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Parental conflict and bargaining in custody and divorce negotiations: Toward a theory of custody negotiations

Ferreiro, Beverly Webster, Ph.D.

The University of North Carolina at Greensboro, 1988

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**PARENTAL CONFLICT AND BARGAINING IN CUSTODY AND DIVORCE
NEGOTIATIONS: TOWARD A THEORY OF CUSTODY NEGOTIATIONS**

by

Beverly Webster Ferreiro

**A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Philosophy**

**Greensboro
1988**

Approved by


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APPROVAL PAGE

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This exploratory study contributes to the development of a theory of custody negotiations by identifying the context factors influencing parental conflict and bargaining strategies in the custody decision-making process and the links between the bargaining process and subsequent parental conflict outcome. In-depth interviews with 26 divorced parents (11 couples and 4 individual respondents) were conducted and 15 case studies were developed for cross-case analyses. The cases were analyzed according to the level of conflict (low, moderate or high) parents experienced during their initial negotiations. Conflict was assessed holistically, using the dimensions of substantive conflict, bargaining style, emotional tone and the timeframe of negotiations. Five context factors affecting the negotiation process were identified: parenting context, marital context, divorce context, legal context and financial context. The marital, divorce and legal contexts exerted most influence on parents' bargaining styles and their overall level of conflict.

The major conclusions of the study are summarized as follows:

1. Feeling guilty about one's role in the breakup of the marriage consistently weakened a spouse's bargaining position in the divorce negotiations. When both parents wanted custody, mothers who felt guilty about their role in the breakup were more likely to settle for joint custody and fathers who felt guilty were more likely to let their wives have sole custody.

2. Conflict in the initial custody negotiations was increased when there was an unusually intense marital relationship that was unilaterally ended by one spouse with total opposition by the other spouse.

3. Uncertainty about the court outcome helped decrease litigation. Parents litigated when one spouse refused to negotiate with the other, either because of a

sense of powerlessness or a sense of moral outrage, and when one parent expected to win and believed he or she was "in the right."

4. Bargaining style was a useful predictor of subsequent parental conflict. Couples who had true consensus and couples who actively bargained for what they wanted using both cooperative and moderately coercive bargaining strategies ended up with less subsequent parental conflict. Surprisingly, the use of moderately coercive bargaining strategies (use of threats such as nonpayment of child support, litigation, exposing spouse's affair in court) did not usually lead to subsequent parental conflict. However, couples who engaged in conflict avoidance or highly coercive bargaining strategies, such as litigation and child-napping, consistently ended up with ongoing parental conflict.

5. Couples who thought that the separation/divorce agreement was unfair consistently developed more uncooperative/hostile relationships.

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CHAPTER I

INTRODUCTION AND REVIEW OF THE LITERATURE

Few family policy questions arouse greater public concern than how to reduce the negative impact of divorce on children. It has been estimated that by 1990, almost 40% of the nation's children will experience the divorce of their parents before they reach the age of 18 (Norton & Glick, 1986). Divorce research over the past ten years, primarily on maternal custody families, points to five key factors in children's adjustment after divorce: time elapsed since marital separation, financial stress, interparental conflict, quality of the custodial parent's relationship with the child, and the father's involvement with the child. The last four of these factors involve, directly or indirectly, the continued interaction of the parents regarding parenting arrangements. However, parents' decision-making processes about parenting arrangements such as custody, visitation or child support have not been studied.

Divorcing parents are faced with making four major decisions: (a) legal custody, (b) where children will live and how much time they will spend with each parent, (c) child support and other financial arrangements, and (d) the division of property. Decisions about the division of property and legal custody are typically one-time decisions, while decisions about where children will live, visitation schedules, involvement in making decisions, and child support change over time and are often sources of continuing conflict.

Custody is an emotionally loaded issue filled with symbolic meaning. Parents must decide about custody just at the time when they may feel that all is lost—spouse, social role, home, financial and emotional security, hopes and

dreams. Legal custody means control, power, ownership, and authority (Morgenbesser and Nehls, 1981). The power implications of custody are not lost on parents or children. One eleven-year-old girl, when asked what custody meant, promptly replied, "It means who owns me" (Ferreiro, Warren & Konanc, 1986).

Power struggles may be set up when one parent feels the other parent has gained unfair advantage through custody or division of family wealth. Reducing sources of conflict is an important issue because conflict between former spouses has emerged as a critical factor affecting children's adjustment after divorce. One study showed that parental conflict was the only predictor of poorer child adjustment (Luepnitz, 1982). A number of other studies have also shown that ongoing parental conflict is extremely problematic for children (Hetherington, 1979; Kurdek, 1981; Wallerstein & Kelly, 1980; Warren, Grew, Ilgen, Konanc, Van Bourgandien & Amara, 1984). Reviewing the research, Emery (1982) concluded that parental conflict, not separation, may be the primary explanation for the association found between childhood problems and divorce.

Purpose

The purpose of this research was a broad one—to describe the custody decision-making process from the perspective of both parents in order to contribute to the development of a theory of custody negotiations. Thus, this research contributes to the development of a theory of custody negotiations by identifying the relevant context, process and outcome variables from which to begin building it. A qualitative research methodology was necessary because of a lack of depth in the literature concerning how parents make their custody decisions. This study was both a descriptive and a hypothesis generating study, since descriptive research was needed from which to begin building a theory about custody negotiations. The divorce agreement creates a structure, a set of expectations that begins to shape

subsequent patterns of family interaction. How do parents go about making their custody decisions? What factors affect the level of conflict in the initial negotiations, and how does that conflict affect subsequent parental interaction? To what extent does the feeling of having been treated fairly or of having been "ripped-off" affect subsequent parental conflict?

