassuring children that divorce is not their fault—all within a safe environment.

Table 3

Frequency of Descriptions of Goals of Programs for Children Whose Parents are Divorcing or Separating, Obtained From 67 Court Systems and 81 Program Providers Across the United States

Psychoeducational Goals	Frequency of Report	% of 44 programs
Facilitation of feelings	41	93
Development of coping skills	38	86
Adjustment to changes	29	66
Provision of information	27	61
Normalization	24	55
Provision of support	22	50

TEACHING STRATEGIES

Of the 81 program providers, 42 described teaching strategies used in their curricula. Strategies were categorized using Bonwell and Eison's (1991) classification of instructional methods (as described in Grasha, 1996). In this classification system, teaching methods are differentiated according to level of active learning and risk (see Table 4). High active learning requires children to engage in activities, movement, and creative endeavors, whereas low active learning requires less behavioral involvement on the part of children. Low and high risk refers to the potential for the strategies to fall short of accomplishing their objective (e.g., disliked by children, overrunning time allotted). It should be noted that the level of risk does not refer to the level of psychological vulnerability.

PROGRAM ADMINISTRATION

The following information on program administration details (i.e., year established, length and number of sessions, number of times offered per year, ages and number of children attending the program, location, and funding) is based on information from 81 program providers, although not all 81 providers answered all questions. Sixty-one program providers reported the year their program began. Thirty-six programs were established since 1996; 17 programs began between 1990 and 1995; and 8 programs began before 1990.

The average length of a children's program was 5½ hours ($n = 66$ counties), and median length was 4 hours, with a range of 1 to 15 hours. The average number of sessions was 4 ($n = 66$), with a median of 2 sessions, a mode of 1 session, and a range of 1 to 14 sessions. The average number of times a program is offered per year is 14 ($n = 58$), with a median and mode of 12 times, and a range of 1 to 120 times per year.

The average number of children who attend a program is 15 ($n = 50$), with a median of 10 children, and a range of 2 to 60 children. The average number of children who attend a program in a location in 1 year is 353 ($n = 49$), with median attendance per year of 110 children, and a range of 11 to 4,500 per year. Most programs serve early and late elementary-age children. See Table 5 for the number of programs serving various age groups.

The most popular locations for programs were public and private mental health agencies, court buildings, schools, and churches. Five counties had multiple locations. Only 17 program providers reported using security measures. Ten rely on building security or sheriff's officers on-site; of these programs, 5 are held in court buildings, the other 5 are in schools or

Table 4

Classification of Teaching Strategies of Programs for Children Whose Parents are Divorcing or Separating, Obtained From 67 Court Systems and 81 Program Providers Across the United States

	High Risk	Low Risk
High active learning	Children write newsletter for parents Communication skills practice Guided imagery Role-play talking with parents Peer group counseling Play therapy Write a letter to parents	Art Drawing Games Collages Crafts Group and individual activities Puppets Storytelling Therapeutic recreation Tour of court Writing
<i>n</i>	26 (62%)	40 (95%)
Low active learning	Discussion of feelings Small and large group discussion	Handouts Lecture/presentation of information Reading books Videos
<i>n</i>	35 (83%)	31 (74%)

Table 5

Ages of Children Served in Programs for Children Whose Parents are Divorcing or Separating, Obtained From 67 Court Systems and 81 Program Providers Across the United States

Age Group	Number of Programs Serving Age Group		Comments
	Yes	No	
Preschool	28	34	Usually starting with age 5, although five counties included 4-year-olds
Early elementary	66	0	Four counties reported 8 as the youngest age
Later elementary	63	2	
Junior high	54	12	
Senior high	41	16	

agencies. Three programs require parental identification and a sign-in or sign-out system for parents to pick up their children. Two locations devise safety plans on a case-by-case basis.

Of the 65 counties reporting program funding information, 29 reported no participant fees, relying instead on court funding (e.g., from divorce filing fees, probation fees, judiciary budget), grants, or fees gathered from the parents' program. Thirty-six counties charged fees, ranging from \$4 to \$425 per child. The majority of programs kept fees less than \$50 and used sliding scales or family caps. For example, one program charged \$4 for the first child and \$2 for each remaining child. Family caps ranged from \$15 to \$100.

PRESENTERS

Programs used presenters from multiple disciplines with differing levels of education. Most programs had presenters from more than one field. The most common education level of presenters was a master's degree in a mental health field, representing the fields of counseling, school counseling, psychology, and social work. Also common were bachelor's-level degrees in teaching, social work, family life education, and human services. Doctoral-level mental health clinicians were reported, but in smaller numbers than the other degrees. Finally, a few programs included judges, attorneys, magistrates, mediators, and volunteer divorced parents.

Thirty-six program providers reported requiring presenters to have a particular educational and/or training level. Seventeen programs required that presenters have a master's degree in a mental health field, and in some cases be licensed. Training specific to the program was required by 18 providers; training ranged from 2 hours to 18 hours. A few programs required presenters to have either a master's degree in a mental health field or a bachelor's-level degree and experience in human services.

EVALUATION EFFORTS

Most program evaluation efforts reported by court and program providers were limited to collecting parental satisfaction data and feedback from children regarding program design and effect. Three program providers reported in-process evaluation studies being conducted by graduate students or faculty members at local universities. Program providers for Kids Turn reported a summary of data collected through registration and evaluation forms from 5,500 children and parents during a 5-year period. Parents reported benefits for themselves and their children, and children reported feeling the program was a safe and helpful place to talk. A longitudinal evaluation study of Kids Turn is under way (www.kidsturn.org/others/longterm.htm).

The Families in Transition program is undergoing evaluation at numerous sites and includes follow-up data collection 6 months and 1-year postprogram. Preliminary analyses regarding child adjustment are promising (www.louisville.edu/kent/community/fit/fitval.html). The Children in the Middle (Children's Version) program teaches children how to respond to parental conflict. In one 4-week follow-up study in which children in a treatment group watched the parents' version of a skill-based video, children reported less stress when finding themselves in the middle of parental disputes than children in a control group who watched an informational video about divorce (Kearnes, Gordon, & Arbuthnot, 1991).

A multisite pilot study for the purposes of gathering formative evaluation and outcome data was completed on the Rollercoasters curriculum. The study relied on pre- and postassessments of parents' and teachers' perceptions of children's communication with parents, willingness to express feelings, behaviors, and self-esteem. Although the study noted limitations, results suggested that parents perceived an increase in their child's self-esteem and willingness to express feelings postprogram, especially for children who initially scored low in self-expression and self-esteem, and exhibited the most pretreatment behavior difficulties (Fischer, 1999).

DISCUSSION AND IMPLICATIONS

Children's programs appear to be gaining popularity within court systems, although they have not reached the prevalence of parent programs. A typical program for children of divorcing parents is described in Table 6.

COURT POLICY

Judges' support and advocacy were consistently a key in successful implementation of programs. Interestingly, of the courts that provided their own programs, more than half required children's attendance; however, of the courts that use community providers, more than half only encouraged children's attendance. Parents are responsible for their children's attendance, although courts did not report a problem with compliance when mandating attendance. For nonmandated programs, a referral network is crucial in attracting parents' interest and obtaining enough children to offer the program, especially in rural areas. Funding beyond participant fees may be necessary given limited parental resources in some counties.

CURRICULUM

Prepared curricula exist for those interested in purchasing program materials. However, almost half of the programs in this study were designed or adapted by the providers. Availability of consistent curricula for purchase may be important to future coordination and consolidation of evaluation efforts.

Historically, schools have been instrumental in the efforts to respond to children's adjustment needs by offering programs during the school day (Cappetta, 1996; Yauman, 1991). For example, Pedro-Carroll and Cowen (1987) provided detailed directions for collaboration between school and nonschool personnel in establishment of the Children of Divorce Intervention Program. Courts could take advantage of schools' experiences and enter into collaborations that would enhance parents' sensitivity to children's needs and their interest in enrolling their children in a program, and increase the availability of programs and children's attendance. Such collaborations may be more resource-efficient as well.

Although Bonwell and Eison's (1991) classification system of teaching strategies provides direction for educators, the level of psychological vulnerability should also be taken into account when designing teaching strategies for children in divorce-education programs. For example, teaching children communication techniques to use with their parents may involve a higher level of psychological vulnerability than having children watch a video about divorce.

Continued efforts at evaluation are clearly necessary. The studies on the school-based program, Children of Divorce Intervention Program, included comparison groups, data collection from multiple sources, inclusion of instruments with established validity and reliability data, and longitudinal design (Pedro-Carroll & Cowen, 1987; Pedro-Carroll et al., 1999). Court personnel and program providers are advised to use such quasi-experimental designs to empirically document the outcomes of children's programs. Otherwise, the particular influence a program has on children's adjustment will never be separated from other possible factors.

Table 6

Typical Program for Children of Divorcing Parents, Obtained From 67 Court Systems and 81 Program Providers Across the United States

-
- Community rather than court-based
 - Established since 1996
 - Consists of one to two sessions with a length of 4 to 5½ hours
 - Offered monthly
 - Encourages children's attendance
 - Serves elementary schoolchildren
 - Varies in funding
 - Facilitates children's feelings and their developing coping skills
 - Engages children behaviorally in activities and creative exercises
 - Presented by a master's-level mental health professional
-

INTERFACE WITH PARENTS' PROGRAMS

Almost all of the counties with a children's program had a parents' program. Children's and parents' programs vary in how they interface. Some programs are held simultaneously, whereas others are held at different times. Parents' involvement in their children's programs also varies. The benefit of having children by themselves is that they can express their feelings about their parents' divorce safely, without worrying about parental disapproval or disappointment. However, when children and parents are together, they have an opportunity to practice communication skills and hear the same information. Practicing together may be important in learning coping skills, a common goal of programs. A combination of activities both with and without parents may enhance children's adjustment.

LIMITATIONS TO STUDY

Relying on previously collected data on parents' programs for the initial sample in this study posed a limitation. Data gathered in the 1998 nationwide study of parents' programs (Geasler & Blaisure, 1999) overrepresented the number of children's programs, perhaps due to a confusing layout of the survey instrument. Through contact with court personnel for this present study, it was learned that 47 of the counties initially reporting a program did not have one. However, it was also learned that additional children's programs existed that were not noted in the 1998 study. Although the data presented here provide more of an overview of the status of programs for children than previously known, it is assumed that more children's programs exist than were identified in this study. Finally, resources limited data collection in terms of the number of follow-up phone interviews allowed.

APPENDIX

A Partial List of Nationwide, Commercially Available Programs for Children Whose Parents Are Separating/Divorcing

Changes

Marti Kitchens, M.A., Licensed Marriage and Family Therapist
7193 Douglas Boulevard, Suite 103
Douglasville, GA 30135

Phone: (770) 942-9361

Kids Turn

Susanna Marshland

1242 Market Street, fourth floor

San Francisco, CA 94102-4802

Phone: (415) 437-0700

Web site: www.kidsturn.org

Parents Forever: Children's Session

Distribution Center

University of Minnesota

405 Coffey Hall

1420 Eckles Avenue

St. Paul, MN 55108-6068

Phone: (800) 876-8636

Web site: www.parenting.umn.edu (click on Parents Forever)

Children in the Middle

Dr. Jack Arbuthnot

Center for Divorce Education

P.O. Box 5900

Athens, OH 45701

Phone: (740) 594-7173

Fax: (740) 594-1724

E-mail: divorce@frognetwork.net

Web site: www.divorce-education.com

Families in Transition Program

Joe Brown, Director

Mary Lou Cambron, Program Coordinator

c/o Family Court Administration

Jefferson County Judicial Center

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NOTES

1. Hawaii County, Hawaii, is divided into halves, the east and west sides of the island. Each side has its own program provided by the court that differ from each other. For purposes of reporting data, Hawaii County, Hawaii, will be treated as two counties.

2. The east side of Hawaii encourages children's attendance at a program, whereas the west side of Hawaii mandates children's attendance at a program.

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CONFIDENTIALITY REVISITED

California Style

Hugh McIsaac

Stewart and I have lived through the legal adversary system and we know what havoc it could have wrought on our family. . . . We were nuts. We were crazy. We were your average psychotic divorcing parents. . . . What you do not see is we get well. We bailed out of the adversary court system because we could see it was no help to us. We were the lucky ones. . . . There are thousands like us who could use your help before the war gets started.

—Parent at the 1978 Midwinter Association of Family
and Conciliation Courts Conference, Los Angeles.

Twenty years before, we made what I now consider a fatal compromise with SB 961, the first mandatory mediation legislation for custody disputes in the country.¹ The bill was being opposed by the director of Family Court Services from Fresno County who wanted to continue their practice of making recommendations to the court when mediation failed. Senator Alan Sieroty, the author of this bill, asked if we wanted to compromise. He would “go to the mat” if we wished to continue and hold out for nonrecommending, confidential mediation, even though it might risk defeat of the bill in the Senate Judiciary Committee. A young (we were all young then) law professor, Carol Bruch, argued against the compromise of adding the phrase “may, consistent with local court rules, make a recommendation to the court.” Our original bill would not have allowed such a recommendation to be made.

Twenty years later, SB 2124, sponsored by Professor Bruch and a coalition including California Chapter of NOW—the Family Law Section of the California State Bar—and several other organizations, sought to eliminate this very language from the statutes.² This article summarizes testimony to the Senate Judiciary Committee hearing the legislation, which passed out of committee and out of the California Senate but which was not carried further by the bill’s author, Senator Liz Figueroa, because of opposition from the judiciary and mediators in her home district, Alameda County.

The legislation, while small in content, was huge in implication. As Robert Mnookin pointed out in his classic article “Bargaining in the Shadow of the Law: The Case of Divorce” published in the April 1979 issue of the *Yale Law Journal*, it is not the law itself that is important.³ Rather, it is the effect of the law on the parties’ private bargaining in the shadow of the law that determines the law’s true impact. The issue before the legislature was whether families who are in the midst of a dissolution, or faced with a significant change in circumstance, will have the opportunity to resolve their disputes through confidential mediation or whether they will be drawn into the legal, adversarial system and have an order imposed in the name of mediation but that in reality is something else: an inadequate evaluation.

Confidential mediation encourages family self-determination or private ordering and helps the family develop its own skills in negotiating conflict in the future; creates a problem-solving, planning forum as opposed to the win-lose paradigm of the adversary system; involves all interested parties in the dispute resolution process, permitting involvement of

grandparents, stepparents, and any others who may have an interest in the child; removes the parental role from the adversary process; focuses on the future rather than the past; establishes principle of future behavior rather than trying to assess blame or focusing on past conduct; avoids the positional bargaining of the adversary process that freezes the parties into two opposing solutions detrimental to one, if not both; creates a problem-solving approach that yields a richer array of potential solutions through constructing and applying criteria for choice and identifying underlying needs; promotes coordination between the court, attorneys, and family (the attorneys represent the parties' adverse interest in distributive issues and the mediation helps the parents work out agreements in the child's best interest); is more cost effective (it was estimated in the Los Angeles County Superior Court that at least nine additional judicial officers would be needed to handle the 5,600 cases resolved through mediation in the Los Angeles Conciliation Court);⁴ encourages cooperation and joint problem solving because it is mandatory; and everyone who has a dispute is exposed to the process (if you do not have a mandatory referral to mediation, then you have a mandatory adversary system). Mediation functions like a meet-and-confer requirement in a labor dispute. The only thing mandatory in the process is that the parties participate in an introduction to mediation. It is not mandatory that they agree. Principled mediation requires that solutions be tested rigorously before they are incorporated into the final agreement, and confidential mediation permits more flexible planning and implementation, allowing for experimentation and the use of step-up plans based on the child's age and stage of development, and allows for ongoing help when conflict arises in the future with easy reaccess to the mediator.

**WHY SHOULD THE STATUTE BE AMENDED TO DELETE
THE LOCAL OPTION FOR COURTS TO PERMIT
THE MEDIATOR TO MAKE RECOMMENDATIONS
WHEN THE MEDIATION IS NOT SUCCESSFUL?**

As the director of the Los Angeles County Conciliation Court, I participated in a compromise to ensure passage of the original Sieroty mediation bill, SB 961. In light of the experience with mediation in recommending courts, it appears that compromise was in error. SB 2124 was an opportunity to correct that mistake.

In 1991 Professor Trina Grillo published her classic article "The Mediation Alternative: Process Dangers for Women." This 604-footnoted article in the *Yale Law Journal* was the result of Grillo's experience in a recommending county, Alameda County.⁵ We invited Grillo to our service in Los Angeles because of our concern about her experience in "mediation." That our mediation was confidential was the single biggest difference between our services and those in the recommending county where she had experienced mediation. The other factors she felt were different in our Los Angeles model from the one in the recommending county where she mediated her own dispute were the orientation to mediation and the opt-out feature if one of the parties does not want to mediate. Opting out and orientation are not a reality in recommending courts because of the mixing of the mediation and evaluation roles. Grillo might not have written her article had she mediated in Los Angeles, or in another nonrecommending court.

WHY SHOULD MEDIATION BE CONFIDENTIAL?

First, mediation is powerful because the mediator has no power to decide. The role of the mediator is to facilitate communication between the parties and to help them arrive at a solu-

tion in the best interest of the child. When the mediator has the power to recommend, the mediation becomes an adversarial process, and the parties do not learn skills in resolving their dispute.

Second, if the parties know the mediator will be making a recommendation to the court and what they say is not confidential, they will tend to reveal information favorable to their position and detrimental to the other parent. Attorneys will caution clients not to be forthcoming in the mediation. It also may promote forum shopping among mediators based on the client-attorney perception of the mediator's biases for, or against, a particular custodial arrangement or gender. Professor Janet Bowermaster, a retired family court service mediator, at the April 4th Senate Judiciary hearing in San Diego is hired by attorneys to prepare their clients for the mediation interview.

Third, other better sources of information and recommendation than mediation exist for collecting information and for making a recommendation. Mediation is not the proper forum. The mediator/evaluator must think very differently about the matter if he or she is going to have to make a recommendation. Instead of thinking about how to facilitate discussion and identify issues, the mediator/evaluator must be evaluating the parents and making conclusions on very limited and potentially biasing information. Often, the person who has the most to lose acts the "craziest," while the less involved parent appears more rational. The mediation interviews are too short and are not checked out over time against other more important sources of information, such as daycare providers, school records, therapists, house calls, and other sources of information.

Fourth, in high-volume courts, mediators are under the gun to process cases and short-circuit the mediation process by revealing their recommendations as a way to get the parties to agree. That almost twice as many participants felt "rushed by the counselor" or "pressured to go along with things they did not want" in recommending counties as opposed to nonrecommending counties support this contention.⁶

Fifth, separating mediation from evaluation encourages the parties to work harder in mediation, knowing they will have to go through an evaluation if they are not able to work out their own agreement. Studies of mediation demonstrate that families who settle their matter in nonrecommending mediation move through the court process more rapidly and are 50 percent less likely to relitigate. The settlement rate for low-income litigants in nonrecommending mediation is as high as 90 percent, undercutting the argument that the poor will be negatively affected by preventing the mediator from making a recommendation, when in fact, they will be clearly benefited because they will have resolved their own dispute without an intrusive, potentially biased recommendation.⁷ That mediation is confidential and no report will be made to the court may help them trust the process more and be more forthcoming in their discussions than with a nonrecommending mediator.

Sixth, when mediation is confidential and no report will be made to the court may help the parents trust the process more and be more forthcoming in their discussions with a nonrecommending mediator.

Seventh, the use of mediators as evaluators is basically inefficient, reducing the amount of time the mediator has to spend in resolving other disputes by tying the mediator up in court proceedings. Any argument recommending that courts are more efficient than nonrecommending courts is undercut by the facts in comparably sized counties: Nonrecommending courts generally have a higher filing-to-staff ratio than recommending courts, indicating that nonrecommending courts are more efficient. Los Angeles County and Orange County, two nonrecommending courts, had a filing-to-staff ratio of 687 filings for each professional staff

member in Los Angeles County and a ratio of 530 in Orange County; Alameda and Ventura, two recommending courts, had a filing-to-staff ratio of 285 and 471, respectively.⁸ Judging from my experience in a very large county and a medium-sized county, the use of mediator panels in smaller, rural counties may be even more cost effective. The average mediation costs to the courts in Tillamook and Clatsop counties is \$240 per family.⁹

Eighth, the California legislation permitting the mediator to make recommendations by local rule in child custody cases is the only such state legislation in the country. No other state permits this practice in the name of mediation, including the state in which I currently reside, Oregon. In the view of one practitioner,

Recommending mediation has always been an oxymoron to me. The very concept of mediation implies self-determination of the outcome of a dispute facilitated by a neutral third party. That, in fact is the prevailing concept across major national mediation organizations, in their ethical guidelines, as well as in their standards of practice.¹⁰

Ninth, the 1990 National Standards for Court Connected Mediation funded by the State Justice Institute recommend that outcome recommendations by the mediator should not be permitted. The Uniform Mediation Act, currently being drafted by the National Conference of Commissioners on Uniform Practices, also condemns this practice. Professor Richard Reuben of the Harvard Law School, one of the reporters for this project, sent the following e-mail:¹¹

The UMA would not permit mediators to make reports, recommendations, etc. to a court or government agency. See Section 7(b), which should be read independently of 7(a). 7(a) has been the subject of considerable discussion and confusion and will no doubt be rewritten this weekend. *7(b) on the other hand is in pretty good shape and it certainly reflects the committees' view that mediators be protected from courts seeking such information.*¹²

Finally, the argument has been mounted that there is “no significant” difference in client evaluations of service between recommending and nonrecommending courts. However, nonrecommending courts favorably exceed recommending courts in all fourteen of the questions asked of parents who had just used the service in the 1996 Administrative Office of the Courts Snapshot Study.¹³ More important, as cited above, respondents from recommending courts were nearly twice as likely to feel “pressured to go along with things” and “rushed by the counselor.”¹⁴ While overall, users of both the recommending and nonrecommending services are generally satisfied with the mediation they received, and the numbers of dissatisfied are relatively small, the harm done to those who are dissatisfied, as described by Grillo, may be substantial.

WHAT IS THE DIFFERENCE BETWEEN RECOMMENDING AND NONRECOMMENDING COURTS FOR MEDIATORS AND THE FAMILIES THEY SEE?

Based on interviews of practitioners familiar with both systems and based on my own experience, I draw the following conclusions: First, recommending mediators must always be collecting information and making judgments in the event that the negotiations break down and they have to justify their recommendations. The mediation in recommending courts takes more time, and the mediator needs to take copious notes.

Second, one mediator observed, "The climate is very different (in recommending mediation). When I had to tell them I might have to testify in court, they no longer trusted me and seemed much more cautious." She went on to observe,

Attorneys would use recommending mediation as a means of discovery. I would be asked to testify about everything said in the mediation. I felt awful. I never heard from these families again. I much prefer working in a non-recommending system. I feel I am really helping these families (in a non-recommending county).¹⁵

Third, the agreement often breaks down after they have taken the matter to the attorney, when this case seems to be an easy one. Then they are stuck with little information about the case and need to conduct more interviews or take their chances on the stand. The mediator who worked in both systems felt there was more cooperation and joint problem solving between the parents, their attorneys, and the mediator in nonrecommending than in recommending courts. In nonrecommending courts, everyone felt freer to talk, knowing what they said or proposed could not be used in court.

Fourth, one mediator who now works in a nonrecommending county observed, "We operated with no standards for this practice. We had to invent the procedures as we go along." This supports noted anthropologist Laura Nader's point that some forms of alternative dispute resolution operate as microlegal systems that lack needed rules or standards.¹⁶

Fifth, recommending mediators experience more preemptory challenges as certain biases, real or imagined, are perceived, supporting the conclusion about increased strategic maneuvering. The bottom line, as in the infamous *Marriage of Fingert* case, which occurred in a recommending court, is that we have not only a failed mediation but a failed evaluation as well. (In *Fingert*, the mother and child were ordered to move to enhance the father's convenient access to the child based on the recommendation of a mediator in a recommending court. The decision was overturned on appeal on constitutional grounds.)

Sixth, in recommending courts, the family is less likely to call the mediator back for continued mediation. In nonrecommending courts, the mediator heads off future problems through the use of step-up plans and helping the parties fine-tune their agreement over time, keeping the family out of court in the future. I have personally had phone calls from more than half of the families I have seen, which helped resolve the issue before it festered into a major misunderstanding resulting in court action. If I had to have made a recommendation in these matters, I know the families would not have called.

Seventh, divorce is a process, not an event. Recommending mediation assumes that the window of time at which a recommendation is made is the way things always were and will always be. Nonrecommending courts shape the process. In nonrecommending courts, the family decides the outcome over time. In recommending courts, the rush to judgment forces the issue and tends to rob the family of developing their own decision-making ability. In recommending courts, you are more likely to have the academy award style of evaluation, "The winner is." "Winning" in this arena is often "losing" over the long run.

Eighth, in recommending counties, a plan is imposed on the family, creating tremendous pressures on the mediator to develop a plan in the shortest time with the least amount of information.

Ninth, recommending is very stressful in move-away cases and other situations requiring interpretations of law. The mediator is put in a difficult situation, making legal judgments more properly vested with the court and the formal legal process. The mediator becomes an adjudicator. Mediation becomes merely an extension of the adversary process. Finally, an

insightful judge in another (Oregon) jurisdiction observed, “We have become so obsessed with ‘output,’ we have forgotten about ‘outcome.’”¹⁷ The rush to process cases is destroying families.

Because of the tremendous stress experienced by mediators who must make recommendations, it appears that staff turnover is higher than in counties where mediation is a nonrecommending process. In Los Angeles, for example, staff turnover was practically nonexistent, probably contributing to the more efficient case-handling statistics of nonrecommending counties.

WHAT ABOUT LIMITING THE REPORTING TO MERELY THE FACTS AND NOT MAKING A RECOMMENDATION?

This was one of the questions asked at the Senate Judiciary Committee hearing: Asking the mediator to present the facts after the mediation is over interferes with mediation’s goal: helping the families reach their own conclusions and solutions. Becoming a fact finder leads the mediator in directions not consistent with the role of mediation. In the mediation, the mediator/fact finder will always be thinking, “How will I present these facts to the judge?” instead of “What are the issues here, and what options will help solve this problem for these parents?”

Example. Mother complains that the father is always late in picking up the children; father says he is not and that mother is trying to frustrate his visitation. We have two very different perceptions. Which one is the fact? If the mediator reports their perception of fact, they will have taken a position, and one or the other parent will not perceive the mediator as impartial. Instead, the mediator should be helping the parents agree about a future solution, such as having a specific time, and providing a method for the parties to resolve the issue if father is late. The mediator may also use a step-up plan to have the couple return in one or two months to review the agreement and to see how it is working. If the mediator reports the facts, one or both will not trust the mediator and will not want to come back. Mediation is about the future, not the past.

The facts become more emotionally laden and problematic when one parent raises a more serious issue such as father’s or mother’s drinking and the other parent denies: The mediator in a nonrecommending, or fact-finding court would be helping the parents invent options for the future, such as adding a provision:

Neither parent will use alcohol twenty-four hours before taking the children. If either parent suspects the other parent of being under the influence of alcohol (or drugs), that parent may request a test within two hours before the children are released. The requesting parent will pay for this test.

The problem is addressed in fifteen minutes instead of two or three days of fact finding and trial at great expense to the parties and the public. The mediator can handle five or ten additional mediations in the time it took to surface the facts, which explains why nonrecommending counties with a separate evaluation staff seem to be more efficient.

SHOULDN’T THIS ISSUE BE HANDLED AT THE LOCAL LEVEL?

This was another question asked:

Generally, I agree. Most issues should be dealt with at the local level. In Oregon we have formed Local Family Law Advisory Committees to deal with local issues. However, certain issues transcend local concerns. This issue is one of them. If we all agree the practice is not sound, then why not have a statewide rule so all California families in the court receive the best practice. No other state statute permits the mediator to recommend after mediation, the two controlling national standards condemn such a practice, why should California permit this practice to continue?

**NOWHERE DO I HEAR CHILDREN BEING INVOLVED.
ARE THEY LEFT OUT? WHAT ABOUT THE CHILDREN?**

This was another question:

In Los Angeles, in mediation, we interviewed children older than age five as part of the mediation process. The purpose of interviewing the children separately was not to have the children decide but rather to help the parents understand the effect of the conflict on their children and to invent the best options for them. In one high profile case between a brother and a sister scheduled for thirteen days of trial, we resolved the matter in six hours of mediation, including separate interviews with each of the children. It became clear to all of the adults through mediation and interviews with the children that the mother, in spite of her recent bout with prescription drugs, was a good mother and was on the road to recovery. The mediation agreement included a referral to a family therapist for the family to heal the wounds created by their unnecessary foray into the adversary system. Judging from recent interviews with this mother, the mediation plan worked.

One shudders to think of what would have happened if this family had dragged all their dirty linen into a court of law. The cost of such an action would have been exceeded only by its ineffectiveness. The attorneys appreciated this solution and were extremely supportive of the mediation process. The judge was happy because thirteen days were cleared from his docket. I felt good because the mediation solved the problem and gave this family some hope. The only reason mediation worked with this family was because it was confidential and nonrecommending to the court.

**IF RECOMMENDING COURTS ARE REQUIRED TO SWITCH TO A
NONRECOMMENDING STATUS, WHAT WILL BE THE COST, AND
HOW CAN THESE ADDITIONAL COSTS, IF ANY, BE MET?**

Recommending courts and the judicial council have raised concerns about the legislation on the grounds that recommending courts would have to employ additional staff to perform evaluations if their mediators could not make recommendations. The evidence from Los Angeles and Portland, Oregon, two nonrecommending jurisdictions, indicate this is not a problem. Eighteen years ago, San Francisco switched from being a recommending to a nonrecommending court with no additional cost. If Los Angeles, San Francisco, or Portland, Oregon, can do it, any court can. The following are some solutions.

Reassign staff. The filing-to-staffing ratios indicate that nonrecommending courts are more efficient. Staff freed up by not recommending could be used to provide mini-evaluations as occurs in Los Angeles or partial evaluations as happens in Portland, Oregon. These partial evaluations are provided at a reduced cost to the litigants. Figures provided by the Adminis-

trative Office of the Courts show that the number of partial evaluations in California nonrecommending courts are an estimated 6,500 per year.¹⁸

Develop panels of evaluators. In Oregon, we have developed panels in two small coastal courts of trained parenting plan and custody evaluators who provide full, nonadversarial evaluations, including home calls. The cost of these evaluations is from \$750 to \$1,350. These evaluations can be paid for by the parties, and the fee is based on their ability to pay. A fund of \$50,000 was allocated last year to pay for evaluations for low-income families in the Clatsop and Tillamook courts, two counties in Oregon with a high concentration of poor litigants. Because of the success of the nonrecommending mediation, only one full evaluation was required last year, resulting in an expenditure of \$750 from the fund.¹⁹

The figures provided by Administrative Office of the Courts indicate that the number of court-connected "full evaluations" have declined in California, from 2,028 in 1996 to 650 in 1999.²⁰ However, these figures do not include the number of private evaluations, which have increased, especially in recommending courts. Recommending courts may be actually increasing the transaction costs for parents and families who do not settle because of the increased costs of contesting recommendations of the mediator through increased attorneys fees and the cost of additional private evaluations.

