

November 4, 1999

To: Nicole Rabner

From: Lenore L. Espinosa

Re: Children of Embattled Divorce Symposium – Research findings

Theme of the symposium: Determines how best to protect children involved in high-conflict divorce from sustaining psychological abuse. Also, it examines the “best interest of the child” – and connects this with the special interests of families and professionals who attempt to care for these children.

The Qualifications of and Methods to be Used by Judges, Attorneys and Mental Health Professionals in High Conflict Child Custody Cases

Barry Bricklin, Ph.D.

Gail Elliot, Ph.D.

High conflict cases are increasing due to: the greater number of fathers seeking sole or joint custody; money recognized by more people as a potent force; internet etc. allow a parent to discover a large number of ways to attack the other parent. Should be familiar with the fact that the usual and standard clinical approaches (individual psychotherapy) in high conflict cases frequently achieve the exact opposite of what is intended: they make things not only worse but also unresolvable.

Suggest that high conflict cases demand even more specialized knowledge. A general solution is to say that more judges, attorneys and MHPs become more aware of the post-divorce research literature as well as the **exceedingly specialized** knowledge. They also suggest that standard health/mental procedures often prove ineffective with high conflict cases, and can even defeat the possibility to progress. Suggest that there is a need to reframe (for battling parents) what “protecting their children” means, and how to achieve these goals outside the legal area – address problems therapeutically, then monitor.

List of the areas in which two blue-ribbon committees suggested MHPs (mental health professionals) should have education and/or training and/or experience to be involved merely in child custody cases (not including high conflict variety):

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| ▪ Child development | ▪ Applicable state statutes and common laws |
| ▪ Child psychopathology | ▪ Typical custody and visitation arrangements |
| ▪ Adult psychopathology | ▪ Ethical standards in child custody evaluations |
| ▪ Effective parenting techniques and behaviors | ▪ Life-span developmental psychology |
| ▪ The effects of divorce and remarriage on families | ▪ Mental retardation and developmental disabilities |
| ▪ Applicable methods of psychological assessment | ▪ Behavior change |
| | ▪ Parent, family and school intervention |

Child Maltreatment and Endangerment in the Context of Divorce

Kathleen Coulborn Faller, Ph.D.
Professor, School of Social Work
University of Michigan

In order for child maltreatment and endangerment to be considered in decisions of custody and visitation, it must satisfy three conditions: 1.) there must be an identifiable parental behavior, 2.) there must be harm or potential harm to the child, and 3.) there must documentation of the parental behavior and potential or actual harm to the child.

Fundamental approach to interviews is the use of a team. Although use of a single evaluator is more efficient, a team decreases the danger of individual bias and enhances pursuit of a range of explanations for concerns about child maltreatment or endangerment. Using a team distributes work among several people, allowing for more exploration of information and sources. It can be advantageous for the team to have professionals from more than one discipline.

Evaluators should focus on parental behaviors of concern, when issues of maltreatment or endangerment have been raised. Evaluators need not be reluctant or defensive about inquiry related to these issues. An evaluation should involve a careful review of all past records, evaluations of all children in the family, evaluations of parents and interview with any new partners. Meetings can be used as an effective mechanism for sharing information, making decisions, and arriving at recommendations. The meeting usually would require three or four hours and should include evaluators, their consultants, and other relevant professionals (team).

Contentious Divorce: The Rocky Path to the Child's Best Interests

Michael S. Jellinek, M.D., Chief, Child Psychiatry Service, Massachusetts General Hospital; Professor of Psychiatry and of Pediatrics, Harvard Medical School

Kate Erwin, M.D. Director, Court Evaluation Service, Erich Lindemann Mental Health Center; Instructor in Psychiatry, Harvard Medical School

Alexa Bagnell, M.D., Second Year Resident in Psychiatry, Massachusetts General Hospital; Clinical Fellow, Harvard Medical School

The study asserts an emphasis on the importance of structure in contentious divorces and how it can best be achieved using the "best interest" principle. Structure serves as a boundary for the behavior of people with personality disorders. A structure is consistent; reasonably frequent physical visitation assured telephone access and guaranteed sanctions for lateness or manipulation of the visitation schedule. For the child this structure is designed to optimize the elements each parent offers and to limit those tensions based on personality disorders. A court appointed Guardian-ad-Litem can potentially provide this structure with the following guideline: 1.) Expertise- family should be assigned a judge who is recognized for training and extensive experience in adjudicating contentious divorces. 2.) Consistency- continuing the custody team with some limitation on changes (especially the rotation of the judge off the case, strategic use of delays, or filing of motions to disrupt the team). 3.) Time- a frame that acknowledges the likelihood that the team may need to stay active for several years. 4.) Limit Setting- to contain character issues at every level. 5.) Cooperation and Respect- the judge, lawyers, and mental health clinician become a structure that reflects the pre-divorce, marital family and childhood families of each parent.

