
High-Conflict Divorce

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Abstract

This article reviews available research studies of high-conflict divorce and its effects on children. Interparental conflict after divorce (defined as verbal and physical aggression, overt hostility, and distrust) and the primary parent's emotional distress are jointly predictive of more problematic parent-child relationships and greater child emotional and behavioral maladjustment. As a group, children of high-conflict divorce as defined above, especially boys, are two to four times more likely to be clinically disturbed in emotions and behavior compared with national norms. Court-ordered joint physical custody and frequent visitation arrangements in high-conflict divorce tend to be associated with poorer child outcomes, especially for girls. Types of intervention programs and social policy appropriate for these kinds of families are presented.

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The intent of this paper is first to discuss the problem of identifying important elements of conflict in divorce and, on the bases of various definitions, to review the available research about their incidence. The second aim is to examine the various factors that are believed to contribute to high-conflict divorce and to propose a theoretical model explaining how these factors interrelate. Third, the focus will turn to what is known about the effects on children of interparental conflict, in general, and what is known about the characteristics of children living in high-conflict divorce situations, in particular. Fourth, dispute resolution procedures and preventive and interventive programs, together with available data on outcome effectiveness, will be outlined. Finally, implications of the current research base for social policy with respect to custody and access in cases of high-conflict divorce will be discussed.

Definitional Problems

In much early research, no conceptual distinctions were made among types of conflict. Spousal and interparental conflict were simply equated with divorce, or with various measures of marital dissatisfaction, hostile attitudes, and physical aggression. This failure to distinguish among types of conflict has confounded the debate about the extent to which different kinds of divorce conflict are normal and functional, and the extent to which they signal pathology and are dysfunctional, especially for children.

Divorce conflict has at least three important dimensions which should be considered when assessing incidence and its effects on children. First, conflict has a *domain dimension*, which can refer to disagreements over a series of divorce issues such as financial support, property division, custody, and access to the children, or to values and methods of child rearing. Second, conflict has a *tactics dimension*, which can refer to the manner in which divorcing couples informally try to resolve disagreements either by avoiding each other and the issues, or by verbal reasoning, verbal aggression, physical coercion,

and physical aggression; or it can refer to ways in which divorce disputes are formally resolved by the use of attorney negotiation, mediation, litigation, or arbitration by a judge. Third, conflict has an *attitudinal dimension*, referring to the degree of negative emotional feeling or hostility directed by divorcing parties toward each other, which may be covertly or overtly expressed.¹ The problem of measuring incidence of conflict in divorce is compli-

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cated further by the facts that a specific domain of conflict may be perceived to exist by one party and not by the other, the parties may employ different conflict tactics (for example, one may avoid and the other may litigate), and one party may harbor greater hostility than is reciprocated by the other.

The duration and developing pattern of each form of conflict are relevant to its characterization as either normal or pathological. For instance, higher levels of most types of divorce conflict are expectable and relatively common beginning at the time of marital separation and filing for divorce and continuing until the issuance of the final decree—that is, encompassing the time when the family is in the process of fundamental reorganization from an intact to a two-household family structure.^{2,3} Postdecree divorce conflicts, on the other hand, are sometimes considered to be intractable and indicative of preexisting individual and family dysfunction.⁴

The question of which dimensions and patterns of parental conflict are associated with poor child adjustment is of particular importance. For instance, are children negatively affected by ongoing legal battles, by parents' inability to coordinate their postdivorce child-rearing practices, by living in a hostile family environment, or by witnessing overt verbal and physical aggression? Is a mother's conflict behavior typically different from a father's? Is conflict manifested differently

in different cultures and ethnic groups? And are children differently impacted because of age, gender, or temperament?

Finally, it is important to consider the relationship of the various dimensions of conflict to one another, especially when designing programs and policies for divorcing families. One critical issue is the extent to which conflict in one domain (such as financial matters) spills over and activates conflict in another domain (such as custody and access). Especially relevant is the extent to which postmarital hostility decreases the capacity for coparental cooperation regarding the needs of children.

Unfortunately, divorce research is still in its infancy with respect to making many of these conceptual distinctions and addressing these questions. In particular, there are virtually no data available about cultural and gender differences in the parents of high-conflict divorce and about effects on children of different ages. The review of research which follows focuses only on the domain of conflict over custody, access, and child rearing after marital separation.⁵

In each study referenced, careful delineation is made of the type and measurement of conflict, and the nature of the sample is specified. The reader is cautioned against generalizing the findings beyond the specific dimension of conflict to nonrepresentative populations of divorcing families. The review includes only empirical studies which either used standardized measures, had comparison groups in the design, or made systematic post hoc comparisons within the sample (that is, the review excludes an extensive and informative literature based on clinical observations and theoretical speculation about the children and families of divorce, as well as articles motivated by social advocacy).

Incidence of High-Conflict Divorce and Associated Factors

Estimates of Incidence of High-Conflict Divorce

Estimates of the incidence of highly conflicted divorce ideally would be drawn from large studies designed to be representative of the full divorcing population. Unfortunately, the studies in this category

provide scant information about the rates of conflict of any kind. Tangentially, in a national study, Furstenberg and Nord noted that the most prevalent pattern of child rearing two years after divorce is “parallel parenting,” in which the only attempt parents make to communicate or coordinate their child-rearing practices is around visitation arrangements.⁶

A recent California study by Maccoby and Mnookin of 1,124 families with 1,875 children, recruited from divorce filings in two counties and reinterviewed one year and two and one-half years later, has provided some estimates, albeit ones that were not intended as incidence statistics.⁷ With respect to the amount of legal conflict over custody and visitation matters, these researchers identified a “conflict pyramid,” showing that, in half the divorces, these issues were uncontested; in nearly one-third more cases, the issues, although contested, were settled without the help of the court or its related services.