Before we can understand how the decision-making period affects later parental conflict, we first must understand the decision-making process. If legal and mental health professionals understand how divorcing parents deal with this critical decision-making period, we can intervene more effectively in the process to reduce subsequent parental conflict.

The custody decision-making process is a relatively uncharted area of investigation. For this reason, a qualitative research strategy, involving the intensive study of a small number of cases was utilized. Data were gathered from 11 divorced couples and four individual parents on their joint decision-making about custody, using semi-structured, in-depth interviews.

There are two types of custody in every custody decision: (a) legal custody, which determines parental decision-making rights, and (b) physical custody, which specifies where the children will live. With sole legal custody, the noncustodial parent loses the right to make decisions regarding health care, religion or education and control over how children will be raised is relinquished to the custodial parent (Schulman & Pitt, 1982). In joint legal custody, custody is shared between the two parents, leaving parental rights and obligations the same as they were during the marriage. Joint legal custody does not, in and of itself, determine the amount of time a child spends with either parent. Actual living arrangements vary widely (as do visitation arrangements in sole custody), ranging from 50/50 time splits to infrequent visitation.

The literature review focuses on four areas: custody decision—making research, the divorce negotiation process, the financial context of the negotiations, and legal context. The theoretical framework of the study is discussed in the concluding section.

Research on Custody Decision—making

The review of the literature produced only three studies which focused directly on parents' perceptions of their custody decision—making process, and the factors that influenced their decisions about custody (Fishel, 1985; Lowery, 1985; Marschall & Gatz, 1975). Marschall and Gatz were the first to investigate custody decision—making from the perspective of divorced parents themselves. Subjects ($n = 76$) from Parents Without Partners were asked to rate, using a written questionnaire, 15 custody criteria for how important each consideration was in making their custody decision. They identified five general dimensions in the following order of importance: continuity (keeping children in the same environment); a belief that young children belong with their mother; the quality and closeness of the child's relationship with each parent; the moral fitness of each parent; and the parent's ability to properly care for the children. These parents reported that, with the benefit of hindsight, they now would give greater consideration to the children's preferences and less importance to parental morals or the belief that children belong with their mothers. There were two major limitations of the study. Information about a complex two—person decision was obtained from only one parent and parents' responses were constrained by the 15 criteria listed. In addition, it was not clear how the criteria were derived.

Lowery (1985) used a similar methodology but improved it by obtaining information from both parents ($n = 55$ couples). Parents were asked in a structured interview to specify each consideration used in deciding custody and to

describe how important that criterion was. The interview was concluded at the point that the parent was unable to think of any other factors that had influenced the decision. Parents then filled out a questionnaire which asked them to rate the importance of 20 criteria. Raters, using this same list of 20 criteria, listened to the taped interview and checked each criteria that parents said they had used in their own custody decision. The interview, which ranked the criteria parents had actually used in their own decision, showed that parents ranked the following criteria in order of importance: (a) parent's ability to provide financially for the child; (b) parent's sense of responsibility to the child (e.g., eating and dressing properly, appropriate medical attention); (c) quality of the parent-child relationship (i.e., trust, warmth and mutual interests); (d) the parent's ability to provide a continuing involvement in the same neighborhood, home and school; and (e) amount of time the parent would spend with the child if custody were awarded.

The questionnaire data, which tapped ideally important criteria, (whether or not parents actually used them in their own decision) rated the following criteria to be most important: (a) the parent's sense of responsibility to child; (b) a reasonable level of mental stability (c) quality of the parent-child relationship; (d) desire for custody; (e) parenting skills (e.g., has reasonable expectations, knows how to handle misbehavior, encourages child's development). Lowery (1985) noted that ideal and actual criteria overlap on only two points: emotional quality of the parent-child relationship and sense of responsibility. She suggested that the discrepancy between ideal and actual criteria may reflect that, when actually making their custody decision, parents prefer making comparisons using concrete, factual criteria (i.e., who has more time to spend with the child and continuity in environment) and try to avoid more value-laden comparisons.

Parents were also asked to rate which parent each criteria favored. Parents

agreed on only 2 out of 20 criteria. Overwhelmingly, parents perceived themselves to be more suitable custodians than their partners did. The utility of Lowery's approach seems questionable since the criteria parents ranked as the most important consideration that they actually used, the parent's ability to provide financially for the child, in fact, had little effect on their actual choice of custody. Seventy-five percent of the families chose mother custody, yet it is highly unlikely that all of these mothers earned more than their husbands (income data were not reported). Fathers reported significantly less confidence that the best decision possible had been made, and less satisfaction than the mothers with the decision even though approximately two-thirds of the couples reported that their decision was consensual. The fathers' dissatisfaction with their custody decision raises intriguing questions about whether fathers, at the time of negotiating their custody decisions were really bargaining for their own preferences, were trying to avoid conflict, or were unaware of the long term consequences of the noncustodial parent role. This study provided no information about the parents' negotiations nor did it place the negotiations in the context of the overall divorce settlement.