Building Multidisciplinary Professional Partnerships with the Court on Behalf of High-Conflict Divorcing Families and Their Children: Who Needs What Kind of Help?

Janet R. Johnston, Ph.D.

Notes how traditional professional roles and ethical constraints have contributed to rather than resolved family conflict and hurt children. There are a number of assumptions about the traditional role of family courts in conflicted custody matters that need to be questioned. For instance, family courts have primarily been used to make decisions for divorcing couples who cannot make their own. This assumes that the court has greater wisdom or some special knowledge about what is best for children.

Suggests a multi-disciplinary partnership approach. The new role of the family court can be one of leadership in bringing the issues, the parties and their helpers to the table to address four constructive questions that invite collaborative problem solving:

- 1.) How can this fractured family coordinate its resources and care for the children after the parents' separation?
- 2.) How can we protect, reconstitute and restore the positive parts of parent-child and family relationships wherever possible?
- 3.) How can these parents make ongoing cooperative decisions throughout their children's growing-up years?
- 4.) What help will these parents need from the community to raise their children?

Prevention Strategies to Protect Professional and Families

Involved in High-Conflict Divorce

Thomas Schacht

James Quillen College of Medicine

East Tennessee State University

Reduce children's involvement in parental divorce proceedings: a secondary benefit of alternative dispute resolution is that it permits children to be excluded from involvement in divorce proceedings. The potential for children's statements, in divorce proceedings, to become fuel for a family conflict can be reduced if rules of procedure explicitly permit interviews to be conducted in chambers, without presence of parents' counsel or parents, but perhaps attended by a guardian ad litem and perhaps assisted by a court's mental health expert.

Therapeutic jurisprudence: Although families are functional psychological units, the legal system tends to see all issues as separate. A mechanism for consolidation of cases, particularly if this could be accomplished in a system of specialized multi-disciplinary courts, would allow one specially trained judge to see the progression of the family and to approach the problem with sensitivity to family issues.

**From Fault Finding to Conflict Management to Differential Diagnosis and Treatment:
Judicial Administration of High Conflict Divorce Cases Involving Children**

Andrew Schepard

More recently, mediation has been joined by court-affiliated parent education programs as a judicial tool for facilitating a child's relationship with both parents after divorce. Court affiliated programs typically educate parents about the legal process of divorce and separation, the impact of divorce on the adults involved and, most important, the impact of divorce on their children and how parents can make the transitions easier for them by reducing their conflict. Forty-five states have enacted legislation or court rules authorizing courts to require parents to attend such programs. The mediation community is in the process of revising its standards of

practice for family and divorce mediation to recognize that mediators should be trained to recognize families in which violence exists and to shape the mediation process to insure safety for victims and children.

Unified Treatment: All legal issues arising out of a family's situation should be determined by a single judge, aided by a single social services team, both of whom have full information about the previous court proceedings. The same judge who decides who should have temporary custody of children, should also decide whether orders of protection are made permanent, interim support payments, and the schedule for the families' forensic evaluations. Managing the process of resolving high conflict divorce cases involving children requires that the court take charge of the family and put it on a rational track toward resolution.

Dispute resolution should assure safety of all involved, and must be responsible for keeping the dispute resolution process moving for high conflict families- the goal of expedition is to make things easier for all family members involved, especially children. The focus of the court is to create a rational, expeditious plan for resolution. Each court will have to create its own flow chart for high conflict cases that incorporate the resources available for such families in its local community. The critical point is that the court must have one. Please see attached.