The remaining one-fifth of the families reached a settlement with respect to custody and access using the more formal conflict-resolution procedures offered by the court (11% in state-mandated mediation sessions; 5% after a formal custody evaluation; 2% during trial; and 1.5% decided by a judge). These “conflict pyramid” proportions are clearly linked as much to the objectives, principles, and procedures of California’s (or the local county’s) family law system as they are to a couple’s propensity to dispute custody. The figures could be very different in states with different custody presumptions and different formal stages of dispute resolution. Using a combined measure of court data and parent interview data, these researchers estimated that 10% of families experienced “substantial” legal conflict, and 15% experienced a greater degree of “intense” legal conflict. Interestingly, the most hostile couples were not necessarily the couples locked in the most contentious legal battles.

Factors Associated with High-Conflict Divorce Coparenting Patterns

Three principal types of coparenting patterns were identified in the Maccoby and Mnookin study, generated by the presence or absence of discord (frequent arguments, undermining and sabotage of each other’s role as parents), and the

presence or absence of frequent attempts to communicate and coordinate with respect to the children.⁷ Three to four years after separation, there were three major patterns: high communication and low discord, called *cooperative coparenting*, characterized 29% of the sample; low communication and low discord, denoted as *disengaged coparenting*, involved 41% of the sample; and low communication and high discord, labeled *conflicted coparenting*, was a feature in 24% of the cases. Over the three-year period, it was unlikely for conflicted parents to become cooperative; most remained conflicted, and a small group became disengaged. Moreover, those who had conflicted coparenting styles were also more likely to be divorcing parents who had experienced substantial

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or intense legal conflict and who were more hostile to one another, especially mothers. It is important to emphasize, however, that these groups (those with high legal conflict, conflicted coparenting, and hostile attitudes) did not completely overlap, confirming that these dimensions of conflict are not identical; in fact, they may be only weakly related to one another.

In sum, using different measures (legal conflict, hostility, and conflicted coparenting), Maccoby and Mnookin’s data indicated that one quarter of divorces were highly conflicted at an average of three and one-half years after the separation, by which time almost all couples had obtained their final decree.⁷ It is interesting that these estimates are not greatly disparate from smaller nonrepresentative samples. Two earlier studies—one by Wallerstein and Kelly of 60 families referred for counseling and one by Ahrons of 54 couples obtained from divorce filings—concurred that almost one-third of families remained very hostile and in conflict over child-rearing matters three to five years after separation.^{8,9}

Families with Young and/or Many Children

What other factors are associated with high-conflict divorce? Again, the 1992 Maccoby and Mnookin study provides the best comparative data.⁷ No socioeconomic, income, or ethnic differences were found to distinguish divorces involving high legal conflict and conflicted coparenting styles from those with low indicators of conflict. Moreover, conflicted coparenting was just as likely to be experienced by children living in dual residences as by those who resided solely with either mother or father. Families with very young children were more likely to be highly conflicted both legally and in terms of day-to-day parenting. Larger families were somewhat more likely to have coparenting conflict than those with an only child. These findings suggest that the need to cooperate closely, especially in the care of very young children and in coordinating the separate needs of multiple children, increases the strain on the coparenting relationship.

Concern About Ex-Partner's Parenting Practices

Most notable, however, are the findings by these same researchers that pervasive distrust about the other parent's ability to care for their child adequately and discrepant perceptions about parenting practices generally typify the couples who are likely to be highly disputatious both

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inside and outside the court.⁷ These observations are supported by a recent California statewide study by Depner and her colleagues of 1,669 mediation sessions conducted in family courts, a sample which included 93% of all disputes regarding custody and access mediated during a two-week period.¹⁰ (California law requires mediation in any case where parents are disputing custody and visitation matters.) Within these sessions, serious

multiple overlapping concerns about the ex-partner's parenting practices were raised by separating and divorced individuals: these included allegations of child neglect (38%), child physical abuse (18%), child sexual abuse (8%), and child stealing (6%). In addition, grave concerns were raised about exposing the child to the other parent because of his or her substance abuse (36%) or criminal activity (7%). It is not known if these allegations could have been substantiated, or if they mostly signified each party's negative perceptions, hostility, and distrust of the other.

It is commonly believed by family court counselors, however, that these allegations of neglect and abuse often do not meet the criteria for mandatory reporting. In fact, court counselors generally contend that, when such investigations are undertaken by child protective services, the allegations are frequently dismissed by overworked staff as being either indicators of interparental spite, impossible to prove, or insufficiently serious to require state intervention.

Depner and colleagues found that, in a startling 65% of families, domestic violence was alleged by one or both parents within the mediation session.¹⁰ Two small studies of high-conflict divorcing families, by Johnston and Campbell (n = 80) and by Johnston (n = 60), confirm this high level of domestic violence.^{11,12} Both samples were drawn from family court referrals for counseling that were made either because mandatory mediation in court had failed or because parents continued disputing over the care of their children, at times violently, despite a legal settlement. Physical aggression had occurred between 75% and 70% of the parents, in the first and second studies, respectively, during the past year, even though the couples had been separated, on the average, 30 months and 42 months. In 25% of the first sample and 20% of the second, the aggression was termed moderate and involved slapping, hitting, kicking, or biting. In 35% of the first sample and 48% of the second, it was denoted as *severe* and involved battering and threatening to use or using a weapon.

In a comparison sample of 60 cases drawn from a more general sample of divorce filings, where the couple had been separated more than two years, physical aggression was 36 times lower than in the

court-referred samples.¹³ Taken all together, these studies suggest that, in divorces marked by ongoing disputes over the custody and care of children, both inside and outside the court, there is often a history of domestic violence in the family and a likelihood that the violence will continue after the separation.