Both studies (Marschall & Gatz, 1980; Lowery, 1985) suffer from the same serious limitation. They completely ignore how parents negotiate in their own best interests or how financial assets were allocated. Lawyers and mental health clinicians working with divorcing families know from experience that focusing on the children's best interests tells only half the story. Asking people directly why they made the decision they did typically elicits stereotyped responses (Kressel, Jaffee, Tuchman, Watson, & Deutsch, 1980). Schwartz and Jacobs (1969) have suggested that when people are asked to reflect on their actions, they are naturally led to also consider what they should have done because of the "potentially moral nature of most action" (p.269).

Fishel (1985) studied how the negotiation process at the time of separation and selected context variables, such as parents' income, education, number of children, and locus of control, influenced divorced women's (N = 51) perceptions of the quality of the subsequent parental relationship as measured by subsequent support and conflict (Ahrns, 1980). She found that a more cooperative negotiation process was more predictive of a positive coparental relationship than any of the context variables studied. This was one of the only studies that has specifically tried to link the negotiation process with subsequent parental outcome.

Two other studies (Luepnitz, 1982; Shiller, 1984) have described custody negotiations as a part of larger studies designed to compare joint and sole custody families. Shiller's study is discussed later, in the section on negotiations in context. Luepnitz (1982) compared 16 mother custody families, 16 father custody families, and 11 joint custody families to determine if custody type affected children's adjustment. Interviews were done with one parent and the children. Only a small part of the analysis focused on how parents made their custody decisions. The typical response of sole custody mothers was that there was never a question about who would get custody; it was just assumed that they would have custody. When probed, the mothers mentioned that their husbands did not want custody or they were seen as incompetent parents. Many of these women felt that they had a right to custody because they had been the primary parent during marriage.

Luepnitz (1982) noted a marked difference in how the fathers had obtained custody. For example, in these families there was a much higher level of conflict about custody; 25% of the sole custody fathers had been involved in a legal action over custody compared to 12% of the sole custody mothers. An additional 19% described a bitter struggle over custody which was settled out of court. Only one third of these parents had settled the custody decision without acrimony. In almost

half of the father custody families, the children had initially been in the custody of their mothers. As a group then, the children in father custody had experienced significantly more conflict during the custody decision—making period.

Half of the joint custody parents in the Luepnitz study experienced no conflict about their custody decision. They just assumed they would share parenting because they had done so during the marriage. These low conflict joint custody parents commonly expressed the belief that the children needed both of their parents. Other factors mentioned were how unfair it was for one parent to be made a visitor, the practicality of joint custody when both parents work, and the desire to avoid the overwhelming burden of being a single parent (one mother). Almost half of the joint custody parents experienced considerable conflict about custody and three of the eleven families litigated their disputes.

Many of the children who were asked to make the decision about where they wanted to live reported that this was a painful decision for them. And it seemed that the parents, at the time of the interview, continued to underestimate how burdened the children felt by this responsibility.

Luepnitz's major finding was that children had more problems when current parental conflict was high, regardless of custody type. Despite the increased levels of conflict about custody during the negotiation period for both joint custody and father custody groups, there was no difference between the three custody (mother custody, father custody and joint custody) groups in the level of current conflict or in children's adjustment. Luepnitz did not discuss the possible implications of this intriguing finding, which seems to suggest that conflict during the active divorce negotiation period does not necessarily carry over to the postsettlement phase. It also raises the question of how much conflict is generated in later stages because conflicts about substantive issues were avoided during the negotiation stage. This

question is addressed in this current study.

The main limitations of this study were that generally only one parent was interviewed, and the custody decision—making process was not put in the context of the whole divorce agreement (including division of property, child support and alimony). Negotiation strategies, or how the mutuality or nonmutuality of the divorce decision affected custody negotiations were not addressed.

Custody Negotiations in Context

The custody decision must be placed in the larger context in which it occurred in order for any understanding of the decision—making process to emerge. One major factor which is likely to play a role in custody negotiations is how the decision to divorce was arrived at and how each spouse felt about the divorce. Another major factor is the legal context of the divorce negotiations: the legal standards and norms that shape parents' private negotiations. A third factor is the financial context of the negotiations, and the issue of how family wealth was allocated. Each of these factors is discussed in the following sections.

Divorce Decision

Research on intimate relationships has shown that very few breakups are truly mutual, that is, with both parties deciding that they would like to discontinue the relationship at more or less the same time (Davis, 1973; Hill, Rubin, & Peplau, 1976). Thus, in most cases, there are two distinct roles, the "leaver" and the "left."

A qualitative study by Kressel et. al., (1980) was the only study to assess directly how prenegotiation conflict and the nonmutuality of the decision to divorce affected attitudes and behavior during divorce settlement negotiations (including division of property, custody, and child support). The main purpose of the study was to compare mediator—assisted couples ($n = 9$) with lawyer—advised couples (n

= 5) to identify what types of couples were best suited for mediation. Data were collected through lengthy postdivorce interviews with both of the former marital partners and from audio recordings of mediation sessions (for the nine mediated couples only). Data from three subjects whose spouses refused to be interviewed were used in a supplementary way. While this study did not address custody as such, it is the only study which has attempted to empirically assess factors affecting the emotional tone and quality of divorce settlement negotiations.