Battered Child Syndrome: Is it a Paradigm for a Child of Embattled Divorce

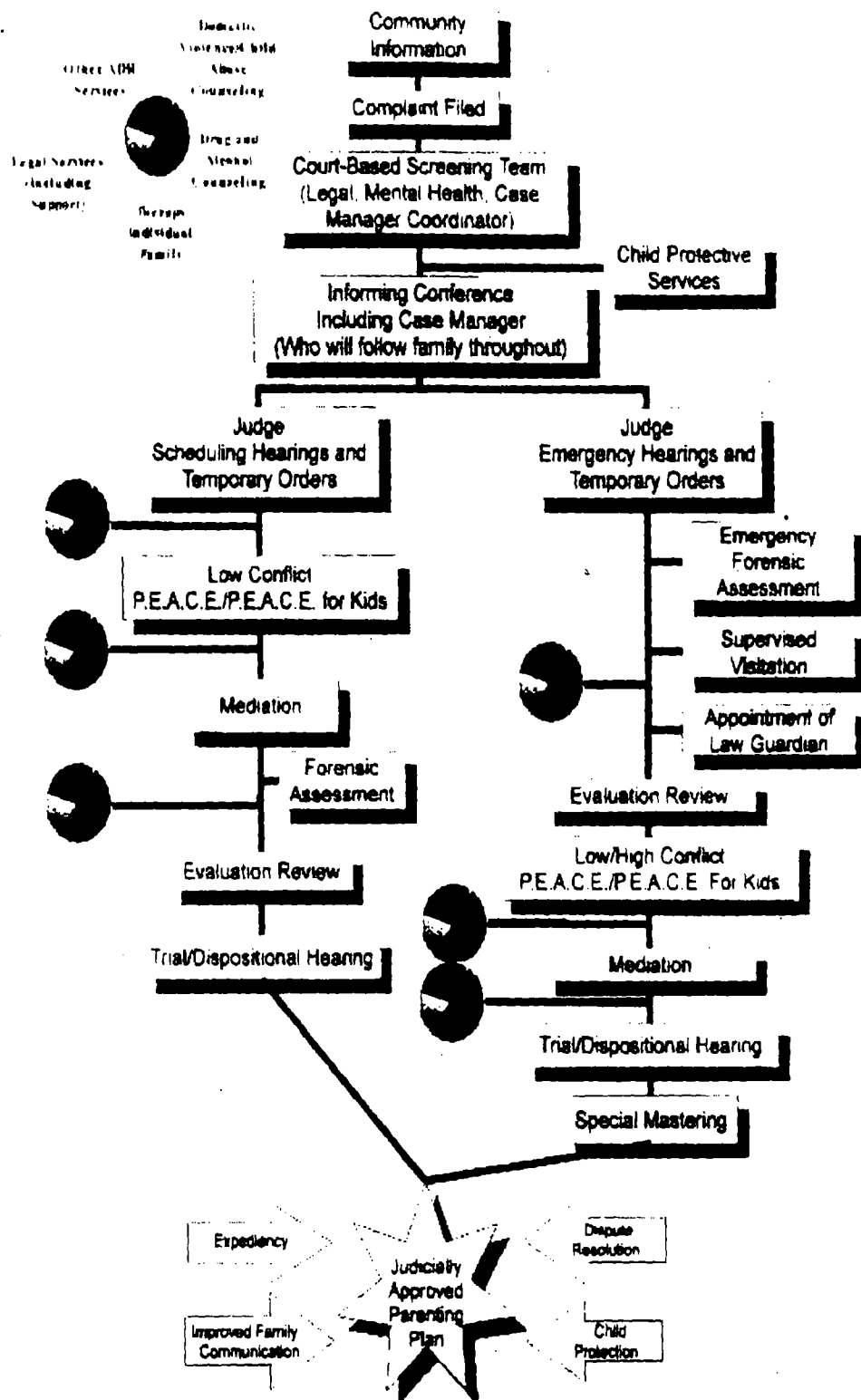
**Patrick Stern
Michael Mellon
Beth Butler
Suzanne Stroh
Nicholas Long
Jerry Jones**

Department of Pediatrics, University of Arkansas for Medical Sciences and Arkansas Children's Hospital

Estimated that 60% of all divorces will involve children, with more African-American children than white children (75% versus 38%) experiencing divorce prior to age 18.

High conflict divorce is related to greater risks of adverse emotional, cognitive, and physical affects for children than low conflict divorce. Conclude the battered-child syndrome offers a potentially beneficial paradigm for children of high conflict divorce cases.

The authors did not find a difference in the kind of symptoms the children in the ten reviewed cases had in high and low conflict divorce. No attempt was made to rate the magnitude of symptoms. Differences in symptoms may not exist because children presenting for evaluation and treatment in low conflict families had greater symptoms than children did in other low conflict families making them indistinguishable from children in high conflict families.



Flowchart for Judicial Management of High and Low Conflict Cases