Emotional Dysfunction and Characterological Disturbance

The extent of emotional dysfunction and characterological disturbance in individuals involved in high-conflict divorce has seldom been studied. Early clinical observations suggest that this group is more likely to have severe psychopathology, personality disorders, and substance abuse problems.¹⁴⁻¹⁷

Using ratings from the third edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III), two-thirds of the 160 parents in the first clinical study of high-conflict divorce described above were diagnosed as having personality disorders and one-fourth as having traits of same.¹¹ Only 2% were diagnosed as psychotic. One-fourth had substance abuse problems. In the second clinical study of 120 parents, a standardized self-report measure of emotional symptomatology, the Brief Symptom Inventory (BSI), was used, and the results indicated that this sample fell midway between a normal population and a psychiatric population in degree of disturbance.^{12,18} The use of drugs and alcohol in this sample did not differ from that in the general population.

In 1989, Schaefer reported on a four-year follow-up study of 83 custodial parents who had contested and won custody (half were mothers, and half were fathers) and noted that their scores on the same standardized measure (BSI) indicated a poorer clinical picture than national norms.¹⁹ The critical question raised by each of these studies is, however, whether the manifestations of psychopathology represented ongoing personality and emotional disorders, or whether they were expectable reactions to severe stressors that included the divorce and legal disputes. For instance, it is difficult to determine whether the paranoia felt by a parent who is being accused by an ex-mate is unreasonable when that person is being evaluated in a court process to determine who is the better parent.

A Theoretical Model Predicting High-Conflict Divorce

Currently, there are no adequate studies that attempt to critically evaluate the various factors which are hypothesized to create and maintain highly conflictual postdivorce relationships between parents over the custody and care of their children. The theoretical explanatory model that is proposed here, however, is a complex, interactive, and reciprocal one, as diagrammed in Figure 1 and illustrated in the accompanying inset (see Box 1).¹¹

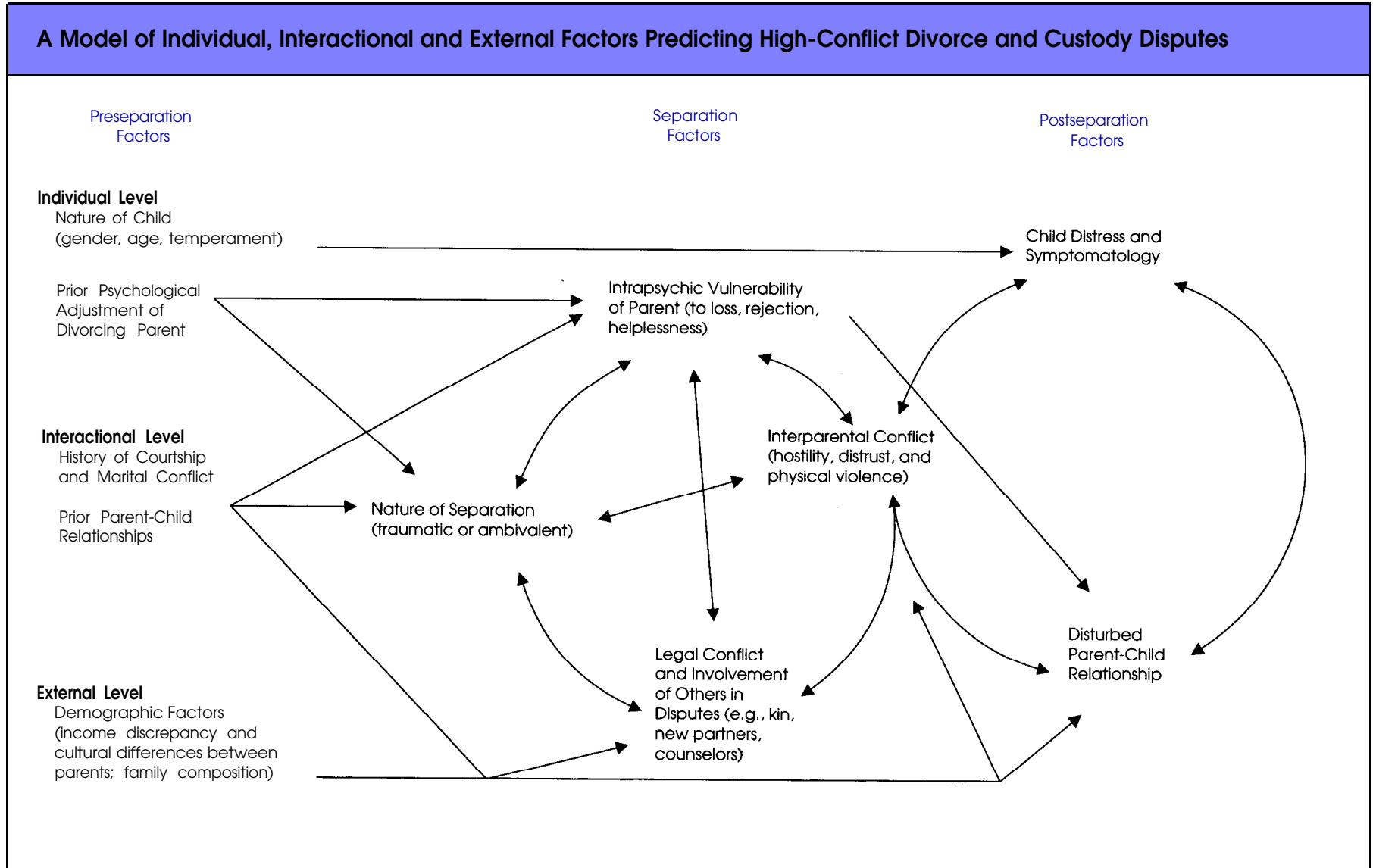
At the individual level, separation-engendered conflicts (the humiliation inherent in rejection, the grief associated with loss, and the overall helplessness in response to assaultive life changes) interact with vulnerabilities in the character

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structure of some divorcing individuals, making them especially prone to unresolved hostility and ongoing disputes. At the interactional level, a combination of the destructive spousal dynamics that are a function of these intrapsychic conflicts, the history of the prior marital relationship, and the legacy of an ambivalent or traumatic separation experience causes the parties to construct negative, polarized views of each other. Consequently, these parents continue to be highly distrustful of each other and are convinced that they are fighting to protect the children from the perceived negative effects of each other's parenting.