Contesting parties pay. Another way to solve this problem is to require litigating parties, who can afford it, to pay for full evaluations. In Portland, Oregon, and in Los Angeles, persons using the court evaluation process have to pay all or part of the cost for full evaluations. The cost can be waived for families who cannot afford to pay. (As mentioned above, the settlement rate for low-income families is very high, and most do not need an evaluation after reaching agreement in nonrecommending mediation.) In San Francisco, a fund has been established to pay the private evaluator up front, so the evaluations are completed in a timely fashion; then, the parents are billed on the basis of their ability to pay. These funds collected are used to offset the cost to the court for providing these evaluations. If middle-income and high-income parents can afford to pay \$10,000 and more to contest after mediation, they certainly can afford a reasonable amount to provide a thoughtful, comprehensive evaluation for the court.²¹

*Senate Bill 433.*²² Chaptered February 16 of this year, it will require courts to develop standards for child custody evaluations requiring evaluators "to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with accepted clinical, forensic, scientific, diagnostic, or medical standards." It is doubtful that evaluations conducted in the guise of mediation could withstand a challenge under this new statutory requirement. The changes SB 2124 seek are entirely consistent with the legislature's decision in SB 433 to improve the quality of evaluations.

CONCLUSION

Alameda County has an excellent staff. They believe in what they do, and a majority of families feel good about the service they receive. As Larry Lehner, Director of the Alameda Family Court Services observed, "Our life would be a lot easier if we did not have to make recommendations, but recommendations to the court help families resolve their disputes." However, not only do the dissolution to staff-filing ratios indicate that nonrecommending

counties may be more efficient but also nonrecommending counties score consistently higher on all of the 1996 snapshot study questions. In recommending counties, 17 percent felt rushed, and 14 percent felt pressured.

SB 2124 was very good legislation. Mediation is confidential and nonrecommending in dependency and civil mediation in California. Why should mediation be nonconfidential in family law?

Now that SB 2124 is behind us, next year's effort should widen the scope of the legislation not only to include the elimination of recommending but also to revise the whole adversary nature of the process as we have done in Oregon.²³ Recommending courts should be given time to make the shift and resources for providing good, timely information to the courts for those disputes not settled in a nonrecommending mediation system. Evaluations should be done so the parents and their attorneys are the first users of the information. These evaluations should be nonadversarial, focusing on the needs of the child, the parents' capacities and histories of parenting, and proposing a parenting plan matching the needs of the child with the capacities and histories. These evaluations might be more like an environmental impact study rather than the current adversarial academy award style evaluations: "The winner is mom, or dad." These nonadversarial evaluations and proposed parenting plans might be discussed in a settlement conference conducted by a mediator with the parents and their attorneys all present. A meaningful settlement might be crafted. For those matters not settled at this stage, a court trial remains. This process is the one we are using in the Clackamas, Tillamook, and Clatsop County Courts on the Oregon coast. Only two cases out of over forty cases have proceeded to trial.²⁴

Adequate funding needs to be provided for all family courts in California. Consideration needs to be given to establishing a family court, separate from the civil and criminal courts, so that these matters may have the most sensitive and effective administration and not have their resources diluted by the exigencies of the other courts and other competing interests. Oregon and other states are moving in this direction; why not California?²⁵

The core issue is not recommending or nonrecommending mediation but rather who should be served—the family or the adversary system. Nonrecommending mediation and nonadversarial evaluations keep the family out of the adversary system and create a problem-solving process rather than the win-lose paradigm of an adversary court process. Recommending mediation may do the opposite.

I would like to end this article with a vignette from a mother's letter sent to me fourteen years after I had first met the family. These parents had been in great strife at the time of the divorce. I thought their plan to have their son split the week with both parents was problematic; yet, it was their plan, and they both loved their child. If I worked in a recommending county and had to make a recommendation in this matter, I would have recommended against their plan and intruded in this family's decision making. I would have imposed on them my mistaken, time-bound solution. The following letter would never have been written:

Sorry, I don't have your home address, but all here wanted to send warmest Holiday greetings. For your . . . file: He has been accepted to Harvard, was elected Student Body President of his 2,000 kid high school; co-captained his cross country team . . . broke the all-time school record for the three mile run. . . . I don't think all these wonderful things would have happened (for our son) without . . . [the] wisdom, compassion and guidance all these years. So thank you from the bottom of our collective hearts.

This letter was from the same parent quoted at the beginning of this article, fourteen years later.

NOTES

1. See generally, Hugh McIsaac, *Mandatory Mediation in Custody/Visitation Matters: California's Bold Stroke*, 21 FAM. CONCILIATION COURTS REV (1983).
2. See Cal. S. 2124 (2000).
3. See Robert H. Mnookin and Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).
4. See McIsaac, *supra* note 1.
5. See Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545, 1545-1610 (1991).
6. See 1996 Snapshot Study Parent Viewpoint Questionnaire. Center for Children and the Courts, Administrative Office of the Courts, Judicial Council of California.
7. See Jessica Pearson, *Mediation and Divorce: Benefits Outweigh the Cost*. The Family Advocate (1982).
8. Statistics obtained from the California Administrative Office of the Courts for staffing, divorce filings, and the 1996 statewide snapshot study. Staffing for the Alameda Family Court Services verified by Larry Lehner, Director.
9. In Tillamook and Clatsop counties, two rural coastal counties in Oregon with populations less than 40,000, the court pays no more than \$200 for four mediation sessions.
10. See Conversation with Don Saposnek, Ph.D., nationally recognized mediator and author of the text *Mediating Custody Disputes*.
11. See R. Reuben. E-mail message to author (March 28, 2000).
12. See *id.*
13. See Snapshot Study, *supra* note 6.
14. See *id.*
15. Information from Sharon James who worked in a recommending county (Ventura County) but now works in a nonrecommending one (Portland, Oregon).
16. See L. Nader, *From Legal Processing to Mind Processing*, 30 FAM. CONCILIATION COURTS REV 468, 468-73 (1992).
17. Comments of Honorable Stephen Tiktin, Presiding Judge Deschutes County at 1st Annual Oregon Statewide Family Law Conference, held in Eugene, Oregon, April 24-25, 1999.
18. Unpublished memo, Center for Children and the Courts, Administrative Office of the Courts, Judicial Council of California. Updated March 9, 2000.
19. See Hugh McIsaac, *Programs for High Conflict Families*, 35 WILLAMETTE L. REV. 567, 567-83 (1999).
20. See Administrative Office of the Courts unpublished memo, *supra* note 18.
21. Telephone Interview with Jeanne Ames (April 3, 2000).
22. See Cal. SB 433, Chaptered February 16, 2000.
23. William Howe and Maureen McKnight, *Oregon Task Force on Family Law: A New System to Resolve Family Law Conflicts*, 33 FAM. CONCILIATION COURTS REV 173, 173-81 (1995).
24. See *id.*
25. See generally, Barbara Babb, *Fashioning and Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S.Cal.L.Rev. 469 (1998).

Hugh McIsaac was director of Family Court Services for the Los Angeles County Superior Court; was director of Family Court Services in Multnomah County, Portland, Oregon; was the editor of the Family and Conciliation Courts Review; served as secretary for the Oregon Task Force on Family Law; and helped develop Oregon's nationally recognized Family Court Plan. Currently, he is a member of the Oregon State Family Law Advisory Committee and director of the Oregon Family Institute—a nonprofit group established in 1989 to assist small, rural courts in developing effective family court services—and is also on the Tillamook and Clatsop County Circuit Court Mediation panels in Oregon.

A STUDY OF DOMESTIC MEDIATION OUTCOMES WITH INDIGENT PARENTS

Judith V. Caprez and Micki A. Armstrong

This research is a study of domestic mediation outcomes of a group of indigent clients served by a grant awarded to Family Development Services at Fort Hays State University by the Kansas Supreme Court Dispute Resolution Council. The period studied was September 1998 through December 1999. There was a total of 29 mediation cases included in the study. The results demonstrated that domestic mediation with indigent clients is equally as effective as domestic mediation with nonindigent clients. Several dependent variables were examined in respect to positive correlations with mediation outcomes.

HISTORY AND BACKGROUND

The Family Development Services Committee, a collaborative effort between community professionals and faculty of Fort Hays State University, Kansas, particularly faculty in the Department of Sociology and Social Work, began meeting in November of 1996. Through meetings and discussions, this group identified the need for services focusing on programs for low-income families, particularly parenting education, divorce education, individual and family counseling, and mediation for families in western Kansas. In addition, the partnership of Family Development Services with Fort Hays State University identified the possibilities for students to engage in practical experiences in the various services offered.

In the spring of 1998, the Department of Sociology and Social Work at Fort Hays State University, with approval from the Kansas Office of Judicial Administration, added an approved domestic-mediation course as an elective at both the baccalaureate and graduate levels. This course is offered at sites in Hays and Garden City Community College, Kansas. Since 1998, 60 students and several faculty have completed the mediation training, and four students have received approved mediator status. Furthermore, students have options to participate in internships under the supervision of approved mediators. Completion of internships allows students to apply for approval as Kansas Supreme Court Mediators.

In 1993, the 15th, 17th, and 23rd judicial districts adopted policies to refer divorce cases that involve contested child custody and child visitation to mediation. Mediation can be court ordered or by mutual consent of both parties. Generally, all districts have lists of private mediators available to the parties, and the cost of mediation is split between the parties.

Using the federal poverty guidelines to classify family incomes (see Appendix C), the Family Development Services Committee assessed mediation services available for low- to moderate-income families. These three judicial districts are primarily rural and had no programs in place to address mediation services for low-income or indigent families, who often present complex and conflictual dynamics. Recognizing that divorce and custody conflicts are so common today, with poverty a major contributing factor, the committee made the provision of a family mediation program for low-income and indigent clients the central focus of Family Development Services.

Family Development Services applied for and was awarded a \$10,000 grant from the Kansas Supreme Court Dispute Resolution Council to perform indigent mediation. This

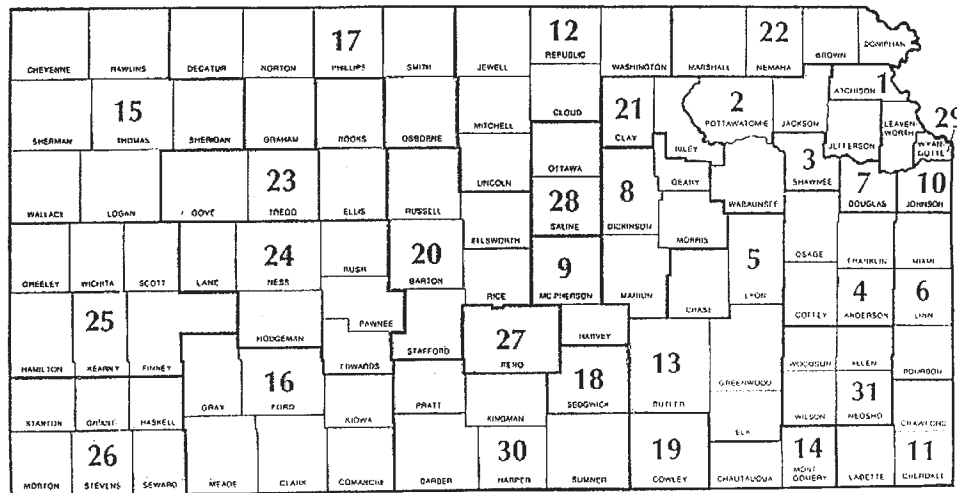


Figure 1. The 15th, 17th, and 23rd judicial districts of the 31 in Kansas adopted policies to refer divorce cases involving contested child custody and child visitation to mediation in 1993.

research study includes the indigent cases referred during the designated grant period from September 1998 to December 1999. The program has continued beyond the grant by pro bono contributions of faculty and sliding-fee scales (see Appendix B).

SURVEY OF LITERATURE

Although there are limited research studies in the literature about mediation outcomes specifically for indigent families, there is information about mediation outcomes that includes both indigent and nonindigent families. There is also considerable supporting data relevant to the effectiveness of mediation versus litigation and relevant to the impact of continuing parental postdivorce conflict on children.

Garrity and Baris (1994) stated unequivocally that the most powerful influence on children's postdivorce adaptation is the status of parental conflict. Essentially, the longer, the more hostile, the more intense the conflict between parents, the more damage occurs to the children. Conversely, Warshak (1992) enumerated the five coping factors he found most important for children to have to prevent the development of postdivorce problems. The first condition is enough access to both parents to ensure quality relationships. The second circumstance necessary for healthy adjustment in children is a low-conflict, cooperative parenting relationship, postdivorce.

Twaite, Silitsky, and Luchow (1998) listed 10 categories of factors that determine postdivorce outcome for children. The first five are as follows: (a) the extent of the conflict between the parents, both during and after divorce; (b) child custody arrangements; (c) the mental and emotional stability of the parent who has residential custody; (d) the remarriage of the primary custodial parent; and (e) the predictability and frequency of the contact with the parent who has visitation.

Thus, the importance of family mediation is clear, as it is a process of conflict resolution that addresses the major issues for children in divorcing and divorced families. Deutch, Morton, and Coleman (2000) found in their research that mediation as a process of settlement had four major benefits. Parties were more apt to compromise in mediation than they were in litigation; there was more equitable sharing of resources; settlements were achieved more quickly; and mediation was less costly both to the parties involved and to the courts.

Emery (1994) reported three categories of outcomes in a study that compared mediation with litigation. The Charlottesville Mediation Project, conducted in 1987 by Emery and Wyer, was a random study of 71 families in child custody disputes (Emery & Wyer, 1987a, 1987b). There were 35 families who were in mediation and 36 in court litigation. The families chose which process they wanted. Although this sample is only one group of families in one state, most of whom were younger with preschool children, nevertheless some very clear response patterns were discovered. Mediation proved to be more effective than litigation for the following reasons: (a) mediation reduced the cost and number of court hearings, (b) it increased the compliance of the parties mediating compared to the parties in litigation, and (c) it proved much more satisfying to all the parties involved than did litigation. Parents were more satisfied with decisions made, how they were made, and with the win-win outcomes.

In Ontario, Canada, Birnbaum and Radovanovic (1999) conducted a pilot study of 40 divorcing parents of lower- to middle-income status, using a model of 10 hours of mediation compared to the 22 hours that was the existing norm for mediation. Disputes were about visitation issues. Any of the cases with issues of sexual and/or physical abuse, parent alienation, or domestic violence were eliminated from the study. The study demonstrated that the shorter, briefer process was as effective as the longer mediation process. The study was done to observe the effects of shorter-term mediation because of the higher number of parental disputes in Ontario, coupled with the diminishing amount of public funds available.

In a 1991 study by Depner, Cannata, and Ricci (1994), 1,338 families from the California Family Court Services Program were evaluated in a study known as the California Family Court Services Snapshot Study. This number represented 82% of all families seen at the California Family Court Services during the time period of the study. The results were similar to other mediation studies: Parents felt mediation was very helpful in working out solutions to child custody and visitation issues and were satisfied with the outcomes. However, some additional significant data were reported in this study. Mediation was noted as more helpful by parents with less education, lower incomes, and by those of ethnic minorities. This positive relationship of outcomes to less education, lower income, and ethnicity certainly supports our supposition that mediation is a viable option for domestic dispute resolution with indigent families.

In 1995, the Office of Juvenile Justice and Delinquency Prevention, under the Office of Justice Programs, U.S. Department of Justice (Howell, 1995), published a guide for strategies to combat serious, chronic, and violent problems in juvenile offenders. This program assessed the risk factors for juveniles in health and behavior. Factors were applied to problem behaviors of substance abuse, delinquency, teenage pregnancies, school dropouts, and violence. The categories of risk factors examined included community, family, school, and individual/peer. Under family risk factors, the two items that were universally applicable to all juvenile behavior problems were family management problems and family conflict. Again, we find that family mismanagement and conflict are significant predictors of problems for children, both of which underscore the merit of mediation over adversarial court procedures for family conflict resolution.

The results of a study by Shaw, Singer, and Povich (1993) were published in which they outlined their recommendations for national standards for court-related mediation programs. This study was conducted jointly by the Institute of Judicial Administration, New York City, and the Center for Dispute Resolution in Washington, D.C., for the purpose of developing national standards for court-related mediation programs. Standard 1.0 refers to Access to Mediation and states very clearly that mediation should be available on the same basis as other court services, meaning mediation should not be based on ability to pay or denied to anyone of diversity or minority status. Standard 13.0 specifically addresses the funding and cost of mediation programs. It states that the service should be universally available regardless of ability to pay. Furthermore, the standard states that even when the court suggests, rather than orders, mediation, the courts should see that mediation is available to indigent families, either through state funding or by encouraging mediators to whom the courts make referrals to provide services for reduced fees. When the court orders mediation, the cost should be covered by public funds. This standard suggests funding mediators employed by the courts or contracting with private mediators on a fee-for-service basis.

RATIONALE

We undertook this study to demonstrate whether a mediation program for indigent families is effective in resolving family and child custody disputes. We feel that indigent families need mediation services as much as, or more than, nonindigent families. We were particularly interested in the outcomes of domestic mediation for indigent parents because historically, indigent families or individuals have the poorest outcomes in health, social services, and criminal justice systems.

Moreover, because research regarding the outcome of mediation in rural areas is also rare, the study provided information about services to rural indigent families. Since the beginning of this grant project, the ultimate goals of this program have been to (a) have a pool of trained and approved mediators located in the western part of Kansas, and (b) provide mediation services to families regardless of income. Our commitment to those goals is based on our commitment to the well-being of the children of divorced families, who will benefit from family mediation because it resolves most of the major conflicts responsible for postdivorce adjustment problems in children.

DEFINITION OF TERMS

- Adversarial: A process in which parties oppose each other to litigate their disagreement. The outcome is usually win/lose or right versus wrong.
- Divorce: Dissolution of the bonds of marriage.
- Impasse: The inability to move toward a mutually negotiated agreement.
- Indigent: Mediation client(s) whose income level is 175% of federal poverty guidelines.
- Full Agreement: Resolution of all areas of conflict or all issues of disputes.
- Litigation: A controversy in a court; a judicial contest through which legal rights are sought to be determined and enforced.
- Mediation: A process in which an impartial third party, who has no decision-making power, assists disputing parties in problem solving and facilitates communication. Participation by the parties can be either voluntary or by court order, but agreement of the settlement of issues is voluntary.

- No Show: Cases in which the referred parties scheduled sessions but did not show up for appointments.
- Partial Agreement: Agreement was reached on some issues but others will be resolved by other methods or the court.
- Paternity Action: An action filed to determine parentage and financial support of a minor child(ren).
- Pretrial Conference: A conference to define issues, exchange information and exhibits, witness lists, set discovery dates, and determine matters agreed on prior to trial.
- Principals: The disputing parties participating in mediation.
- Significant Other: A household member or intimate relationship other than spouse involved in parenting the minor children.
- Temporary Agreement: A trial agreement whereby parties plan to return at a later date to negotiate a more permanent agreement.
- Truncated: Cases in which referred parties did not respond to letters to schedule mediation sessions.

HYPOTHESIS

The hypothesis of this study was that mediation with indigent families regarding child custody disputes and visitation is effective. Several dependent factors were examined. These dependent variables were selected from a combination of information compiled from previous research studies plus the experience of the authors in mediation practice.

RESEARCH DESIGN

The 18-month study covered the time period from July 1, 1998, to December 31, 1999. There were 48 case referrals from the 15th, 17th, 20th, and 23rd judicial districts. Of the 48 referrals, 34 were mediated. Of those 34 cases, 29 were defined as indigent by at least one party meeting income-qualifying criteria for indigents. The remaining 14 cases classified as truncated (did not respond to letters to schedule mediation sessions) were eliminated because they could not be documented as indigent.

A mediation assessment questionnaire (see Appendix A) was administered to closed mediation case records. Case records were also examined in county courthouses to obtain data not available in the mediation records.

The authors hypothesized that domestic mediation outcomes with indigent clients would be as successful as domestic mediation outcomes with nonindigent clients. To ascertain the validity of the indigence in the sample, case indigence was tabulated. To confirm that our indigent sample was generally comparable to other research samples of domestic mediation clients in relation to basic demographics, we included the following information:

- Age range of principals;
- Age range of minor children who were subjects of mediation;
- Marital status of principals;
- Number of court ordered versus voluntary referrals;
- Types of cases;
- Average number of mediator hours per case.

We examined selected dependent variables because of expectations that those particular factors would affect the outcomes of domestic mediation. Those subhypotheses included the following:

Subhypothesis 1: That those cases in which a spouse or significant other was involved in mediation, by mutual consent of all principals, and such individuals were found to be helpful, would have higher rates of agreement.

Subhypothesis 2: That the longer the period of time between filing and mediation, the poorer the outcome.

Subhypothesis 3: That the higher the number of premediation litigations, the more likely a poorer outcome.

RESEARCH STUDY RESULTS

Regarding the basic demographic information on the 29 cases, the rate of indigence for women to men was 3:2. More recent literature regarding spousal income postdivorce reports reveal that the percentage of women in poverty is not as great as previously reported nor the income of husbands as high. This study demonstrates more women than men as indigent, but not by as great a margin as past figures in the research have indicated. According to Peterson's (1996) study in Los Angeles County, income of divorced men rose 10% the first year after divorce and that of women decreased by 27% during that same time period. According to Braver (1998), who used a number of different sources of data and varying methods of computation regarding postdivorce incomes of ex-spouses, both mothers and fathers one year after divorce are very close to their predivorce levels of income. Fathers show a 5% increase and mothers a 5% decrease in income.

Ages of principals ranged from late teens to mid-40s, with a concentration of subjects between 21 and 40 years of age (69%) for the total sample of cases.

The total sample of age range of children was balanced among the five age categories. However, in paternity cases, as one might expect, 57.1% of the children were birth to 2 years of age, and none fell in the 11 to 18 age ranges. In the paternity cases, there was one child per case. In divorce cases, 74.4% of the children fell in the age groups of 6 to 18 years. The mean average number of children per divorce case was 1.95. These figures regarding divorced families are substantiated by data from Lamanna and Reidmann (2000). Infants, preschool children, and the presence of many natural children in the original marriage stabilize marriages.

Of the divorced principals, only 22.8% were remarried and only 28.6% of the unmarried principals had married. The combined categories of Divorced and Never Married totaled 75.8% of the sample. The rate of single-parent households, therefore, was very high in this sample.

Of the 29 cases, 26, or 89.7%, were court ordered. There are no state statistics available for comparison.

Domestic mediation cases of unmarried parents (paternity cases) represented 24.1% of the total sample. There has not to date been a lot of research reported on the use of domestic mediation by unmarried parents for child custody and visitation issues.

The average hours per case for children was figured on the basis of 12 cases, rather than 29 cases, because children 8 years and younger were not interviewed unless they were part of an older sibling group. The time of the mediator in the cases studied was on target with 1999

Table 1

Case Indigence in Kansas Study Sample From September 1998 to December 1999 (N = 29)

	Number of Cases	%
Mother only	11	37.9
Father only	2	6.9
Both principals	16	55.2
Total females	27	93.1
Total males	18	62.0

Table 2

Age Range of Principals by Type of Case Filed From Kansas Study Sample From September 1998 to December 1999 (N = 58 principals)

Age Range	Divorce		Paternity		Total	
	n	%	n	%	n	%
15 to 20	2	4.8	4	25	6	10.3
21 to 30	7	16.7	9	56.2	16	27.6
31 to 40	21	50	3	18.8	24	41.4
41 to 50	12	28.5	0	0	12	20.7
Total	42	100	16	100	58	100

Table 3

Age Range of Minor Children Who Were Subjects of Mediation by Type of Case Filed From Kansas Study Sample From September 1998 to December 1999

Age	Divorce		Paternity		Total	
	n	%	n	%	n	%
Birth to 2	3	7	4	57.1	7	14
3 to 5 years	8	18.6	2	28.6	10	20
6 to 10 years	12	28	1	14.3	13	26
11 to 13 years	10	23.2	0	0	10	20
14 to 18 years	10	23.2	0	0	10	20
Total	43	100	7	100	50	100

NOTE: Divorce = 22 cases; paternity = 7 cases.

Kansas mediation statistics from the Office of Judicial Administration, Dispute Resolution Coordinator, which documents 8 hours per case as the average mediation time.

In this study, the agreement rate was 82.8% and the impasse rate was 17.2%. In regard to this table, the authors were unable to locate any statistical data, either state or national, with which to compare the rate of agreement versus impasse in mediation outcome.

The percentage of spouse/significant other involvement was relatively low (22.4%) because the percentages of divorced principals who were remarried and single parents who had married was also low (24.2%). The rate of helpfulness of those who were involved was very high (92.3%). The experience of the researchers, both of whom have extensive experi-

Table 4

Marital Status of Principals at Time of Mediation in Kansas Study Sample From September 1998 to December 1999
(N = 58 principals)

Type of Case	Divorced		Remarried		Never Married		Married		Total	
	n	%	n	%	n	%	n	%	n	%
Divorce	34	77.3	10	22.8	0	0	0	0	44	100
Paternity	0	0	0	0	10	71.4	4	28.6	14	100
Total Cases	34	58.6	10	17.2	10	17.2	4	6.9	58	100

Table 5

Court Ordered Versus Voluntary Mediation Referrals in Kansas Study Sample From September 1998 to December 1999 (N = 29)

	n	%
Court ordered	26	89.7
Voluntary ^a	3	10.3
Total cases	29	100

a. Voluntary cases were two paternity cases and one divorce case.

Table 6

Type of Cases Filed From Kansas Study Sample From September 1998 to December 1999 (N = 29)

	n	%
Divorce	22	75.9
Paternity	7	24.1
Total cases	29	100

Table 7

Average Number of Mediator Hours per Case in Kansas Study Sample From September 1998 to December 1999

Categories of Mediator Time	Total Hours	Average Mediation Hours Per Case
Principals	198.50	6.84 ^a
Children	10.0	.83 ^b
Administrative	44.0	1.52 ^a
Total	252.50	8.67 ^a

a. N = 29.

b. N = 12.

ence working with divorced and remarried families, supports the significance of spouses and significant others regarding the degree of cooperation between ex-spouses in custody and visitation practices.

There appears to be no significant difference in mediation outcome related to type of case filed (i.e., divorce or paternity). Divorce cases did show more temporary and fewer full

Table 8

Mediation Agreement Versus Impasse Outcomes in Kansas Study Sample From September 1998 to December 1999
(N = 29)

	n	%
Agreement	24	82.8
Impasse	5	17.2
Total cases	29	100

NOTE: *Agreement* includes the categories Full, Partial, and Temporary.

Table 9

Involvement of Spouse/Significant Other in Mediation in Kansas Study Sample From September 1998 to December 1999 (N = 58)

	Yes		No		Total	
	n	%	n	%	n	%
Divorce	10	22.7	34	77.3	44	100
Paternity	3	21.4	11	78.6	14	100
Total cases	13	22.4	45	77.6	58	100

Table 10

Helpfulness of Spouse/Significant Other Involved in Mediation in Kansas Study Sample From September 1998 to December 1999

	Helpful		Not Helpful		Total	
	n	%	n	%	n	%
Divorce	10	100	0	0	10	100
Paternity	2	66.7	1	33.3	3	100
Total cases	12	92.3	1	7.69	13	100

Table 11

Helpfulness of Spouse/Significant Others Related to Mediation Outcomes in Kansas Study Sample From September 1998 to December 1999 (N = 12 Principals)

Mediation Outcome	n	%
Full	8	66.7
Partial	0	0
Temporary	3	25
Impasse	1	8.3
All principals	12	100

NOTE: Twelve principals represented 9 cases.

agreements than did paternity cases. However, because of the small number of cases, any kind of valid generalization is not possible.

Table 12

Type of Case Related to Specific Outcome in Kansas Study Sample From September 1998 to December 1999 (N = 29)

	Full Agreement		Partial Agreement		Temporary		Impasse		Total	
	n	%	n	%	n	%	n	%	n	%
Divorce	9	40.9	1	4.5	8	36.4	4	18.2	22	100
Paternity	4	57.1	1	14.3	1	14.3	1	14.3	7	100
Total cases	13	44.8	2	6.9	9	31	5	17.2	29	100

Table 13

Length of Time From Filing to Mediation Related to Mediation Outcome in Kansas Study Sample From September 1998 to December 1999 (N = 29)

	1 to 3 Months	3 to 6 Months	6 to 12 Months	1 to 2 Years	2 to 5 Years	5 to 10 Years	Older Than 10 Years	Total
Full	1	2	2	2	4	2	0	13
Temporary	3	1	1	0	2	1	1	9
Partial	1	0	0	1	0	0	0	2
Impasse	0	1	2	1	1	0	0	5
Total	5	4	5	4	7	3	1	29

Table 14

Number of Premediation Motions Filed Related to Mediation Outcome in Kansas Study Sample From September 1998 to December 1999 (N = 29 cases)

	0	1	2	3	4	5	6	More Than 6	Total
Full	2	6	4	0	0	0	1	0	13
Temporary	3	3	2	0	1	0	0	0	9
Partial	1	1	0	0	0	0	0	0	2
Impasse	1	0	2	1	1	0	0	0	5
Total cases	10	8	7	1	2	0	1	0	29

Contrary to research expectations, there was no positive correlation between length of time from filing to mediation. The expectation was that the longer the time between filing and mediation, the less likely that a successful outcome would be reached. Table 13 shows a random distribution of cases and does not demonstrate any correlation between length of time and type of outcome. What Table 13 does demonstrate is that mediation at varying stages in child custody and child visitation disputes can be helpful.

The summary of premediation motions per case does not include legal procedures or court policies that are part of a divorce or paternity action, such as the pretrial conference and the paternity or divorce hearing itself. In addition, any legal actions regarding child support issues were not included because the court has legally and philosophically separated child support issues from custody and visitation issues. Premediation motions tabulated included

restraining orders and motions for changes in visitation and/or custody. These particular motions were selected because they are indicative of parental conflict regarding the children. The relationship of premediation motions filed to mediation outcomes appears to be random and does not support the prestudy supposition that those cases with the higher number of premediation litigations would have the least successful outcomes.

CONCLUSIONS AND RECOMMENDATIONS

The hypothesis of this study, that domestic mediation for child custody and child visitation with indigent clients would be effective, was proven by the results.

Subhypothesis 1 was substantiated—that higher rates of agreement were found in cases in which the involvement of spouses/significant others had been evaluated as helpful. In the 12 cases involving helpful spouses/significant others, 11 reached agreement and 1 resulted in impasse, for an agreement rate of 92%. Therefore, the authors encourage mediators to explore the inclusion of spouse/significant others in mediation sessions.

Subhypothesis 2, that the longer the period of time between filing and mediation, the greater the chances of poor outcome, did not prove to be true. The distribution of length of time between filing and mediation related to outcome showed no positive correlation. However, our data did demonstrate that mediation proved to be helpful at any stage regardless of length of conflicted time preceding mediation.

Likewise, Subhypothesis 3, that the number of premediation orders filed would be a prediction of outcome, did not prove to be true. There was basically a random distribution of number of premediation court orders filed in relation to all outcomes.

The clientele studied in this project were in mediation sometime between September 1998 and December 1999. Because this study was completed in August of 2000, there was not a significant enough passage of time to allow for a meaningful follow-up study. We intend to conduct a follow-up study in 2002, at which time 2 to 4 years will have passed since the mediation dates of these cases.

We would also like to call attention to the fact that one out of four cases served by this grant were nonmarried parents. This group has not been identified or researched in terms of suitability for mediation for child custody and child visitation issues. With 32% of babies born to single mothers (Lamanna & Riedmann, 2000) who are generally young and indigent, these single parents should be included in any planning programs for domestic mediation.