Kressel and his colleagues found that both the level of predivorce conflict between the couple and the manner in which the couple arrived at the decision to divorce significantly affected the emotional tone and quality of the negotiations. The most important factor was the nonmutuality of the divorce decision, which, as one might expect, had an unfavorable effect. Noninitiators had the greatest difficulties, partly because they had much less time to prepare themselves to face the emotional and substantive issues involved in negotiating a divorce agreement. They tended to take extreme and inflexible bargaining stances which often expressed their own anger even though positions were couched in terms of protecting the interests of their children. Initiators, on the other hand, typically first responded by giving in to their spouses' demands and then reciprocating with anger and inflexibility of their own.

The investigators developed a typology of negotiation styles of divorcing couples conceptualized along the dimensions of: (a) the degree of ambivalence about the divorce decision; (b) the frequency and openness of communication about the divorce and (c) level and overtness of the conflict about the decision. They concluded that the divorce settlement process "tended to recapitulate, in a more concentrated fashion and within a more restricted time—frame, the major dynamics of the divorce—decision period" (Kressel et.al., 1980, p.107).

Four negotiation patterns were identified: enmeshed, autistic, direct conflict, and disengaged. The hallmarks of the enmeshed pattern ($n = 7$) were high levels of conflict, communication and ambivalence about the divorce. These couples engaged in "prolonged squabbling" (Kressel et.al., 1980, p.107) over minutiae, which seemed related to their ambivalence about divorce and an unconscious desire to hold on to the relationship. This pattern had the worst outcomes: parents felt bitter and dissatisfied with the divorce agreement and there was a high level of mutual blaming. The children experienced significant adjustment difficulties, and there were lawsuits and one case of physical violence.

The autistic pattern of negotiation ($n = 2$) was almost the antithesis of the enmeshed type since there was almost no communication or overt conflict. In spite of "emotional fireworks" (Kressel et.al., 1980, p.110) there was little real communication about issues. Conflict avoidance, the dominant characteristic, was so high that a truly informed negotiation process did not occur. In the one case discussed, the emotional tone of the negotiations seemed to have a long lasting effect, in spite of, from an objective observer's perspective, a fairly equitable settlement.

The direct conflict pattern ($n = 6$) was characterized by high levels of overt conflict (less intense than the enmeshed couples), frequent and open communication, and, most important, less ambivalence about the divorce. This decreased ambivalence seemed related to the fact that these couples had discussed divorce for more than a year (half of this group had obtained joint counselling). Conflict was resolved through mutual problem-solving, though discussions were not necessarily amiable. Conflicts seemed focused on realistic concerns. For example, many of the wives in this group were in an uninformed and inferior position about financial matters. The effects of the financial dependency of one

spouse, however, was not systematically analyzed.

The disengaged conflict pattern ($n = 2$) was characterized by notably low levels of ambivalence about the divorce, and low levels of communication and conflict, which seemed more related to disinterest than to anxiety, as was the case in the autistic group. The overall impression was that there was a low level of attachment between these spouses. Although the divorce negotiations were tense and sharp differences occurred, they were swift and cooperative. There was a strong desire to avoid conflict. The partners seemed basically fair and bargained not only in their own interest, but in the interests of the other spouse and children as well. Although there were real conflicts over issues, demands were not unrealistic and partners were responsive to each other's communications. The one problem that the investigators noted was that the prevailing tone of cordiality might inhibit more constructive problem-solving. In one case, the couple avoided discussing the effects of the wife's proposed move to a town 100 miles away. At follow-up, the wife complained of the father's infrequent visitation and late payment of child support.

Kressel's study raises the question, as do Lowery's (1985) and Luepnitz's (1982) studies, of what level and type of conflict during the divorce negotiation stage is most conducive for creating workable parenting arrangements and reducing later parental conflict. The question of whether issue-oriented conflict during divorce negotiations heads off later discontent and conflict needs to be investigated.

Kressel and his colleagues (1980) summarized their findings on what factors appeared to be related to whether a couple chose to mediate or use lawyers by hypothesizing that couples who perceive a high level of conflict and view their own resources for "effective self-representation as inadequate" (p.106) will choose not to mediate. Conversely, mediation will be more attractive when couples perceive

moderate levels of conflict, and the wife, in particular, perceives that she can effectively represent herself.

Only one study explored the interaction between one's role in initiating the divorce, the resulting level of guilt, and choice of custody. Shiller (1984) compared 20 joint custody families with 20 sole custody families on a number of variables, with only a small part of the analysis focusing on the custody decision itself. The two groups reporting the highest level of guilt were the maternal custody fathers and the joint custody mothers, and parent's level of guilt was significantly correlated with whether they had initiated the divorce. In the two low guilt groups (joint custody fathers and maternal custody mothers) there was no correlation between initiating the divorce and guilt.

Shiller (1984) found that, when both parents desired custody, joint custody was more likely to be chosen when the mother was both the initiator and felt guilty about her role in the break-up. When the father assumed the role of guilty initiator, maternal custody was chosen. The complex interplay between one's sense of responsibility for the break-up of the marriage, the subsequent level of guilt and how these impact on choice of custody and the financial aspects of the divorce agreement needs to be better understood.

Financial Issues

In their classic essay on bargaining in divorce, Mnookin and Kornhauser (1979) argued that there are essentially only two issues between divorcing parents: money and children. Reduced to its basic form, the task of divorcing parents is to negotiate a division of financial assets and child-rearing responsibilities according to their personal preferences.