In addition, there are realistic concerns about parenting capacity in individuals whose functioning and judgment are compromised by their own emotional distress and the continual criticism and undermining of their parenting by the ex-spouse. The dysfunctional family relationships that are a product of these intrapsychic and interparental conflicts,

Figure 1



Source: Johnston, J.R., and Campbell, L.E.G. *Impasses of divorce: The dynamics and resolution of family conflict*. New York: Free Press, 1988.

especially disturbances in parent-child relationships, can result in emotional and behavioral symptomatology in children (particularly in vulnerable younger children and boys). This, in turn, fuels the interparental dispute. At the external social level, these disputes can be both provoked and maintained by socioeconomic and cultural stressors and by coalitions formed with significant others: extended kin, new partners, and mental health and legal professionals. The traditional adversarial process in the courts is particularly fertile ground for the polarization of perceptions and for the hostility and combative stance which are hallmarks of this group.

Children's Adjustment to Divorce-Related Conflict

Effects of Parental Conflict on Children

The studies reviewed in this section are concerned with the general relationship between parental conflict and child functioning in the broader population of divorcing families. Here, we are interested in understanding under what conditions children are affected by interparental conflict, and to what extent and in what ways they are disadvantaged. These are crucial questions with social policy implications. An extensive literature has been generated during the past two decades about the effects of interparental conflict on children, mostly within intact but also within divorcing families (see reviews by Emery; Grych and Fincham; Depner, Leino, and Chun).²⁰⁻²² A common shortcoming of these numerous studies is that, with few exceptions (for example, Cherlin and colleagues) they have not looked at the long-term outcomes of living with interparental conflict, nor have they looked at how conflict can interfere with the normal developmental course of children.²³

Most early studies did not discriminate among conflict domain, tactics, and hostility (for example, Rutter).²⁴ More recently, however, there have been attempts to compare the effects on children of exposure to domestic violence with those of living in highly conflictual but nonviolent homes. Further distinctions are now being made about the effects on children of witnessing violence compared with being directly abused (see review by Jaffe, Wolfe, and Wilson).²⁵ The consistent conclusions of these reviews indicate that interparental

Box 1

Case Illustration

Alan (11 years) is the only child of bitterly disputing parents who separated suddenly three years ago and who have been in conflict over custody and visitation ever since. Both parents are vocationally successful but are economically stressed by the divorce. Both feel humiliated by the perceived rejection inherent in the failed marriage and especially by the counterattacks in the custody litigation that has followed.

The mother is overtly rageful and vengeful; she has physically attacked the father on occasion. She has a focused paranoid belief that her ex-husband is out to destroy her and her child. In turn, the father is smug, obsessively controlling and financially withholding. He uses his ex-wife's distressed behavior to thoroughly denigrate her parenting, in carefully written documentation submitted to the court. The mother also claims that Alan's visits to his father are negatively affecting the boy and should be reduced or eliminated.

Although Alan is not directly asked to take sides in the fight, he is presented with two starkly contrasting realities from parents both of whom love him. Likewise, he is attached to them both; he has painful loyalty conflicts and fears losing each of his parents.

In accord with his father's expectations of him, in his father's home Alan is overly bright, competent, and entertaining. When Alan returns to his mother's home, he regresses to a dependent, demanding, and irritable child who has many irrational fears and panic attacks. Somatic symptoms include tiredness, stomachaches, and digestive problems, which periodically keep him from attending school. He is withdrawn socially and engages in much solitary play with his collection of toy soldiers.

It is perhaps not surprising that these parents are disputing in court as to whether the boy is in need of therapy.

hostility and physical aggression are moderately associated with more behavioral problems, emotional difficulties, and reduced social competence in children, compared with nonconflictual families. Where gender differences have been investigated, boys tend to show more overt behavioral disturbance and girls tend to have more covert emotional disturbance. These findings indicate that, in general, children who are exposed to physical aggression between parents are more symptomatic than those who experience nonviolent interparental discord and that this symptomatology is even more pronounced in children who have been directly abused.

It is important to note that, while children from hostile and aggressive families, as a group, have more adjustment problems than normally expected, the range of individual outcomes is broad. Some children do very well despite these adverse environments; others appear to be reactive and negatively affected. What makes for these differences? In studies of divorced families, it has been found that interparental hostility and aggression mostly have indirect effects on children, mediated by the quality of the parent-child relationship, with

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the child's relationship to the mother being more predictive of child adjustment than is the relationship with the father.^{7,26,27} This finding implies that a good parent-child relationship can buffer children from interparental conflict. In addition, some characteristics of the individual child (for example, a more adaptable temperament, higher intelligence, and better coping skills) are indicators of more resilience. The problem is, however, that conflict between spouses tends to erode a couple's capacity to cooperate in the care and guidance of children. As a consequence of divided parental authority and lack of respect given to one another, parenting tends to become more problematic: discipline is more coercive, and expectations are

more inconsistent, all of which are predictive of more negative and distant parent-child relationships and an increase in children's emotional and behavioral problems.²⁸