If and when mediation services for indigent parents become the norm, then this population may seek mediation voluntarily, which may increase the likelihood of agreement and therefore decrease parental conflict. Although ongoing parental conflict is a significant stressor to children regardless of socioeconomic level, it is compounded in indigent families by the presence of other family stresses related to poverty.

We recommend that states provide mediation services for indigent and nonindigent clientele. Such programs need state-supported funding. Clients should be responsible for a portion of the cost of mediation based on ability to pay. Shaw et al. (1993) compiled national standards for court-connected mediation programs that provide a comprehensive guide for establishing such programs. These guidelines and standards are readily available to states for implementation. The authors believe that mediation centers strategically located statewide to serve indigent and nonindigent parents, either court ordered or voluntary, on an ability-to-pay fee scale, and subsidized by state funding, would be the most feasible plan for the implementation of universally available mediation services.

APPENDIX A
Mediation Assessment Instrument

DEMOGRAPHIC DATA:

TYPE OF CASE: _____ DATE FILED: _____

BY WHOM: _____

COUNTY: _____ CLIENT NO.: _____

DATE OF MARRIAGE: _____ DATE OF DIVORCE: _____

MEDIATION: VOLUNTARY ☐ COURT ORDERED ☐

PRINCIPALS FATHER: _____	PRINCIPALS MOTHER: _____
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OTHER: _____	OTHER: _____
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AGE: _____ AGE: _____

OCCUPATION: _____ OCCUPATION: _____

RESIDENCE DURING MEDIATION: _____	RESIDENCE DURING MEDIATION: _____
--------------------------------------	--------------------------------------

SPOUSE: () YES () NO SPOUSE: () YES () NO

SIGNIFICANT OTHER: () YES () NO SIGNIFICANT OTHER: () YES () NO

S.O./SPOUSE INVOLVED: () YES () NO S.O./SPOUSE INVOLVED: () YES () NO

S.O./SPOUSE HELPFUL: () YES () NO S.O./SPOUSE HELPFUL: () YES () NO

CHILD(REN) _____ DATE OF MEDIATION: _____

SEX _____ AGE _____ CLASSIFIED/INDIGENT: _____

MOTHER: _____

FATHER: _____

BOTH: _____

ATTORNEY: _____ ATTORNEY: _____

PREMEDIATION CUSTODY ARRANGEMENT: _____

PREMEDIATION LITIGATION: _____

ISSUES FOR MEDIATION: _____

MEDIATION OUTCOMES:

FULL AGREEMENTS _____

PARTIAL AGREEMENTS _____

TEMPORARY AGREEMENTS _____

IMPASSE _____

NO SHOWS _____

DISPOSITION OF NO SHOW:

• CUSTODY EVALUATIONS ORDERED AND DONE _____

• COURT HEARING FOR CUSTODY _____

• WITHDRAWAL OF MOTION BY FILING PARTY _____

• DIVORCING PARTIES REACH AGREEMENT THEMSELVES _____

DISPOSITION OF IMPASSE CASES:

• CUSTODY EVALUATIONS ORDERED AND DONE _____

• COURT HEARING FOR CUSTODY _____

• WITHDRAWAL OF MOTION BY FILING PARTY _____

• DIVORCING PARTIES REACH AGREEMENT THEMSELVES _____

TOTAL NUMBER OF HOURS IN SESSION: _____

TOTAL NUMBER OF HOURS IN INDIVIDUAL SESSIONS: _____

TOTAL NUMBER OF HOURS IN JOINT SESSIONS: _____

TOTAL ADMINISTRATION HOURS: _____

TOTAL MEDIATION HOURS: _____

POST MEDIATION LITIGATIONS: _____

APPENDIX B

Fort Hays State University Indigent Mediation Program

Eligibility Guidelines

Participant's Income Level	Fee per Hour in Dollars
Less than 100% of federal poverty guidelines	5
Between 100% and 125% federal poverty guidelines	10
Between 125% and 150% federal poverty guidelines	20
Between 150% and 175% federal poverty guidelines	30
Between 175% and 200% federal poverty guidelines	40

APPENDIX C

Guidelines Used by Kansas Legal Services for Low-Income Clients

Size of Family	Poverty Level in Dollars	125% of Poverty Level in Dollars	150% of Poverty Level in Dollars	175% of Poverty Level in Dollars	187.5% of Poverty Level in Dollars	200% of Poverty Level in Dollars
1	8,050 (670.83)	10,063 (838.58)	12,075 (1,006.25)	14,088 (1,174.00)	15,094 (1,257.83)	16,100 (1,341.67)
2	10,850 (904.17)	13,563 (1,130.25)	16,275 (1,356.25)	18,988 (1,582.33)	20,344 (1,695.33)	21,700 (1,808.33)
3	13,650 (1,137.50)	17,063 (1,421.92)	20,475 (1,706.25)	23,888 (1,990.67)	25,594 (2,132.83)	27,300 (2,275.00)
4	16,450 (1,370.83)	20,563 (1,713.58)	24,675 (2,056.25)	28,788 (2,399.00)	30,844 (2,570.33)	32,900 (2,741.67)

APPENDIX C

Continued

Size of Family	Poverty Level in Dollars	125% of Poverty Level in Dollars	150% of Poverty Level in Dollars	175% of Poverty Level in Dollars	187% of Poverty Level in Dollars	200% of Poverty Level in Dollars
5	19,250 (1,604.17)	24,063 (2,005.25)	28,875 (2,406.25)	33,688 (2,807.33)	36,094 (3,007.83)	38,500 (3,208.33)
6	22,050 (1,837.50)	27,563 (2,296.92)	33,075 (2,756.25)	38,588 (3,215.67)	41,344 (3,445.33)	44,100 (3,675.00)
7	24,850 (2,070.83)	31,063 (2,588.58)	37,275 (3,106.25)	43,488 (3,624.00)	46,594 (3,882.83)	49,700 (4,141.67)
8	27,650 (2,304.17)	34,563 (2,880.25)	41,475 (3,456.25)	48,388 (4,032.33)	51,844 (4,320.33)	55,300 (4,608.33)

NOTE: The fee is negotiated with each participant based on his or her income level and the natural children supported by this income. Numbers without parentheses indicate the annual salary; numbers in parentheses indicate the monthly salary.

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STUDENT NOTES

MEDIATION TRENDS A Survey of the States

Carrie-Anne Tondo, Rinarisa Coronel, and Bethany Drucker

With the shift to no-fault divorce in the late 1970s,¹ there was an increase in the divorce rate.² In addition, a change in custody standards³ played a vital role in the conception of mediation, which subsequently paved the way for the advent of joint custody. This joint custody revolution required a rethinking of the procedural role of the custody courts.⁴ To handle this growth, policy makers began (and continue) to implement legislation pertaining to divorce and mediation.⁵ Where the legislature has not codified mediation in statutes, in most states, there exist various forms of local rules that the courts follow. These rules may or may not change among jurisdictions, dependent on which state is being analyzed.

Family and divorce mediation is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement.⁶ Without the need to dwell on blame and conflict, this interest in the nonadversarial mediation process grew.⁷ However, the transformation in the custody court's role from fault-finder to conflict manager and beyond is far from complete. The purpose of this mediation survey of the states is to analyze the current state statutes and court rules that are in effect and to identify changes in the processes, if any, that states have enthusiastically implemented to further the goals of mediation. The attractiveness of mediation is due in part from the role the mediator plays in the process. Courts, overwhelmed with custody cases, began to understand that children were negatively affected by parental conflicts in divorce proceedings and that the children, in return, were hurt not only during the proceedings themselves but for a long duration thereafter.

Mediators are known for "aid[ing] the parties in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise and finding points of agreement."⁸ Mediation allows consideration for matters outside of the legal forum. The pro-

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cess of mediation is recognized for preserving relationships, avoiding a win-lose decision, putting a premium on control by disputants, and dealing with multiple issues.⁹ Mediation offers parents the possibility of self-determination and the ability to formulate their own postdivorce parenting plan rather than have a court impose one on them.¹⁰ Experience has established that family mediation is a valuable option for many families because it can increase the self-determination of the participants and their ability to communicate, promote the best interests of the children, and reduce the economic and emotional costs associated with the resolution of family disputes.¹¹ Policy makers are recognizing the quality of justice and that the participant satisfaction from mediation is worth pursuing.¹²

Furthermore, as a result of the implementation of mediation, parties have reported reasons for high satisfaction with mediation as follows: Mediation enabled them to deal with issues they themselves felt important, mediation allowed them to present their views fully and gave them a sense of being heard, and mediation helped them to understand each other.¹³ Overall, mediation gives the parties a greater degree of participation in the decision-making process and a fuller opportunity to express themselves and to communicate their views.¹⁴

This article reports findings from a survey of the fifty states on the practice of mediation in courts on issues of domestic relations, inclusive of divorce, child custody, and domestic violence. The goals of our study were to gain a clearer and updated understanding of the legal authorization for the use of mediation in the dissolution of the marriage and to what extent states have captured this process and regulated the mediation process by statute, court rules, or other means. Specifically, we were interested in learning how states are currently regulating mediation in the family courts. We were particularly concerned with the topics to be mediated, the exceptions to mediation, who pays for the process, the qualifications and duties of the mediator, and the outcome, if any, of the mediation process.

The initial phases of research for this study included an in-depth analysis of state statutes, legislative acts, and court rules. The traditional methods of legal research on this study were employed; however, those methods were unable to capture the significant changes in mediation that courts have put in place. Change in this area generally starts at the local level, rather than with the legislature. Therefore, it was essential to explore the court rules of the states to understand how that particular state applied the mediation process. Since there is an ever-increasing awareness of the vital importance of the role that mediation plays in family relations and since laws and methods of mediation are constantly being revised, research included a final verification stage. This phase included a nationwide survey of selected Association of Family Court and Community Professionals members who thankfully affirmed or altered our initial findings to conform to each state's most current mediation methods.¹⁵ Because methods are constantly changing due to newly developed research and studies pertaining to the valuable usage of mediation, we placed a cutoff date of December 31, 2000, on this research survey. Despite the need for this cutoff date, the *Family Court Review* will update this survey as changes arise. Our future intention is to expand this survey from a national level to an international awareness. Therefore, we ask for your continued support and assistance with this goal. If there should be a change in your state in regard to the mediation process, we ask that you contact *Family Court Review*, and we will publish an updated version of the survey in a future edition. Likewise, if there are any essential data that are missing or that do not conform to the state's most current practices, please inform us and we will quickly issue any corrections in our forthcoming editions. This survey is an ongoing and necessary tool that will enable us to understand the significant role that mediation lends to the family court systems of the states.

Findings to date show that mediation of family relations is not used in the precise manner in any two states. Currently, there are thirty-eight states that have legislation that regulates family mediation. Although the remaining twelve states do not have such legislation, there are in some states local rules that apply and vary among jurisdictions. This finding in and of itself suggests the need for uniformity. In states that have mediation statutes, it was found that mediation is used most widely at the courts' discretion. Most states will not refer cases to mediation in which there are mere allegations of domestic abuse. Generally, the parties are responsible for payment of the mediation process. In most instances, the court appoints a qualified mediator; however, many states allow the parties to select a mediator subject to court approval. The mediation process is generally confidential; however, there are a few exceptions in certain states. One such exception is child abuse and neglect and juvenile proceedings.¹⁶ Interestingly, North Carolina was the only state that also excluded mediation from instances in which substance abuse was involved. Furthermore, most agreements reached through mediation are not binding until approved by the court. If no agreement is reached, generally, the cases go to trial.

Overall, from our studies, we found that mediation should be at the court's discretion on all family dissolution issues. However, mediation should not be referred where issues of domestic violence, abuse, or neglect are alleged. Parties shall be responsible for paying the mediator except in cases in which the court determines that one or both parties are indigent. Fees for mediation should be allocated on a sliding-fee-scale basis proportionate to each spouse's yearly income. The parties should only be permitted to select a mediator from the court-approved list of qualified mediators. If the parties cannot agree, then the court should appoint a mediator. Qualifications of mediators should be uniform, inclusive of training and education that will aid the parties who are most often in an emotional state of mind. The mediation process should be confidential and privileged. The mediator should prepare a final draft of the agreements reached, signed by the parties and their counsel, if any, and file with the court for approval. If no agreement is reached, the case should be scheduled for hearing. As stated earlier, and is evident from the results of this survey, the transformation in the custody court's role from faultfinder to conflict manager and beyond is far from complete.

Once again, we would like to thank all of the Association of Family Court and Community Professionals members who assisted us with our research.

Alabama. Mediation is only mandatory for all parties if a motion is made by any party,¹⁷ or the trial court may on its own motion order mediation.¹⁸ Any issue can be mediated except in a petition for an order of protection¹⁹ and in custody or visitation proceedings where the court finds that domestic violence has occurred.²⁰ Mediation can be requested when there is evidence of domestic violence only if it is requested by the victim of domestic violence.²¹ It is provided by a mediator who is trained to deal with domestic violence issues in a way that protects the victim,²² and the victim is allowed to bring a support person to the session.²³ If one party makes a motion for mediation, that party must pay the mediation cost unless the parties agree otherwise.²⁴ If the court orders mediation, the mediator must be compensated at a reasonable rate and the burden shared equally by the parties unless the court orders otherwise.²⁵ The parties can select their own mediator. If they cannot agree on a mediator, then the court may select one at its discretion.²⁶ The qualifications are based on what the court deems appropriate given the subject matter to be mediated.²⁷ All records, reports, or other documents received by the mediator shall be considered confidential.²⁸

Alaska. The trial court can order mediation on its own motion or on a party's motion "whenever it determines that mediation may result in an equitable settlement."²⁹ In making this determination, the court will consider "whether there is a history of domestic violence between the parties which could be expected to affect the fairness of the mediation process or the physical safety of the domestic violence victim."³⁰ Mediation will not be ordered or referred in a proceeding concerning child custody or visitation or divorce if a protective order has been issued or filed under AK. STAT. §§ 18.66.100-18.66.180 (Michie 1998).³¹ Also, if a party objects on the grounds that domestic violence has occurred, then mediation will not be ordered or referred. Any issues concerning divorce and the dissolution of marriage can be mediated.³² Costs of mediation shall be borne equally by the parties unless the court apportions the costs differently between the parties.³³ In child custody mediation, costs will be paid by the state if both parties are indigent.³⁴ The court appoints the mediator and can appoint anyone the court finds suitable if the parties cannot agree on a mediator.³⁵ If mediation efforts have failed, then the mediator shall notify the court clerk and the divorce action shall proceed in the usual manner.³⁶ To date, Alaska does not have any statutes, regulations, or court rules regarding mediator experience or qualifications.

Arizona. Divorce mediation is at the court's discretion.³⁷ However, custody disputes are always subject to mediation.³⁸ The conciliation court judge may grant exemption from mandatory mediation if it would cause undue hardship.³⁹ The court may appoint a mediator, or the parties can contract with a private mediator in which event they are responsible for payment.⁴⁰ The mediator must be qualified and approved by the court.⁴¹ The mediation process is confidential. The mediator will put the agreement in writing—which will be signed by the parties, and counsel, if any—and submit it to the court for approval.⁴² If mediation is unsuccessful, then the mediator shall notify the court.⁴³

Arkansas. Mediation is at the discretion of the court. A party may object to mediation if good cause is shown. Each party is responsible for paying their cost of attending mediation. The parties may select a mediator from a list provided by the judge, or one approved by the judge. To be qualified, mediators must have met the Arkansas Alternative Dispute Resolution Commission's requirements.⁴⁴

California. Mediation is mandatory for disputed custody and visitation.⁴⁵ Where there has been a history of domestic violence or where a protective order is in effect, the mediator must meet with the parties separately and at separate times.⁴⁶ There is no direct cost to either party for the use of the Family Court Services' Mediation Program.⁴⁷ The court may appoint mediators, or the parties can select their own.⁴⁸ Mediation is confidential.⁴⁹ The mediator must report any agreement reached to counsel for the parties before filing with the court.⁵⁰ If no agreement is made, the mediator shall advise the court if further mediation may be helpful in resolving the matter, in which case, the court may order the parties to return for further mediation.⁵¹

Colorado. Mediation is at the court's discretion, subject to the availability of mediation services or dispute resolution programs.⁵² The court shall not refer parties to mediation where one of the parties claims to have been the victim of physical or psychological abuse.⁵³ Parties are responsible for paying the mediator for services. The mediator may be selected by the parties if not appointed by the court.⁵⁴ Colorado, at this time, does not have a certification process of mediators nor any standards. Rather, Colorado has voluntary standards that have

been established by the state mediation organization and its bar association; however, these standards are not required by either statute or court rules. Private mediators do most mediation rather than mediators working with the Office of Dispute Resolution. Mediators are not “qualified” within the meaning of formal qualification. Mediation is confidential.⁵⁵ The mediator shall supply the court, subject to approval, the agreement reached by the parties. If no agreement is reached, then the court shall set the matter for hearing.⁵⁶

Connecticut. Mediation programs are discretionary and can be established in any judicial district that the chief court administrator finds appropriate. The mediation process is confidential.⁵⁷ The statute further provides for mediation in visitation cases.⁵⁸ In addition, it provides for mediation in family violence criminal matters⁵⁹ and further provides for mediator confidentiality for private mediators in civil matters, inclusive of family matters.⁶⁰ In a district where there is a mediation program, mediation shall address property, financial, child custody, and visitation issues.⁶¹

Delaware. Mediation is mandatory in the family court on all issues concerning support, and/or all custody and visitation proceedings.⁶² Court-ordered mediation is prohibited where there are issues of domestic violence.⁶³ The mediation process is confidential.⁶⁴ When parties are unable to reach an agreement, the matter shall be referred to the court for judicial scheduling.⁶⁵

District of Columbia. Mediation is used in the United States District Court in the District of Columbia.⁶⁶ It is discretionary.⁶⁷ However, it is encouraged, and occasionally, the judge will require that parties mediate after giving them the opportunity to show cause why mediation will not work in their case.⁶⁸ Any civil case where the parties are represented by counsel is eligible for mediation.⁶⁹ It is at the court’s discretion which issues can be mediated and at which point in the dispute.⁷⁰ Mediators are members of the U.S. District Court Bar. They are selected by the court and trained by professional trainers.⁷¹ They represent litigants on a pro bono basis. If a settlement is reached, the agreement will be binding on all parties. If the case is not settled, the litigation process will continue.⁷²

Florida. In circuits in which a family mediation program has been established and upon a court finding of a dispute, a court shall refer to mediation, all or part of custody, visitation, or other parental responsibility issues as defined in F.S.A. § 61.13.⁷³ All contested family matters may be referred to mediation.⁷⁴ Upon motion or request of a party, a court shall not refer any case to mediation if it finds that there has been a history of domestic violence that would compromise the mediation process.⁷⁵ When appropriate, the court shall apportion mediation fees between the parties.⁷⁶ The parties can select either a certified mediator or a mediator who does not meet the certification requirements of the rules but who, in the opinion of the parties and on review by the presiding judge, is qualified by training or experience.⁷⁷ If they cannot decide on a mediator, the court shall appoint a certified mediator for the parties.⁷⁸ Mediation is confidential.⁷⁹ If an agreement is reached, it shall be in writing and signed by the parties and their counsel, if any, and filed with the court. If no agreement is reached, the mediator shall report the lack of an agreement to the court without comment or recommendation.⁸⁰

Georgia. There is no statute that dictates what should be done in domestic relations cases; however, it is the intent of the legislators “to encourage judges in divorce cases to require all

couples involved in contested divorces to go to mediation to attempt a mutually agreeable settlement.”⁸¹

Hawaii. An amendment to the Hawaii Family Court Rules⁸² provides that a motion to set a trial in a matrimonial action constitutes a declaration by the movant that a “bona-fide attempt to settle the issues in said case has been made, that mediation has been attempted or is inappropriate for reasons specified in said motion, and that these efforts have been unsuccessful.” Mediation is confidential, and evidence of conduct or statements made in compromise negotiations or mediation is likewise not admissible.⁸³ Mediation is not required when a party alleges family violence, unless the alleged victim specifically authorizes the mediation.⁸⁴ This is inclusive of alleged spousal abuse, allegations of family violence, in custody or visitation proceedings where a civil restraining order is in effect and in custody or visitation proceedings where there is no civil restraining order but where family violence has been alleged.⁸⁵

Idaho. A court shall order mediation if, in the court’s discretion, it finds that mediation is in the best interest of the children and is not otherwise inappropriate under the facts of the particular case.⁸⁶ All actions involving a controversy over custody or visitation of minor children shall be subject to mediation.⁸⁷ Parties are permitted to select a mediator from an approved list provided by the court.⁸⁸ The mediator must be a member of the Academy of Family Mediators, a member of the Idaho judiciary, licensed member of the State Bar, licensed psychologist, licensed counselor, or certified social worker who also has twenty hours of training in child custody mediation.⁸⁹ The mediator must have a bachelor’s degree with sixty hours of mediation training, twenty of which must be in the child custody field.⁹⁰ The mediator has a duty to define for the parties the mediation process before it begins. The mediator will not have any communication with the court other than on issues such as if the parties are in agreement or they failed to attend sessions.⁹¹

Illinois. There is no unified state statute. The following information derives from local rules of a single judicial circuit, of which there are many. We have chosen in this instance to include this circuit, for as mentioned earlier, changes begin at the local level. As such, mediation is discretionary in all family relations disputes.⁹² Mediation will not be referred where there exists family violence or intimidation.⁹³ Parties shall be responsible for paying the mediator except in cases in which the court determines that mediation would otherwise be unavailable for financial reasons.⁹⁴ The parties select a mediator from the court-approved list; if the parties cannot agree, then the court appoints the mediator.⁹⁵ Mediators must be qualified as required by Rule 6. Mediation is confidential.⁹⁶ The mediator must present to the court for approval the agreements reached by the parties.⁹⁷ The mediator will notify the court if an agreement has not been reached.⁹⁸

Indiana. There is no mediation statute.

Iowa. Mediation of all domestic disputes is at the discretion of the courts.⁹⁹ Issues that involve domestic abuse shall not be referred to mediation.¹⁰⁰ The parties are responsible for the costs of mediation.¹⁰¹ The parties can select any mediator they want, regardless of qualification or listing. Only if the court appoints a mediator, a qualified mediator from a list provided by the courts is chosen.¹⁰² Mediation is confidential.¹⁰³

Kansas. Mediation is discretionary.¹⁰⁴ Any issues of domestic disputes may be mediated. The parties are responsible for mediation fees.¹⁰⁵ Any understanding reached through mediation is not binding until it is in writing; signed by the parties and their attorneys, if any; and approved by the court.¹⁰⁶

Kentucky. Mediation is mandatory in issues involving custody, visitation, assignment of nonmarital property, division of marital property, and/or maintenance unless waived by the court.¹⁰⁷ Mediation may be waived on a showing of good cause.¹⁰⁸ The parties are responsible for mediation fees. The parties can select from a court-approved mediator. Mediators must meet the qualifications set forth in Rule 509. Mediation is confidential. The only exception is for the reporting of abuse.¹⁰⁹ Mediators must prepare a final draft of the agreements reached, signed by the parties, and their counsel, if any, and filed with the court for approval. The mediator must report to the court if no agreement is reached.¹¹⁰

Louisiana. Mediation is discretionary and can be ordered by the court to resolve custody or visitation disputes, unless a spouse or parent satisfies the court that he, she, or any of the children has been the victim of family violence perpetrated by the other spouse, in which case, participation in mediation cannot be ordered by the court as to any issue.¹¹¹ The court may order the costs of mediation to be paid in advance by either party or both parties jointly. If no agreement is reached, the costs of mediation shall be taxed as costs of court.¹¹² The cost of court-ordered mediation is subject to approval by the court. The mediator must meet the qualifications required in La. R.S. 9:334. If the parties reach an agreement, the mediator must prepare a written, signed, and dated agreement. However, the mediator must advise each of the parties to obtain review by an attorney of an agreement reached in mediation prior to signing the agreement. A consent judgment incorporating the terms of the agreement must be prepared by the parties' attorneys and submitted to the court for its approval. Mediation is confidential. Mediation is also discretionary and can be ordered by the court in all cases governed by Louisiana's Children Code, except for domestic abuse proceedings brought pursuant to Chapter 8, Title XV of the Code, and except for the informal family services plan procedure of Chapter 5, Title VII.¹¹³

Maine. When there are minor children of the parties, mediation is mandatory.¹¹⁴ In other cases, the court may at any time order mediation.¹¹⁵ The court can waive mediation for extraordinary cause.¹¹⁶ If the parties cannot reach an agreement through mediation, a hearing is held to determine if the parties made a good faith effort to mediate.¹¹⁷

Maryland. In any case where the custody or visitation of a minor child is at issue, the court will determine if mediation is appropriate and likely to be beneficial to the parties or the child.¹¹⁸ Mediation is limited to custody and visitation issues unless the parties and their attorneys agree otherwise in writing.¹¹⁹ The Court cannot order mediation where there is a possibility of physical or sexual abuse of a party or child.¹²⁰ The mediator is appointed from a list of qualified mediators by the court unless the parties agree to another qualified mediator approved by the court.¹²¹ The parties are responsible for payment of the mediator's fee unless the court waives the fee.¹²² All communications, except for an agreement submitted to the court, are confidential.¹²³ If the parties cannot reach an agreement, the mediator must advise the court.¹²⁴

Massachusetts. There is no mediation statute. A confidentiality statute covers Massachusetts.¹²⁵ It provides for confidentiality of communications if a mediator is appointed by a judicial organization or governmental body or acting in that capacity pursuant to a written agreement and has thirty hours of training and four years' experience as a mediator or accountable to a dispute resolution organization in existence for three years.¹²⁶

Michigan. Mediation is at the discretion of the court. The parties can object to mediation if good cause is shown.¹²⁷ Parties are responsible for mediation fees.¹²⁸ The court shall appoint a qualified mediator.¹²⁹ With court approval, the parties may select a nonqualified mediator.¹³⁰ Mediation is confidential.¹³¹ The mediator must notify the court when parties have reached an agreement and present it to the court for approval.¹³² If no agreement is reached, the case will go to trial.¹³³

Minnesota. Mediation is at the court's discretion; however, almost all child issues are referred to mediation. Exceptions to this rule include domestic abuse families, contempt actions, and maintenance/support/parentage actions where a public agency responsible for child support enforcement is a party or is providing services to a party.¹³⁴ The court cannot require or refer the parties to mediation if there is probable cause that one of the parties or a child has been physically or sexually abused;¹³⁵ the parties may and often do waive this right and go to mediation. The domestic abuse exclusion applies even if the party merely alleges abuse; there does not have to be a finding.¹³⁶ Mediators of contested child custody and visitation matters must complete a forty-hour basic child/family/divorce mediation training program that has been approved by the Minnesota Supreme Court and must be on the Minnesota Supreme Court's list of certified mediators. They must have six hours of training on domestic abuse, which can be either part of the forty hours or separate, depending on how the training program is structured. There are additional requirements of six hours of training annually, an expectation that persons on the Supreme Court list are actively engaged in the practice of mediation as well as adherence to the Rule 114 ethics section.¹³⁷ Most court-connected child custody and visitation mediation is free or low cost. The trial court can waive fees if it deems the parties unable to pay.¹³⁸ Mediation is confidential. Mediators can only report an agreement (or the lack of one), whether an evaluation is needed or whether mutual-restraining orders should be issued. There are a few statutory exceptions, for example, child abuse/neglect and duty to warn. The parties can waive the confidentiality if both agree to do so.¹³⁹ All civil actions must go to some form of alternative dispute resolution (ADR) under Rule 114, including family court matters, unless one of the exclusions listed above applies.

Mississippi. There is no mediation statute. However, in 1987, the Supreme Court of Mississippi entered an Administrative Order in regard to the use of court mediators in domestic relations.¹⁴⁰ Thereafter, the court approved a pilot program for the use of mediators in all civil litigation.¹⁴¹ The Administrative Order for domestic relations was then rescinded, and domestic relations matters would be dealt with similar to other civil litigation.¹⁴² Mediation is at the discretion of the court.¹⁴³ The fee of the mediation session is established by agreement of the mediator and the parties and must be paid by the parties.¹⁴⁴

Missouri. There is no mediation statute. However, in Jackson County, there is a mediation guide.¹⁴⁵ The court may order parents to two hours of mediation when they file for divorce or file a motion to modify an order if they are not in agreement about issues involving a child.¹⁴⁶ The court will order mediation when there is a disagreement regarding child custody, divi-

sion of parenting time, or parenting responsibilities.¹⁴⁷ The Missouri Supreme Court maintains a list of mediators who are qualified to deal with child custody and related parenting issues.¹⁴⁸ Mediators must be either attorneys or persons with graduate degrees in related fields.¹⁴⁹ Each parent is required to pay his or her own fee before the first session. The fee is set by a sliding fee scale based on annual gross income.¹⁵⁰ The court may sanction parties for failure to appear for a mediation session.¹⁵¹

Montana. Mediation is at the discretion of the parties or request of the court.¹⁵² Anything related to the termination of marriage, child custody, or support can be subjected to mediation.¹⁵³ The court maintains a list of mediations and will appoint one to a case at its discretion. If a mediator is not on the list, he or she may be chosen by agreement of the parties.¹⁵⁴ The parties are responsible for the mediation costs, and the court may establish the fee.¹⁵⁵ All records of mediation proceedings are confidential.¹⁵⁶ A mediator's records may not be subpoenaed and are not admissible as evidence unless there is a signed written agreement between the parties. A mediator, or the parties, may not be subpoenaed or forced to testify about the mediation proceeding.¹⁵⁷ The court cannot require mediation if it has reason to believe that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party.¹⁵⁸ To qualify as a mediator, he or she must have knowledge of the court system, procedures used in family law matters, resources in the community, child development, the effect of marriage dissolution on children, and the mediation process.¹⁵⁹

Nebraska. Judges may refer mediation without the consent of the parties.¹⁶⁰ In Douglas County District Court (Fourth Judicial District), an attempt at mediation is required before a custody or visitation case can go to trial.¹⁶¹ If private mediators are used or state mediation centers employed, both parties pay for mediation on an equal-share basis according to each party's ability to pay or on a sliding fee scale. If the court refers a case to mediation, however, there is no fee.¹⁶² Any communication made during a mediation session is confidential.¹⁶³ To qualify as a mediator, a person must have thirty hours of basic mediation training, thirty hours of family mediation training, knowledge of the court system and procedures used in contested family matters, Nebraska family law, resources in the state for the family and general child development, and the effect of marriage dissolution on children.¹⁶⁴ If the parties do not reach an agreement as a result of mediation, the mediator shall report that fact to the court.¹⁶⁵

Nevada. Mediation is mandatory on issues that involve a dispute regarding child custody, access, or visitation. Orders for protection against domestic violence shall not be referred to mediation unless by court order.¹⁶⁶ Fees for mediation may be assessed to parties referred to mediation pursuant to NEV. REV. STAT. § 3.500(2)(e) (1998). Parties shall be responsible for fees if they have contracted with a private mediator.¹⁶⁷ Mediation is confidential, except that the mediator has the duty to report any information that falls within the scope of the abuse reporting requirements.¹⁶⁸ If mediation is a success, then an agreement must be presented to the court for approval. If no agreement is reached, the mediator shall notify the court that mediation has concluded.¹⁶⁹

New Hampshire. Mediation is discretionary. Any domestic relations matters may be mediated; however, mediation will not be referred in cases involving domestic abuse allegations.¹⁷⁰ The parties shall be responsible for the fees of mediation.¹⁷¹ The parties shall directly contract with a qualified mediator. Mediation is confidential.¹⁷² The mediator shall write the

agreement reached and signed by the parties and then present it to the court for approval. If no agreement is reached, the court retains jurisdiction.¹⁷³

New Jersey. Mediation is discretionary. Any domestic relations dispute may be mediated.¹⁷⁴ All complaints or motions involving a custody or parenting time issue shall be screened to determine whether the issue is genuine and substantial and, if so, shall be referred to mediation by the court for resolution in the child(ren)'s best interests.¹⁷⁵ Cases where a preliminary or final order of domestic violence has been entered shall not be mediated.¹⁷⁶ Parties are responsible for payment of mediation.¹⁷⁷ Mediation is confidential; however, the mediator has a duty to report to the authorities any illegal activity that is likely to result in death or serious bodily harm.¹⁷⁸ Mediators must be qualified¹⁷⁹ and must have completed a forty-hour training program in basic as well as specialized family mediation skills, which covers issues of family and child development, family law, divorce procedures, family finances, and community resources.¹⁸⁰ In addition, the mediator may not subsequently act as an evaluator for any court-ordered report or make any recommendation to the court respecting custody and parenting time.¹⁸¹ If mediation results in the parties' agreement, it shall be reduced to writing and given to each party.¹⁸² The agreement need not be furnished to the court. If an agreement is not reached, the matter shall be referred back to court for formal disposition.¹⁸³

New Mexico. Mediation varies depending on the local court district and is discretionary in some districts.¹⁸⁴ The court has the discretion to not listen to a case until it has been mediated. In other districts, mediation is mandatory in cases involving a dispute or custody or visitation of a minor child.¹⁸⁵ In most districts, the parties pay the mediation fees.¹⁸⁶

New York. There is no mediation statute.