Custody, visitation, and child support issues are intricately intertwined and the links between them need to be better understood. For example, a number of

legal observers are concerned that fathers use custody as a bargaining chip (e.g., "I'll give you custody if you accept less child support") for decreasing their child support obligations (Mnookin & Kornhauser, 1979; Neely, 1984; Polikoff, 1982; Reece, 1983; Schulman & Pitt, 1982). Currently no systematic data are available even to begin to answer the question about the extent to which custody/visitation conflicts are a guise for economic conflicts. Allocation of family wealth is an important issue since economic stress and poverty intensify the stress of divorce on children, with children from poorer homes showing more problems (Kurdek, 1981; Levin, 1984; Pett, 1982; Spanier & Fler, 1979; Wallerstein & Kelly, 1980). Clearly, any investigation of custody decision-making needs to be placed in the context of how financial assets were allocated for a more comprehensive understanding of the underlying dynamics.

Legal Context

Divorcing parents do not bargain about their preferences for custody in a vacuum, but as Mnookin and Kornhauser (1979) pointed out, they bargain "in the shadow of the law" (p.950). The main lines of their argument are as follows. The prevailing legal standards and norms for custody, child support, or property division, give the bargaining couple some notion of what the law would impose if they fail to reach agreement. In Thibaut and Kelly's (1959) terminology, the prevailing legal practice constitutes a comparison level of alternatives. For example, if a preference for maternal custody still prevails in a given jurisdiction, the edge in bargaining is given to the mother, because both parties know that in a court fight, she will win. There is little uncertainty under a strong maternal preference standard.

If the best interests of the child standard is prevalent, then the outcome of a custody dispute is made highly uncertain. The judge is given the greatest degree of discretion because each case must be considered individually. Mnookin and

Kornhauser (1979) speculated that in this highly uncertain legal context (in terms of predicting a specific outcome), the parent who is most averse to risk would be at a disadvantage in bargaining while the parent who is more of a gambler, would have an edge. The most concerned and responsible parent is, ironically, the one most penalized. Mnookin and Kornhauser suggested that uncertainty also gives a greater advantage to the more skilled negotiator.

The third widely discussed legal standard for determining custody is presumption of joint custody. This standard provides a good context for "private ordering" (Mnookin & Kornhauser, 1979, p.980) since parents can be fairly certain of being awarded joint custody if they go to court, and it does not penalize a risk-averse parent. However, Mnookin and Kornhauser questioned how well a presumption of joint custody standard would serve as a principle for settling custody disputes between litigating couples.

The question for empirical research is whether divorcing parents are aware of the nuances and bargaining chips provided by the legal context, and if they are, how do they affect the negotiations? Empirical research on how the legal context affects divorce bargaining or outcomes has not been done.

Mnookin and Kornhauser (1979) discussed the need for a theory of divorce bargaining that would enable us to predict how various legal rules would affect parents' negotiations and the "deal they would strike" (p. 966). Based upon their extensive experience as lawyers they proposed the beginning outlines of such a theory. They suggest that five factors influence bargaining outcomes: (a) parents' personal preferences regarding the allocation of custody and money, including their preference to bargain from a position of altruism, self-interest, or spite; (b) the bargaining "endowments" (p.966) created by how the court would allocate property and custody if couple goes to court; (c) the degree of uncertainty concerning the

legal outcome if the couple goes to court, coupled with each party's attitude toward risk; (d) transaction costs (financial and emotional costs of negotiations or going to court) and the respective ability of each party to bear them; and (e) strategic behavior, which Mnookin and Kornhauser (1979) narrowly define as "behavior in which the parties misrepresent their own intentions, desires, or chances of winning in order to obtain a strategic advantage in negotiation" (p. 973).

Theoretical Framework

The research and theory pertaining to family decision-making has been extensively critiqued in recent years (Cromwell & Olson, 1975; McDonald, 1980; Scanzoni & Szinovacz, 1980) for conceptual and methodological inadequacies such as focusing on outcomes instead of processes and relying solely on the wife's point of view. Even when couple data are collected, there is no consensus on how individual data should be combined to represent the couple adequately. Family scholars agree that the field must continue to grapple with the difficult task of conceptualizing and measuring decision-making processes (Hill & Scanzoni, 1982).

The theoretical framework for the present study is negotiation theory (Gulliver, 1979; Zartman, 1978) or joint decision-making theory (Scanzoni and Polonko, 1980; Scanzoni & Szinovacz, 1980; Hill & Scanzoni, 1982). Scanzoni and his colleagues (Hill & Scanzoni, 1982; Scanzoni & Polonko, 1980; Scanzoni & Szinovacz, 1980) have developed a conceptual framework for analyzing family decision-making, which provided the general paradigm for the present study, in which three critical phases of decision-making are delineated: context, process and outcome.

Decision-making between couples is viewed as being dependent on a variety of interrelated variables that occur before (context variables), during (process variables) and after (outcome variables). Gulliver (1979) and Scanzoni (1979) both

emphasize the iterative process of negotiations. Negotiators, especially in families, do not start anew with one another; they bring all of their past experiences to the bargaining table with them. Hence, in the flow of ongoing decision-making, the outcome of one decision event becomes the context for the next. That is why, in this study, an understanding of the divorce decision itself is considered essential for understanding the custody decision-making process.

