Custody in Dispute: Legal and Psychological Profiles of Contesting Families

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The family disruptions engendered by divorce and its outcome for parents and children have both legal and psychological dimensions. These two critical aspects of marital dissolution are discussed in a description of the parental relationships and legal profiles of a group of contesting families. Patterns common to these families are disturbances in adult and child adjustment, minimal contact between former spouses, and the absence of parental accord. High rates of relitigation exist despite joint custody arrangements and reflect instability in parent-child relationships and patterns of access.


Every year, 2.4 million adults choose to dissolve their marital relationships by divorce. Although some of these divorces do not directly involve children, more than one million children each year experience the familial disruptions that follow marital dissolution (Spanier and Glick (1981) in Belsky et al. (1984), p. 26). Divorcing families vary widely in their psychological relationships and their use of the legal system. At one extreme, the decision to divorce is an outgrowth of careful consideration and acceptance of mutual responsibility for past conflicts, current actions, and future planning. For these couples, the divorce process, although painful, proceeds in a somewhat orderly fashion. At the other extreme, the process from a marriage to divorce is characterized by hostility, harassment, and continued struggle. For these couples, the divorce process actively reflects the disorder within the marital relationship, is fraught with charges and counter charges, and lacks lasting resolution.

For all these families, the legal system frames the unfolding of amicable resolutions or the waging of acrimonious disputes. And, because it is the institution that formally terminates these relationships, the court has devised procedures that have an impact on each family, from the most conciliatory to the most contesting. Just as there are variations in each adult and child's psychological histories, so too are there variations in each family's legal history and their ways of interacting with the court, its personnel and its processes. The decisions parents make for the care and custody of their children following marital dissolution are thus uniquely shaped by the preexisting relationships within the family and the impact of legal proceedings on restructuring these relationships in the future. In this paper we consider the interplay between familial processes and the legal environment in shaping custodial choice and designation.

Numerous studies concentrate on psychological aspects of divorcing parents, the impact of the divorce experience on children, and the emotional sequelae encountered in the post-divorce period (e.g., Hetherington et al., 1979, 1983; Wallerstein and Kelly, 1980). Wallerstein and Kelly’s research has emphasized the significance of developmental stages in assessing the range of children’s reactions to their parent’s divorce. Their longitudinal data describe a variety of outcomes for children shaped in part by their relationship to the custodial parent and access to the noncustodial parent, as well as their individual developmental level. Hetherington et al. (1979) have likewise extensively documented children’s post-divorce adjustment. The growing movement toward joint custody has led to still more studies, which evaluate the impact of varying custody arrangements on children’s lives following the separation of their parents (e.g., Ahrons, 1980; Luepnitz, 1982; Steinman, 1981).

Although the majority of these studies consider nonclinical populations, their assessments of children’s adjustment following divorce focus primarily on measures of emotional health, or the presence or absence of psychological well-being. However, there is, for the most part, minimal consideration of how these families formulated their legal agreements, or what, if any, brief or continuing contact these families have had with the legal system that stipulated the rules under which parents and children were to live following family dissolution. Most studies also do not comment on the relationship between court stipulations and actual living situations.
A second set of studies focuses on the legal process, investigating adjudication in divorce, and standards for custody rulings (Chambers, 1984, Foster, 1983; Mnookin, 1975; Mnookin and Kornhauser, 1979; Weitzman and Dixon, 1979). All of these authors review custody adjudication from a variety of viewpoints, including legal standards for custody decisions and their implementation (Weitzman and Dixon, 1979), the impact of the legal system on divorce negotiation and bargaining "in the shadow of the law" (Mnookin and Kornhauser, 1979), a search for standards governing "best interests of the child" (Goldstein et al., 1973), and a comprehensive analysis of the array of issues underlying the rules for designating custody (Chambers, 1984). Besides their thoughtful examination of the legal framework surrounding custody decisions, these investigators emphasize the necessity of refining legal standards for decision making, and the importance of longitudinal studies documenting the effect of various custody designations on the lives of parents and their children.