North Carolina. Mediation is mandatory on issues involving child custody and/or visitation.¹⁸⁷ On all other matters of domestic relations, mediation is at the court's discretion. Mediation may be waived for good cause, which may include, but is not limited to, allegations of abuse or neglect, undue hardship to a party, allegations of substance abuse, or allegations of severe mental problems.¹⁸⁸ In the state mandatory mediation program, the State of North Carolina Administrative Office of the Courts pays the mediator. The court can appoint a qualified mediator, or the parties can select one on their own subject to court approval.¹⁸⁹ The parties must then choose from a list of certified mediators who have met specific state criteria. If the parties cannot agree on a mediator from the list, the judge will appoint one. If parties choose the court-employed custody mediator, the services will be provided at no cost. On the other hand, if a private mediator is employed, parties are responsible for payment. There are no official criteria for custody mediators who are not employed by the court. The court mediators, however, are fully trained and certified, most eligible for practitioner status under AFM guidelines. There is a set fee for which the couple is responsible. Mediation is confidential. Any agreement reached by the parties as a result of mediation shall be reduced to writing, signed by each party, and submitted to the court as soon as practicable.¹⁹⁰ If no agreement is reached, the mediator shall report that to the court.¹⁹¹ The state also has community mediation centers whose widest possible use is promoted by the courts.¹⁹² Many of those centers, such as those found in Ashville, provide voluntary mediation services at free or reduced costs on a sliding-fee-scale basis.

North Dakota. Mediation is discretionary. Any issues concerning domestic relations may be mediated except issues involving domestic abuse.¹⁹³ All contested family law proceedings filed in the South Central Judicial District, however, shall be subject to a mediation orientation consultation, except when an issue of domestic violation is raised by either party.¹⁹⁴ Furthermore, the court may issue an order for mediation upon a motion by either party, a stipulation or request for mediation from the parties, or in contested child proceedings, upon the courts initiative, except when issues exist that may involve physical or sexual abuse of a party or of the child of a party to the proceeding.¹⁹⁵ The parties are responsible for the fees.¹⁹⁶ Mediation is confidential, except as authorized by the court and agreed to by the parties.¹⁹⁷ Mediators must be qualified.¹⁹⁸ The presiding judge of each judicial district maintains a list of qualified, court-referable mediators. To be on the list, the mediator must make an application to the presiding judge of the judicial district in which the mediation is to occur. If court appointed, the mediator must have a minimum of forty hours' training in domestic relations mediation, including two hours of domestic abuse training and nine hours of continued dispute resolution training during each three-year period. The mediator must also hold either a bachelor's degree in behavioral science with two years' experience in family/child intervention service, a master's degree in behavioral science with one year's experience in family child intervention service, or have a license to practice law with two years' experience in domestic relations cases. Mediators must also be of good moral character.¹⁹⁹ Their training must be certified.²⁰⁰ The mediator shall reduce to writing any agreement of the parties. The agreement is not binding until approved by the court. If no agreement is reached, the mediator can recommend to the court that a full hearing be held within thirty days on the custody support or visitation issue.²⁰¹

Ohio. Mediation is discretionary. There are several local court rules that authorize the judge to order mediation and may provide for payment of services by the court. Any domestic relations issue may be mediated. Currently, twenty-three domestic relations courts and nineteen juvenile courts provide mediation as a free service. Otherwise, the parties are responsible for payment of the mediation.²⁰² The court or the parties may select the mediator.²⁰³ The mediator shall be qualified.²⁰⁴ To be a qualified mediator, he or she must hold a bachelor's degree or equivalent education experience, as is satisfactory to the court, and at least two years of professional experience with families, which includes counseling, case work, legal representation in family law matters, or equivalent experience as is satisfactory to the court; at least twelve hours basic mediation training; or equivalent experience as a mediator.²⁰⁵ In addition, the mediator should have at least forty hours of specialized family or divorce mediation training in a court-approved program.²⁰⁶ The court shall approve any agreements reached in mediation before it is binding.²⁰⁷

Oklahoma. Mediation is discretionary. Any family court matter may be mediated. The Oklahoma statute under which most divorce and child custody mediation proceeds is the Dispute Resolution Act, 12 O.S. sections 1801 through 1813 and the rules and procedures for the act that are amended to the act. Domestic mediation is provided through the community-based, court-connected mediation programs supervised by the administrative director of the courts.²⁰⁸ However, the court shall halt or suspend mediation in cases involving allegations of domestic abuse.²⁰⁹ The parties are responsible for mediation fees. If provided by the court, the parties can select from a list of qualified mediators.²¹⁰ The district court may maintain a list of qualified mediators to assist parties.²¹¹ Divorce of family mediators shall be certified pursuant to the Dispute Resolution Act; complete forty hours of training in family and

divorce mediation and conduct at least twelve hours of mediation with three separate families and complete at least six hours every other year of professional education in the area of family mediation; or have regularly engaged in practice of family and divorce mediation for at least four years. Mediation is privileged and confidential.²¹² The parties who come to the early settlement, community-based mediation programs are served for no additional fee if they have already paid a district court filing fee (\$2 of which is earmarked for the ADR System). If no court fees have been paid, then the parties are each assessed a fee of five dollars per the Dispute Resolution Act. When the parties seek mediation services through the early settlement programs, the program staff assigns a co-mediation team. The parties do not select the mediators from a list. Mediators who serve as volunteers for the community-based mediation programs must complete specific training requirements and be qualified.

Oregon. Mediation is discretionary on any contested family issue.²¹³ Counties are required to provide an orientation to mediation for all contested custody and parenting time disputes. Judicial districts are also required to develop a plan for providing mediation services along with parent education and other family law services identified by the Local Family Law Advisory Committee appointed by the presiding judge of the judicial district. The mediator shall not consider issues of property division or spousal or child support in connection with the mediation of a dispute concerning child custody, parenting time, or otherwise, without the written approval of both parties or their counsel.²¹⁴ The mediator shall be qualified.²¹⁵ The mediator shall report in writing to the court and to counsel for the parties any agreement reached by the parties as a result of mediation, and the agreement shall be incorporated in a proposed order or decree provision prepared for the court. If no agreement is reached, then the mediator shall report that to the court.²¹⁶

Pennsylvania. A court may establish a mediation program for domestic relation issues and adopt local rules for the administration of the mediation process.²¹⁷ Each local district can adopt rules regarding qualification of mediators and other matters deemed appropriate by the court.²¹⁸ An example of a local district that has adopted a mediation program is McKean County.²¹⁹ The court cannot order parties to mediation where there is evidence of domestic violence or child abuse at any time during pendency of the action or twenty-four months prior to the filing of the action.²²⁰ A local district with a mediation program may impose a filing fee of up to twenty dollars to be used to fund the mediation process.²²¹

Rhode Island. The court has discretion to order mediation in any petition for divorce involving custody and child visitation.²²² The issues that can be referred are child custody and/or visitation.²²³ The court may do one of three things: order mediation and postpone the trial,²²⁴ order mediation and continue to try the case,²²⁵ or try the case and at the end order the issue for mediation.²²⁶ Any communications made during mediation are privileged and confidential and are not admissible as evidence in any civil or criminal proceeding.²²⁷ Following mediation, a report, in the form of a Memorandum of Understanding, is prepared by the mediators and is presented to the court. If the court approves the agreement, it will be entered as an enforceable order of the court. In the event that parties are unable to reach an agreement, the attorneys are notified of the issues that remain in dispute.

South Carolina. There is no mediation statute.²²⁸ However, the family courts in Florence and Richland Counties have promulgated their own rules for mediation. In Florence and

Richland Counties, the court shall order mediation in all cases involving issues of custody or visitation in domestic relations, except when the cases are uncontested.²²⁹ A party may move the court to order mediation of any issue in controversy, or to impose special conditions on mediation, such as mediation with a mental health professional or with an attorney. The family court shall rule on the motion without a hearing. When the parties stipulate to the mediator, compensation shall be agreed on between the parties and the mediator. Court-appointed mediators are compensated by the parties at an hourly rate of \$100 per hour, unless otherwise ordered by the chief judge of administrative purposes of the family court or agreed on by the mediator and the parties, provided that the court-appointed mediator shall not charge more than one hour of time in preparing for the initial mediation conference. The parties shall split the fees in equal shares and may move the court for exemption of payment of mediation fees when they are unable to pay. Determination of indigence is at the sole discretion of the court. The mediation shall be kept confidential, unless the mediator is given permission by all parties or unless required by law or public policy.²³⁰ Parties are free to make their own rules with respect to confidentiality. The mediator must be certified.²³¹

South Dakota. Mediation is mandatory in any custody or visitation dispute between parents unless the court deems it inappropriate under the facts of the case.²³² The court may also direct that an investigation be conducted to assist the court in making a custody or visitation determination and shall allocate the costs of such investigation between the parties in the proportion as the court determines equitable.²³³ The court appoints the mediator.²³⁴ To be a court-appointed mediator, a person must file an application with the presiding judge for the circuit in which the mediator will conduct mediations.²³⁵ The cost of the mediation is allocated between the parties.²³⁶ The mediator must have forty hours of training or five years of mediating custody and visitation issues with a minimum of twenty mediations during that time.²³⁷ In addition, the mediator must have knowledge of the South Dakota family law court system, its procedures in contested visitation issues, child development, impact of divorce on family members, resources available in the community, and interviewing and mediation techniques applicable in family setting.²³⁸ The mediator must take continuing education courses.²³⁹ If the parties cannot agree, the mediator can recommend to the court that a full hearing on custody or visitation is needed.²⁴⁰

Tennessee. Mediation is at the discretion of the court or by request of any party.²⁴¹ The court provides specific procedures, standards, and regulations of family mediators for divorce.²⁴² If an order of protection is in effect between the parties or if the court finds domestic abuse or any criminal conviction involving domestic abuse within the marriage, the court may allow mediation only if (a) the victim of the alleged abuse agree to the mediation, (b) the mediator is trained in domestic abuse in a manner which protects the victim, and (c) the victim is allowed to have a support person of the victim's choice.²⁴³ The same procedure applies for cases involving child custody and visitation.²⁴⁴ The court may in its sound discretion waive or reduce costs to the alternative-dispute proceeding.²⁴⁵ All records, reports, and other documents developed for mediation are confidential and privileged.²⁴⁶ All Rule 31 mediators shall complete a course of training consisting of not less than forty hours²⁴⁷ and shall be qualified.²⁴⁸

Texas. There is no statute that deals specifically with mediation. There is, however, a general alternate dispute resolution statute in the state for suits affecting the parent-child rela-

tionship.²⁴⁹ That statute makes mediation discretionary on written consent of the parties or on the court's own motion.²⁵⁰

Utah. Mediation of and child visitation cases are mandatory. The parties may, however, file an objection to the mediation process. Mediation shall not be ordered in cases that fall under the cohabitant abuse act.²⁵¹ The court may appoint a mediator, or the parties can choose one with court approval. In visitation cases, however, parties are referred to a court-approved mediator and must attend at least one session they will pay for. In the event that the parties cannot pay for this service, the court picks up the cost. The parties are responsible for the payment of mediation fees.²⁵² Mediation is confidential.²⁵³ The mediator shall file reports with the court and shall submit the mediation agreement with the court. At the end of the process, each party shall complete an evaluation of the mediation process.²⁵⁴

Vermont. There is no mediation statute.

Virginia. Mediation of domestic disputes is discretionary.²⁵⁵ A party may object to mediation on grounds that there is a history of family abuse.²⁵⁶ The parties are responsible for the mediation fees.²⁵⁷ If it is determined that one or more of the parties is indigent and no agreement on payment has been made, the court shall refer the case to a dispute resolution program that offers free services or to a neutral who agrees to accept the case on a pro bono basis.²⁵⁸ Mediation is confidential.²⁵⁹ The court shall appoint a qualified mediator, or the parties can select one from the court-approved list.²⁶⁰ The guidelines for training and certification of court-referred mediators are different in each court. The mediator shall report any agreements to the court. If an agreement is not reached, the court shall proceed with a hearing on any unresolved issue.²⁶¹

Washington. Any proceeding dealing with child custody may be set for mediation.²⁶² Each superior court may make mediators available.²⁶³ The mediator may be a member of the professional staff of a family court or mental health services agency.²⁶⁴ Some local court districts have made mediation mandatory.²⁶⁵ Benton and Franklin County Superior Court are examples of local districts with mandatory mediation rules.²⁶⁶ All communications during mediation are privileged and confidential.²⁶⁷

West Virginia. Mediation is at the discretion of the parties or request of court.²⁶⁸ A circuit court or a family law master can require the parties to attempt mediation of their visitation issues.²⁶⁹ Upon entry of an order referring a case to mediation, parties have fifteen days to file a written objection specifying the grounds.²⁷⁰ The legislature encourages mediation of disputes when children are involved and encourages parents to share in the rights and responsibilities of rearing their children after divorce.²⁷¹ The West Virginia State Bar maintains a list of persons willing and qualified to serve as mediators.²⁷² The State Bar establishes minimum qualifications for training and experience.²⁷³ Parties may choose their own mediator who may or may not be a person listed on the State Bar listing.²⁷⁴ If parties cannot agree on a mediator, the court shall designate one from the State Bar listing.²⁷⁵ If court designates the mediator, it should attempt to select one who is willing to act as mediator at no charge to the parties.²⁷⁶ If a volunteer mediator is not available, then the parties are responsible for the fees.²⁷⁷ Mediation is confidential.²⁷⁸ A mediator may not be subpoenaed nor be subject to disclosure of confidential information relating to the mediated dispute.²⁷⁹ Within ten days after media-

tion is completed or terminated, the mediator shall report to the court the outcome of the mediation.²⁸⁰

Wisconsin. Mediation is mandatory in all actions affecting the family where it appears that issues involving legal custody or physical placement are contested. Mediation shall not be ordered when there are issues of family violence.²⁸¹ Unless the parties receive services from a private mediator at their own expense, the director of the counseling services must assign a mediator to the case.²⁸² Mediation is confidential.²⁸³ Mediators shall be qualified.²⁸⁴ Mediators conducting mandatory mediation are required to receive twenty-five hours of certified training. The court may approve or reject the final mediation agreement after it has been prepared in writing and reviewed by the parties and their counsel, if any.²⁸⁵ Mediators are required to certify that the agreement is in the best interest of the child(ren). The parties or the mediator must notify the court if no agreement can be met.²⁸⁶

Wyoming. There is no specific mediation statute. Pursuant to court rules, however, the court may assign any civil case for mediation on its own motion or by request of one of the parties.²⁸⁷ The Supreme Court maintains a registry of qualified mediators.

APPENDIX MEDIATION CHART OF THE STATES

State	Attendance ^a	Exceptions ^b	Parties Pay for Mediation ^c	Are Mediators Qualified? ^d	Confidential	If No Agreement Reached ^e
Alabama	Discretionary	Domestic abuse allegations by victim	Yes	Yes	Yes	Not listed
Alaska	Discretionary	Domestic abuse allegations/ protective order	Yes, unless indigent	No	Yes	Set for trial
Arizona	Discretionary, except custody disputes	Undue hardship	Yes	Yes	Yes court	Notify the
Arkansas	Discretionary	Not listed	Yes	Yes	Yes	Not listed
California	Mandatory	Not listed	No	Yes	Yes	Refer to court
Colorado	Discretionary	Physical or psychological abuse allegations	Yes	No	Yes	Set for hearing
Connecticut	Discretionary	None	Not listed	Not listed	Yes	Not listed
Delaware	Mandatory	Domestic abuse allegations	Not listed	Yes	Yes	Set for hearing
District of Columbia	Discretionary	Court's discretion	Not listed	Yes	Not listed	Litigation process continue
Florida	Mandatory	Domestic abuse allegations	Apportioned	Yes	Yes	Refer to court
Georgia	No statute	No statute	No statute	No statute	No statute	No statute
Hawaii	Mandatory	Domestic abuse allegations or restraining order	Not listed	Not listed	Yes	Not listed

(continued)

APPENDIX
Continued

State	Attendance ^a	Exceptions ^b	Parties Pay for Mediation ^c	Are Mediators Qualified? ^d	Confidential	If No Agreement Reached ^e
Idaho	Mandatory	Not listed	Not listed	Yes	Not listed	Not listed
Illinois	No unified statute/local circuit is discretionary	Domestic abuse allegations	Yes	Yes	Yes	Report to the court
Indiana	No statute	No statute	No statute	No statute	No statute	No statute
Iowa	Discretionary	Domestic abuse allegations	Yes	Yes	Not required	Report to court
Kansas	Discretionary	None	Yes	Yes	Yes	Report to court
Kentucky	Mandatory	Good cause	Yes	Yes	Yes	Report to court
Louisiana	Discretionary	Domestic abuse allegations	Yes	Yes	Yes	Report to court
Maine	Mandatory if children are involved	Can be waived for extraordinary causes	Not listed	Not listed	Not listed	Good-faith hearing
Maryland	Discretionary	Sexual or physical abuse allegations	Yes	Yes	Yes	Report to court
Massachusetts	No unified statute	No statute	No statute	Yes	Yes	No statute
Michigan	Discretionary	Good cause	Yes	Yes	Yes	Set for trial
Minnesota	Discretionary	Physical or sexual abuse allegation	Free, low cost	Yes	Yes	Refer to court
Mississippi	No statute	No statute	No statute	No statute	No statute	No statute
Missouri	No unified statute	Not listed	Yes	Yes	Yes	Not listed
Montana	Discretionary	Abuse allegations	Yes	Yes	Yes	Not listed
Nebraska	Discretionary	Not listed	Not if court ordered	Yes	Yes	Report to court
Nevada	Mandatory	Domestic abuse allegations	Yes	Yes	Yes	Report to court
New Hampshire	Discretionary	Domestic abuse allegations	Yes	Yes	Yes	Report to court
New Jersey	Discretionary	Domestic violence allegations	Yes	Yes	Yes	Report to court
New Mexico	Discretionary	Not listed in some districts	Yes	Not listed	Not listed	Not listed
New York	No statute	No statute	No statute	No statute	No statute	No statute
North Carolina	Discretionary/mandatory in child custody and visitation	Domestic abuse allegations/substance abuse/undue hardship	Varies	Yes	Yes	Report to court
North Dakota	Discretionary	Domestic abuse allegations	Yes	Yes	Yes	Set for hearing
Ohio	Discretionary	Not listed	Varies	Yes	Yes	Report to court
Oklahoma	Discretionary	Domestic abuse allegations	Yes	Yes	Yes	Not listed

APPENDIX Continued

State	Attendance ^a	Exceptions ^b	Parties Pay for Mediation ^c	Are Mediators Qualified? ^d	Confidential	If No Agreement Reached ^e
Oregon	Discretionary	Cannot mediate custody issues with property division/spousal and child support	Yes	Yes	Yes	Report to court
Pennsylvania	Mandatory in McKean County; No unified statute	Domestic violence	Not listed	Yes	Yes	Refer back to court for hearing
Rhode Island	Discretionary	Not listed	Not listed	Not listed	Yes	Set for trial
South Carolina	No statute	No statute	No statute	No statute	No statute	No statute
South Dakota	Mandatory	Determined by the court	Yes	Yes	Yes	Set for hearing
Tennessee	Discretionary	Domestic violence	Not listed	Not listed	Not listed	Not listed
Texas	No statute	No statute	No statute	No statute	No statute	No statute
Utah	Mandatory	Cohabitant abuse	Yes	Yes	Yes	Report to court
Vermont	No statute	No statute	No statute	No statute	No statute	No statute
Virginia	Discretionary	History of family abuse	Yes	Yes	Yes	Set for hearing
Washington	Mandatory in two counties	Good cause showing	Yes	Yes	Yes	Family court investigation
West Virginia	No statute	No statute	No statute	No statute	No statute	No statute
Wisconsin	Mandatory	Domestic abuse allegations	Yes	Yes	Yes	Report to court
Wyoming	No statute	No statute	No statute	No statute	No statute	No statute

a. Attendance is defined as how the parties opt into the mediation process; sometimes, they enter mediation by choice, and other times, they are required by court order or statute to attend.

b. Exceptions refer to what reasons, if any, prohibit parties from using mediation.

c. This column refers to who is responsible for the costs of mediation proceedings.

d. Qualifications vary among the states. Please refer to the individual caption of the state for specifications.

e. This references what happens if the parties do not reach an agreement after mediation sessions.

NOTES

1. See KAN. STAT. ANN. §23-601 (1995).

2. Between 1950 and 1997, the divorce rate in the United States rose from 2.6 per 1,000 people to 4.3 per 1,000 people, with a peak of 5.3 per 1,000 in 1981. The divorce rate recently declines slightly and is presently at the lowest annual rate in two decades. This recent decline, however, must be measured against a 67% increase in the divorce rate between 1970-1990. UNITED STATES CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES, VITAL STATISTICS* 75 (1999).

3. See *e.g.*, Beck v. Beck, 432 A.2d 63 (N.J. 1981).

4. See Andrew Schepard, *The Evolving Judicial Role in Child Custody Disputes: From FaultFinder to Conflict Manager to Differential Case Management*, 22 U.A.L.REV. 407 (Spring 2000).

5. See American Bar Assoc. 1982, chap. 1; Folberg and Milne 1988, chap. 1.

6. See *Model Standards of Practice for Family and Divorce Mediation*, 39 FAM. CT. REV. 127 (Jan. 2001).

7. See J. Vasquez, et. al., *Beyond Confrontation*, University of Michigan Press, at 14 (1995)

8. *Id.*
9. See R.A.B. Bush, *What do we need a mediator for? Mediation's "Value-added" for Negotiators*(1996).
10. See *supra*note 4, at 409.
11. See *supra* note 5, at Ch. 1.
12. Carol J. King, *Burdening Access to Justice: The Cost of Divorce*,73 ST. JOHN'S L. REV. 375-376 (1999).
13. See *supra*note 9.
14. See *id.*
15. See Appendix for AFCC members who graciously took part in the study.
16. See e.g., LA. CH. C. ART. 441(A)(2) (where it states that all parties and the mediator may agree in writing to waive confidentiality during a juvenile proceeding).
17. See ALA. CODE§ 6-6-20(b)(1) (1975).
18. See ALA. CODE§ 6-6-20(b)(3) (1975).
19. See ALA. CODE§ 6-6-20(d) (1975).
20. See ALA. CODE§ 6-6-20(e) (1975).
21. See *id.*
22. See ALA. CODE§ 6-6-20(f)(2) (1975).
23. See ALA. CODE§ 6-6-20(f)(3) (1975).
24. See ALA. CODE§ 6-6-20(b)(2) (1975).
25. See ALA. CIV. CT. Mediation Rule 15(b).
26. See ALA. CIV. CT. Mediation Rule 3.
27. See ALA. CIV. CT. Mediation Rule 4.
28. See ALA. CIV. CT. Mediation Rule 11.
29. See AK CIV. R. 100(a).
30. See *id.*
31. See ALASKA STAT. §25.24.060 and 25.20.080 (Michie 1998); see also CIV. RULE 100(a).
32. See ALASKA STAT. §25.24.060 (Michie 1998).
33. See ALASKA CIV. RULE 100(b)(3).
34. See ALASKA STAT §25.24.080(e) (Michie 1998).
35. See ALASKA CIV. RULE 100; ALASKA STAT. §25.24.060(b) (Michie 1998).
36. See ALASKA STAT. §25.24.060(d) (Michie 1998); ALASKA CIV. RULE 100(f).
37. See ARIZ. REV. STAT. § 6.8 (1999).
38. See *id.*
39. See ARIZ. REV. STAT. ANN. §17B, R.6.8 (h)(1) (West 1999).
40. See *id.*
41. See ARIZ. REV. STAT. ANN. §17B, R.4.2 (d)(1) (West 1999).
42. See *id.*
43. See *id.*
44. See 1999 ARK. ACTS 704 (enacted March 18, 1999).
45. See CAL. FAM. CODE§3170-3177 (West 1994).
46. See CAL. FAM. CODE§3181.
47. See CAL. APP. SUPP. R.7.14 (West 1999).
48. See *id.*
49. See *id.*
50. See *id.*
51. See CAL. APP. SUPP., R.10.8(e) (West 1999).
52. See COLO. REV. STAT. ANN. §13-22-311 (West 1999).
53. See *id.*
54. See *id.*
55. See *id.*
56. See *id.*
57. See CONN. GEN. STAT. ANN. §46b-53a (West 1999).
58. See CONN. GEN. STAT. ANN. §46b-59a (West 1999).
59. See CONN. GEN. STAT. ANN. §54-56m (West 1999).
60. See CONN. GEN. STAT. ANN. §52-235(d) (West 1999).
61. See CONN. GEN. STAT. ANN. §46b-53(a) (West 1999).
62. See DEL. FAM. CT. R. 16(b)(1) (1994); DEL. FAM. CT. R. 16(a) (1994).
63. See DEL. CODEANN. 13 §711A (1992).

64. *See supra* note 61. (Although only subsection (b) specifically states that nothing said in mediation may be used in subsequent hearings, it is court policy to extend this protection to hearings covered by subsection (a) as well).

65. *See* DEL. FAM. CT. R. 16 (West 1995).

66. U.S. DIST. CT. RULES D.C., App. C II

67. *See id.*

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.*

72. *See id.*

73. *See* FLA. STAT. ANN. §44.102(2)(c) (West 1999).

74. *See* FLA. STAT. ANN. §44.102 (West 1999).

75. *See supra* note 72.

76. *See* FLA. STAT. ANN. §44.102 (West 1999).

77. *See* FLA. STAT. ANN. §44.102 (6)(A)(West 1999).

78. *See* FLA. STAT. ANN. §44.102 (6)(B)(West 1999).

79. *See* FLA. STAT. ANN. §61.183 (West 1999); FLA. STAT. ANN. §44.102(3) (West 1999).

80. *See* FLA. STAT. ANN. §12.740(f)(West 1999).

81. *See*, GA ST-ANN editor's notes.

82. *See* H.F.C.R. Rule 94(a), effective Jan. 1, 2000.

83. *See* H.R.E. 408.

84. *See* H.R.S. §580-41.5. (1998).

85. *See id.*

86. *See* IDAHO RULES FOR CIV. PROC. RULE 16(j)(5).

87. *See* IDAHO RULES FOR CIV. PROC. RULE 16(j)(2).

88. *See* IDAHO RULES FOR CIV. PROC. RULE 16(j)(3).

89. *See* IDAHO RULES FOR CIV. PROC. RULE 16(j)(6)(B).

90. *See id.*

91. *See* IDAHO RULES FOR CIV. PROC. RULE 16(j) 8.

92. *See* IL. R. 17 CIR. MED. R. 1.

93. *See id.*

94. *See* IL. R. 17 CIR. MED. 9.

95. *See* IL. R. 17 CIR. MED. 10.

96. *See id.*

97. *See* IL. R. 17 CIR. MED. RULE 4

98. *See id.*

99. *See* IOWA CODE §598.7A (1999).

100. *See* 1999 IOWA ACTS 6837

101. *See id.*

102. *See id.*

103. *See id.*

104. *See* KAN. STAT. ANN. §23-701 (1998).

105. *See id.*

106. *See* KAN. STAT. ANN. §23-603 (1998).

107. *See* KY. REV. STAT. ANN. §509 (Banks-Baldwin 1999).

108. *See id.*

109. *See* KY. REV. STAT. ANN. §209.030 (Banks-Baldwin 1999); *See* KY. REV. STAT. ANN. §620.030 (Banks-Baldwin 1999).

110. *See supra* note 106.

111. *See* LA. REV. STAT. ANN. §363 (West 1999).

112. *See* LA. REV. STAT. ANN. §332 (West 1999).

113. *See* LA. CH. C. ARTS. 435, *et seq.*

114. *See* ME. REV. ANN. TIT. 19-A §251.2 (WEST 1999).

115. *See* ME. REV. ANN. TIT. 19-A §251.1 (WEST 1999).

116. *See* ME. REV. ANN. TIT. 19-A §251.2 (WEST 1999).

117. *See* ME. REV. ANN. TIT. 19-A §251.4 (WEST 1999).