Context variables

In order to identify what factors influenced the initial custody and financial negotiations, this study focuses on the following context variables suggested by the divorce research literature and the pilot study done for this current study: (a) the nature of the marital relationship; (b) the parenting context (the parenting and work roles parents had during the marriage and parental need for the children); (c) the divorce context (the mutuality or nonmutuality of the divorce decision, the effects of being in the role of leaver, initiator, or guilty party) (Kressel, et.al., 1980; Shiller, 1984); (d) the legal context (parents' perceptions of what would happen if they went to court and the costs and benefits of going to court) (Brown, 1984; Mnookin & Kornhauser, 1979; Schulman & Pitt, 1982); and (e) financial context (the financial dependency of one spouse on another, and the income disparity between the parents) (Scanzoni & Polonko, 1980).

Process Variables

Process variables can be conceptualized in a variety of ways, as decision-making, negotiations, problem solving, or conflict resolution (Cromwell & Olson, 1975). Scanzoni and Szinovacz (1980) distinguished between decision-making and negotiation. Decision-making is the generic term; negotiation is decision-making which involves conflict. Joint decision-making processes include equity, exchange, power, conflict and negotiation (Scanzoni & Fox, 1980). Negotiation, of which

bargaining is a part, is a method of joint decision—making (Pruitt, 1981). It can also be described as a form of conflict resolution because the origins of conflict are often illuminated and changed during negotiations (Pruitt, 1981). Bargaining is one type of negotiation process. Bargaining is defined as a form of decision—making in which two or more parties talk with one another in an attempt to resolve their opposing interests (Pruitt, 1981). It is a process by which a joint decision is made by two or more parties through concession making or a search for new alternatives (Pruitt, 1981). In this paper the term bargaining is used synonymously with the term negotiation.

One way to conceptualize a process variable is on how competitive or cooperative the parties' negotiation strategies are, ranging from verbal persuasion; to more competitive strategies such as anger, lying, refusing to listen; to coercive tactics such as physical violence or unilateral action (Scanzoni & Polonko, 1980).

According to Scanzoni's analysis (1979) of the bargaining process, partners use their power and resources to work out their disagreements through bargaining, and evaluate their outcomes according to how fair or just they feel they are. If each party perceives that their negotiations and exchanges are just, a sense of mutual joint profit (Thibaut & Kelly, 1959; Scanzoni, 1979) emerges. Mutual joint profit exists when A has the sense that B has a general concern for A's well—being, in addition to looking out for B's own self interest (Scanzoni, 1979).

Scanzoni contrasts bargaining from the perspective of mutual joint profit with bargaining with only one's own self interest in mind. Mnookin and Kornhauser (1979) added a third possible bargaining orientation: that of spite. Divorcing parents not only have preferences about allocating custody and money, but about whether they will negotiate from a perspective of self interest, altruism or spite. Similarly, Burns (1973) proposed a typology of what he called "social orientations":

(a) positive–other orientation (altruistic, where the primary goal is to maximize others outcomes); (b) joint self–other (actors choose alternatives on the basis of what is fair to both parties; (c) self–orientation (goal is to maximize individual outcomes with little concern for others' outcomes); and (d) negative–other orientation (a hostile pattern in which actors is more concerned with harming other than in furthering own self–interest, similar to the notion of spite discussed by Mnookin & Kornhouser (1979).

Burns (1973) described a feedback loop in which actors with positive orientations toward one another tend to cooperate and the cooperation reinforces the mutually positive orientation, just as hostile conflict reinforces a negative orientation. Burns assumes that long–term relationships are symmetrical (both parties have jointly positive or negative orientations) and suggests that, while combinations of orientations are possible, they are likely be unstable over time.

The current study analyzed parents' accounts of their custody negotiations and patterns of bargaining (bargaining styles) were identified. Using a qualitative research strategy, the researcher had no apriori methods for measuring the bargaining process other than to identify specific bargaining strategies and bargaining chips (resources for bargaining) and to describe the patterns of bargaining that were evident.

Outcome Variables

Decision–making events move toward some outcome and its implementation (Gulliver, 1979). Hill and Scanzoni (1982) argued that the subjective assessment of an outcome (i.e., feelings of satisfaction, bitterness, resignation) may be a more sensitive predictor of the stability of the agreement reached during negotiations than the substance of the agreement itself. Subjective assessments indicate participants feelings about the degree of legitimacy or fairness

of the current arrangements. The more arrangements are considered to be unfair or illegitimate, the more likely they are to change (Blau, 1964; Homans, 1974; Scanzoni, 1979). In terms of equity theory, perceived inequity will increase the likelihood of conflict; the greater the inequity, the greater the attempts to restore equity (Adams & Freedman, 1976; Walster, Walster, & Bersheid, 1978).

The issue of fairness or equity may be vital since agreements seen as fair by both parents, will, according to equity theory, decrease the likelihood of subsequent conflict and bitter feelings. We know little about whether or how a parent's perception of the divorce agreement as fair or unfair affects their future negotiations in terms of subsequent parental conflict because equity issues in divorce have not been studied.

However, equity theory might explain some current research findings. Pearson (1982) found that many custody disputes are not about the concrete child custody arrangements themselves but about custody labels. Parents are exquisitely sensitive to words which support or undermine their parental role. Patrician (1984) studied fathers' reactions to the connotation of the terms (a) "joint legal custody" and "sole legal custody"; and (b) "custodial parent" and "noncustodial parent" using a semantic differential technique. She found fathers had a highly polarized reaction to these terms; the term "sole legal custody" was evaluated as being unfair, selfish, unequal, bad, and useless; the term "noncustodial parent" was evaluated as weak, powerless, losing, submissive, and unimportant. Another study found that noncustodial fathers were the group most likely to litigate (Ahrons, 1984). Equity theory, which predicts that perceived inequity increases the likelihood of later conflict, offers one possible explanation for why these noncustodial fathers were so likely to litigate.