The awesome task facing those in legal settings whose role and responsibility it is to make such decisions is clearly stated:

Deciding what is best for the child poses a question no less ultimate than the purpose and values of life itself (Mnookin, 1975, p. 260).

The decisions that are made about the care and custody of children at the time of divorce will inevitably have a major impact on their future lives and happiness (Weitzman and Dixon, 1979, p. 474).

In both the legal and clinical literature concerning divorce and custody, there is continuing emphasis on "the best interests of the child" as the determining standard for adjudication of disputes. The body of literature cited here clearly contains efforts of professionals from the legal, policy making and mental health fields to further refine such a standard. Yet despite these efforts, "the determination of what is 'best' or 'least detrimental' for a particular child is usually indeterminate and speculative. For most custody cases, existing psychological theories simply do not yield confident predictions of the effects of alternative custody dispositions" (Mnookin, 1975, p. 229). Thus, there is a continuing need not only to examine further the process and outcome of custodial choice from both clinical and legal perspectives, but also to discover how the joining of these perspectives can further enhance both public policy and professional intervention.

In this paper, we wish to focus on a specific group of families, those who actively contest the custody of their children. Examining this group has particular relevance for understanding legal and psychological factors since both are intertwined in each custody dispute. Although parties themselves determine custody in over 90% of all divorces (Foster, 1983), the 10% of cases in which such issues are litigated requires a disproportionate amount of the court's time for adjudication. These families are also avid consumers of institutions other than the courts, requesting services and support from mental health centers, welfare departments, protective agencies, and the criminal justice system. It is our hope that a closer examination of this population will contribute to an understanding of divorcing families by providing another view of "the psychological structure of families after divorce as a source of influence on children," which as Hess and Camara (1979, p. 83) note, is often not included in the current literature. Hess and Camara further refer to the need for more specific information about how post-divorce relationships are affected by public policy (p. 95). Our consideration of contesting families, combining both legal and psychological perspectives, responds to a felt need by both clinical and legal personnel attempting to serve the requirements of families undergoing divorce-related stress.

The Setting

Established in 1971, the Family Service Clinic of the Middlesex Probate Court in Cambridge, Massachusetts, is located in the family court which serves Massachusetts most populous county (population 1,682,000 in 1982). There are 5,000 divorce petitions filed each year at the probate court. Although 60% of these petitions are contested divorces at the time of initial filing, the majority are resolved prior to the final divorce hearing. Fewer than 25% are formally contested at the time of the final decree (Phear et al., 1983, p. 422). Within this court, the Family Service Clinic provides psychological assessments and clinical interventions to families where issues of custody and visitation are in dispute. The staff of five part-time mental health professionals evaluates a total average case load of 175 families each year. The Family Service Clinic is thus in a unique position to assess the continuing interface between legal decision making and post-divorce parent-child relationships.

The Family Service Clinic population of contesting parents is similar in a number of ways to those divorcing spouses described by Mnookin. He gives five possible reasons which may underlie these couples' continuing need to litigate:

1. Spite
2. Distaste for Negotiation
3. Calling the Bluff—the Breakdown of Negotiation
4. Uncertainty and Risk Preference
5. No Middle Ground (Mnookin, 1979, p. 974).
Through our experience in the clinic, we have the opportunity to gain clinically based understandings of these disputing parties and to further elucidate those clinical patterns associated with Mnookin’s views of disputing partners. In considering the characteristics of this population, it is useful to contrast them with the characteristics of the larger group of families who are able to resolve disputes. In obtaining marital histories from the more vigorously disputing partners, it is obvious that few divorces have been arrived at collaboratively. One often hears a history of ambivalence or impulsivity surrounding critical life choices such as the decision to marry or separate, and the planning and rearing of children. However, it is not only impulsivity and ambivalence that distinguish contesting parties from those who resolve disputes. Individual histories of chronically conflicted marital partners also contain episodes of early separation and loss and the parents’ own turbulent experience with the divorce of their own parents, as well as other examples of disruption in parenting. In these disputing couples, equally intense as the early experience of loss and current fear of abandonment, is a heightened interdependency, often characterized by regressive pulls to families of origin, or an inability to separate appropriately from children. These close intergenerational ties, while in part created to buttress the loss of self-esteem experienced in a failed marriage, may produce dependency as a defense against recognition of loss, or may lead to boundary confusion, particularly for children.