118. *See* MD. CODE ANN., FAM. LAW § 9-205 (b) (1998).
119. *See* MD. CODE ANN., FAM. LAW § 9-205 (c) (1998).
120. *See* MD. CODE ANN., FAM. LAW § 9-205 (b)(2)(1998).
121. *See* MD. CODE ANN., FAM. LAW § 9-205 (h) (1998).
122. *See* MD. CODE ANN., FAM. LAW § 9-205 (g) (1998).
123. *See* MD. CODE ANN., FAM. LAW § 9-205 (f) (1998).
124. *See* MD. CODE ANN., FAM. LAW § 9-205 (d) (1998).
125. *See* MASS. GEN. LAWS. CH. 233 §23 (1999).
126. *See id.*(Note that the Supreme Judicial Court adopted Uniform Rules on Dispute Resolution in 1998).
127. *See* MI. R. SPEC. P. MCR 3.216
128. *See* MI. R. SPEC. P. MCR 2.403
129. *See id.*
130. *See* MI. R. SPEC. P. MCR 3.216
131. *See id.*
132. *See id.*
133. *See id.*
134. *See* MN. A.D.R. RULE 114.
135. *See* MINN. STAT. ANN. §518.619 (2) (WEST 1999).
136. *See* MN. A.D.R. RULE 114.
137. *See id.*
138. *See* MINN. STAT. ANN. §563.01 (1999); MN. A.D.R. RULE 114.11 (d).
139. *See* MINN. STAT. ANN. §518.619(5) ; MN. A.D.R. RULE 114.08(e); Rule 114.10(c); Rule 114.10 (d).
140. *See* MS RULE UNIF. CH. CT. ADMIN. ORDER NO. 41 (1987).
141. *See* COURT ANNEXED MEDIATION RULES FOR CIVIL LITIGATION.
142. *See id.*
143. *See id.*
144. *See id.*
145. *See* MO. R. SIXTEENTH JUDICIAL CIR. COURT MEDIATION PROGRAM GUIDE
146. *See id.*
147. *See id.*
148. *See id.*
149. *See id.*
150. *See id.*
151. *See id.*
152. *See* MONT. CODE ANN. §40-4-301 (1) (1999).
153. *See id.*
154. *See* MONT. CODE ANN. §40-4-301 (3) (1999).
155. *See* MONT. CODE ANN. §40-4-308 (1999).
156. *See* MONT. CODE ANN. §40-4-303 (1) (1999).
157. *See* MONT. CODE ANN. §40-4-301 (2) (1999).
158. *See id.*
159. *See* MONT. CODE ANN. §40-4-307 (1) (1999).
160. *See* NEB. REV. STAT. §43-2906 (1999).
161. *See* Local Court Rule 4-3.
162. *See* NEB. REV. STAT §43-2911 (1999).
163. *See* NEB. REV. STAT §43-2908 (1999).
164. *See* NEB. REV. STAT §43-2905 (1999).
165. *See* NEB. REV. STAT §43-2910 (1999).
166. *See* NEV. REV. STAT §25 (1998).
167. *See id.*
168. *See id.*
169. *See id.*
170. *See* N.H. REV. STAT. ANN. § 458:15-a. (1999).
171. *See* N.H. REV. STAT. ANN. § 328-C (1999).
172. *See id.*
173. *See id.*
174. *See* NJ RULE 1:40-4

175. *See* NJ RULE 1:40-5(a) (2000).
176. *See id.*
177. *See id.*
178. *See id.*
179. *See* NJ R GEN. APPLICATION R. 1:40-12 (2000).
180. *See* NJ R GEN. APPLICATION R. 1:40-10 (b)(1)(5) (2000).
181. *See* NJ R GEN. APPLICATION R. 40-10 (b)(1)(5) (2000).
182. *See id.*
183. *See id.*
184. *See* N.M. STAT. ELEVENTH DIST. CT. RULE LR11-115; N.M. STAT. EIGHTH DIST. CT. RULE LR8-107B; N.M. STAT. NINTH DIST. CT. RULE LR9-703B
185. *See* N.M. STAT. THIRD DIST. CT. RULE LR3-301 N.M. STAT. THIRD DIST. CT. RULE LR3-301; N.M. STAT. NINTH DIST. CT. RULE LR9-703D; N.M. STAT. ELEVENTH DIST. CT. RULE LR11-115G.
186. *See* N.M. STAT. THIRD DIST. CT. RULE LR3-301; N.M. STAT. NINTH DIST. CT. RULE LR9-703D; N.M. STAT. ELEVENTH DIST. CT. RULE LR11-115G.
187. *See* N.C. GEN. STAT. § 50-13.1 (1995).
188. *See id.*
189. *See* NC ST Mediated Settlement Conferences Rule 2.
190. *See id.*
191. *See id.*
192. *See* N.C. GEN. STAT. § 7A-38.5
193. *See* N.D. CENT. CODE § 14-09.1-02 (1999).
194. *See* N.D.R. LOCAL CT. P.R. 2 (1999).
195. *See id.*
196. *See id.*
197. *See id.*
198. *See* N.D. ADMIN. CODE § 8.8 (2001).
199. *See* N.D. ADMIN. CODE § 8.9 (2001)
200. *See id.*
201. *See* N.D. ADMIN. CODE § 14-09.1-08 (1999).
202. *See* OHIO REV. CODE ANN. § 3109.052 (West 1999). This Statute applies to both domestic relations courts and cases involving unmarried parents or parents divorced in another jurisdiction that come under the purview of the juvenile courts.
203. *See* OHIO REV. CODE ANN. § 2.8 (West 1999).
204. *See* OHIO REV. CODE ANN. § 3109.052 (West 1999).
205. *See* OH. CT. R. of Superintendence of CTS. of OH R. 16 (2001).
206. *See id.*
207. *See* OHIO REV. CODE ANN. § 3109.052 (West 1999).
208. *See* R. & Procedure of Disp. Resolution A. Rule 7(d).
209. *See* OKLA. STAT. ANN. TIT. § 107.3 (West 1999).
210. *See* OKLA. STAT. ANN. TIT. 12 § 1825 (West 1999).
211. *See* OKLA. STAT. ANN. TIT. 12 § 1825(a)(2) (West 1999).
212. *See* R. & Procedure of Disp. Resolution A. Chapter 37 App. C(a).
213. *See* OR. REV. STAT. § 107.765 (1998).
214. *See id.*
215. *See* OR. REV. STAT. § 107.610 (1998).
216. *See* OR. REV. STAT. § 107.765 (1998).
217. *See* PA. STAT. ANN. TIT. 23 § 3901 (c) (1).
218. *See id.*
219. *See* PA MCKEAN CTY Ct RCP RULE L1915. Mediation is mandatory in McKean County. All contested child custody cases will be referred to mediation by the Family Law Master. The court appoints the mediator. If no agreement is reached through mediation, the matter is referred back to the court for hearing and disposition.
220. *See* PA. STAT. ANN. TIT. 23 § 3901 (c)
221. *See* PA. STAT. ANN. TIT 23 § 3902 (a)
222. *See* R.I. GEN LAWS § 15-5-29(a) (1998).
223. *See id.*
224. *See* R.I. GEN LAWS § 15-5-29(b)(1) (1998).

225. *See* R.I. GEN LAWS §15-5-29(b)(2) (1998).
226. *See* R.I. GEN LAWS §15-5-29(b)(3) (1998).
227. *See* R.I. GEN LAWS §15-5-29(c) (1998).
228. Since 1976, South Carolina implemented a uniform Statewide Family Court system. The Family Court has exclusive jurisdiction over all matters involving domestic or family relationships and is the sole forum for hearing all cases concerning marriage, divorce, legal separation, custody, visitation rights, termination of parental rights, adoption, support, alimony, division of marital property, and change of name.
229. *See* S.C. FAMILY COURT RULE 2 (1999).
230. *See* S.C. FAMILY COURT RULE, STANDARD V (1999).
231. *See* S.C. FAMILY COURT RULE 10 (1999).
232. *See* S.D. CODIFIED LAWS §25-4-56 (1999).
233. *See id.*
234. *See* S.D. CODIFIED LAWS §25-4-57 (1999).
235. *See* S.D. CODIFIED LAWS §25-4-58.1 (1) (1999).
236. *See id.*
237. *See* S.D. CODIFIED LAWS §25-4-58.1 (1) (1999).
238. *See id.*
239. *See* S.D. CODIFIED LAWS §25-4-58.1 (3) (1999).
240. *See id.*
241. *See* TENN. SUP. CT. R. 31 §10.
242. *See* TENN. SUP. CT. R. R. 31.
243. *See* TENN. CODE ANN. §36-4-131 (1999).
244. *See* TENN. CODE ANN. §36-6-305 (1999).
245. *See* TENN. SUP. CT. RULE 31 §7 (2000).
246. *See* TENN. CODE ANN. §36-4-130 (1999).
247. *See* TENN. SUP. CT. RULE 31 §7 (2000).
248. *See* TENN. SUP. CT. RULE 31 §7 (2000).
249. *See* TEX. FAM. CODE ANN. §153.0071 (c).
250. *See id.*
251. *See* UTAH CODE ANN. 1953, 30-6-4.6 (1999).
252. *See id.*
253. *See* UTAH CODE ANN. 1953, 78-31b-7 (1999).
254. *See id.*
255. *See* VA. CODE ANN. §8.01-576.4 (Michie 1999).
256. *See* VA. CODE ANN. §20-124.4 (Michie 1999).
257. *See id.*
258. *See* VA. CODE ANN. §8.01-576.7 (2000).
259. *See id.*
260. *See* VA. CODE ANN. §8.01-576.8 (Michie 1999).
261. *See* VA. CODE ANN. §20-124.4 (Michie 1999).
262. *See* WASH. REV. CODE §26.09.015 (1) (WEST 1999).
263. *See* WASH. REV. CODE §26.09.015 (2) (WEST 1999).
264. *See id.*
265. *See* Island and San Juan CTY SUPERIOR CT. CIV. RULES, Rule 14(a); *see* Benton and Franklin CTY SUPERIOR CT. LCR 94.06W.
266. *See* Benton and Franklin CTY SUPERIOR CT. LCR 94.06W. Effective January 1, 1999, Benton and Franklin Counties have mandatory mediation of child placement and visitation issues. The mandatory mediation can only be waived upon a showing good cause to the court. The parties can agree on an outside mediator or use a family court mediator. The mediator must, within seven days of the completion of the mediation, provide the parties with a written declaration of the results. The mediator shall only advise the court whether or not an agreement has been reached. The parties are responsible to pay for the mediator. Payment is determined by their respective income unless either or both parties are declared indigent. If the parties do not reach an agreement, a family court investigation may be ordered and a recommendation will be filed with the court.
267. *See* WASH. REV. CODE §26.09.015. (5) (WEST 1999).
268. *See* W. VA. TRIAL CT. R. 25.03, *See also*, W. VA. R. CIV. P. 16.
269. *See* Carter v. Carter, 196 W.Va. 239, 470 S.E.2d 712 (1988).
270. *See* W. VA. TRIAL CT. R. 25.03

271. See W. VA. CODE §48-11-101 (b) (1999).
272. See W. VA. TRIAL CT. R. 25.04.
273. See W. VA. TRIAL CT. R. 25.04.
274. See W. VA. TRIAL CT. R. 25.05.
275. See W. VA. TRIAL CT. R. 25.05.
276. See W. VA. TRIAL CT. R. 25.06.
277. See W. VA. TRIAL CT. R. 25.06.
278. See W.VA. R. EVID. §408.
279. See W.VA. R. EVID. §408.
280. See W. VA. TRIAL CT. R. 25.15.
281. See WIS. STAT. ANN. §767.325 (West 1999).
282. See *id.*
283. See *id.*
284. See WIS. STAT. ANN. §767.11(4) (West 1999).
285. See *id.*
286. See *id.*
287. See WY. R. CIV. P. 40.
288. Attendance is defined as how the parties opt into the mediation process; sometimes they enter mediation by choice, and other times they are required by court order or Statute to attend.
289. Exceptions refer to what reasons, if any, prohibit parties from using mediation.
290. This column refers to who is responsible for the costs of mediation proceedings.
291. Qualifications vary amongst the States. Please refer to the individual caption of the State for specifications.
292. This references what happens if the parties do not reach an agreement after mediation sessions.
293. We sincerely apologize for any omissions to this list.

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IN THE AFTERMATH OF *TROXEL V. GRANVILLE* Is Mediation the Answer?

Michael E. Ratner

While the Court in *Troxel v. Granville* opines about the problems litigation creates, that of both expense and intrusion into the lives of families in the midst of grandparent visitation disputes, the Court decision falls short of posing a solution. The focus of this note is to propose a standard for mediation as a viable alternative to traditional litigation in such cases. The hope is that mediation will serve the best interests of the child.

In 1999, the United States Supreme Court granted certiorari to *Troxel v. Granville*,¹ a case that came out of the Washington Supreme Court, and entertained oral arguments in January 2000.² Rendering its decision on June 5, 2000, the Court held that the application of the Washington Grandparent Visitation Statute, with respect to this particular case, was unconstitutional and included dicta concerning the problems presented by the statute's language.³

Throughout the plurality opinion in *Troxel*, an underpinning concern was that statutes, which purport to give grandparents greater rights to directly petition courts for visitation, actually take away fundamental rights from the custodial parents.⁴ Yet, the custodial parents' freedom to care, control, and maintain custody of their children is a right that the Supreme Court holds as a liberty, protected by the Due Process Clause of the United States Constitution.⁵ Citing to seminal cases,⁶ the Court notes the importance of such protections in making decisions concerning the care, custody, and control of their children under the Fourteenth Amendment.⁷

A further concern and the motivation of this note is the Court's dicta on the enormous burden placed on the mother (custodial parent) in litigating against grandparents.⁸ "The litigation costs incurred by Granville [custodial parent] on her trip through the Washington court system and to this Court are without a doubt already substantial."⁹ The Court noted that not only there is a monetary concern but there is a concern that the litigation process is "disruptive of the parent-child relationship" and that any additional litigation "would further burden Granville's parental right."¹⁰ In spite of the Court's concern about the adverse affects that prolonged litigation can have on children, nothing in this decision speaks of possible alternatives to litigation.

Family law is an area of law drastically different in its ideology from many others. Family law has a distinct emphasis in self-determination and goal of limited state intrusion into family. In response to the concern of natural parents to the possible intrusion into family life, along with the understanding of the enormous costs of litigation, the Supreme Court handed down the decision in *Troxel*. This note serves to discuss whether there should be a statute mandating that grandparent visitation cases go through a mediation type process before they are litigated, a solution of which the Court in *Troxel* does not speak. The focus of this note is

to propose a standard for mediation as a viable alternative to traditional litigation in parent/grandparent visitation cases.

Part I of this article will examine the current versions of several statutes regarding grandparent visitation rights. In addition, it will focus on Washington's statute and others that showcase the lack of uniformity between the jurisdictions. Part II will show the burdens that these current statutes are placing on the parties involved in the litigation process. Part III will explore the purpose and benefits of mediation in general. Part IV will provide a look into mediation and the other avenues of law that use this process effectively. Part V will conclude with a discussion of the states that currently use mediation in grandparent visitation petitions.

I. CURRENT STATE OF GRANDPARENT VISITATION CASES

In recent years, the Supreme Court has denied certiorari in many family law matters, including grandparent visitation rights, in effect choosing not to address the matter.¹¹ In essence, the Court has left it to the state legislatures and courts to decide these issues.¹² This choice, by the Court, has left legal entitlement of grandparents to visit with their grandchildren in a state of constant flux.¹³ In addition, little help has been provided by Congress, as it has maintained that family matters are of state concern.¹⁴ Consequentially, each state, as well as the District of Columbia, has enacted some form of visitation rights for grandparents.¹⁵

TROXEL V. GRANVILLE (WASHINGTON'S STATUTE)

The Supreme Court (plurality opinion) in *Troxel* addressed the constitutionality of the State of Washington's nonparental visitation statute.¹⁶ The Washington statute provides,

Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.¹⁷

In *Troxel*, the parents, who were never married, had two children. The father regularly brought the children to visit with his parents. Sometime after the father committed suicide, the mother informed the paternal grandparents that she wished to limit their visitation with the children to one visit per month.¹⁸ The grandparents petitioned for visitation under Washington Statute Section 26.10.160(3).¹⁹ The trial court found that more extensive visitation with the grandparents was in the children's best interests and, therefore, ordered the visitation.²⁰

The Washington Court of Appeals reversed the lower court's visitation order on the basis that nonparents lack standing to seek visitation under section 26.10.160(3), unless a custody action is pending.²¹ The appellate court reasoned that this limitation, on nonparental visitation actions, was consistent with the constitutional restrictions on state interference with parents' fundamental liberty interest in raising their children.²²

The Supreme Court of Washington disagreed with the appellate court's reading of the statute, holding that the plain language of section 26.10.160(3) gives grandparents standing to seek visitation regardless of whether a custody action is pending.²³ The Washington Supreme Court held, however, that section 26.10.160(3) was an unconstitutional infringement on the fundamental right of parents to rear their children.²⁴ Specifically, the court found that the statute was too broad because it allows "any person" to petition for forced visitation

with the child “at any time” with the only requirement being that visitation serves the best interest of the child.²⁵ Thus, the Washington Supreme Court held that the statute allows the state to interfere with the fundamental right of parents to rear their children, without requiring a threshold showing of harm to the child as a result of the discontinued visitation.²⁶

The Supreme Court found that section 26.10.160(3), as applied to the facts of the case, was an unconstitutional infringement on this specific mother’s fundamental liberty interest in raising her children.²⁷ The Court began its analysis with a discussion of the important role that grandparents play in the increasingly prevalent existence of single-parent households.²⁸ The Court pointed out that the nationwide enactment of nonparental visitation statutes is certainly due to the states’ recognition of the changing realities of the American family; however, these statutes also “comes with an obvious cost.”²⁹ For example, the State’s recognition of an independent third-party interest in a child can place a substantial burden on the traditional parent-child relationship.³⁰

Turning to the Washington statute, the Court in *Troxel* focused on its broad scope.³¹ Section 26.10.160(3) allows “any person” to petition for visitation “at any time”³² and provides no requirement that a court must give deference to the parent’s decision that visitation would not be in the child’s best interest.³³ Furthermore, the Court emphasized that the trial court gave no special weight to the mother’s determination of her children’s best interests.³⁴ In fact, the court presumed that the grandparents’ request for visitation should be granted unless the children would be adversely affected.³⁵ Thus, the Court effectively reversed the burden and placed it on the mother to disprove that visitation would be in the best interests of her children.³⁶

The question posed in this note, and voiced in the opinion of *Troxel*, is what effect these differing state statutes will have on custodial parents and the children they try to protect. Interpretations in various jurisdictions differ since the state statutes all afford broad discretion to the judges, which leads to an increased burden on custodial parents to defend their decisions in court.³⁷ While the Court in *Troxel* recognizes the problem, it fails to provide any solution to it. This note poses a possible solution that fits into the *Troxel* standard, most notably by attempting to limit litigation’s increased possibility for intrusion into the lives of a family. Alternatives to litigation, more specifically mediation, provide such a scenario. This note examines mediation, to see whether these methods, which have been increasingly used in other avenues of law,³⁸ should also be used to shield those involved in grandparent visitation cases.

OTHER STATES’ STATUTES

Many state statutes promote the fears of undue economic and emotional hardship for the custodial parent, and ultimately the children, that the *Troxel* court sees as a grave reality. More substantially, the multitude of statutes breeds uncertainty within the legal system, which directly correlates into an increase in litigation whereby the court rewards the party willing to take the risks or gambles of litigation.³⁹

While the *Troxel* Court believes there is an inherent right for custodial parents to decide the visitation rights of their children, there are currently numerous jurisdictions that allow grandparents to petition for visitation under any circumstances.⁴⁰ These jurisdictions provide little in the way of safeguards, give little or no deference to parents’ objections, and the petitions are determined regardless of the family unit’s status.⁴¹ Not only do they give very broad discretion to the trial judge but they also allow anyone to petition, which in turn, provides petitioners with expansive abilities to get into court.⁴²

In Connecticut, any person may be granted the right of visitation to a minor child by a decision of the Court.⁴³ In determining which factors will be considered in the decision to allow such visitation, the statute uses the “best interest standard” as well as weighing the wishes of the child.⁴⁴ However, the Connecticut statute is devoid of any language that even suggests that the court should give deference to the wishes of the custodial parent.⁴⁵ Similarly, the Kentucky statute provides grandparents with a mechanism for petitioning the court but does not speak of any deference given to the desires of the custodial parents.⁴⁶ Florida’s statute gives a list of criteria for the court to follow when determining what the “best interests” of the child are and when it is appropriate to use them.⁴⁷ However, one factor missing is the parent’s deference.⁴⁸ The Florida statute stands in opposition to the *Troxel* standard that a parent knows what is best for their child.⁴⁹ Even more dramatically different from the *Troxel* standard is North Dakota’s visitation statute, which states that grandparents of an unmarried minor must be granted reasonable visitation rights by the court unless a finding is made that visitation is not in the best interests of the minor.⁵⁰ The statute also states that visitation rights of grandparents are presumed to be in the best interest of the minor.⁵¹

Few statutes grant the courts discretion to award visitation rights to grandparents whenever they find that it would be in the best interests of the grandchild, regardless of whether the family is intact or some disruption has occurred.⁵² As previously noted, Connecticut allows a court to decide visitation based solely on the determination of the child’s best interest, weighing no deference to parents’ wishes or to the family’s current structure.⁵³ Similarly, Delaware’s statute provides that on petition, a grandparent’s right to visitation, with respect to their grandchild, will be decided “regardless of marital status of the parents of the child or the relationship of the grandparents to the person having custody of the child.”⁵⁴ Also worth noting is New York’s grandparent visitation statute, which provides for visitation “where either or both of the parents of a minor child, residing within this state, is or are deceased, or where circumstances show that conditions exist which equity would see fit to intervene.”⁵⁵ The statute leaves this determination of “best interests” solely up to the judge and provides that the judge can decide to grant visitation even without dissolution, decease, or divorce in the family structure.⁵⁶

Many states have also changed their statutes in the past five years, adding to the vagueness and uncertainty in each jurisdiction. Alabama initially allowed grandparents to petition the court for visitation even when the family was intact.⁵⁷ Currently, the statute only allows a petition during or following divorce proceedings.⁵⁸ North Dakota amended its statute to create a statutory presumption that grandparent visitation was in the best interests of the children.⁵⁹ However, the North Dakota Supreme Court held that this new law violated parents’ fundamental liberty interest in controlling the persons with whom their children may associate and was thus deemed void.⁶⁰

Only a few states strive to provide deference to custodial parents’ wishes by limiting petitioners’ access to court proceedings, whereas far too many states provide little in the way of judicial obstacles to prevent a petitioner from getting a court proceeding. Illustrating this point is New Jersey’s statute, which allows a grandparent or any sibling of a child to make an application for an order of visitation.⁶¹ Consequently, this statute makes it very easy for a grandparent or a sibling to get before a judge. In an extremely broad ranging and open-ended statute, Idaho’s grandparent visitation statute provides, “The district court may grant reasonable visitation rights to grandparents or great-grandparents upon a proper showing that the visitation would be in the best interests of the child.”⁶² The statute goes no further and does not provide the trier of fact with any further details or criterion to help make the deci-

sion.⁶³ It, therefore, provides the court with extremely broad discretion as well as provides the petitioner with an extremely lenient standard to at least initiate a court proceeding.

In addition to the obvious inconsistencies among various jurisdictions' grandparent visitation statutes, courts have been equally inconsistent in applying these statutes.⁶⁴ From the plain language of Tennessee's, Kentucky's, Missouri's, and New York's statutes, it would appear that visitation would be granted to grandparents even in the context of intact families.⁶⁵ However, in recent decisions by each of these four courts, only the Missouri and Kentucky courts actually allowed it.⁶⁶ While the disparity cannot be explained by the language of the statutes, it has been noted that a possible resolution may be that considerations, other than the "best interests" of the child—the paramount consideration asserted in all of these cases—might be at play.⁶⁷

II. BURDENS THE CURRENT STATUTES CREATE FOR PARTIES

As evidenced in the prior section, states have made the waters of grandparent visitation statutes murky with uncertainty.⁶⁸ In many situations, parties are unaware of even the criteria a judge will use in determining the outcome of a dispute.⁶⁹ It is this uncertainty that encourages litigation since the outcome could go either way.⁷⁰ Increased litigation is in no one's best interests. As *Troxel* points out, "The burden of litigating a domestic relations proceedings can itself be 'so disruptive of the parent-child relationship that the constitutional right of a custodial parent to make certain basic determinations for the child's welfare becomes implicated.'" ⁷¹ Justice Kennedy further states in his dissent, "If a single parent who is struggling to raise a child is faced with visitation demands from a third party, the attorney's fees alone, might destroy her hopes and plans for the child's future."⁷² As the plurality discusses, the litigation costs incurred by Granville in her legal battle throughout the Washington court system and to the Supreme Court are substantial, to say the least.⁷³ By *Troxel*'s own admission, this litigation's court fees prior to its ascent to the United States Supreme Court topped more than \$50,000.⁷⁴

Courts have generally maintained that the goal of all grandparent visitation rights statutes is to maintain the already existing vital relationships between grandparents and grandchildren, and not to forge new relationships.⁷⁵ However, the current system for grandparent visitation, as demonstrated by the facts of the *Troxel* case, creates economic burdens as well as psychological and emotional burdens suffered by both the custodial parent and the child.⁷⁶ Kennedy further prefaces his dissent with "our system must confront more often the reality that litigation can itself be so disruptive that constitutional protection may be required."⁷⁷ It is this grave realization by the plurality, as well as the dissent, that drives this note to proffer an alternative to litigation.

The current structure of most grandparent visitation statutes provides the petitioner with a twofold process to gain visitation rights.⁷⁸ The first step in this process for court intervention is for the petitioner to demonstrate that the family situation fits within the legislatively defined range of circumstances in which the courts are given discretion to act.⁷⁹ The second step is to provide the court with sufficient evidence to persuade the trier of fact that court-ordered visitation is warranted.⁸⁰ As discussed earlier, since the "best interests" standard is and cannot be defined precisely, there is little restraint at this second stage on judge's discretion in determining family relationships.⁸¹ This lack of restraint may result in "impermissible intrusions upon parental interests protected by the Constitution."⁸² It is lack of

restraint on judge's powers that only further fuels the uncertainty in litigation and encourages grandparents to seek out litigation.⁸³

Studies and psychological literature have shown that the impact of a lawsuit on the stability of a child's environment can be extremely detrimental.⁸⁴ Lawsuits accompanied by intrusions by psychological experts and lawyers cause an inevitable disruption of the nuclear family, which eventually results in extreme anxiety and dislocation for a child.⁸⁵

Besides the possibility for intrusion and insecurity by the courts because of the lack of uniformity, the adversarial setting of the courtroom provides a poor environment for resolving family issues by allowing underlying problems between the parent and the grandparent to play out in public.⁸⁶ By allowing grandparents to seek court intervention, the system has created a "situation ripe for abuse by parents or grandparents motivated not by the best interest of the child but by the emotions resulting from underlying problems between the parent and grandparent."⁸⁷ For example, parents may deny visitation, and grandparents may petition for visitation, as a means of retaliation out of frustration or anger.⁸⁸ If this contest is taken out of the courtroom and placed in a setting where the underlying issues can be worked out, the situation would likely solve itself and would likely eliminate the dispute over grandparent visitation.⁸⁹

In *Troxel*, the plurality was especially cognizant of a custodial parent's wishes.⁹⁰ It was the belief of the Court that the "decisional framework employed by the Superior Court [in *Troxel*] directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child" by not affording the parent's decision to limit visitation any deference.⁹¹ This current framework for statutes, which provides little or no deference to parents' wishes, may create adverse consequences.⁹² When a court intervenes and orders visitation that parents do not welcome, the result might be ill feelings, bitterness, and animosity between the parent and grandparent.⁹³ Although on the surface this attempt by the court to foster a positive relationship between the grandparent and the child might seem to be successful, a court order will not serve the best interest of the child if it forces the child into an environment consisting of hostile and conflicting authority figures.⁹⁴ Even the possible benefits of love and affection of a grandparent may not necessarily justify awarding grandparents visitation privileges.⁹⁵ In the author's opinion, litigation is not the solution to these problems; alternatives should be sought. Mediation is one such alternative.

III. MEDIATION

At some point during most litigation between grandparent and parent, courts often express discomfort that the child has become a central focal point in some sense to a family power struggle.⁹⁶ These courts further lament the family's inability to resolve their own conflicts in a setting that is most certainly inadequate to resolve such familial conflicts.⁹⁷ The hostilities involved in a grandparent visitation case often echo the hostilities involved in divorce proceedings.⁹⁸ Thus, as in divorce proceedings, grandparent visitation cases have the same potential for becoming a traumatic event for a child.⁹⁹ Unfortunately, litigation can make these emotionally wrenching family conflicts even more difficult for the child involved.¹⁰⁰ Besides emotional detriment to the child, court adjudication may not be well suited for the resolution of grandparent visitation because disputes, heard in a single court hearing, are generally insufficient to resolve the background issues that have taken years to develop.¹⁰¹ Because the dispute is frequently based on perceptions rather than facts, a fact-

finding justice system is said to be ineffective.¹⁰² Thus, courts might prefer that these disputes be resolved without resort to litigation.¹⁰³ As Mnookin stated, in child custody disputes during divorce proceedings,

a process that leads to agreement between the parents is preferable to one that necessarily has a winner and a loser. A child's future relationship with each of his parents is better ensured and his existing relationship less damaged by a negotiated settlement than by one imposed by a court after an adversary proceeding.¹⁰⁴

As of 1998, more than two thousand laws have been enacted by legislatures dealing with mediation and other dispute resolution processes, and even more courts and administrative agencies have advocated for its use.¹⁰⁵ Mediation is a process through which a mediator, a neutral third party, assists parties in negotiating a voluntary and mutually agreeable settlement of their differences.¹⁰⁶ The mediator assists in the process but maintains no interest in the dispute.¹⁰⁷ An essential characteristic of mediation is its informality, allowing the process to have a free and open level of discussion between the parties and the facilitator.¹⁰⁸

As opposed to other alternative dispute resolution processes, such as arbitration, mediation does not allow the neutral party to determine the outcome of the negotiations.¹⁰⁹ The mediator is only allowed to oversee the process, whereas the parties are the entities that develop the agreement. The mere belief of an opportunity for expression is seen as fair.¹¹⁰ A belief that a process is fair leads to an increased satisfactory level, regardless of the outcome.¹¹¹

Mediation's ease of settlement and cost-saving outcomes have also resulted in a feeling of satisfaction among parties.¹¹² Mediation, as a whole, is less expensive than going to trial, and furthermore, after spending a fortune on a trial, parties generally do not get the intended results or receive results no different than those that could have been ascertained through mediation.¹¹³ Furthermore, it has been seen that in a trial, the party better able to bear the transaction costs, whether financial or emotional, will have an advantage in bargaining.¹¹⁴ Mediation as a process attempts to eliminate advantages in bargaining, leaving parties on a equal plane.