Children's Adjustment in High-Conflict Divorced Families

It is argued here that family laws as well as court policies are often justified by research findings from the broad population and are insufficiently backed by studies of the special subgroup of the divorcing population to which they are most frequently applied, that is, to families of high-conflict divorce. High-conflict divorce is characterized by all of the following: intractable legal disputes, ongoing conflict over parenting practices, hostility, physical threats, and intermittent violence. To address social policy with respect to the children of high-conflict divorce, it is necessary to evaluate the extent to which child outcomes are multiply determined and to examine the relative impact of interparental hostility and physical aggression, parent psychopathology, and the custody and visitation arrangements on children's functioning. Only a few such studies can be found scattered throughout the literature. These studies are summarized here in some detail for the first time. Taken together, they begin to paint a picture of a subgroup of children at high risk who have special social policy needs.

In 1988, Brotsky, Steinman, and Zemelmann made clinical observations of 67 children (ages 1 to 15 years) from divorcing families at one, two, and four years after separation.²⁹ Almost half of the parents were referred by the family courts for counseling because of disputed joint physical custody; the remainder were attempting voluntarily to put together a joint custody plan and had requested help. The sample ranged broadly in terms of socioeconomic status and was 80% white. At the one-year follow-up, 12 families were classified as "successful" in implementing a cooperative joint custody plan, 20 were seen as "stressed" by this endeavor, and 15 were rated as having "failed."³⁰

These three groups of couples were distinguished by their capacity to respect and support each other's parental efforts with the child and to keep separate and modulate their own anger and ambivalence toward the ex-spouse. The "successful" and "failed" groups clearly main-

Table 1

Some Standardized Measures Used in Studies of High-Conflict Divorcing Families ^a		
Name and Purpose of Measure	Factors	Examples of Items
Conflict Tactics (CT) scales (Straus, 1979) ¹ 18-item report on self and ex-spouse	Verbal reasoning, verbal aggression, physical aggression	Discussed the issue calmly; insulted or swore at the other; slapped; punched, bit, hit the other; beat up; threatened with/used a weapon
Brief Symptom Inventory (BSI) (Derogatis and Spencer, 1982) ¹⁸ 53-item self-report by adults	Somatization, obsessive-compulsiveness, interpersonal sensitivity, depression, anxiety, phobia, paranoid ideation, hostility, psychoticism	Dizziness or faintness; difficulty making decisions; feelings easily hurt; feels lonely, blue; feels fearful; feels uneasy in crowds; feels watched or talked about; has urges to beat, injure, or harm someone; has idea that someone else can control thoughts
Child Behavior Checklist (CBCL) (Achenbach and Edelbrock, 1983) ³¹ 112-item parent report on child's adjustment	Depression, withdrawal, somatic symptoms, aggression, externalizing, internalizing	Cries a lot; sad; worrying; refuses to talk; secretive; feels worthless; stares blankly; asthma; aches and pains; disobedient; physically attacks people; gets into many fights; stubborn; sullen; irritable
^a The psychometric properties of these well-established measures can be found in the referenced publications.		

Sources: Ahrons, C.R. The continuing coparental relationship between divorced spouses. *American Journal of Orthopsychiatry* (1981) 51:415-28. Also, Derogatis, L.R., and Spencer, P.M. *The brief symptom inventory (BSI) administration, scoring and procedures manual: I*. Baltimore, MD: Clinical Psychometric Research, Johns Hopkins University School of Medicine, 1982. See also, notes 1, 18, and 31 at the end of this article.

tained their profile at the four-year follow-up; four-fifths of the "stressed" group had become more cooperative and satisfied with the coparenting arrangement.

The important finding for social policy is that, at each time of observation, those parents whose joint custody arrangements were court-ordered or court-recommended were more likely to be classified as "failed" or "stressed," and their children were more likely to be symptomatic or at high risk in terms of their behavioral, emotional, and social adjustment. A cautionary note is sounded in that this study employed a small sample and did not report results based on the standardized measures that were used.

In 1989, Schaefer reported on a four-year follow-up of 83 children (ages 1 to 11 years at separation) whose parents had reached a settlement of custody through court-ordered evaluations and/or judicial decree.¹⁹ In half of the cases, the fathers had been awarded custody; these were matched with sole mother-custody cases according to age and gender of the child.

The socioeconomic status was predominantly middle- to upper-middle-class, and families were predominantly white. The children's adjustment was assessed by the Child Behavior Checklist (CBCL) completed by the custodial parent.³¹ The parents reported their own symptomatic distress on the Brief Symptom Inventory (BSI) and the amount of coparental communication (see Table 1).^{9,18}

The findings indicated that parents' reports of their own emotional distress were most strongly related to their reports of the children's adjustment. However, it could not be determined whether this was evidence of a true relationship or of the parents' emotional state having biased their perceptions of their children. There were few indications that coparental communication was related to the children's adjustment. The custodial parent reported significantly more internalizing symptomatology (for example, withdrawal, depression, somatic symptoms) when the children had more frequent access to the other parent. There were no significant

differences found in either the boys' or girls' adjustment in mother-custody homes compared with father-custody homes on any of the measures. These findings indicate that the custodial parent's own adjustment is the best predictor of child adjustment and that children of both genders do as well in the primary care of their fathers as in the primary care of their mothers, when these arrangements have been made after careful psychological evaluations of the best match between parent and child. The value of frequent access to the noncustodial parent is, however, questionable.

Findings indicate that the custodial parent's own adjustment is the best predictor of child adjustment.