The profile of contesting couples includes not only a history of distorted parental relationships, but also disturbances in current functioning, both in the marital dyad and between parent and child. Additionally, there is frequently evidence of marginal social functioning. In terms of the couples’ marital histories, the women are often pregnant when married, both experience chronic difficulties in steady employment, have histories of alcohol and drug abuse, criminal records, evidence of serious mental illness or chronic physical disability, and high levels of conflict during the marriage. Often the legal divorce is the last in a series of prior separations with incomplete or inadequate attempts at reconciliation.

Coupled with problematic parental histories and impaired functioning within the marital relationship, is the effect of the stress of divorce on adults who are vulnerable because of individual characterological deficits, and on children who are vulnerable because of age and developmental stage. Although divorce may be characterized as a “life crisis” that in recent years is as normative as it is abnormal, couples who dispute create chronic crises and hence prolonged stress.

Our extensive clinical experience with disputing parents combined with the availability of court records and familiarity with the legal process has resulted in several research studies utilizing both methodical record review and clinical interviewing (Beck et al., 1985; Clark et al., 1985; Phear et al., 1983). These studies have used random populations, contacted from records on file with the probate court. The first of these studies described 500 sole and joint custody agreements, and chronicled the families’ demographics, the chronology of their marriages and their marital dissolution. It reported on the varieties of custody and visitation decrees, summarizing the provisions for children’s current and future needs, and tabulated the incidences of post-divorce litigation (Phear et al., 1983). For the second study, we selected from these 500 records a sample of 46 cases of joint legal custody, which we matched with a sample of 46 sole legal or split custody cases. Letters sent to 184 parents resulted in a total of 40 parents who agreed to be interviewed. These interviews of 35 families provide the data for our study on post-divorce outcome for children and their parents (Clark et al., 1985). A third study, using the same interview data, describes and rates four characteristics of parental interaction and their impact on two measures of post-divorce adjustment: child adjustment and family outcome (Beck et al., 1985).

Although this research was conducted within the setting of the Family Service Clinic, its samples were drawn from the court records of a non-clinical population of divorcing families. Nonetheless, in designing our interview, developing measures and analyzing our data, we found ourselves continually drawing on our years of clinical experience with contesting families referred to the Family Service Clinic for evaluation and treatment. In this current paper, we have used findings from our research studies as a background against which to describe our clinical impressions of families in chronic dispute following marital dissolution.

Legal Dimensions

Custodial Designation

Our clinic population represents a variety of custodial designations as stipulated in the formal divorce decree. Most of the arrangements are imposed by the court since the disputing parents cannot negotiate a settlement. Despite the presence of high conflict in these families, joint legal custody is a custodial arrangement that is, at times, imposed by the court as a solution for our clinic families, as in the following two case examples:
Mr. and Mrs. Davis are joint legal custodians of their two children. Physical custody, originally with Mr. Davis, was awarded to Mrs. Davis in the final decree. Despite the designation of joint custody, Mr. Davis notes, "We have absolutely no communication. At school parents' nights we have to sit separately." Mrs. Davis calls joint custody "a sham" arrived at after a "frustrating parade through the legal system... You have to have something joint to have joint custody..."

In another family with joint legal and physical custody, the parents referred to each other as "psychologically damaging" to their 9-year-old son. Mrs. Walsh said of her former husband, "As a parent, he's bad; he provides materially only." Mr. Walsh, in turn, saw his former wife as "violent." In the course of 3 years of litigation, he has filed a child abuse report against her and has asked twice for custody changes because of "emergencies" such as his former wife's taking the child to a movie he considered inappropriate.