Mediation enables parties to look beyond legal issues and remedies in developing more efficient ways to solve the two parties' problems.¹¹⁵ Since the mediator is not required to stay within the formal rules of evidence and parliamentary procedure, parties may introduce any evidence they feel necessary in any way they feel comfortable.¹¹⁶ The purpose is not to prevent evidence but to enable a settlement or at the very least provide the mechanism for allowing the possibility for a "win-win" resolution.¹¹⁷

With the understanding that the parties have more extensive knowledge of the situation than any judge could hope to have, mediation provides the opposing parties an opportunity to maintain and increase their potential for shaping the remedy.¹¹⁸ Mediation also guarantees that the agreement can be as specific as the parties desire as opposed to a court determined order.¹¹⁹ With the use of mediation, children will be less likely the subject of future conflicts, as it has been shown that mediated settlements are usually better adhered than are court judgments.¹²⁰

Finally, while mediation may result in a positive solution to the parties' dilemma, the process does not eliminate the right of either party to seek relief by way of the courts.¹²¹ However, it is this safety net that could lead to an increased potential for a successful mediation, as the threat of a trial could force the parties to resolve their differences.¹²²

IV. MEDIATION IN OTHER AVENUES OF LAW

It has been noted that the unique nature of family law, in that it meshes both law and personal feelings, enables mediation to be most conducive to producing a settlement.¹²³ Florida initiated the first mediation program in 1975, when it created the first court-connected mediation program to resolve community disputes.¹²⁴ Florida has since opened its mediation doors to all types of litigated topics.¹²⁵ Florida has also authorized the referral of all family matters to mediation.¹²⁶ Florida Family Law Rule 12.020(a) defines family law matters to include among others, matters arising from dissolution of marriage, paternity, child support, custodial care or access to children, adoption, emancipation proceedings, and declaratory judgment actions related to premarital, marital, or postmarital agreements.¹²⁷ Furthermore, Rule 12.740 states, "All contested family matters and issues may be referred to mediation."¹²⁸

In 1980, the California legislature enacted the first statute requiring a form of mediation in all contested child custody cases.¹²⁹ As of 1995, twenty-five states had enacted either a mandatory or discretionary mediation statute in child custody cases.¹³⁰ California Civil Code § 4607 became effective on January 1, 1981, with a stated purpose to "reduce the acrimony which may exist between the parties and to develop an agreement, assuring the child or children's close and continuing contact with both parents after marriage is dissolved."¹³¹

By 1999, forty states as well as the District of Columbia had established either mandatory or discretionary statutes for mediation in child custody cases.¹³² Of those forty-one jurisdictions, eleven make the mediation process mandatory.¹³³ Exemptions for mediation are listed for either domestic abuse allegations, undue hardship, extraordinary causes, or sexual or physical abuse.¹³⁴ Under the California statute, there is no direct cost to either party for the use of the Family Court Services' Mediation Program.¹³⁵ The statute allows the court to appoint mediators or the parties can select their own.¹³⁶ The mediator will notify the court if an agreement has been met and will submit the agreement to the court for approval.¹³⁷ If no agreement is met, the mediator will advise the court whether further mediation would be helpful in resolving the matter, in which case, the court may order the parties to return for further mediation.¹³⁸

However, just as in grandparent visitation statutes, mediation statutes vary between states as well. In Kansas, mediation is discretionary and any issues of domestic disputes may be mediated.¹³⁹ In Kansas, the parties are responsible for mediation fees.¹⁴⁰ In addition, any understanding, reached through mediation, is not binding in Kansas until it is in writing and is signed by the parties and their attorneys, if any are involved, and approved by the court.¹⁴¹ In Alaska, mediation is used at the trial court's discretion, and any issues concerning divorce and the dissolution of marriage can be mediated.¹⁴² However, mediation will not be ordered or recommended in a proceeding concerning child custody or visitation if a protective order has been issued or filed.¹⁴³ The Alaska court appoints the mediator and can appoint anyone it finds suitable.¹⁴⁴ If mediation efforts fail, then the mediator will notify the court clerk, and the divorce action will proceed in the usual manner.¹⁴⁵

Very few studies have been done on the quantifiable advantages mediation provides.¹⁴⁶ One such study was completed after the enactment of California Civil Code § 4607.¹⁴⁷ In 1980, an evaluation showed a reduction in the average number of custody or visitation hearings from 275 per year, in 1977 to 3 in 1980.¹⁴⁸ A later study, in Virginia, found that its mediation program resulted in a 61 percent reduction in the number of cases going to trial.¹⁴⁹ In addition, mediated final agreements were achieved in one-half of the time required to reach an agreement through the litigation channel.¹⁵⁰

In addition to the efficiency and ability to clear the backlog existing within the legal system, mediation provides a monetary benefit as well.¹⁵¹ A 1979 study of Los Angeles County's custody mediation program showed a savings of over a week and a half, in man-time hours, as opposed to litigation as well as an average savings of close to \$1,000,000 (one million dollars) for the county.¹⁵² Finally, in a California study completed in the mid-1980s, the average cost to litigate a divorce proceeding was 134 percent higher than to mediate the action.¹⁵³

V. STATES THAT HAVE DISCRETIONARY STATUTES FOR MEDIATION OF GRANDPARENT VISITATION CASES

Few states have passed statutes enabling the court to use the mechanism of mediation in grandparent requested visitation cases.¹⁵⁴ In the state of Florida, where mediation is used to resolve "differences over grandparent visitation," the statute reads that "it shall be the public policy of this state that families resolve differences over grandparent visitation within the family."¹⁵⁵ The statute provides for a mediation service where the lines of communication within the family structure have broken down.¹⁵⁶ The statute also delineates that the mediation program may be either formal or informal and that the determination of such a program falls squarely on the family.¹⁵⁷ The court's direction to the parties to seek mediation is the only court-induced interference provided for by the statute.¹⁵⁸

Virginia is a second jurisdiction in which a legislature saw fit to implement a mediation program to handle disputed visitation cases.¹⁵⁹ While the statute does not specifically state that mediation is discretionary, there is no provision requiring mediation; rather, under this section, trial courts have discretionary authority to refer parties, in an appropriate case, to evaluation for possible mediation services.¹⁶⁰ The mediation service is also paid for by the commonwealth, enabling an even larger percentage of the population to benefit from mediation.¹⁶¹ In North Dakota, a similar discretionary statute permits the court to require mediation in those situations in which the court determines that families would benefit from the service.¹⁶² The statute goes on to permit the court to order the dispute arbitrated by the person who attempted mediation.¹⁶³

New Mexico also established a legislative statute to provide mediation services to petitioning grandparents in visitation cases.¹⁶⁴ In contrast, West Virginia has no statute for discretionary mediation but does provide in court cases for possible mediation.¹⁶⁵

In California, mediation for contested custody as well as visitation is mandatory.¹⁶⁶ This mediation program, which covers both custody and visitation, is heavily guided by state law and provides for a mediator to be certified by the state.¹⁶⁷ In an effort to keep this dispute out of the courts,

Where the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.¹⁶⁸

An indication of the trend toward meditation use between parents and grandparents may be seen in a variety of local court rules in jurisdictions in Nevada, Texas, and Arizona.¹⁶⁹

CONCLUSION

On June 5, 2000, the Supreme Court voiced its opinion by concluding that a Washington statute regarding grandparent visitation rights, as it pertained to this specific situation, was unconstitutional, in large part, for its breadth of scope. In doing so, the Court also opined that the process, by which state courts allow for third parties to petition the courts for visitation, places unreasonable burdens on custodial parents as well as on the child. This note has attempted to provide a window on the basis for this belief, as well as to provide a mechanism for alleviating the deleterious side effects of third parties petitioning for visitation via litigation. Mediation as the recommended mechanism has been successful in other avenues of law, including closely related areas such as child custody. Moving families toward the mediation process could provide sufficient momentum to solve their problems by mutual agreement, instead of through a court order. It is, therefore, the hope that whereas grandparent/parent struggles in a courtroom atmosphere only serve to ignite smoldering problems, a mediated agreement between family members might serve to extinguish visitation dispute flames. In this way, it is hoped that family members may settle disputes amicably while making the best interests of the child paramount.

NOTES

1. *Troxel v. Granville*, 530 U.S. 57 (1999).
2. *Id.*
3. *See id.*
4. *See generally, Troxel*, 530 U.S. 57.
5. *See id.*
6. *See Troxel*, 530 U.S. at 65 (citing *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Mass.*, 321 U.S. 158 (1944)).
7. *See Troxel*, 530 U.S. at 65.
8. *Troxel*, 530 U.S. at 75.
9. *Id.*
10. *Id.*
11. The Supreme Court in 1992 denied certiorari in *King v. King*, 828 S.W.2d 630 (Ky.) (granting paternal grandfather right to visit with his granddaughter over objections of child's married, natural parents), cert denied 506 U.S. 941 (1992) and in *H.F. v. T.F.*, 483 N.W.2d 803, 804-7 (Wisc.) (granting paternal grandparents right to visit with grandchild despite adoption of child by stepfather), cert denied, 506 U.S. 953 (1992).
12. *See generally Troxel*, 530 U.S. 57. Leaving the question of whether grandparents have a right to visitation unanswered.
13. *See* Judith L. Shandling, Note, *The Constitutional Constraints on Grandparents' Visitation Statutes*, 86 COLUM. L. REV. 118, 119-21 (1986) (discussing lack of jurisdictional uniformity in grandparent visitation cases).
14. *See* U.S. CONST. art. I, § 8 (family law or grandparents' visitation rights are not encompassed in powers of Congress); U.S. CONST. Amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").
15. *See* ALA. CODE § 30-3-4.1 (1999); ALASKA STAT. ANN. § 25.20.065 (1998); ARIZ. REV. STAT. ANN. § 25-409 (1994); ARK. CODE ANN. § 9-13-103 (1998); CAL. FAM. CODE ANN. § 3104 (West 1994); COLO. REV. STAT. § 19-1-117 (1999); CONN. GEN. STAT. § 46B-59 (1999); DEL. CODE ANN., TIT. 10, § 1031(7) (2000); FLA. STAT. § 752.01 (2000); GA. CODE ANN. § 19-7-3 (1991); HAW. REV. STAT. § 571-46.3 (1999); IDAHO CODE § 32-719 (2000); ILL. COMP. STAT., CH. 750, § 5/607 (1998); IND. CODE § 31-17-5-1 (1999); IOWA CODE § 598.35 (1999); KAN. STAT. ANN. § 38-129 (1993); KY. REV. STAT. ANN. § 405.021 (Baldw. 1990); LA. REV. STAT. ANN. § 9:344 (West Supp. 2000); LA. CIV. CODE ANN., ART. 136 (West Supp. 2000); ME. REV. STAT. ANN., TIT. 19A, § 1803 (1998); MD. FAM. LAW CODE ANN. § 9-102 (1999); MASS. GEN. LAWS § 119:39D (1996); MICH. COMP. LAWS ANN. § 722.27b (Supp. 1999); MINN. STAT. § 257.022 (1998); MISS. CODE ANN. § 93-16-3 (1994); MO. REV. STAT. § 452.402 (Supp. 1999); MONT. CODE ANN. § 40-9-102 (2000); NEB. REV. STAT. § 43-1802 (1998); NEV. REV. STAT. § 125C.050 (Supp. 1999);

N. H. REV. STAT. ANN. § 458:17-D (1992); N. J. STAT. ANN. § 9:2-7.1 (West Supp. 1999-2000); N. M. STAT. ANN. § 40-9-2 (1999); N. Y. DOM. REL. LAW § 72 (McKinney 1999); N. C. GEN. STAT. §§ 50-13.2, 50-13.2A (1999); N. D. CENT. CODE § 14-09-05.1 (2000); OHIO REV. CODE ANN. §§ 3109.051, 3109.11 (Supp. 1999); OKLA. STAT., TIT. 10, § 5 (Supp. 1999); ORE. REV. STAT. § 109.121 (1997); 23 PA. CONS. STAT. §§ 5311-5313 (1991); R. I. GEN. LAWS §§ 15-5-24–15-5-24.3 (Supp. 1999); S. C. CODE ANN. § 20-7-420(33) (Supp. 1999); S. D. CODIFIED LAWS § 25-4-52 (1999); TENN. CODE ANN. §§ 36-6-306, 36-6-307 (Supp. 1999); TEX. FAM. CODE ANN. § 153.433 (Supp. 2000); UTAH CODE ANN. § 30-5-2 (1998); VT. STAT. ANN., TIT. 15, §§ 1011-1013 (1989); VA. CODE ANN. § 20-124.2 (1995); REV. CODE WASH. § 26.09.240 (2000); W. VA. CODE §§ 48-2B-1–48-2B-7 (1999); WIS. STAT. §§ 767.245, 880.155 (1993-1994); WYO. STAT. ANN. § 20-7-101 (1999).

16. See *Troxel*, 530 U.S. at 65. “In this case, we are presented with just such a question. Specifically, we are asked to decide whether § 26.10.160(3), as applied to Tommie Granville and her family, violates the Federal Constitution.” *Id.*

17. *Troxel*, 530 U.S. at 61 quoting WASH. REV. CODE § 26.10.160(3) (1994).

18. See *id.*

19. See *In re Troxel*, 940 P.2d 698, 700 (1997).

20. See *id.* at 61-62.

21. See *In re Troxel*, 940 P.2d 698, 700 (1997).

22. See *id.*

23. See *Troxel*, 530 U.S. at 62-63. (citing *In re Smith*, 969 P.2d 21, 26-27 (1998)).

24. See *Troxel*, 530 U.S. at 63.

25. See *id.*

26. See *id.* at 63 (citing *In re Smith*, 969 P.2d at 28-31).

27. See *id.* at 67.

28. See *id.* at 63-64.

29. *Id.*

30. See *id.* at 64.

31. See *id.* at 67.

32. Wash. Rev. Code § 26.10.160(3) (1994).

33. See *Troxel*, 530 U.S. at 67. “Thus, in practical effect, in the State of Washington a court can disregard and overturn any decision by a fit custodial parent concerning visitation whenever a third party affected by the decision files a visitation petition, based solely on the judge’s determination of the child’s best interests.” *Id.*

34. See *id.* at 69.

35. See *id.*

In reciting its oral ruling after the conclusion of closing arguments, the Superior Court judge explained: The burden is to show that it is in the best interest of the children to have some visitation and some quality time with their grandparents. I think in most situations a commensal approach [is that] it is normally in the best interest of the children to spend quality time with the grandparent, unless the grandparent [sic], there are some issues or problems involved wherein the grandparents, their lifestyles are going to impact adversely upon the children. That certainly isn’t the case here from what I can tell. *Id.*

36. See *id.*

37. See Michael Quintal, *Court Ordered Families: An Overview of Grandparent-Visitation Statutes*, 29 SUFFOLK U.L. REV. 835, 836-37 (1995).

38. See David A. Ruiz, *Note & Comment: Asserting a Comprehensive Approach for Defining Mediation Communication*, 15 OHIO ST. J. ON DISP. RESOL. 851, 851 (2000). “Mediation and other forms of alternative dispute resolution (ADR) have experienced immense popularity in recent years.” *Id.*

39. See Robert H. Mnookin and Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 969. (1979). “Often, the outcome in court is far from certain, with any number of outcomes possible. Indeed, existing legal standards governing custody, alimony, child support, and marital property are all striking for their lack of precision and thus provide a bargaining backdrop clouded by uncertainty.” *Id.*

40. See Shandling, *supra* note 13, at 119.

41. See *id.*

42. See *id.*

43. See CONN. GEN. STAT. § 46b-59 (1999).

44. *Id.*

45. See generally *id.*

46. See Ky. Rev. Stat. Ann. § 405.021 (1998).

47. Fla. Stat. § 752.01 (2000) “the court shall, upon petition filed by a grandparent of a minor child, award reasonable rights of visitation to the grandparent, with respect to the child, when it is in the best interest of the minor child.”

48. See generally *id.*

49. *Troxel*, 530 U.S. at 66. “In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody and control of their children.” *Id.* “In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody and control of their children.” *Id.*

“There is a presumption that fit parents act in their children’s best interests; there is normally no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.” *Id.* at 68-69.

50. See N.D. CENT. CODE, § 14-09-05.1 (2000).

51. See *id.*

52. See Shandling, *supra* note 13, at 119.

53. See Conn. Stat., *supra* note 43; see also MONT. CODE ANN. § 40-9-102 (2000).

54. DEL. CODE ANN., Tit. 10 § 1031(7) (2000).

55. NY DOM. REL. § 72.

56. See *id.*

57. See CODE OF ALA. § 30-3-4 (Supp. 1996) (repealed).

58. See CODE OF ALA. § 30-3-4 (1999).

59. See N.D. CENT. CODE, @ 14-09-05.1 (2000).

60. See *Hoff v. Berg*, 595 N.W.2d 298 (1999) (1993 Amendment void presumption standard).

61. See N.J. ST 9:2-7.1 (2001).

62. Idaho Code § 32-719 (2000).

63. See generally *id.*

64. See Sarah Norton Harpring, Comments: Wide-Open Grandparent Visitation Statutes: Is the Door Closing, 62 U. CIN. L. REV. 1659, 1673 (1994).

65. See TENN. CODE ANN §§ 36-6-301(a) (1999); MO. REV. STAT § 452.402 (SUPP. 1999); KY. REV. STAT. ANN. § 405.021 (1998); NY DOM REL. § 72 (2001).

66. See *Hawk v. Hawk*, 855 S.W.2d 573 (Tenn. 1993); *Herndon v. Tuhey*, 857 S.W.2d 203 (Mo. 1993); *King v. King*, 828 S.W.2d 630 (Ky. 1992); *Doe v. Smith*, 595 N.Y.S.2d 624 (N.Y. Fam. Ct. 1993).

67. See Harpring, *supra* note 64, at 1673. In fact, “[c]ommentators have asserted that judges frequently decide these cases based on their own personal views of the value of grandparent-grandchild relationships. Where the applicable statutes do not expressly enumerate the factors to be considered in determining the best interests of a child regarding visitation, that is a distinct possibility.” *Id.*

68. See Section 1 for the list of grandparent visitation statutes in all 50 states. Most jurisdictions have different statutes which leads to differing outcomes in each state.

69. See Mnookin, *supra* note 39, at 971. “But in real situations, the exact odds of various possible outcomes are not known by the parties; often they do not even know what information or criteria the judge will use in deciding.” *Id.*

70. See *id.*, at 956. “Moreover, a negotiated agreement allows the parties to avoid the risk and uncertainties of litigation, which may involve all-or-nothing consequences.” *Id.*

71. *Troxel*, at 75 (O’Connor, J., quoting Kennedy, J.’s dissent).

72. *Id.* at 101.

73. *Id.* at 75.

74. Letter written by Troxel Party. (visited Mar. 3, 2001) <http://www.parentsrightrights.org>. “As you can imagine, our legal expenses have been overwhelming and won’t be lessening in the U.S. Supreme Court. We have spent more than \$50,000 before three state courts defending our rights to not have the court system interfere with our family decisions. We are unable to fund our Supreme Court defense on our own.” *Id.*

75. See *Apker v. Malchak*, 490 N.Y.S.2d 923, 925 (App. Div. 1985) (denying grandparents visitation rights because they had not seen their grandchildren in nine years and thus lacked any meaningful relationship with their grandchildren); *Looper v. McManus*, 581 P.2d 487, 488 (Okla. App. 1978) (“Visitation is not solely for the benefit of the adult visitor but is aimed at fulfilling what many conceive to be a vital, or at least a wholesome contribution to the child’s emotional well-being by permitting partial continuation of an earlier established close relationship.”)

76. See *Troxel*, 530 U.S. at 75.

77. *Id.* at 101.

78. See Shandling, *supra* note 13, at 122.

79. See *id.*

80. *See id.*
81. *See id.* at 123.
82. *Id.*
83. *See* Mnookin, *supra* note 39, at 958. "Moreover, because parents, not state officials, are primarily responsible for the day-to-day child rearing decisions both before and after divorce, parents, not judges, should have primary authority to agree on custodial arrangements." *Id.*
84. *See id.* at 124.
85. *See id.*
86. *See* Quintal, *supra* note 37, at 850.
87. *See id.*
88. *See id.*
89. *See id.* at 854.
90. *Troxel*, at 70. "And, if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination." *Id.*
91. *Id.*
92. *See* Quintal, *supra* note 37, at 850-51.
93. *See id.*
94. *See id.*
95. *See id.*
96. *See* Harpring, *supra* note 64, at 1676.
97. *See id.*
98. *See id.* at 1677.
99. *See id.*
100. *See id.* "For example, one asserted problem with using the judicial system is that its adversarial nature can exacerbate the family dispute and make the existing division between the parties even more resolute, potentially making it less likely that peace will result following the adjudication." *Id.*
101. *See id.* at 1677-78.
102. *See id.* at 1678.
103. *See id.*
104. *See* Mnookin, *supra* note 39, at 958.
105. *See* Chris Guthrie and James Levin, A "Party Satisfaction" Perspective on a Comprehensive Mediation Statute, 13 OHIO ST. J. ON DISP. RESOL. 885, 885 (1998).
106. *See id.* at 853.
107. *See id.*
108. *See id.*
109. *See* Guthrie and Levin, *supra* note 105, at 890.
110. *See id.* 891.
111. *See id.*
112. *See id.* at 895.
113. *See* Harpring, *supra* note 64, at 1678-79.
114. *See* Mnookin, *supra* note 39, at 972.
115. *See* Ruiz, *supra* note 38, at 854.
116. *See id.*
117. *See id.* at 854-855.
118. *See id.*
119. *See id.*
120. *See* Harpring, *supra* note 64, at 1678.
121. *See id.*
122. *See id.*
123. *See* Alison E. Gerencser, *Symposium: Dispute Resolution in the Law School Curriculum: Opportunities and Challenges, Part II: Alternative Dispute Resolution has Morphed into Mediation: Standards of Conduct Must Be Changed*, 50 FLA. L. REV. 843, 852 (1998).
124. *See id.*
125. *See id.* at 853.
126. *See* Fla. Fam. Law Rule 12.020(a).
127. *See id.*

128. See Fla. Fam. Law Rule 12.740. There is an exception in FS 44 that excepts cases where there is a history of domestic violence which would compromise the mediation process.

129. See Cal. Civ. Code § 4607 (West 1993) (repealed 1994).

130. See Dane E. Gaschen, *Note and Comment: Mandatory Custody Mediation: The Debate Over its Usefulness Continues*, 10 OHIO ST. J. ON DISP. RESOL. 469, 472 (1995).

131. *Id.* at 470.

132. ALA. CODE § 6-6-20(b)(1) (1975); ALA. STAT. § 25.20.080 (West 1998); ARIZ. REV. STAT. § 6.8 (1999); 1999 ARK. ACTS 704 (enacted March 18, 1999); CAL. FAM. CODE § 3170-3177 (West 1994); COLO. REV. STAT. ANN. § 13-22-311 (West 1999); CONN. GEN. STAT. ANN. § 46b-53a (West 1999); DEL. FAM. CT. R. 16(b)(1) (1994); U.S. DIST. CT. RULES D.C., APP. C II; FLA. STAT. ANN. § 44.102 (West 1994); HAW. REV. STAT. § 580-41.5 (1998); IDAHO RULES FOR CIV. PROC. RULE 16(J)2; IL. R 17 CIR. MED. RULE 1; 1999 IOWA ACTS 683; KAN. STAT. ANN. § 23-701 (1998); KY. REV. STAT. ANN. § 509 (Banks-Baldwin 1999); ME. REV. ANN. TIT. 19-A § 251.2 (West 1999); MD. CODE ANN., FAM. LAW § 9-205; Ma. House Bill 1379 (SN) 1999; MI. R SPEC P MCR 3.216; MINN. STAT. ANN. § 518.619 (1) (West 1999); MS RULE UNIF. CH. CT ADMIN. ORDER No. 41; COURT ANNEXED MEDIATION RULES FOR CIVIL LITIGATION; MO. R SIXTEENTH JUDICIAL CIRCUIT COURT MEDIATION PROGRAM GUIDE; MONT. CODE ANN. § 40-4-301 (1) (1999); NEB. REV. STAT. § 43-2906 (1999); NEV. REV. STAT. ANN. § 25 (1998); N.H. REV. STAT. ANN. § 458:15-A. (1999); NJ RULE 1:40-4; N.M. STAT. ELEVENTH DIST. CT. RULE LR11-115; N.M. STAT. EIGHTH DIST. CT. RULE LR8-107B; N.M. STAT. NINTH DIST. CT. RULE LR9-703B; N.C. GEN. STAT. § 50-13.1 (1995); N.D. CENT. CODE. § 14-09.102 (1999); OHIO REV. CODE ANN. § 3109.052 (West 1999); OKLA. STAT. ANN. TIT. 43 § 107.3 (West 1999); OR. REV. STAT. 107.765 (1998); PA. STAT. ANN. TIT. 23 § 3901 (C) (1); RI ST § 15-5-29(A) (1998); S.D. CODIFIED LAWS § 25-4-56 (1999); TENN. CODE ANN. § 36-4-131 (1999); TEX. FAM. CODE ANN. § 153.0071 (c); UTAH ADMIN. CODE 4-909 (1996); VA. CODE ANN. § 8.01-576.4 (Michie 1999); *Carter v. Carter*, 196 W.Va 239, 470 S.E.2d 712 (1988); W. VA. CODE § 48-11-101 (b) (1999); WIS. STAT. ANN. § 767.325 (West 1999).

133. These include California, Delaware, Florida, Idaho, Kentucky, Maine, Nevada, Pennsylvania, South Dakota, Utah, Washington and Wisconsin.

134. See Gerencser, *supra* note 123.

135. *See id.*

136. *See id.*

137. *See id.*

138. *See* CAL. APP. SUPP., R.10.8(e) (West 1999).

139. *See* KAN. STAT. ANN. § 23-701 (1998).

140. *See id.*

141. *See* KAN. STAT. ANN. § 23-603 (1998).

142. *See* ALA. STAT. § 25.24.060 (West 1998).

143. *See id.*

144. *See id.*

145. *See id.*

146. *See* Gaschen, *supra* note 130, at 481.

147. *See id.*

148. *See id.*

149. *See id.*

150. *See id.*

151. *See id.*

152. *See id.* at 482.

153. *See id.*

154. *See* FLA. STAT. § 752.015 (2000); VA. CODE ANN. § 20-124.4 (2000); N.D. CENT. CODE, § 14-09-05.1 (2000); CAL. FAM. CODE § 3160 (2000).

155. FLA. STAT. § 752.015 (2000).

156. *See id.*

157. *See id.*

158. *See id.*

159. *See* VA. CODE ANN. § 20-124.4 (2000).

160. *See Summers v. Summers*, No. 2759-98-4, 1999WL 1133284 at *3 (Va. App. Aug. 3, 1999) (Where a father was denied the right to mediation by the court; court concluded that mediation was a court's discretion).

161. *See* VA. CODE ANN. § 20-124.4 (2000).

162. *See* N.D. CENT. CODE, § 14-09-05.1 (2000).

163. *See id.*

164. See N.M. Stat. Ann. @ 40-9-2 (2000): (H).

165. See W. VA. CODE § 48-2B-1 (2001); see *Carter v. Carter*, 470 S.E.2d 193 (1996). “Although the West Virginia Code does not specifically require mediation in family law matters, a circuit court or a family law master in an appropriate situation may require the parties to attempt mediation of their visitation differences.” *Id.*

166. In 1993 California repealed CAL. CIV. CODE 4607, replacing it in with CAL. FAM. CODE § 3160. § 3160 continues without substantive change and generalizes the first and third sentences of former Civil Code Section 4607(b).

167. See Sections 3160, 3162, 3163, 3164, 3172, 3173, 3175, 3176, 3180(b), 3181, 3183, 3184, and 3185.

168. CAL FAM CODE § 3183 (2000).

169. Interviews with Phil Bushard, Family Mediation Program, Reno, Nevada (July 16, 2001), Pat Ross, Manager, Dallas County Family Court Services (July 16, 2001), and Fred Mitchell, Family Center of the Conciliation Court, Tuscon, Arizona (July 16, 2001).

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AN EXPLORATORY STUDY OF SUPERVISED ACCESS AND CUSTODY EXCHANGE SERVICES The Parental Experience

Barbara E. Flory, Jerry Dunn, Marla Berg-Weger, and Marguerite Milstead

An exploratory outcome study to investigate the ability of a supervised access and custody exchange center to function as a safe visitation enforcement mechanism of the court was accomplished as part of a larger study investigating child well-being. During a 6-month period of program participation, frequency and consistency of noncustodial parents' access to children dramatically increased and interparental conflict significantly decreased, demonstrating that supervised visitation and custody exchange centers that function in partnership with family court during interim court processes can address the unmet needs of family court and high-conflict domestic disputant as well.

A child born in 1990 has approximately a 50% chance of falling under the jurisdiction of the court for the purpose of deciding where and with whom the child will live (Mason, 1994). Although most divorces will be resolved amicably, approximately one third of cases will remain marked by high conflict centered around visitation complaints 3 to 5 years postdivorce (Garrity & Baris, 1994; Johnston, 1994; Maccoby & Mnookin, 1992). About 10% of these highly conflicted families will tax the family court system, entering and exiting the courthouse as if through a revolving door, seeking remedies to real or perceived injustices (Ahrns, 1994; Maccoby & Mnookin, 1992).

Increasingly, family courts across the nation are recognizing that this small segment of the divorced population fails to benefit from repeat court intervention. To better meet the needs of such families, the 22nd Judicial Circuit of Missouri, St. Louis City Family Court, entered into a formal collaboration with a private mental health agency to establish Heritage House, a community-based supervised access and custody exchange center. The mission of Heritage House is to ensure the safety of children and adult family members by providing court-ordered supervised visitation and custody exchange services in a neutral, family-friendly environment.

High conflict is an abstract term often used in conjunction with intractable child access disputes; however, there is no agreed-on definition. For this study, families are considered high conflict when one or more of the following criteria is present: (a) children's opportunity to maintain a relationship with both parents is precluded by parental behavior, (b) ongoing adult interpersonal conflict exposes children to negative messages and inappropriate role expectations, (c) ongoing interparental verbal and/or physical conflict exposes children to potential emotional and/or physical harm, (d) child physical or sexual abuse and/or neglect is alleged, or (e) domestic violence exposes adult victims to potential physical harm (Flory, 1998).

At the same time that family courts are struggling to find just remedies to high-conflict visitation disputes, the changing social fabric of our lives has introduced contemporary

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issues into the mix, most commonly, the rights of never-married parents. From 1970 to 1996, the number of U.S. unmarried-couple households (opposite-sex couples) grew from 523,000 to 4 million (U.S. Department of Health and Human Services, 1998). This contemporary reshaping of adult living arrangements suggests that increases in single-parent childbearing will continue in the 21st century and further complicates judicial decision making concerning visitation arrangements that fall outside the context of marriage (the very context on which social policy is based). Many of these never-married parents share the same characteristics as divorced parents but also include other complex dimensions, such as little if any relationship history.

Stepped-up efforts to enforce child support began in the mid-1980s (Public Law 100-485, 1988); however, few programs aimed toward expedited visitation efforts have been established (Lee, Shaughnessy, & Bankes, 1995). As family courts face the unprecedented dilemma of determining the role of previously uninvolved fathers, centers such as Heritage House permit judges to write simultaneous child support and child access orders. Programs that share the mission of Heritage House work to mediate the emotional stress placed on children by introducing and facilitating the formation of a healthy parent-child relationship, thus easing judicial concern about child safety.

Over a 3-year period of operation, statistical trends and anecdotal evidence gathered in direct client observation indicate that Heritage House successfully accomplishes the intended goal of providing safe, supervised access and custody exchange services. However, the partnership recognized the value of more rigorous documentation to support early successes and to promote the development of centers like Heritage House statewide. Securing a research grant from the St. Louis University Emmett J. and Mary Martha Doerr Center for Social Justice Education and Research, St. Louis, Missouri, enabled the implementation of a yearlong exploratory outcome evaluation focused on child well-being. The findings reported in this article result from data collected as a part of the larger study and represent only the portion that demonstrates the ability of centers like Heritage House to function as a visitation enforcement mechanism of the court that helps manage the inherent conflict associated with this special needs population.

LITERATURE REVIEW

A literature review concerning supervised access and custody exchange services discloses a sparse body of information. Most early literature on supervised visitation describes program models (Hess, Mintun, Moelhman, & Pitts, 1992; Stocker, 1992), whereas more recent articles focus on the use of supervised visitation in the context of domestic violence (Field, 1998; Johnston & Straus, 1999; Pearson & Thoennes, 2000; Sheeran & Hampton, 1999; Thoennes & Pearson, 1999). Johnston and Straus (1999) addressed the needs of "vulnerable children who are the primary clients of visitation services" (p. 135). The authors recommended structuring services to protect the psychological safety of traumatized children—a subject about which very little is written. Other writers (Field, 1998; Sheeran & Hampton, 1999) addressed the need to find a balance between access and the safety of women victims and the children for whom they are responsible. The authors offer the following recommendations: (a) heightened safety procedures that preclude contact between custodial and noncustodial parents, (b) provision of on-site security staff, (c) trained and skilled staff knowledgeable about the unique dynamics of domestic violence, and (d) court oversight

mechanisms to better inform judiciary about family dynamics to aid progress toward less restrictive visitation when possible.