Johnston, Kline, and Tschann studied 100 children (ages 1 to 12 years) whose parents were referred by the family court because of ongoing disputes over their custody and care at the time of litigation and again about two and one-half years later.³² The children were ethnically relatively diverse (62% white) and from low-middle socioeconomic backgrounds. Children's adjustment was measured by

an average of both parents' reports on the CBCL.³¹ Interparental conflict was assessed by both parents' reports on the Conflict Tactics Scale (CTS), in which verbal aggression and physical aggression were combined (see Table 1).¹ The custody arrangement was rated in terms of the legal decree, the amount of access (days per month) with the visiting parent, and the number of transitions per week between parents. At the follow-up, 35% of these children were in joint physical custody, 53% in mother custody, and 12% in father custody.

There was no clear evidence that children were better adjusted in either custody type. However, as a group, children who had more shared access to both parents in joint custody arrangements and those who had more frequent visitation with a non-custodial mother or father in sole custody situations were more emotionally and behaviorally disturbed. Specifically, they were more depressed, withdrawn, and/or uncommunicative, had more somatic symptoms, and tended to be more aggressive.

When gender groups were analyzed separately, these findings were significant for girls but, in general, not for boys. This longitudinal study showed that more verbal and physical aggression was generated between parents when children had more frequent access arrangements; consequently, these children tended to get more caught up in the interparental con-

flict. Whereas girls' adjustment was more adversely affected by more access to both their disputing parents, boys and older children compared to younger ones were more caught up and used in the parental conflict that was generated as a consequence of the more frequent access arrangement, and this, in turn, was related to poorer child outcomes.³²

Apart from the small size of this sample, the main limitations of this study were that only averaged parental reports on the children were used as outcomes (possibly obscuring differences between mothers and fathers); that the effects of verbal aggression were not distinguished from those of physical aggression; and that parents' individual dysfunction (an alternative explanation for the findings) was not measured. Consequently, a second study was designed to correct some of these limitations.

In the second study, Johnston reported on the adjustment of 75 children (ages 3 to 12 years) in disputed-custody divorces.¹² Their parents were referred from the family court because of interparental violence or because there was ongoing conflict of a nonviolent nature. This sample was diverse in socioeconomic status and 80% white. In addition to the same measures used in the first study, teachers rated the children, as did clinicians.^{27,32,33} Parents' individual dysfunction was measured by the BSI.¹⁸ With respect to the custody of these children, 36% were in joint physical custody, 57% were in sole mother custody, and 7% were in sole father custody.

Boys and girls appeared to differ in their adjustment to the custody and access arrangements. The overall results indicated that girls were functioning better when in the primary care of their mothers in these high-conflict and physically violent families (according to ratings by mothers, fathers, and clinicians, but not those by teachers). There was some weaker evidence that boys did better when they had more access to their fathers (according to fathers' and some teachers' ratings, but not to ratings by mothers or clinicians). However, more frequent access arrangements were associated with more concurrent aggression between parents, which offset some of the benefits of access for boys.

When all factors in this study were simultaneously analyzed, the findings

were that a history of physical aggression in the family was strongly and consistently associated with emotional, behavioral, and social problems in children. It was not only directly predictive of more child disturbance, it was also associated with mother's diminished parenting, in that mothers from violent relationships were less warm and more coercive with their children. In addition, the degree of both mothers' and fathers' emotional dysfunction independently predicted child disturbance, both directly and indirectly, as it was associated with less warmth and more coerciveness in parenting. Apart

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from the small sample size, the weakness of this study is that, because family relationships and children's functioning were assessed at only one point in time, it remains undetermined what is cause and what is effect.

Each of the above studies (conducted by Brotsky and colleagues, by Schaefer, Johnston, and colleagues, and by Johnston) were of children of high-conflict divorce, whose parents had failed mediation, undergone evaluations, or had court-imposed settlements.^{12,19,29,32} According to Maccoby and Mnookin, these categories represent a small proportion, the top 10th percentile, of legal conflict in the divorcing population.⁷

To what extent are these children seriously disturbed? In each of the studies where standardized measures of maladjustment were reported, these children scored as significantly more disturbed and were two to four times more likely to have the kinds of adjustment problems typically seen in children being treated for emotional and behavioral disturbance as compared with national norms. In general, boys were more symptomatic than girls.

Caution needs to be used in interpreting and generalizing from these findings. Each study used a relatively small sample of unknown representativeness of

the population of high-conflict divorce. Though all but one of these studies were longitudinal in nature, only one used statistical analyses enabling causal directions to be tested.^{12,32} Only two employed multivariate analysis to examine the joint and relative effects of each factor.^{12,32} The effects of age of child and ethnic differences were not explored. In sum, these should be viewed as tentative correlational findings to be confirmed by further research. Despite the limitations, however, the findings of all these studies are fairly consistent. Interparental conflict after divorce (for example, verbal and

and then negotiate and bargain differences and alternatives. In this method of dispute resolution, the assumption is that the mediator can contain and deflect the emotional conflicts of the divorcing couple and help them to become rational, focused, and goal oriented. In general, mediation of disputes about the custody and care of children after divorce has been widely advocated as the forum of choice because it empowers parents to make their own decisions, avoids unnecessary state interference in family affairs, and increases satisfaction and compliance with the agreements made. Most states now have some provision for mediation in custody disputes either by statute, court rule, or judicial referral.

An association between joint custody/frequent access and poorer child adjustment appears to be confined to divorces that are termed “high-conflict.”

physical aggression, overt hostility, distrust) and the custodial parent’s emotional distress are jointly predictive of more problematic parent-child relationships and greater child maladjustment. Court-ordered joint physical custody and frequent visitation arrangements tend to be associated with poorer child outcomes, especially for girls.