The growing body of literature considering the psychological and legal aspects of joint legal custody describes criteria for successful implementation of this arrangement (Clark et al., 1985; Luepnitz, 1982; Steinman, 1981). Among the criteria set down by the Pennsylvania Superior Court, cooperation of the parents is the most important, closely followed by the parents' ability to communicate in promoting the child's best interests (Atkinson (1984), p. 37). A high percentage of relitigation, the transitional and ephemeral nature of these physical custody arrangements, and evidence of minimal levels of parental accord are all characteristic of our clinic population. Thus, these parents do not conform to even the minimal standards necessary for shared custodial decision making.

**Custodial Arrangements**

Despite the court's efforts to resolve disputes by legally designating custody, many families continue to alter their custodial arrangements without court sanction. The instability of post-divorce familial relationships in our clinic population is reflected in our impression that, in many cases, physical custody no longer accurately represents the arrangements agreed to by the parents at the time of the divorce. For some families in our prior research study, the physical custody arrangement at the time of the interview differed from the arrangement fixed by the divorce decree. In our clinic population, many children repeatedly change their residences. The alterations are characteristically impulsive and informal shifts, appearing to follow changes in the relationship between the child and his or her physical custodian, several of which are described below:

Fifteen-year-old John moved from his mother's to his father's house during one summer that his father described as a "critical" time for him and his son. "We were at the 'pits' in our relationship. He didn't get enough attention from me as I was always on the move, keeping myself busy when the separation came." When interviewed, John's father reported that his son lived with him for well over a year, but had recently announced he was considering a return to his mother's house.

Michael who was 18 when his parents separated, initially remained with his father. However, 4 months after his parents' divorce became final, he moved to his mother's home, where he stayed for 9 months. "He was on drugs and alcohol," his mother noted. "I gave him love and support." He eventually found a job, attempted to live independently, but has now returned to be with his father and younger brother.

David and Tom were 15 and 13, respectively, at the time of their parents' separation. They remained in the marital home with their mother and younger sister. In the past 2 years since their parents' divorce, both came to live with their father "after rifts with their mother." David, in trouble with the police for stealing, was sent to his father by his mother, claiming she could not handle him. His father noted, "He began to respond to me but then asked to go back home. After 2 days with his mother he returned to my house; but in a while my former wife said she wanted him back so he went."

His younger brother, Tom, at age 15, was "thrown out" by his mother after a fight. His father stressed rules, encouraging Tom "live with me according to my life-style." One night after Tom stayed out late, his father could not accept it. "I brought him home to his mother's and told him, "you live that life-style here."

These families, in which there are informal shifts in physical custody, are also examples of families in which physical custody of the children is split between the parents. This arrangement in which children are physically separated, some living with one parent and some with the other, can either be legally mandated or arranged, as in the above examples, without court sanction. In our original studies, the number of split custody cases, although small (6 out of 35 families), "received significantly lower ratings for family outcome and child adjustment" (Beck et al. (1985), p. 6). It was concluded that, "Although the numbers are small, the finding that these cases had poorer outcomes than either the sole or joint custody cases should alert us to the possible importance of split custody as a risk marker for future difficulties" (Beck et al. (1985), pp. 9-10).

It is therefore not surprising to find that, in a disputing population, there are many families in which siblings are separated. These arrangements draw families into perplexing dilemmas of how to maintain contact between siblings who live apart, and for whom the usual expectable visitation schedules can in no way compensate for serious rupture in previously un-
broken sibling ties as in the following family.

In a precipitous custodial change, 11-year-old Sam and his 7-year-old sister, Lisa, went to live with their father, who had petitioned the court for custody. His legal pleadings did not include custody of his 15-year-old daughter Sarah, who preferred to remain with her mother and finish high school. Since her parents’ separation 4 years previously, Sarah had taken significant responsibility for the care and supervision of her younger brother and sister. Following the custodial change, she saw them only twice a month. She told the interviewer over and over again how worried she was: “Sam has gotten in with a bad crowd. Lisa calls every day crying to come back. They are both having trouble in school and there is no one home to watch them all afternoon.”