A recent national survey of supervised visitation programs, family court administrators and judges, child protective services administrators, and other family law professionals produced a profile of providers (Thoennes & Pearson, 1999). The survey reveals that supervised visitation is a long-used service in the child protection arena but has a shorter history in the domestic relations arena. However, the service is becoming increasingly popular with judges, with many seeing it as "the only responsible response in divorce cases with highly conflicted and violent couples" (p. 473). Clearly, the demand for services outweighs program capacity, and the availability of services during evening and weekend hours in family-friendly surroundings is sorely lacking. Programs struggle for financial survival, particularly those that handle domestic cases, and funding sources are extremely limited. Consequently, most programs rely on volunteer rather than professional providers. Programs lack public awareness and often function in isolation without essential information, and the scope of services is so limited that one interviewee boldly referred to the service as "superficial" (p. 467). In spite of the shortages and criticisms, Thoennes and Pearson wrote, "Many different types of entities provide effective supervised visitation services; many different service formats work" (p. 460). This statement seems questionable when considering the lack of reliable data currently available.

In a separate study, Pearson and Thoennes (2000) reviewed the files of 676 families who received supervised visitation services at four centers and then interviewed 201 participating parents. The data compiled provide critical information about the kinds of families who use supervised visitation programs, the types of services they receive, how services are accessed, and their experience with visitation after they exit the program. The study reports that programs typically serve financially challenged, never-married, divorcing, and divorced families who have young children. Of these cases, 92% originate in family court, dispelling the notion that multiple referral sources are the norm. Families report high satisfaction marks and improved visitation during participation, but there is limited evidence that improvement is sustained after program exit.

To date, only one research endeavor (a three-part study) evaluates the impact of supervised access services on its clients and collaborators (Jenkins, Park, & Peterson-Badali, 1997; Park, Peterson-Badali, & Jenkins, 1997; Peterson-Badali, Maresca, Park, & Jenkins, 1997). The portion of the study concerning parental experience concludes that involvement with supervised access does not substantially change ex-partners' attitudes toward one another (Jenkins et al., 1997). This finding is called into question because these constructs are measured by exploratory opinion surveys, not with empirically reliable and valid instruments, highlighting the need for more precise measurement in future research. Jenkins et al. (1997) reported that 58% of participating children did not know the reason they came to the center, and some reported they continued to experience conflict and distress during the visits, therefore feeling unsafe. Although this series of studies has brought attention to an otherwise underresearched population, Jenkins et al. (1997) focused solely on families involved in a supervised access program. To date, no research is published on families using custody exchange services.

In contrast to the above findings, Heritage House staff completed a pilot stakeholders survey ($N = 39$) to determine if the goal of providing court-ordered visitation in a safe, neutral environment by reducing the amount of contact and conflict between ex-partners was reached (Dunn, 1998). The findings reveal that most of the adult participants consider them-

selves and their children to be safer during facilitated transfers conducted at the center. Likewise, most of the guardians ad litem believe the amount of conflict witnessed by their child clients noticeably decreased after referral to Heritage House. This trend is supported by the children's parents, who report significant reductions in their ex-partner's verbal aggression, ($t = 4.905$, $df = 18$, $p < .001$), physical aggression, ($t = 3.285$, $df = 18$, $p < .01$), and threats to increase legal conflict ($t = 3.067$, $df = 18$, $p < .01$). In keeping with the goal of increasing personal responsibility, adult respondents report a significant decrease in verbal aggression toward the ex-partner since becoming a Heritage House client ($t = 3.908$, $df = 18$, $p < .001$). This pilot study documents that Heritage House enables high-conflict families to maintain safe contact and supports the need for further exploration.

PROGRAM DESCRIPTION

Historically, supervised visitation between a noncustodial parent and child is judicially ordered when child safety is at risk. Prior to the implementation of Heritage House, resources for such services were scarce. In the City of St. Louis, family court domestic relations workers provided a very limited number of court-ordered supervised visits during business hours. Noncustodial parents were forced to choose between work or visiting with their children, and custodial parents were forced to choose between work and transporting their children to the visit. Likewise, when the safe transfer of children from custodial to noncustodial parent was needed for the purpose of temporary custody, resources were lacking because such transfers commonly occur during weekend hours. The transfer of children typically occurred at public places such as fast-food restaurants or shopping malls. However, such transfers offer no assurance that violence will not erupt, placing other innocent persons at risk.

To pave the way for Heritage House, a change in local court rule (22nd Judicial Circuit of Missouri, Family Court, Local Court Rule 68: Dissolution of Marriage Sections 452.310-452.600 RSM) was necessary to facilitate two procedural changes: (a) enacting an informal enforcement of visitation provision and (b) formalizing court protocols for referrals to expanded court-based mediation services. This administrative change relieved the overburdened condition of the Domestic Relations Division, enabling the expansion of court services to the community and the enforcement of court-ordered visitation. An administrative decision to fund Heritage House provides parents the opportunity to have visitation during nontraditional work hours, thereby increasing noncustodial parents' access to children (K. A. Miller, personal communication, 1998). The program functions as a formal collaboration with a common goal, well-defined roles and responsibilities, and shared resources and rewards.

The goal of the partnership is to fill the gap between law and social services by reaching beyond current practice boundaries to offer traditional clinical services in nontraditional ways. The center functions as an adjunct service of the court and includes a court oversight mechanism. The center is staffed by paid professional clinicians and operates during evening and weekend hours. Off-duty city police officers who hold the authority to arrest, if needed, are employed to maximize participants' safety. Heritage House considers high-conflict families a special-needs population due to the intractability of the dispute. As such, all families receive one-on-one attention, regardless of the service provided. Contractually, supervised access services must be provided by a master's-level clinician. Baccalaureate-level staff are used for custody exchange facilitation.

Of the families served by Heritage House, 100% enter the program through judicial referral. Referrals originate in the Domestic Relations or Adult Abuse Divisions of family court; therefore, delivery of services must be multifaceted to respond to wide-ranging needs. Referrals to Heritage House encompass a variety of concerns, including the following needs or circumstances:

- reconnection of noncustodial parent and child after a prolonged separation,
- introduction of biological parent and child when no previous relationship is intact,
- one or both parents pose a threat to the child's safety and well-being or hold inappropriate role expectations,
- a history or concern about risk of harm to children and adults at pickup and drop-off,
- a history or concern about risk of flight,
- a history or concern about substance abuse,
- entrenched negative attitudes about the ex-partner that are communicated to the children,
- unwarranted hotline calls to child protective services concerning poor parenting skills, and
- psychiatric diagnoses that compromise a parent's ability to care for the child.

One or more of the foregoing concerns, when accompanied by the appropriate filing, is sufficient reason for judicial referral.

Recognizing that referral to Heritage House must not be a dead end for families, regularly scheduled review hearings ensure a method of progression from most restrictive (supervised visits) to least restrictive (facilitated custody exchange) visitation. Standard referral orders often include a progressive plan to be implemented before the next review hearing takes place. In other instances, updated orders entered at subsequent review hearings reflect the changing needs of the family. Heritage House staff is charged with implementing the court order exactly as written and monitoring parental compliance. All noncompliance issues are reported weekly to court staff who are solely responsible for addressing the issue with the offending parent(s). This hand-in-hand approach adds authority to an otherwise powerless process.

Staggering the arrival and departure times of parents eliminates contact between the ex-partners, and the presence of two security officers during all hours of operation ensures the physical safety of parent and child while on site. Often, reinstating visitation and imposing structure serves to de-escalate the situation in the short term and helps to facilitate the safety of participants during nonprogram hours. In the long term, new skills learned at Heritage House promote change in long-standing destructive relationship patterns that benefit children's well-being.

Heritage House intervention creates an opportunity for ex-partners to experience each other in new and different ways. That space, complemented by ongoing therapeutic conversation, helps to focus ex-partners on the best interest of their child (rather than on their ex-partner), while staff informally educate them about how to become more effective coparents. The service is not to be confused with therapy or viewed as a substitute for therapy. When the court determines that therapy, anger management, batterer's intervention, substance abuse treatment, or other more intensive service is needed, the specific service(s) may be included in the court order based on judicial discretion. Recognizing that Heritage House intervention is most effective when complemented by other services, staff encourages participation as ordered. However, monitoring participation and completion of treatment is the sole responsibility of the court counterpart.

In collaboration with a court counterpart, highly trained and skilled center staff compile vital information during interim court processes. The innovative hand-in-hand approach “complement[s] the law,” yet avoids “two important problems with the application of social science to custody issues” (Mason, 1994, p. 192). The first problem is using an expert witness “selectively to promote arrangements,” and the second is the inherent risk of “taking away the court’s ultimate decision-making power” (p. 192). Staff members function as the eyes and ears of the court, obtaining pertinent factual information through direct observation of families’ verbal and nonverbal behaviors at the anxiety-provoking time of custody exchange transfer and during guided supervised access sessions. When subpoenaed, staff “testify only to what they have observed” (p. 192). Therefore, staff members appear in court as neutral fact witnesses rather than biased expert witnesses promoting one parent over the other. The information more fully informs judiciary about parents’ coparenting abilities, thus aiding in the crafting of lasting dispositions that reflect individualized needs.

The hallmark of Heritage House intervention is reciprocal respect. The respectful process serves to promote responsible and accountable behavior that creates an opportunity for behavior change to take place with or without other more intensive intervention. Whereas the ultimate goal is self-maintenance, participation is not time limited. Services are available as long as needed to protect children and adults from enduring interparental conflict, whether that is verbal or physical assault. When domestic violence is the issue, self-maintenance is deemed inadvisable; therefore, final judgments reflect that position.

Heritage House’s unique program format is carefully structured to meet the needs of the court and the safety needs of high-conflict families by reducing the amount of contact and conflict experienced by ex-partners. During the 3 years Heritage House has been in operation, research has been published that recommends program components that were incorporated into program development at the time of inception. Early anecdotal evidence indicated that Heritage House was successful in meeting the intended goals. Therefore, the primary purpose of this exploratory evaluation effort is twofold: (a) to determine the effectiveness of the Heritage House intervention and (b) to paint a broader picture of the kinds of families who rely on supervised visitation/custody exchange services while telling the field more than is currently known about the conflict issue as it relates to child custody.

METHOD

PARTICIPANTS

Adult clients referred to Heritage House for supervised access/custody exchange services who had at least one child older than age 2 were invited to participate. Research staff explained the requirements of the study and reviewed the procedures to protect participants’ confidentiality. Because the study was conducted during pending litigation for most clients, potential participants were given a copy of a court order protecting the data for this study from subpoena.

Participant recruitment took place during a 6-month period. Of the 61 clients eligible for the study, 55 adults agreed to participate and provided their informed consent. Six individuals declined to participate, citing concerns about the content of questionnaires and time constraints as reasons for refusal. After agreeing to participate, 1 client withdrew from the study based on an attorney’s advice. In addition, 9 participants were excluded because they did not meet established criteria. Forty-five participants completed the pretest portion of the study.

Criteria for inclusion in the posttest portion of the study included participation in Heritage House services for 6 months or leaving the program in “good standing” after completion of three supervised visits or custody exchange transfers. Leaving in good standing is defined as exiting the program due to (a) issuance of a court order terminating services, (b) case settlement prior to trial, (c) parties’ mutual agreement to transfer children without assistance after final disposition, or (d) change in residence that prevented Heritage House participation. When participants left Heritage House during the duration of the study ($n = 21$), monthly telephone contact documented the frequency with which visits occurred.

MEASURES

The following measures were used.

Family information form. The authors developed the family information form (FIF) to document a demographic and relationship profile. Participants reported on the duration of verbal and physical aggression within the relationship, the legal history of the case (i.e., nature and duration), and the number of noncustodial parent/child visits that occurred in the 6 months before administration.

Program records. Heritage House case records (EXCEL spreadsheet format) documented the number of noncustodial visits and/or custody exchange transfers that occurred during the study. When clients left the program in good standing, data gathered via telephone monitoring documented the number of noncustodial parent/child visits that took place.

Modified Conflict Tactic Scale. The Modified Conflict Tactic Scales (MCTS) is a self-report questionnaire that includes 23 possible actions that family members can employ to resolve a conflict (Pan, Neidig, & O’Leary, 1994). The list begins with nonaggressive actions (e.g., “brought someone in to help settle things”) and includes more coercive or aggressive responses (e.g., “kicked, hit or bit” or “used knife or gun”). Respondents report the frequency of self- or partner-initiated actions during a given time period by choosing from categories ranging from *never* to *more than twenty times*.

The original Conflict Tactic Scales (CTS) and its subsequent revisions have been used in numerous studies investigating the nature and impact of family violence that have established the reliability and validity of the scales (Straus, 1990; Straus, Hamby, Boney-McCoy, & Sugarman, 1996). The version of the scale used in this study maintains all the components contained in the original CTS plus an additional six items that were validated through factor analysis (Pan et al., 1994). All of the scales are reported to have acceptable internal consistency and reliability coefficients, with means ranging from .50 to .88 (Straus, 1990). Using manual directions, a composite score for total couple violence was calculated as well as subscale scores for reasoning, psychological aggression, and physical assault (Straus, 1990; Straus et al., 1996).

PROCEDURE

A member of the research team conducted a semistructured interview in which the FIF and MCTS were completed. Participants reported on their own behavior and their recollec-

tions of their partner's behavior during the 6 months preceding entry into the program and study.

Six months after the initial interview, participants were again interviewed to complete relevant FIF variables and the MCTS to determine the amount of visitation and conflict between ex-partners that occurred during participation in the study. If participants were no longer receiving services at the time of follow-up, a member of the research team attempted to complete the posttest interview via telephone.

FINDINGS

Table 1 illustrates the participant profile. The sample is composed of 45 adults court ordered to receive supervised access/custody exchange services through Heritage House. More than half of the sample ($n = 25$, 55.6%) is female. Participants are racially diverse, with Caucasians being the most represented group ($n = 26$, 57.8%) and African Americans and biracial Americans rounding out the remainder of the sample ($n = 19$, 42.2%). Participant ages range from 22 to 60 years ($M = 35.47$, Median = 34, $SD = 7.96$). The participants are relatively well educated, with approximately two thirds having postsecondary training ($n = 29$, 64.5%). Most of the participants are employed ($n = 39$, 86.4%) and working in widely diverse occupations. Incomes range between \$5,200 and \$72,000, with fathers reporting higher earnings.

Table 2 depicts parent characteristics. At the time of entry into the study, more than half of the participants were separated or divorced from the party who faced them in the current custody or visitation dispute ($n = 26$, 57.8%). Greater than one third ($n = 16$, 35.6%) had never married their ex-partners. The remaining sample consisted of grandparent guardianships.

More custodial parents/guardians ($n = 26$, 57.5%) agreed to participate in the study than did noncustodial parents ($n = 19$, 42.2%). Nearly half of the sample consists of female custodians ($n = 20$, 44.2%) including one custodial grandmother. The remaining sample includes custodial fathers ($n = 6$, 13.3%) and noncustodial mothers and fathers. More than half of the participants ($n = 27$, 60.0%) were engaged in a custody or visitation dispute involving their only child; the remainder of the cases involve two or more children ($n = 18$, 40.0%). Approximately half were referred to Heritage House for custody exchange services ($n = 24$, 53.3%), whereas nearly one third of the participants were referred for supervised visitation services ($n = 14$, 31.1%). The remainder of the sample were referred with progressive orders ($n = 7$, 15.6%) that moved the participants from most restrictive access (i.e., supervised visitation) to least restrictive access (i.e., custody exchange). Fathers outnumbered mothers as the visiting party by a 3:1 ratio.

Greater than half ($n = 23$, 51.1%) of the participants' cases came to the court's attention through motion-to-modify filings requesting changes to existing orders. One quarter of the cases ($n = 11$, 24.4%) were original dissolution filings. Cases involving paternity establishment ($n = 4$, 8.9%), contempt charges ($n = 4$, 8.9%), and protective orders ($n = 3$, 6.7%) make up the remaining referrals. Overall, these cases involve repeated contact with the family court system, with participants reporting a mean of three legal filings per case.

The length of relationship between ex-partners varied widely (4 months to 11 years), with the average relationship lasting approximately 4 years ($M = 47.60$ months, $SD = 38.96$ months). Similar variability is found in the length of ex-partners' separation (8 months to 12 years), with the average separation occurring approximately 5 years prior to entry into the

Table 1
Demographic Profile

	<i>n</i>	%	Range	Mean
Gender				
Female	25	55.6		
Male	20	44.4		
Ethnicity				
Caucasian	26	57.8		
African American	17	37.8		
Biracial	2	4.4		
Age			22-60	35.47 (<i>SD</i> = 7.96)
Educational status				
Did not graduate high school	7	15.6		
Graduated high school or equivalent	9	20.2		
Some college or vocational training	20	44.5		
Graduated college	6	13.3		
Postgraduate degree	3	6.7		
Employment status				
Employed				
Mother	22	48.7		
Father	17	37.7		
Unemployed				
Mother	3	6.7		
Father	2	4.4		
Public assistance				
Mother	0	0		
Father	1	2.2		
Income (in dollars)				
Mother			23,000-60,000	23,829
Father			5,200-72,000	29,205

study ($M = 62.83$ months, $SD = 47.92$ months). Virtually all participants ($n = 41$, 91.1%) acknowledged that the relationship they shared with their ex-partner involved verbal aggression (i.e., shouting, yelling, or swearing at each other). The duration of verbal aggression varied widely, ranging from less than 5 months to 17 years, with the mean duration being reported as approximately 6.5 years ($M = 81.8$ months, $SD = 61.1$ months). Several participants reported that long-standing patterns of verbal aggression were present at entry despite lengthy separations from their ex-partners. Physical aggression (i.e., pushing, slapping, hitting, shaking, kicking, choking, and/or throwing objects) took place in greater than two thirds of these relationships (68.9%). On average, physical aggression lasted 20 months ($SD = 38.5$ months), ranging from 1 month to 16 years.

RESULTS

The primary aim of this study is to determine if visitation frequency increased and interparental conflict decreased during the 6 months following entry into the study.

Table 2
Parent Characteristics

	<i>n</i>	%
Parental relationship		
Newly divorcing	5	11.1
Divorced	21	46.7
Never married	16	35.6
Custodial arrangement		
Mother	19	42.2
Father	6	13.3
Grandparent	1	2
Number of children per family		
One	27	60
Two	17	37.8
Three or more	1	2.2
Service request at entry		
Supervised access (SA)	14	31.1
Custody exchange (CE)	24	53.3
Progressive SA to CE	7	15.6
Visiting party		
Mother	5	11.1
Father	14	31.1
Current filing		
Motion to modify	23	51.1
Dissolution	11	24.4
Paternity establishment	4	8.9
Contempt charges	4	8.9
Protective orders	3	6.7

VISITATION FREQUENCY

Perceived visitation. Independent sample *t* tests were used to examine differences between participants' estimates of prestudy noncustodial visitation based on each participant's gender or custodial status. No significant differences were found between female and male participants' estimates of noncustodial visitation during the 6 months before study entry. Likewise, no significant differences were found between custodial and noncustodial estimates of noncustodial prestudy visitation. Consequently, the sample was combined for further analysis.

Paired samples *t* test examined differences between participants' perceived visitation frequency at pretest and posttest. Participants' perceived estimates of the number of visits that occurred during the 6-month period prior to program and study entry were compared to participants' self-reported estimates of the number of visits that occurred during the 6-month duration of the study. No significant differences were found between the participants' self-reported pretest and posttest estimates of visitation, suggesting little change.

Documented visitation. A paired-samples *t* test explored difference between the frequency of prestudy visitation and the first 6 months of program participation. Participants' pretest estimates of earlier visitation were compared to actual visits documented through case records and/or follow-up calls. The number of documented visits occurring during the

study ($M = 12.04$, $SD = 6.13$) was significantly greater in the pre- and postprogram involvement ($M = 8.16$, $SD = 6.27$), $t(44) = -3.967$, $p = .000$).

INTERPARENTAL CONFLICT

Ten participants were unavailable to complete the posttest MCTS, 3 participants were unable to finish the posttest within study time constraints, and 1 participant refused to complete the posttest measures. Posttest analyses were performed on the remaining 31 participants who completed both pretest and posttest administrations. Independent samples t tests examined differences based on gender or custodial status in participants' pretest reports of the interparental conflict. No significant differences were found between female and male participants' estimates of interparental conflict during the 6 months prior to study entry. Likewise, no significant differences were found between custodial and noncustodial parents' estimates of interparental conflict. Consequently, the sample was combined for further analysis.

A paired-samples t test explored differences between prestudy and postentry interparental conflict. Total couple MCTS scores for the 6-month period preceding program and study entry were compared to total couple MCTS scores during the study. Posttest mean MCTS total couple score of interparental conflict during the study ($M = 5.74$, $SD = 7.95$) was significantly lower than the pretest mean MCTS total couple score of the interparental conflict ($M = 11.71$, $SD = 11.44$), $t(30) = 3.02$, $p = .005$. This finding was driven by a significant reduction in psychological aggression, $t(30) = 3.125$, $p = .004$, between ex-partners; physical assault was minimal during the pretest period ($n = 2$ incidents); therefore, any reduction was not significant.

DISCUSSION

Supervised visitation and custody exchange centers exist with the specific goal of providing services to divorcing, divorced, and never-married families. The findings herein paint a picture of the families who use Heritage House, adding depth to our knowledge about the kinds of families who require such services. Given that separation/divorce spans the social spectrum, users of Heritage House mirror the general population. The participant demographic profile generated by the study reflects the general Heritage House client population. However, the profile is different from that generated by Pearson and Thoennes (2000) in that the Heritage House participants are less financially troubled. In that study, 10% to 20% of participants sought fee reduction; however, no explanation concerning fee schedules is included. The rate of unemployment is included, and unemployment among the Heritage House population is considerably less for both mothers and fathers. Heritage House fee structure may render services more affordable, or the employment status of Heritage House participants may make fee payment more bearable. Heritage House supervised access fees are assessed on a sliding-fee scale based on an individual's ability to pay; consequently, less than 1% of participants request waived or reduced fees. Custody exchange fees are based on a flat rate, which is most often evenly split between ex-partners. The profile generated by this study is consistent with the wide-ranging socioeconomic base of the city in which it is located. The fact that intervention significantly increases frequency of visitation indicates that the center functions as a viable resource to the court as a visitation enforcement mecha-

nism. However, the marked difference between parental perception of visitation frequency versus documented visitation suggests that a changed context alone is insufficient to alter ex-partners' perceptions about one another's behavior.

This finding does suggest that the embedded distortions held by ex-partners drive the "revolving door" use of the court system. Therefore, public-private partnerships that enforce visitation hold the potential to slow the turning of the revolving door by providing factual information about "he said/she said" issues. Once clarity is gained, final judgments may more accurately reflect a family's needs and become more enduring.

Increased frequency in visitation leads to increased consistency in visitation, suggesting parties are more likely to comply with the court-ordered parenting plan. A review of Heritage House records for the fiscal year in which the study took place indicates parental compliance ranges from a high of 100% to a low of 84%. An often-voiced complaint from families is lack of understanding of the language in the court order; hence, they are unclear about how and when visitation is to occur. Contemptuous behavior may often be the ex-partner's disagreement about the interpretation of the court order. This finding suggests that third-party intervention that assists families in implementing the court order holds the potential to decrease the number of contempt charges on high-conflict cases and thereby reduce court usage.

Families come to Heritage House holding entrenched polarized positions. Johnston and Roseby (1997) wrote that one of the most notable characteristics about high-conflict couples is their propensity to negatively redefine their ex-partner. This negative redefinition becomes embedded in the social context of the court where truth finding is the mission. Unless the context is changed, little inspiration to alter the negative definition exists. Referral to Heritage House changes the context and imposes structure that aids participants in new and different ways of behavior. The fact that interparental conflict is significantly reduced during program participation suggests that Heritage House intervention may revitalize ex-partners to behave in responsible and accountable ways. It is also likely that high expectations set by staff at the time of intake encourage and entice the parties to strive to meet those expectations; doing so requires that each party become self-focused rather than other-focused. This finding suggests that program structure aimed at maximizing participants' safety is an effective conflict management technique for high-conflict families.

SUMMARY AND CONCLUSIONS

The Honorable Thomas J. Frawley (personal communication, 1999) asserted, "The days we do business within the confines of the courthouse are over." The results of this exploratory study indicate that carefully planned and orchestrated collaboration between social services and the law can address the unmet needs of family court and high-conflict domestic disputants as well. Supervised visitation and custody exchange centers that function in partnership with family court during interim court processes are an effective visitation enforcement mechanism that significantly increase the frequency of noncustodial parent/child contact and decrease interparental conflict.

Judicial referral to supervised access and custody exchange services is often a last resort in a long line of treatment interventions. Programs that promote responsible and accountable behavior can help foster much-needed behavior change that helps bridge past indiscretions and advance parental relationships to new levels of understanding. Positive behavior is the first step toward achieving self-maintenance. Over time, improved parental relationships should diminish the revolving door use of the court system. Reduced recidivism rates would

likely encourage family courts to underwrite the establishment of centers like Heritage House.

The intent of this study is exploratory only; therefore, the results of the study are generalizable only to this sample. For more general conclusions to be drawn, a larger sample is needed and a longitudinal study is indicated. The scope of the study is limited; study design that incorporates additional factors that may affect outcomes is needed in future efforts. Ultimately, replication of the program is essential to substantiate program effectiveness. Another limitation is lack of a comparison group; the addition of a comparison group will increase the rigor of future efforts. However, doing so will present many challenges due to population characteristics. The investigators' concerns about the difficulty of recruitment were confirmed in this effort. Participants' reticence to participate was profound, even though a "Confidentiality Order" (1999) safeguarding "all data collected for or in connection with this project shall be and remain protected from subpoena" was included as an attachment to the consent form.

The results of this study indicate that Heritage House is achieving the intended mission. Continued investigation into program effectiveness is nonetheless indicated, including closer monitoring of recidivism rates of Heritage House "graduates." To address the needs of high-conflict families, the family court should pursue and fund community partnerships to develop specialized programming to meet jurisdictional needs. Likewise, program developers should cultivate relationships with courts in an effort to better meet the needs of the families they serve.

Grassroots organizing and volunteerism pioneered the first wave of supervised visitation and custody exchange programs. The program described herein is likely the coming wave in the evolution of programming, that is, collaboration and professionalization of service delivery.

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PARTNER VIOLENCE AND RISK ASSESSMENT IN CHILD CUSTODY EVALUATIONS

William G. Austin

How to integrate the problem of partner violence into a child custody evaluation is analyzed within a risk-assessment approach. The research literature on partner violence is reviewed to examine the issues of establishing a base rate for partner violence and its relative frequencies for both genders. Theoretical typologies of partner violence are reviewed and a new typology presented that is more suitable to the predictive task in the custody evaluation. A model of how the evaluator should approach partner violence is described, with an integration of a risk-assessment approach to child developmental outcomes as associated with custody and parenting time arrangements and a violence risk assessment of a perpetrator/parent.

PROBLEM OF PARTNER VIOLENCE AND CHILD CUSTODY

Spousal maltreatment and violence is a complex and contentious issue that sometimes arises in high-conflict child custody cases. Courts sometimes call on mental health professionals to assist the trier of fact in the decision-making process on child custody and parental access to children. The roles of custody evaluator, mediator/arbitrator, special advocate, special master, and guardian ad litem are occupied by mental health and legal practitioners in this assist role to the judge. The issue of how to address the problem of spousal maltreatment is extremely important in best interests of the child custody determinations (CCDs) because of the demonstrated negative effect on a child's welfare and development from exposure to and witnessing domestic violence (Jaffe & Geffner, 1998) and exposure to high conflict between parents (Johnston & Roseby, 1997). Although there are inconsistencies in the research on the behavioral effects on children, this may be due to methodological shortcomings, and it is generally assumed that there is potential for grave developmental effects due to exposure to family violence. When the methodology is improved and database enlarged from multiple sources, negative effects are consistent (Sternberg, Lamb, & Dawud-Noursi, 1998).

Relatively little guidance is found in the forensic clinical methodology literature on how to integrate the problem of partner violence into a child custody evaluation (CCE) in which the fundamental task is to predict the child's long-term developmental outcomes associated with alternative environmental circumstances due to different custody and parent access arrangements (Austin, 2000a). Gould (1998) and Stahl (1999) provide general frameworks and address issues associated with domestic violence in the context of a CCE. This article attempts to provide a more specific structure for analyzing the partner violence factor in CCEs via a risk-assessment approach to making behavioral predictions in the forensic CCE.

Jaffe and Geffner (1998) reviewed the literature on the negative child effects of spousal violence. Their conclusions were that exposure to partner violence is likely to produce exag-

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gerated behaviors in children above those expected from children in divorcing families who experience high conflict between parents. They proposed that partner violence may produce internalizing symptoms in children such as anxiety, school refusal, psychosomatic symptoms, and nightmares consistent with exposure to trauma.

Externalizing symptoms may include anger, aggression, and a variety of acting-out behaviors. These authors further described a variety of understandable but maladaptive role behaviors exhibited by children from violent homes: attempts to protect the victimized mother and acting as a peacemaker in an attempt to defuse the father's anger in a violent family. Jaffe and Geffner (1998) view partner violence as a general risk factor facing the child. No suggestions were made on how to integrate the problem into a CCE, but suggestions were offered on how to restrict parenting access for the perpetrator of partner violence. Parallel findings are reported by Johnston and Roseby (1997) on characteristics of children from highly conflictual and violent divorcing families. They report developmental disruptions in a number of fundamental domains: separation-individuation with fragmentation of self, sexualized anxiety and gender discomfort, emotional and interpersonal disturbance, and moral development.

The Jaffe and Geffner (1998) review and analysis of partner violence on child custody disputes is weakened by their restricting the analysis to female victimization only. Research shows a high degree of allegations of partner violence among divorcing couples (Newmark, Harrell, & Salem, 1994) and at nearly equal rates of perceived victimization by both sexes (Straus, 1979). In other populations, research has shown this pattern as well. Among psychiatric populations, the rates of partner violence are approximately equal for frequency and initiation between the sexes (Lidz, Mulvey, & Gardner, 1993). Survey studies in the United States (Straus & Gelles, 1986), Canada (Kwong, Bartholomew, & Dutton, 1999), and New Zealand (Magdol et al., 1997) document the parity of violence between the genders. One-year prevalence rates of approximately 12% for both sexes were reported by Kwong et al. (1999). Bland and Orn (1986) found 58% of men and 73% of women reported initiating the violence when it occurred.

The empirical generalization of parity in the gender distribution of spouse-initiated violence does not diminish the importance of potential differences in the dynamics of male versus female violence initiation. Most studies have not controlled for the level of violence severity. Women are more likely to seek medical attention and report more serious physical injury (Stets & Straus, 1990) and express more fear of physical injury (Morse, 1995).

The scientific literature thus suggests a need for a more comprehensive framework for examining the problem of crafting appropriate custody and access arrangements appropriate for all subtypes of partner violence, including consideration of bidirectional partner violence. When the child may be exposed to ongoing parental conflict, there is a need for a forensic methodology to accommodate this risk factor for predicting developmental outcomes. This suggestion is made with recognition of research findings and clinical experience that female-partner-initiated violence is likely to cause less physical damage, sometimes be in self-defense, and may be in response to emotional abuse and persistently controlling behavior by the male partner (Holden, Geffner, & Jouriles, 1998). Clinical theorists and researchers have documented the phenomena of the male batterer (Jacobson & Gottman, 1998; Walker, 1984), abusive personality in violent intimate relationships (Dutton, 1998), and stalking that can occur after a marital breakup (Walker & Meloy, 1998). There will be a subset of cases, however, in which the female partner is the principal or sole perpetrator, and many cases of partner violence are likely to be interactive or reciprocal, either in response to the stresses of marital dissolution or as an enduring pattern of partner conflict. Kwong et al.