It is important to note that the finding of an association between joint custody/frequent access and poorer child adjustment appears to be confined to that small proportion of families (about one-tenth) of all divorces that are termed “high-conflict” as defined above. Several other studies of the broader population of divorcing families, where custody arrangements are generally made voluntarily by parents, indicate that joint physical custody and frequent visitation are not more detrimental to the majority of children. In some cases, especially where parents are cooperative, they are more beneficial.³⁴⁻³⁶

Conflict Resolution Procedures and Programs

Mediation

Mediation here is defined as the use of a neutral third party in a confidential setting to help disputing parents clearly define issues, generate options, order priorities,

and then negotiate and bargain differences and alternatives. In this method of dispute resolution, the assumption is that the mediator can contain and deflect the emotional conflicts of the divorcing couple and help them to become rational, focused, and goal oriented. In general, mediation of disputes about the custody and care of children after divorce has been widely advocated as the forum of choice because it empowers parents to make their own decisions, avoids unnecessary state interference in family affairs, and increases satisfaction and compliance with the agreements made. Most states now have some provision for mediation in custody disputes either by statute, court rule, or judicial referral.

Formal outcome studies of mediation and court experiences indicate that rates of success in reaching agreement range between 40% and 70%.³⁷⁻⁴⁰ It is important to note, however, that the “failures of mediation” have all the characteristics of “high-conflict divorce.” The failures have been described as enmeshed and highly conflicted couples who are ambivalent about their separation and who have severe psychopathology or personality disorders.¹⁵⁻¹⁷ It is often argued that mediation is inappropriate for many dysfunctional families: where couples are chronically litigious, where there is domestic violence, where there are allegations of child abuse and molestation, and when one or both parents are alleged to have serious psychological difficulties.⁴¹⁻⁴³ Furthermore, it is difficult for parents to arrive at some consensus when they have highly divergent perceptions of their children’s needs and a pervasive distrust of each other’s capacity to provide a secure environment. In sum, high-conflict divorcing families have often been identified by their failure to make effective use of mediation methods that rely upon a rational decision-making process.

Evaluation and Recommendations

When attorney negotiations and mediation are ineffective, the courts generally rely upon the expert testimony of mental health professionals to help in the time-consuming task of fact finding and to offer opinions as to how disputes over the custody and care of children should be resolved according to the current legal standard, which is “the best interests of the child.” It is generally believed that mental health evaluators are most useful

if they serve as impartial experts appointed by the court, or by stipulation of both parties, rather than as an expert retained by one party, who pits his or her professional opinions against that of the expert retained by the other party.⁴ Evaluations can be conducted within services that are a part of the court system, or by private practice professionals and community agencies outside the court. They can involve a narrow focus on a particular issue (for example, which school the child should attend) or entail a complete family evaluation (for example, psychological testing of all parties, school and home visits, substance abuse assessments, child abuse and molestation investigations).

Studies of the outcome of the evaluation process indicate that the final court order is in accord with the recommendation in about 85% of cases. In actuality, in about 70% to 90% of the cases, after hearing the recommendations, the parties reach a negotiated agreement which is then entered as a consent judgment.^{4,7,44} Although evaluations appear to be very effective in reaching an initial agreement, they often bring little relief for those high-conflict couples who harbor great distrust and hostility and have difficulty in cooperating and coparenting their children on a daily basis. A two-year follow-up study by Ash and Guyer of 267 families showed that families who had undergone custody evaluations had a rate of relitigation that was two and one-half times the rate for families who had settled by themselves (19% compared with 7%).⁴ Over approximately an eight-year follow-up period, a recent study by Hauser and Straus of 700 families confirmed this difference. Among families who had custody evaluations, 71% relitigated compared with 41% of the divorcing population in general.⁴⁵

Visitation Enforcement Programs

Throughout the United States, a variety of court-related services have been established to deal with ongoing coparental disputes over visitation and child care in highly conflictual divorces.⁴⁶ Typically, they involve one or more of the following: parent education (usually in groups); assessment and mediation of the visitation dispute; drafting more specific, enforceable court orders; and monitoring visitation by letter or telephone. Increasingly, these services are seen as having a probationlike function, and in some cases they are specifically used as a diversion pro-

gram in lieu of prosecution for contempt of court orders. In some jurisdictions, particularly litigious families are assigned a "case manager" (for example, a judge or court counselor) who is responsible for coordinating the numerous court actions with the many professionals and others involved in the family dispute. The effectiveness of some of these programs in ensuring the child's conflict-free access to the noncustodial parent is currently being evaluated. Of particular interest is whether improved access leads to increased compliance with child support orders.⁴⁶

Therapeutic Remedies

It is evident that misplaced and escalating personal and spousal conflicts of divorcing couples, whether emanating from long-term difficulties or from separation-engendered conflict, result in resistance to mediation, questionable negotiation strategies, unrealistic custody and access demands in repeated litigation, and ongoing inability to cooperate on behalf of the children. From a therapeutic viewpoint, a more appropriate intervention re-

From a therapeutic viewpoint, a more appropriate intervention requires gaining some understanding of why these parents are locked into chronic disputes.

quires gaining some understanding of why these parents are locked into chronic disputes. Based on such understanding, therapists can devise strategic, focused therapeutic interventions aimed at the impasse, which will help these parents to make decisions more rationally. Moreover, based upon an understanding of the developmental needs of the individual child, therapists can help parents focus on meeting the needs of their children, separate from their own psychological agendas. This approach has generally been referred to as "therapeutic mediation" and has been most highly developed as a method called "impasse-directed mediation" by Johnston and Campbell.^{11,17,47}