Relitigation

Because the existence of a dispute is the basis for a referral to the Family Service Clinic, almost all of our clinic families have an extensive history of litigation when compared with our larger study of 500 families, 20% of whom returned to court during the post-divorce period. Although the reasons for relitigation often relate primarily to issues surrounding child custody or access, they also involve financial issues, and include requests for reduction of child support, payment of children’s medical expenses, reimbursement of attorney’s fees, selling the marital home and assessing educational costs. The intensity of litigation can further be demonstrated by a superficial survey of the court files of contesting families. The legal records of these families are voluminous, filled with descriptive pleadings, revised financial statements, extensively documented affidavits and comprehensive judgments.

Some of the families referred to the Family Service Clinic have remained as “open” cases almost from the formal establishment of the clinic in 1971. Thus, we have had the chance to follow children who have been profoundly affected by their parents’ continuing legal disputes and interpersonal conflicts, as in the following example:

When she was first seen at age 6, Mary Ann was a physically robust yet emotionally fragile child. Already burdened by the inconsistent parenting of her mother whose developing paranoia was essentially untreated, Mary Ann presented the interviewer with her solution to the conflict over her custody: “Why don’t they cut me in half,” she suggested, tracing with her finger a line that divided her head, neck, shoulders and arms. “My mother can have my front and my father my back.” However, awarding custody to her father did not serve to secure Mary Ann’s future. Her interview at age 16 occurred after a wearying 10 years of more than 40 court appearances, initiated by her mother. At the core of the mother’s now chronic schizophrenia has been an endless quest for the return of her daughter. Mary Ann no longer thinks of how to please her mother, but rather has found a plan to escape: “I want to study engineering in preparation for becoming an astronaut.” Perhaps only in outer space can she find the peace she once wished the court and judge could provide.

Families need not actively return to court or even file the necessary papers to keep alive the possibility of custodial change. Armed with even superficial knowledge of the legal process, parents and children alike often use the threat of “going to court” in mutually hostile and provocative ways. It is not unusual for children in families in which there is extensive relitigation to have a sophisticated familiarity with court papers, and legal terminology:

Billy is a verbally precocious 9-year-old whose parents have been separated for 5 years but have never formally concluded the steps toward legally finalizing their divorce. He has been living in an endless variety of custodial arrangements, none lasting longer than 8 months at a time. He says with an anxious smile, “My daddy is going to court to get custody of me; he has all the papers.” Yet he adds worriedly, “But don’t tell my mother; she doesn’t know yet.”

Psychological Characteristics

The development of research questionnaires in our prior studies evolved primarily from our work with contesting parents. Our attempt in these interviews was to assess how well and how comfortably parents and children were functioning with each other and in relation to their environment. The clinically derived criteria that we used to carry out these assessments included:

1. Access: The extent to which the children had reasonable and appropriate access to both parents, taking into account geographical distance.
2. Shared Parenting: The degree to which parenting responsibilities were shared.
3. Parental Accord: The level of parental consultation, agreement on parenting issues, handling of disagreements.
4. Adult Adjustment: The absence or presence of major adult adjustment problems.
5. Children’s Adjustment: A single, collective measure of school, peer, and intrafamilial adjustment of all children in the family.

For the marginally functioning families in our clinic, disruptions in adjustment in a number of these areas are noted below in clinical excerpts.
**Shared Parenting**

The marked inability of parents to interact with each other about matters involving their children occurs consistently in our clinic population. Not only do these parents commonly refer to absence of communication, but they have little, if any, positive feeling about their former spouse’s adequacy as a parent:

The Johnsons, a family with joint legal custody, have been actively litigating for the past 4 years. Of his wife, Mr. Johnson, a farmer, says “A pig would take better care of its young than she did.” Mrs. Johnson, in describing her former husband as a parent, noted, “He does not allow the children to grow psychologically; He keeps them working 24 hours a day . . . This man is ‘mental.’”

Mrs. Adams says she earnestly wishes that her children could have a relationship with their father. But he is “irresponsible and has such bad judgment that he can’t possibly take care of them—even for a few hours.” She then lists a series of possible disasters that could befall Katie and Peter were they to be with their father. “He might leave them alone; or he wouldn’t hear them at night. He has been known to drink, and he’s careless with his cigarettes. Why he could burn down the apartment.”