The current study analyzed parents' accounts of their relationship since the

initial custody negotiations were completed and patterns of subsequent parental conflict were identified. The influence of parents' bargaining style and perceptions of the fairness of the divorce agreement on subsequent parental conflict was analyzed.

Development of the Research Focus

It is the nature of qualitative research to start with a broad focus and for the specific research questions to evolve from the broad focus as the study progresses. It is an iterative process in which the researcher is guided by the data into new lines of inquiry. It is, as Blummer (1969) has stated:

. . . by definition a flexible procedure in which the scholar shifts from one line to another line of inquiry, adopts new points of observation as his study progresses, moves in new directions previously unthought of and changes his recognition of what are relevant data as he acquires more information and better understanding (p.40).

The original intent was to describe the entire custody decision—making process with the goal of developing a theory of custody negotiations. A theory of custody negotiations should explain both the process of how parents made their custody decisions and which type of custody was chosen. In order to explain which outcomes were chosen, it would need to explain parents' initial preferences about custody as well as the bargaining process they used to resolve their substantive conflicts. Confronted with analyzing nearly a thousand pages of interview data, it became evident that it was necessary to narrow the focus of the study. The researcher chose to focus on parental conflict and bargaining processes in the initial custody negotiations, rather than to focus on the factors that influenced parents' preferences about type of custody.

This focus was chosen for two reasons. First, as was discussed in the beginning of this chapter, parental conflict has emerged as one of the primary factors affecting children's adjustment, and therefore, is a significant concern for

legal and mental health professionals, as well as divorcing parents themselves. Second, from a theoretical perspective, bargaining behavior in competitive contexts such as divorce has been insufficiently studied by family researchers, with the exception the studies by Fishel (1985) and Kressel and his colleagues (1980). As can be seen from the review of the literature, however, no previous study has focused on the parents' own perspectives of their custody negotiations (collecting data from both parents), and how that process evolved over time.

As the study evolved, the researcher was led in unexpected directions. For example, in analyzing what factors influenced the parental conflict during the initial custody negotiations, it was necessary to clearly define conflict and identify the relevant dimensions and behavioral indicators by which it could be measured. How parental conflict was conceptualized and operationalized thus became an important finding.

There is a clear need for a better understanding of the complex factors that influence parental conflict and bargaining in the custody decision-making process and the linkages between the bargaining process and subsequent parental conflict. The following specific research questions were developed during the data analysis phase in order to delimit the focus of this study:

1. What patterns of bargaining (process variable) can be identified? This question is discussed in chapter 3.
2. What context factors influenced the degree of parental conflict in the initial custody negotiations?
3. What factors influenced whether parents bargained between themselves or turned to the courts for resolution? Questions 3 and 4 are addressed in chapter 4.
4. What influence did parents' bargaining styles have on the level of subsequent parental conflict (outcome variable)?

5. What influence did parents' perceptions of the fairness of their divorce settlement have on the level of subsequent parental conflict (outcome variable)?

Questions 4 and 5 are addressed in chapter 5.

Thus, this research contributes to the development of a theory of custody negotiations by identifying the relevant context, process and outcome variables from which to begin building it. The study focuses specifically on identifying the context factors influencing parental conflict and bargaining strategies in the custody decision-making process and identifying the links between the bargaining process and subsequent parental conflict.

CHAPTER II

RESEARCH METHODOLOGY

The overall goal of this exploratory study was to contribute to the development of a theory of custody negotiations. In Deutscher's (1973) words, the purpose was to study "how things come about, rather than the relationship of fragments to one another" (p.258). Understanding how things come about is the special contribution of qualitative studies, which by their longitudinal nature, often through retrospective accounts, are better able than cross-sectional designs to investigate complex interactional processes.

Three assumptions guided the design of this study. The first assumption was that the custody decision must be placed in the larger context in which it occurred in order to understand the dynamics of the decision-making process. Therefore, the decision about physical and legal custody was placed in the context of all of the divorce negotiations, including decisions about child support and division of property.

The second assumption was that an understanding of the decision-making process could not be gained merely by asking people what factors they had considered in making their custody decision. Instead, parents were asked to describe the sequence of events during the initial custody negotiations, which enabled the researcher to arrive at an understanding of the decision-making process. Putting their experience in chronological order seemed to have an evocative effect, that is, as the participants told their story, it stimulated past emotions and the recall of specific discussions.

Third, it was assumed that data from both the mother and the father was essential for gaining an understanding of the dynamics of the custody negotiation process. People want to save face and are selective in what they will reveal about themselves to a stranger, but are more likely to reveal a spouse's negotiation tactics. The original research plan was to collect data from 12 separated/divorced couples, doing individual interviews with both husband and wife. However, after data were collected from 11 couples, the investigator became concerned that including only couples was biasing the sample, since in the recruitment process, parents sometimes mentioned conflict with a spouse as a reason for refusing to participate. Therefore, a decision was made to include a small subsample of cases in which only one spouse was interviewed ($n = 4$, 2 husbands and 2 wives). These cases were selected because the initial information either indicated that there had been high conflict between the parents or because one spouse had refused to participate in the study.