Typically, this dispute resolution method involves both parents and their children in a relatively brief, confidential intervention (15 to 25 hours), which can be adapted either to individual high-

conflict families or to groups of such families. The strategy is two-pronged: On one hand, parents are helped to develop some awareness or insight into their psychological impasse (or, there is an intervention with the extended family and significant others, including professionals, which aims to avoid the impasse for those parents who are too disturbed to benefit from direct counseling). On the other hand, parents are educated as to the effects of their conflict on their children and counseled about how to protect their children from the spousal disputes. Subsequently, parents are helped to negotiate a coparenting plan and are provided with some assistance in implementing or modifying their arrangements in scheduled, or intermittent, follow-up sessions. A two- to three-year follow-up of two studies of high-conflict families ($n = 80$ and $n = 60$) who received this treatment indicated that two-thirds were able to keep or renegotiate their own agreements regarding custody and access and, consequently, to stay out of court. The group method was found to be 40% more cost-effective than the individual method.^{11,48}

Coparenting Arbitration

This is a relatively new approach, which has been developed for those high-conflict families who need continual structure and help with their parenting and coparenting after divorce over a long period of time. Essentially, it involves a mental health specialist (variously called a

Supervised visitation programs comprise a rapidly growing new social service that has been developed in direct response to intractable divorce disputes.

court master, custody commissioner, coparenting counselor, guardian ad litem) who is appointed by the court or by stipulation of the parties. This person is then available to the family on an ongoing or "as needed" basis to help with decisions about the children. Depending upon the specific contract with the family, any or all of the following methods may be used: counseling, mediation, recommendation, and arbitration. This kind of intervention

can be useful in a variety of cases: those that involve chronic litigation and enmeshed family conflicts; where there are ongoing allegations of abuse (physical or sexual) or there is concern about domestic violence; where there is intermittent mental illness of a parent that needs monitoring; when a child has special needs (for example, physical or mental disability) that require close coordination between parents; or, simply, when children are very young (infants) and the parenting plan must be reworked over time in response to the changing needs occasioned by their rapid development. To date, no known studies have evaluated the effectiveness of these kinds of approaches.

Supervised Visitation

Supervised visitation programs comprise a rapidly growing new social service that has been developed in direct response to intractable divorce disputes. Currently, there are more than 70 such programs nationwide, brought together by a fledgling organization called the Supervised Visitation Network.⁴⁹ Largely staffed by trained volunteers or counseling interns and funded variously by local, state, or charitable grants and by advocacy groups (for example, domestic violence agencies), these programs provide a protected setting for visitation to occur between children and their noncustodial parents.⁵⁰ This supervision can take a variety of forms, and its extensiveness can vary over time. In the most extreme cases, the supervision may be part of a therapeutic intervention into the parent-child relationship and is undertaken by a trained counselor.

Where the children are at high risk (because of a parent's psychological disturbance, substance abuse problems, history of emotional or physical abuse, molestation, serious domestic violence, or child abduction), visitation may occur only under the continual surveillance of a neutral third person in a closed setting. In situations of less gravity, supervision may be performed in an open setting (for example, at a park, or in the noncustodial parent's home) by family members or friends. Where there is no direct threat to the child but there is a possibility of verbal or physical abuse between parents, the supervision may be limited to the time of exchange of the child at a safe, neutral place. There have been no formal evaluations of these programs to date.

Implications for Social Policy

What kind of public policy with respect to custody and visitation is supported by the current body of research on high-conflict divorce? The more conservative approach is to note the limitations of this research and to conclude that there are no policy implications (the studies are too few, comprise small nonrepresentative samples, have not adequately demonstrated causal relationships between different custody/access arrangements and child outcomes, have not differentiated between children of different ages, and have not examined cultural differences). This conclusion, however, leaves no guidelines for daily decision making in family courts. A more helpful approach is to propose a number of principles that should guide custody decision making, recognizing that individual cases raise multiple issues which require good clinical judgment and judicial discretion. It is also important to note that these policy principles may change as more becomes known about these families.

Key Principles

- Children need custody and access arrangements that minimize the potential for ongoing interparental conflict; they especially need to be protected from exposure to violence.⁵¹
- Children are better off in the care of a parent who is relatively free of psychological disturbance or substance abuse inasmuch as both of these conditions compromise parenting.
- A good parent-child relationship is the best predictor of good outcomes in children. It is this domain that should carry considerable weight in determining a child's primary residential arrangement in these families.
- The present research base indicates that high-conflict divorced parents have a relatively poor prognosis for developing cooperative coparenting arrangements without a great deal of therapeutic intervention. The fourth principle, then, is that custody arrangements should allow parents to disengage from their conflict with each other and develop parallel and

separate parenting relationships with their children, governed by an explicit contract that determines the access plan. A clearly specified regular visitation plan is crucial, and the need for shared decision making and direct communication should be kept to a minimum. This fourth principle implies, therefore, that joint legal and joint physical custody schedules which require

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careful coordination of the child's social, academic, and extracurricular activities are generally inappropriate for this special subpopulation of divorcing families, as are frequent transitions of the child between parents for visitation purposes. This principle may need to be modified for very young, preschool children who have difficulty remembering an absent parent unless access occurs at more frequent intervals.

- Where there is concern about the capacity of both parents to protect the child from the interparental conflict and their own disturbed attitudes and behavior, it may be appropriate to give more weight in the custody/access decision to providing the child with continuity in relationships with supportive others (such as teachers, peers, grandparents) and stability of place (such as neighborhood and school). In these more difficult cases, custody and access awards can be made contingent upon either or both parents' obtaining appropriate counseling (for parenting, violence, substance abuse, and the like). Finally, if conflict continues, children themselves may be better protected if a court order assures them of direct access on an ongoing basis to their own counselor, one who can maintain a positive or equidistant relationship with both parents and help the children directly.

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