**Parental Accord**

It is difficult for a majority of these parents to discuss specific areas of shared or sole decision making about child-rearing issues. Indeed, many parents refuse to meet in the same room with their former spouse to discuss their children, claiming fear of violent exchanges, uncontrollably angry eruptions, and overwhelming frustration with any attempts to communicate. Parents commonly state there is little or no agreement about anything having to do with the children. These disagreements about child-rearing range from difficulties in establishing basic rules for the care and safety of very young children, to lengthy and acrimonious conflict over limit-setting and discipline for adolescents, as in the following situations:

Mrs. Howard, separated from her husband when their son Jimmy was 6 months old, vigorously objected to any contact between her son and his father. Mr. Howard, his former wife claimed, was too inconsistent and refused to follow her instructions about Jimmy’s care. “I send foods he likes when he goes to his dad’s but my ‘ex’ feeds him things like strawberries . . . He does not believe babies need schedules and puts him to bed when he feels like it . . . the bottle of antibiotics I gave him when Jimmy had an earache was returned untouched.”

In an effort to counteract what he perceives as his former wife’s disinterest in their 13-year-old son’s social and intellectual development, Mr. MacDonald keeps an entire wardrobe of suits, ties and shoes which Jonathan wears instead of the sneakers and jeans which are the preferred outfit at his mother’s. The vigor with which Mr. MacDonald enforces Jonathan’s homework schedules and shepherds him on a wearying round of concerts and theatrical performances only thinly disguises his conviction that in his mother’s care, Jonathan is bound to fail in his adult life. A perplexed and saddened young boy, Jonathan asks the interviewer, “doesn’t my dad understand that I like the way things are at my mom’s house?”

**Adult Adjustment**

Clinic parents appear to conform to the psychological profile of adults in disputing families described earlier in this paper (Hauser, 1983). We often receive requests for specific evaluations of alcohol and drug use, hear accounts of physical abuse during the marriage and note that frequently our clinic families have histories of psychiatric hospitalizations or extensive individual, couple, or family counseling. The following history is not an unusual one:

From their composed appearance and rational presentation, it initially seemed that Mr. and Mrs. Green could amicably resolve their dispute over the custody of Michael, 10, and 12-year-old Christine. However, in the course of their evaluation interviews, both parents described chronic marital turbulence which included Mrs. Green’s hospitalization for severe depression, serious physical abuse resulting in multiple brief separations which both attributed to Mr. Green’s alcoholism, and continued employment changes with accompanying financial insecurity. Their custody dispute was a bitter and protracted one with a succession of lawyers, therapists, and probation officers, contributing an array of conflicting solutions and assessments, reflecting this family’s underlying chronic disorganization.

**Children’s Adjustment**

The children in one clinic family, who are described by their mother as “really thriving in spite of everything,” and by their father as showing “continual exciting improvement,” are indeed unusual. It is more likely that parents will report that their disputes have had a variety of impacts on their children, ranging from episodic distress to more serious and prolonged behavioral difficulties. The following example demonstrates a cluster of adjustment problems which for many children may vary over time:

Michelle’s parents have been involved in battling over her custody for more than 3 years. When she was first seen at age 9, Michelle was withdrawn and bewildered. Her teachers noted that she could not concentrate in school and was socially isolated. She was referred to a local mental health center where she participated in a group for latency aged children. Her subsequent improvement paralleled not only her therapy, but also her father’s decision to relinquish his wish for custody. However, 1 year later, he again renewed his request and began vigorous legal proceedings. Michelle began to refuse to attend school, could no longer complete assignments, and was described as constantly struggling with both her parents. Again referred for therapy, the eval-
ator observed her to be sullen and silent, difficult to engage and intensely conflicted in her attempt to remain loyal to both her parents.