(1999) stated: "The majority of respondents in violent relationships reported a pattern of violence that was bidirectional, minor, infrequent, and not physically injurious" (p. 150). There are external validity problems both with studies of clinical samples of battered women and representative surveys. The former may overestimate the frequency of the extreme forms of violence; the latter may underestimate the extreme forms because they are rare in the survey samples (Kwong et al., 1999; Straus, 1990).

Standard of practice guidelines indicate that custody evaluators need to take a family system approach and to be open to all hypotheses on a given issue (Gould, 1998). Thus, partner violence needs to be examined in its full context and not limited to male-partner-initiated violence. A faulty preconception by custody evaluators can create clinical blinders and not produce a forensic-scientific work product that is more likely to contain accurate predictions on developmental outcomes. The scientific evidence documents the existence of bidirectional or reciprocal partner violence (Kwong et al., 1999; Lidz et al., 1993; Stets & Straus, 1990; Straus & Gelles, 1986) and a widely accepted typology of partner violence includes "female-initiated" and "interactive" violence as two of the five types (Johnston & Campbell, 1993). This empirical generalization is applicable to the wider population of industrialized nations and not just to psychiatric populations. Kwong et al. (1999) stated, "Sixty-two percent of men and 52% of women who reported violence indicated that it was perpetrated by both partners" (p. 156). Lidz et al. (1993) concluded that clinicians who are supposed to make violence risk assessments generally tend to underestimate the rate of female-initiated violence. Both the partner violence prevalence and violence risk assessment studies thus identify the need for researchers and clinicians to be mindful to all subtypes of violence while at the same time being most aware of signs of the extreme subtypes in which physical injury can be severe.

TYPOLOGIES OF PARTNER VIOLENCE SCENARIOS

Johnston and Campbell (1993) proposed the following descriptive scheme to differentiate types of violent intimate partner relationships:

- Ongoing or episodic male battering;
- Female-initiated violence;
- Male-controlling interactive violence;
- Separation-engendered violence/postdivorce trauma;
- Psychotic and paranoid reactions leading to violence.

These subtypes of partner violence are useful to mental health and legal professionals because they suggest common behavioral patterns and needs of children when they are exposed to the particular family dynamics in each subtype. The modal characteristics of parents found in a subtype help establish an outlook for change that is necessary for more effective parenting. Each scenario provides suggestions on interventions to control the violence. They also provide a framework for constructing predictions in the CCE. For example, in the male battering subtype, it is expected that the male perpetrator has a personality disorder with traits of narcissism, low frustration tolerance, low impulse control, and a need to dominate and control his partner. The custody evaluator will want to focus on the stable personality trait and its likely resistance to change. In the female-initiated subtype, the male partner may be passive-aggressive, intellectualizing, and depressed, and is likely to provoke his part-

ner who, in turn, may have traits of histrionic behaviors, dependency, emotional unpredictability, and self-preoccupation (Johnston & Campbell, 1993).

A more parsimonious descriptive system has been proposed by Johnson (1995), who dichotomized partner violence into “patriarchal terrorism” and “common couple violence” subtypes. His system emphasizes the controlling, physically and emotionally brutalizing example of male battering versus a bidirectional, interactive violence generally characterized by violence of a low level of severity.

Partner violence typology. These typologies are helpful to the clinician who is constructing therapeutic interventions. For the custody evaluator whose task is predictive accuracy, I propose a different, multidimensional typology that will lend itself to a more exact measurement of variables relevant to the prediction of violence and developmental outcomes for the child. This typology reflects the scientific research on frequencies of partner violence, major risk factors for violence, and level of violence. The six dimensions include temporal pattern of violence, sex of perpetrator, severity of physical violence, verbal versus physical aggression, presence of major risk factors for violence potential, and whether the child was exposed to the violence. I propose that an examination of the combination of these variables creates a more efficient method of making behavioral predictions relevant to custody evaluators’ task. It also becomes easier to communicate a risk assessment to the court by combining these dimensions to portray the family context of the violent behavior.

The following scheme describes the variables and the gradients for each dimension.

1. Temporal dimension
 - Reactive (to relationship separation), single incident
 - Reactive, reciprocal or bidirectional violence, multiple incidents
 - Enduring, chronic consistent or episodic pattern of violence
2. Sex of perpetrator and causal direction of violence
 - Male, instigator
 - Female, instigator
 - Bidirectional, mutual
 - Bidirectional, mostly male
 - Bidirectional, mostly female
3. Severity of physical harm (operationalized via the Conflict Tactics Scale) (Straus, 1979)
 - Mild (threw something, pushed, grabbed, or shoved)
 - Moderate (kicked, bit, or slapped)
 - Severe (hit with fist, hit or tried to hit with something, beat up, choked, threatened with knife or gun, used a knife or gun)
4. Type of aggression
 - Verbal provocation
 - Physical violence
5. Presence of major risk factors
 - Presence or absence of alcohol use during violence
 - Presence or absence of substance abuse during violence
 - Presence of alcohol or substance abuse as an ongoing mental disorder
 - Presence or absence of major mental disorder (bipolar disorder; schizophrenia or other psychotic state; personality disorder)
 - History of violent behavior in other settings
6. Children exposed to violence
 - Children exposed
 - Children not exposed

This typology presents a system with utility by its face validity for the court and its efficiency for making predictions by the evaluator with a combination of risk factors. It combines research-based actuarial factors with clinical skill, or what has been called the “guided clinical approach” in the violence risk assessment literature (Hanson, 1998). Its practical utility forms case questions: What is the predictive value of unidirectional, chronic, moderate severity, involving major mental disorder and substance abuse, and children exposed? Or, reactive, several incidents, bidirectional, mild severity, involving bipolar disorder in one parent, and children exposed only to verbal aggression? The typology also incorporates gradations of severity on the dimensions to facilitate clinical-forensic predictions in contrast to the dichotomous system of Johnson (1995) or the categorical system of Johnston and Campbell (1993). In a given case, when partner violence is relevant to the questions of custody and access, the evaluator can identify the subtype of partner violence in a straightforward manner for the court. For example, when the partners engaged in reactive, bidirectional violence of pushing in one incident, alcohol or substance abuse was not involved, there is not a history of violence in other settings, and there is not a major mental disorder or substance abuse/alcohol disorder, then the violence will not be considered relevant in the custody evaluation. In contrast, when there is an enduring pattern of violence and major risk factors are present, then the factor will be heavily weighted in a CCE. Predictions and recommendations of custody and access will depend on the type and level of violence and its causal direction (unitary or bidirectional). The typology requires the use of information gathered by the skilled clinician who has training in techniques and knowledge of research on violence risk.

Theoretical rationale for dimensions. First, the dimension of a temporal understanding of the violence places the factor in the context of the relationship and family history. The extreme case of unitary and chronic abuse by one partner lies at one extreme versus a single incident in reaction to the relationship breakup at the other extreme.

Second, the causal direction of violence is important in understanding the family dynamics as they relate to parenting effectiveness. One could encounter the case of two involved but contentious parents who frequently engage in reciprocal low-level violence versus a primary caretaker mother who episodically instigates physical violence versus a father who gets physically violent when intoxicated about twice per month.

Third, the severity of physical violence is important in understanding the potential harm to children and adult victims. This helps define the clinical context when, in contrast, surveys have not generally studied the effect of severity.

Fourth, the distinction between verbal aggression and physical violence addresses the conceptual and clinical overlap between the high conflictual but nonviolent instigator versus the reactionary violent perpetrator in response to verbal aggression. One partner may push the emotional trigger; the other may react physically. Given the research data on gender parity in the initiation of violence, it is expected that the predominantly verbal versus physical instigation may be equally distributed as well. This information is valuable in attempting to craft workable parenting access schedules for highly conflictual couples. It juxtaposes emotional and physical abuse.

Fifth, the inclusion of major risk factors goes to the heart of one of the principal clinical tasks for the custody evaluator: to make predictions of violence risk potential for one or both parents. Research from the violence risk-assessment literature establishes the strong predictive power of major mental disorder, substance abuse and alcohol dependence, and history of aggressive and violent acts in other contexts (Lidz et al., 1993; Skeem, Mulvey, & Lidz, 2000). They elicit questions relevant to intervention, treatment, and prognosis for change.

The evaluation of mental and substance abuse/alcohol disorders may prove pivotal in predicting potential for the rare and severe violent event in reaction to the end of the marriage, spousal and child homicide. The rejection and narcissistic injury in this context can be lethal.¹

Fifth, the presence of children in direct observation or indirectly exposed to conflict and violence provides direct evidence on parenting judgment.

LEGAL CONTEXT OF PARTNER VIOLENCE

There has been an evolution of state statutory law in the United States in recognizing the need for legal control of partner violence generally and its significance for child custody determinations in particular. More than two dozen states now have mandatory arrest statutes when police officers are called to a residence in a domestic dispute. The Colorado Revised Statutes, as an example, has this mandate (*Offenses Involving Family Relations*, 1999). It further allows for temporary custody of a child to be awarded to a third party if it is predicted the child may be exposed to spousal abuse (*Dissolution of Marriage-Parental Responsibilities*, 1999a). In the context of child custody disputes, the Colorado statute requires a party to disclose all prior restraining orders related to spousal abuse (*Dissolution of Marriage-Parental Responsibilities*, 1999b), and there is a presumption against joint custody (or shared parenting responsibility) if there has been a conviction for spousal abuse (*Dissolution of Marriage-Parental Responsibilities*, 1999c), and it will be a relevant factor for parenting time determinations (*Dissolution of Marriage-Parental Responsibilities*, 1999d). This presumption is also proposed in a model statute by the National Council of Juvenile and Family Court Judges (1994). One “unexpected” finding of partner violence laws has been the increasing number of arrests of women. In California, with a “primary aggressor” law, 16% of arrests in 1998 were women (Clifford, 1999), which further points to the need to consider interactive or bidirectional dynamics in partner violence.

CLINICAL-FORENSIC-SCIENTIFIC PARADIGM

FORENSIC FRAMEWORK

Recent writings on clinical methodology for CCEs (Gindes, 1995; Gould, 1998, 2000; Schutz, Dixon, Lindenberger, & Ruther, 1989; Stahl, 1994, 1999) in combination with guidelines published by professional organizations (American Psychological Association, 1994; Association of Family & Conciliation Courts, 1995; Committee on Ethical Guidelines Forensic Psychologists, 1991; North Carolina Psychological Association, 1994) provide a framework for the emergent paradigm on how to approach these evaluations. The custody evaluation is now constructed as one type of forensic evaluation, namely, the application of theory, research, and scientific method to legal questions before a court (Gould, 1998, 2000). The task of the evaluator in the new paradigm is to present detailed observations in a scientific case study of the family system, explain relationships between relevant factors or predictive variables, and make predictions on the effects of differential environmental circumstances associated with custody and access arrangements on the developmental outcomes for the child. The properly designed and implemented CCE should be verifiable by other evaluators with respect to interpretation and prediction of developmental outcomes.

The expectation of a scientific work product in the CCE is consistent with the trend among states (Shuman, 1997) to adopt the stricter federal standards of evidence for expert testimony (*Daubert v. Merrell Dow Pharmaceuticals*, 1993; *General Electric v. Joiner*, 1997; *Kumho Tire, Inc. v. Carmichael*, 1999). In this context, the evaluator must be able to justify his or her hypotheses, choice of independent variables, clinical methodology, operationalization of the dependent or outcome variables for the child's long-term development, use of relevant scientific research, and the rational basis for behavioral predictions. The sophisticated attorney will want to put a report through a rigorous forensic quality-control test on the clarity in articulation of hypotheses, measurement of factors, robustness and precision of methods, and the correspondence between data and interpretation. (For an analysis of evidentiary standards and admissibility of behavioral science testimony, see Krauss & Sales, 1999; Shuman & Sales, 1999; Tenopir, 1999).

RISK ASSESSMENT APPROACH TO CCE

I have recently reconceptualized the task of the CCE in terms of risk assessment on the potential for developmental harm to the child associated with divorce (Austin, 2000a) or relocation (Austin, 2000b, 2000c). This view of seeing the task of evaluator and decision making as one of first predicting potential detriments associated with custody and access is particularly appropriate when there is alleged or verified partner violence or other types of domestic violence, abuse, or neglect. When violence becomes the salient factor in a CCD, the analysis will turn on the conceptual obverse of best interests of the child, or predicting potential harm. The evaluator's role also includes making risk-reduction interventions: therapy, parent education, access schedules, parenting time supervision, and controlled contact between parents.

The risk-assessment approach provides an alternative analytical scheme to be integrated into the normal evaluation procedures. The evaluator initially will measure the same types of variables: relationship/attachments between family members, psychological status of all parties, special developmental needs, parenting effectiveness, resources of the child, child's demonstrated resilience, and social supports from other parties. The risk-assessment component then directs the evaluator to measure risk factors, protective factors, and to address the issue of potential prediction errors and their possible consequences (Austin, 2000b, 2000c). Risk factors in the CCE for violent families include those contained in the partner violence typology, with attention paid to the subtype, or combination of the six variables. Risk factors in the typology are the type of violence, severity of violence, temporal pattern, and presence of one or more of the major risk factors for violence (major mental disorder, substance abuse and/or alcohol disorder, and history of violence in other settings), and parent violence in front of the children. Other risk factors may include special developmental needs of the child; poor coping with divorce by child; negative relationship or attachment problems between child and parent or parents; inability of one parent to promote the child relationship with other parent; signs of parental alienation; economic hardship; physical living condition of a parent's residence; and negative attitude toward a new significant other. Protective factors include the inverse of some risk factors such as strong emotional bond between child and parent; good predivorce level of functioning by child; strong psychological resources by child, especially intellectual level; ability of parents to work together on parenting despite a history of violence; and general high ratings on parenting effectiveness.

The evaluator's predictions of the child's developmental outcomes is guided by combining risk and protective factors. Predictions and recommendations should be presented to the

court in probabilistic rather than dichotomous language. The probabilistic statement reflects the evaluator's level of confidence based on the data (Austin, 2000c).

GATHERING CLINICAL INFORMATION ON VIOLENCE

Violence risk assessment and CCE. The risk assessment for a CCE for the violent family involves a three-step process. The evaluator must first conduct a violence risk assessment (VRA) on one or both parents. This requires the evaluator to be trained in these clinical techniques and have underlying research knowledge on violence in intimate relationships (Heilbrun & Heilbrun, 1995; Quinsey, Harris, Rice, & Cormier, 1998; Webster, Harris, Rice, Cormier, & Quinsey, 1994). The clinical data should include structured interviews; psychological testing, including a personality inventory such as the Minnesota Multiphasic Personality Inventory-2 and projective personality testing (Rorschach); collateral information; and special instruments such as the Spousal Risk Assessment Guide (Kropp, Hart, Webster, & Eaves, 1999), the Revised Psychopathy Checklist (Hare, 1991), and Violence Risk Assessment Guide (Harris, Rice, & Quinsey, 1994). Part of the VRA will be an assessment of the credibility of the allegations of violence if the facts are in dispute.

The second step is to integrate the VRA findings into the CCE, where the degree of predicted risk to the child due to exposure to violence is balanced with other factors. When there is a significant degree of violence risk, it will become a salient and heavily weighted factor in addressing issues of custody and access.

The third step is to address interventions that will reduce the risk of harm. Researchers have grouped risk factors into static and dynamic factors (Heilbrun & Heilbrun, 1995). Static refers to factors that resist change (personality or substance-abuse disorder refractory to treatment, history of violence). Dynamic factors are those that are more fluid or situational and contain a better prognosis for change (reactive form of partner violence, psychological disorder amenable to change, parenting deficit). Risk-reduction interventions are integrated into recommendations to the court: anger management treatment, parenting instruction, and parental contact rules to safeguard child from conflict or violence.

Discrepant reports on violence. Research has uncovered discrepancies in violence reporting between males and females, suggesting that it may be difficult to ascertain the true subtype and dynamics of partner violence in a given case. The pattern of discrepancies is complex and difficult to clearly interpret. Some studies show a low rate of agreement between partners, which suggests underreporting of violence by husbands of husband-initiated violence (Jouriles & O'Leary, 1985; Langhinrichsen-Rohling & Vivian, 1994; Szinovacz, 1983). Sternberg et al. (1998) concluded their literature review with the statement, "All researchers agree that the apparent prevalence of spousal violence varies depending on whether husbands or wives are informants, particularly when agreement about specific violent incidents are at issue" (pp. 125-126). They interpret the literature as showing why it is important to use multiple informants to try to increase reliability in the data on the issue of violence.

The findings from representative surveys of partner violence provide contrasting patterns of data on the issue of discrepant reporting of violence. Kwong et al. (1999), with a sample size of 707, found striking gender agreement for frequency of occurrence at all levels of violence severity on the indices of one-year prevalence. They also found males to report slightly higher, but not statistically significant, rates of male- to female-instigated violence in con-

trast to the clinical research sample above that found evidence of underreporting by male perpetrators. Kwong et al. (1999) found the perhaps counterintuitive finding that "men generally reported gender equality in the perpetration receipt, initiation, and bidirectionality of abuse . . . women tended to report that they were more likely to perpetrate violent acts than their male partners" (p. 157). The authors acknowledge that the findings may reflect women underreporting violence when they are the victim, but the overall findings contradict the conclusions of Sternberg et al. (1998) and others of stark gender differences in reporting.

The differences between survey and clinical studies may be due to several reasons. First, the clinical samples are likely to contain a higher level of psychological disturbance and more entrenched family conflict (e.g., couples involved in marital therapy) (Jouriles & O'Leary, 1985), where biased reporting might be expected. Second, the relatively small sample sizes in the clinical samples are subject to statistical distortion due to potential influence of extreme scores on derived mean scores, grossly different group sample sizes between clinical and community groups (e.g., Jouriles & O'Leary, 1985), and unstable estimates due to small sample size per se. It can be argued that when there is a large representative sample in which severity level and causal direction is measured for both partners, then the rate of agreement should be high and prevalence of partner violence substantial (e.g., 10% to 12%) (Kwong et al., 1999).

Although violence reporting may be more reliable than previously thought, this does not imply that there will not be self-interested distortions of violence reports for the complex child custody case involving domestic violence. When the case cannot be mediated or settled and a CCE is ordered, it is expected that there will be a highly contentious quality to the case, in which information manipulation may be common. The mandatory arrest statutes further suggest that it will not be uncommon to encounter cases of reactive aggression associated with a marital breakup. In these subtypes of partner violence, the severity and causal direction may be ambiguous. A bidirectional altercation with minor severity would be a common subtype (Kwong et al., 1999), and the dynamics may include one partner being verbally aggressive and with the other partner responding with physical force. The task of the evaluator is to unravel the past scenarios of aggression and violence and the implications for the children in a changed family structure with custody and parenting access.

Studies have also suggested significant discrepancies on parent estimates of exposure of children to partner violence and children reports (Dobash & Dobash, 1984; Hughes, Parkinson, & Vargo, 1989; O'Brien, John, Margolin, & Erel, 1994). Parents tend to underestimate the frequency of child exposure. Sternberg et al. (1998) concluded it is likely children are exposed to parent violence much of the time, and parents apparently are either unaware or motivated to minimize the extent of exposure.

Dealing with biased data. Recent publications emphasize the need to use multiple informants or collateral sources in investigating the extent and nature of partner violence in a family. Drawing on multiple data sources is proposed for gathering reliable research data for understanding family violence of all types (Sternberg et al., 1998), dealing with situations of unverified allegations of partner violence (Austin, 2000d), and using a system for deciphering the potential for bias and distortion (Austin, in press). The methodological rule in these articles is to demand that the evaluator employ multiple data sources to achieve convergent and discriminant verification of the relevant hypotheses in the case on the issue of violence. The interpretive task is generally one of triangulation, in which the evaluator examines degrees of congruency between separate sources of information, with more weight afforded sources who hold greater perceived neutrality (Austin, in press; Heilbrun & Warren, 1999).

In an earlier article (Austin, 2000d), I outlined a framework for assessing credibility in allegations of partner violence when the facts are in dispute.² The evaluator needs to draw on divergent sources of information to determine the likelihood that violence occurred and to what extent. These sources of information include the following:

- Objective verification from records (medical and police).
- Pattern of abuse complaints; did allegations surface only in the context of a child custody case?
- Corroboration by credible others.
- Absence of disconfirming verbal reports by credible third parties.
- Psychological profile and past history of abusive behavior by the alleged perpetrator of marital violence.
- Psychological status of the alleged victimized partner.

The custody evaluator who works on the complex issue of family violence needs to develop a system for dealing with biased data in both the VRA stage and the CCE stage. Mental health professionals are not more skilled at deciphering the truth than others based on clinical impressions (Eckman & O'Sullivan, 1991). The six factors listed above are an attempt to provide discrete data sources that can create a triangulation of reasoning on the issue of violence. The result should be a larger database and clearer perspective, not just on the issue of whether violence occurred in the marital relationship, but the subtype, degree, pattern, and presence of children.

In another article (Austin, in press), I added to the development of a system for interpreting potentially biased data. In addition to examining the six sources of information, the evaluator can engage in a process of cleaning up the data by comparing congruencies and discrepancies in the data between the divergent data sources. This system proposes the following approach to utilizing collateral sources of information:

- Ascertain the informational value of a collateral source: access to critical information and/or a breadth of material about child and family.
- Establish the ostensible credibility of the source from the degree of neutrality or nonalignment with the litigating parents.
- The discriminative value of the collateral information will be a product of the informational value and credibility.
- The convergent validity of the information will be a product of agreement with a parent and the discriminative value.

The evaluator should strive for a goal of a compiling a comprehensive data set on a family that can be examined for bias and distortion. Issues such as partner violence enhance the dangers of self-interested bias, distortion, and manipulation. It is proposed that an important part of the standard of forensic practice for CCEs should be a systematic method of trying to control these errors in the data by using divergent sources of information and evaluating their ultimate convergent value. The six sources of information and the triangulation analysis to increase convergent validity of data on the clinical hypotheses are proposed as one framework to use. In some cases, the evaluator will not be able to derive an unambiguous picture on the issue of violence. The evaluator will not be able to hold a clear opinion or make a prediction on the risk associated with violence. There are limits to truth-finding. In this case, the court will be better equipped to deal with the issue through the adversarial fact-finding process.

CLINICAL PRAGMATICS: QUESTIONS FOR THE EVALUATOR

When the issue of partner violence is raised as a relevant factor in a CCE, the evaluator will want to ask the following questions and choose clinical methods to answer them:

1. Was there partner violence or other types of family violence?
2. Are the facts in dispute on the violence issue?
3. When did the allegations of violence first surface?
4. If the allegations are verified, what is the subtype of partner violence? This will yield information on the pattern, type, severity, causal pattern (who initiates), and if children were exposed. What does the subtype imply for future harm or emotional security to the child?
5. If the allegations are in dispute, what system will be used to sort out the potential bias in the data?
6. Is the violence likely to recur in the new family living arrangements?
7. What risk and protective factors are present in the family system?
8. What custody and access arrangements will work best to lower the risk of harm to the child in light of the violence?
9. What is the likelihood of change? Is the perpetrator or perpetrators amenable to treatment? Are they taking responsibility for the misconduct? Are the relevant risk factors mostly static or dynamic?

NOTES

1. The potential lethality of partner violence is well documented (Showalter, Bonnie, & Roddy, 1980). The risk assessment in the child custody evaluation needs to address the possibility of homicide or serious bodily injury associated with contact between conflictual parents and alterations in parenting access schedules. Several murder-suicide cases within the context of custody and access disputes occurred in Colorado within the same year (Cornelius, 2000).

2. This system can also be applied to allegations of sexual abuse when there is an absence of positive medical findings or eyewitness evidence.

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BOOK REVIEW

Philip M. Stahl, *Complex Issues in Child Custody Evaluations*. Thousand Oaks, CA: Sage, 1999.

This book is an outgrowth of Philip Stahl's extensive experience in undertaking custody evaluations as well as his participation in professional conferences and court-affiliated training throughout the United States. It is a sequel to his earlier, introductory text *Conducting Child Custody Evaluations: A Comprehensive Guide* (1994). As such, it devotes a series of chapters to current, highly complex, and often controversial issues: parent alienation, domestic violence, allegations of sexual abuse,¹ move-away evaluations, and high-conflict divorcing families. The book also provides a good review of the developmental needs of children and an original chapter on cultural issues in evaluation.² The remaining chapters deal with process issues in evaluating and making custody recommendations: the use of psychological testing, testifying in court, and ethical dilemmas.

The breadth and depth of the task Stahl has undertaken in writing about a series of diverse, complex issues is truly impressive. For this reason, I asked a number of highly experienced custody evaluators to help me review the book.³ As a result, his book has been subject to particularly critical scrutiny in this review. This seems warranted given the author's stature in the field and the significant influence this book may have on custody evaluators and the families they serve.

Stahl has an extraordinary talent for communicating in a simple and straightforward manner to multidisciplinary audiences of attorneys, judges, mediators, and mental health professionals, and for this reason this book should be highly attractive to relative newcomers in the field. It may also serve as a touchstone for more seasoned evaluators who wish to update their knowledge of a controversial area. The danger, however, in attempting to write in this manner about complex and controversial issues is that of oversimplification. In this sense, the author may unwittingly lure inexperienced custody evaluators into a false sense of confidence that they understand the issues better than they really do. For this reason, the balance of this review will attempt to describe and elaborate some of the reasons why one needs to be wary in reading what is otherwise a highly topical discussion of the hot issues in the field. In this sense, the purpose is not to take away from Stahl's valuable contribution but to add to and complement what he has provided in this book.

With respect to parental alienation, Stahl skims over the fierce debate as to whether it actually exists as a syndrome and whether it meets the standards for admissibility of expert testimony under *Frye*⁴ and *Daubert*.⁵ He seems to assume a consensus in the field that does not currently exist (p. 5). Furthermore, the reader is left pondering the important question, How can the custody evaluator reliably distinguish alienation from a child's valid, expectable reaction to traumatic experiences like witnessing violence, psychological maltreatment, and/or the more subtle, unobservable forms of abusive parenting?

In the chapter on domestic violence, the primary tasks of lethality assessment for the perpetrator and safety planning for victims and child witnesses need to be placed foremost and in center stage. Stahl does, quite rightly, emphasize the need for differential assessment of the violence. However, evaluation procedures that protect against the dangers of categorization based on insufficient data or inadequate understanding of the dynamics of abusive relationships would be a valuable addition to his review of previous work in this field. For example, how does an evaluator distinguish violence arising only at the time of a traumatic separation from an ongoing controlling relationship that explodes into violence when the victim attempts to separate? What are reliable and valid ways of distinguishing mutual violence from unilateral abuse?

It is pleasing to note that Stahl clearly distinguishes high-conflict families from domestic-violence families by discussing them in separate chapters. Although there is some overlap of the issues, too often these types of families have been confused with one another. The reader may be left with the impres-

sion, however, that most high-conflict families are probably parents with personality disorders of some kind and that the appropriate recommendations are parallel parenting and co-parenting arbitration (e.g., a special master). It is my experience that high-conflict divorces can originate from many different sources: tribal warfare between extended families and professionals, traumatic and ambivalent separations, the reactivation of early traumatic losses, special vulnerability to the humiliation inherent in the divorce, and a special-needs child.⁶ The need to share parenting of infants and toddlers or dealing with special-needs children also may provoke constant disputing in some families. If any of these elements are detected by the evaluator, a more appropriate recommendation may be a range of other kinds of help, including specialized therapeutic interventions (co-parenting counseling/mediation) and specialized parenting education, rather than assigning them to a coercive procedure like arbitration.

The strength of the chapter on allegations of sexual abuse is that it shows how to set up the evaluation and gather the data. It also discusses how to interpret the data and write reports in a way that includes and evaluates the possible alternative explanations for the symptomatic behavior or allegations. A discussion of the evaluator's role with regard to confidentiality, roles, and ethics when working with other related professionals and other agencies (such as Child Protective Services and juvenile and criminal courts) would have been helpful. Also, reference should be made to other reviews and evaluation guidelines.⁷

The chapter on move-away evaluations presents a clear articulation of factors that need assessment. The case examples are also useful as models for how to focus on the factors most pertinent to a child's best interests in the face of relocation. On the other hand, the review of the legal hallmark cases cited may leave evaluators more confused than enlightened. Of particular concern is the lack of discussion about the shift in the legal standard from best interests to detriment of the child in the *Burgess* case heard by the California Supreme Court. This shift, in addition to elevating the preservation of the child's relationship with a primary custodial parent above all other best-interest factors, has become a central controversy for attorneys, evaluators, and judges. Finally, the discussion of move-away cases could benefit by referencing the seminal article of Leslie Shear on this matter.⁸

The purpose of using standardized psychological testing and a review of those tests often used in custody evaluations are discussed in another chapter. In addition, it would have been helpful to have some discussion as to the extent that well-researched, widely used psychological tests (used mainly for assessing individual psychopathology and vocational screening purposes) are valid and appropriate in assessing parenting capacities. In this respect, elaboration about the "small but growing body of research [using the MMPI-2, MCM-III, and Rorschach] specific to child custody evaluations" (p. 143) could have been discussed to great benefit of evaluators. Furthermore, there is an urgent and compelling need to find ways of focusing parents and courts on the needs of children, and for this reason more emphasis could have been given to direct assessment and testing of children. Advice could be added that if the custody evaluator is not a child psychologist, this part of the evaluation needs to be subcontracted to someone who understands children's functioning and principles of development.

The chapters on the components of the evaluator's recommendation, on testifying, and on ethical issues are sound and comprehensive ones and provide a road map for evaluators who are somewhat new to the field as well as those who find themselves challenged by this aspect of the work. Some further discussion would be helpful about ways of ameliorating the negative impact and stress inherent in the evaluation process itself on the child and family, as well as the fallout on therapists, teachers, and others who provide information. Also, because most cases do not go to trial, how can the evaluator use his or her role after the report is submitted to assist with the settlement?

In summary, I hope that Stahl will continue with his valuable work and that the suggestions offered in this review might inspire revisions and expansions of his documentation and synthesis of complex issues in custody evaluations.

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NOTES

1. The chapter on sexual abuse is contributed by Theresa M. Schuman.
2. The chapter on cultural issues is written by Rosemary Vasquez.
3. The following contributed to this review: Steven Friedlander, Ph.D.; Joan Kelly, Ph.D.; Margaret Lee, Ph.D.; Nancy Olesen, Ph.D.; Matthew Sullivan, Ph.D.; John Sikorsky, M.D.; and Marjorie Walters, Ph.D.
4. *See* Frye v. U.S., 293 F. 1013 (D.C. Cir. 1923).
5. *See* Daubert v. Merrill Dow Pharmaceuticals, Inc. 509 U.S. 579, 113 S. Ct. 2786 (1993).
6. J. R. JOHNSTON & L.E.G. CAMPBELL, *IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT* (New York: Free Press, 1988).
7. S. L. Goldstein, & R. P. Tyler, *Sexual Abuse Allegations in Custody and Visitation Cases: Difficult Decisions in Divisive Divorces*, 11(3) AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN (1988) (guidelines for psychological evaluations in child protection matters). APA Council of Representatives, February, 1998; AFCC Research Unit. The sexual abuse allegations project, report by N. Thoennes, March 1998.
8. L. E. Shear, *Life stories, doctrines and decision-making: Three high courts confront the move away dilemma*, 34 FAMILY & CONCILIATION COURTS REVIEW, 439-458 (1996).

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