**Parental Access**

In our clinic population, access of children to their parents predominately takes one of two forms: children who have minimal and fleeting access to the noncustodial parent, and children whose access is adequate but often erratic and fraught with conflict at times of transition:

Mrs. Wright had consistently denied her husband access to their two daughters who were 3 and 5 at the time they separated. Two years after their divorce, Mr. Wright, alarmed at reports that his children were often left unattended, requested that he be granted custody. Mrs. Wright impulsively agreed despite her prior refusal to allow even minimal visitation. After 6 months with their father, during which time Mrs. Wright had no contact with her children, she requested that they return to her custody.

Each time Mr. Kelly arrived at his former wife's home to pick up David for his weekly visits, he became so angered at her refusal to engage in conversation or invite him into the house, that he inevitably threatened her both physically and verbally. Often the police were called to intervene in this couple's battles. David became regressed and fearful, clinging to his mother whenever he saw his father. The court's attempted resolution of having the child transfer from one parent to the other at the local police station in no way calmed David's distress.

**Discussion**

As clinicians working exclusively with a population of chronically contesting families, we have long had the impression that these parents and children had significantly impaired post-divorce adjustment, compared with the larger population of divorcing families. The existence of our previous studies documenting child custody and post-divorce outcome gave us a unique opportunity to compare the psychological characteristics and legal dimensions of a larger sample with our clinic population of disputing parents and their children.

As a group, these parents have virtually no direct communication with each other about their children and little, if any, agreement on issues important to their children's lives. Evidence of absence of any parental accord and the consistent finding of adjustment difficulties among parents and children support Hess and Camara's (1979) observation that "high levels of parental discord may keep the child constantly distressed and confused" (p. 83). In our clinic sample, parents and children alike are notably impaired in their ability to perform well in a variety of areas, namely work and educational functioning and social relationships. The most disturbed relationships occur between parents who, despite lack of direct communication, relate a detailed litany of their former spouses' inadequacies in every conceivable area of child-rearing.

Families in our clinic differ markedly in the designations for legal and physical custody. In many families the court-stipulated designation differs from the actual living arrangements which families choose. These custodial changes reflect the often transitory nature of post-divorce agreements between parent and child, and the marked inability of this group to refrain from impulsive decisions which lead to continual upheaval for parent and child.

There is a further critical question about the limitations of the legal system in effecting stable arrangements for litigating spouses and their children. Many of our clinic families repeatedly returned to court in the years following their initial dispute over custody. The fact that some of these families have joint legal custody calls into question the appropriateness of that designation for this contesting group. It is not clear whether the right to exercise joint decision making may in fact exacerbate conflict in some of these families who struggle with each other in derivative ways through attorneys, probation officers and clinic staff, rather than engaging in direct communication. It does appear, however, that simply having the designation of joint custody does little if, anything, to ameliorate conflict; nor does it promote, support, or make possible appropriate communication, adequate to children's needs in a population of chronic litigators.

It is important in further research efforts to investigate more broadly the varieties of outcome for children in families where nonresolution continues long after marital dissolution. Chronic litigation is costly in both economic and human terms. Furthermore, clinic families themselves report dissatisfaction with both the legal process and therapeutic services as providing solutions to their disputes. One central question, discussed in an earlier study (Clark et al., 1985) and validated by our review of the clinic population, focuses on whether family characteristics rather than court procedures and process guide post-divorce outcome. It appears that divorcing families exhibit strikingly different patterns in their use of the judicial system. Moreover, the legal system itself impacts on family relationships in a large variety of ways. Further clarification of these issues can help shape policy, combining legal and therapeutic interventions for contesting parents and their children.

The disputing population we have studied is comprised of families who, having failed in their marital relationships, have also been failed by a legal system whose procedures are inadequate to limit the burgeon-
ing struggles of spousal conflict and to alter lability in parent-child relationships. Although the perpetuation of post-divorce struggle may be a stabilizing factor for some of these parents, it is likely to have adverse effects for children. There is need to contain conflict, and for this a refinement of the limit-setting function of the court may be most effective. Interventions which emphasize protection of children from continued and crippling exposure to conflict are clearly important remedies for improvement of post-divorce outcome in contesting families.

References