Qualitative Research Approach

A qualitative research methodology was necessary because of a lack of depth in the literature concerning how parents make their custody decisions. The qualitative research strategy of in-depth conversational interviews enabled subjects to tell their story in their own way. The data were not artificially constrained by the investigator's preconceptions as is the case when a highly structured design is used. Conversational interviews also enabled the investigator to probe informants' responses to get beyond such euphemisms as, "It was in the children's best interests." The research strategy needed to facilitate comfortable discussion of factors that parents might consider to be socially unacceptable or the exploration of aspects of which they may not have been initially aware. The fact that people can answer questions does not mean that they know the answers to the questions.

There are things people do not know about themselves but, if asked, they can construct plausible answers (Schwartz & Jacobs, 1979).

The Research Plan

Design of the Study

Fifteen case studies were developed; in 11 cases, data were collected from both husband and wife, and in four cases data were collected from only one spouse. Each of the 26 parents was interviewed separately. A retrospective design using a small number of cases studies was chosen because it provided a longitudinal perspective of negotiations over time. A case study methodology was an appropriate method for this study because the topic of inquiry, joint decision-making about parenting arrangements, is a complex phenomenon which evolves over time. Yin (1981) argued that the case study, which is designed to study subjects intensively, is the method of choice for understanding underlying processes, mechanisms, dynamics and lawful interactions. The case study intensively examines the interplay of all variables in order to provide as complete an understanding of the phenomenon as possible, rather than surveying a few variables across many cases.

A prospective longitudinal design which concurrently follows couples' custody decision-making experiences was not considered because the anticipated difficulty of recruiting subjects to participate in the study was incompatible with the timeframe of the research and also because of ethical concerns related to the risk of influencing the negotiations. Clearly, there are uncertainties about the accuracy of retrospective data. Nonetheless, as a first step, it is worthwhile to explore the phenomenon using retrospective data.

Sample Selection

The sample was drawn from five North Carolina counties, Guilford, Wake,

Orange, Durham, and Chatham. Separated or divorced parents ($n = 11$ couples and 4 individual respondents, 2 husbands and 2 wives) were recruited through a variety of convenience strategies: placing advertisements in newspapers, requesting lawyers to contact divorcing parents who have recently completed their custody negotiations to inform them of the study, asking acquaintances to refer respondents, seeking volunteers from a fathers' rights group, and obtaining names from participants in the study. The most productive strategies for recruiting the 15 cases were obtaining names of possible subjects from colleagues ($n = 5$), advertising ($n = 4$ volunteers), and referrals by participants ($n = 3$). Additional names of possible subjects were obtained from a fathers' rights group ($n = 1$), the list of respondents in the pilot study ($n = 1$), and one couple was recruited through personal acquaintance.

Criteria for inclusion in the study were as follows: (a) there was at least one child currently under the age of 18 living at either parent's home, (b) the parents had completed their initial divorce negotiations, (c) both parents agreed to participate in the study (this criterion was later changed to include four individual respondents in order to check on the possible biases generated by including only couples), and (d) due to the small sample size, the sample was limited to white couples. All of the couples who participated in the study knew that their spouses were also in the study. Each respondent signed an informed consent form (see Appendix A).

Since the goal of the study was to investigate both the initial custody negotiations and subsequent parental conflict, an effort was made to include both couples who had recently completed their negotiations (to obtain a clearer picture of the initial negotiations) and couples who had been separated for a longer time (to obtain a clearer picture of long-term outcomes). An effort was made to include

both sole and joint custody parents, as well as parents with low and high conflict. Because the goal of this exploratory study was hypothesis generation rather than hypothesis testing, it was important to obtain enough variability in the sample to increase the explanatory power of the hypotheses derived (Glaser & Strauss, 1970; Miles & Huberman, 1984).

Once parents' names were obtained, they were initially contacted by telephone. The researcher explained that the purpose of the research was to learn how parents go about making their custody decisions, and that both parents needed to agree to participate in order to be included in the study. A brief description of the length of time of the interview and the kinds of questions to be addressed was given. If the first parent contacted agreed to participate, then the name and telephone number of the other parent was obtained. Several parents expressed a preference for contacting their spouses themselves and did so. The investigator made a point of informing all parents that the request for participation came from the investigator, and that the other parent had merely agreed to participate. The investigator was careful to explain to subjects how she had gotten their name, so that they were fully informed.

Great care was taken to insure that parents were adequately informed about the nature and focus of the interviews, since the interviews dealt with sensitive emotional issues. When parents verbally agreed to participate, they were sent a detailed information sheet (Appendix B) to read over, with the suggestion that they take time to make a decision about whether or not to participate. The letter was followed several days later with a telephone call to see if they had any questions or concerns about participating. If they were still willing to participate, an appointment was made. The time and place of the interview were arranged according to the parent's preferences. Most parents chose to be interviewed in

their homes, two parents were interviewed in the investigators office, five parents were interviewed in their offices, and one parent was interviewed in the investigator's home.

A total of 48 parents were contacted about participating in the study, 26 (54%) parents agreed, 12 parents refused to participate, and 10 parents either did not fit the criteria for the study or they had joint custody and the investigator needed more sole custody parents in an effort to obtain an equal number of both custody types. One woman was willing to participate but refused to have her husband participate because of previous high conflict which involved being threatened with a gun. In the other 11 refusals (5 women and 6 men), the first spouse contacted had agreed to participate, but the second spouse refused.

Parents refused to participate for a variety of reasons. The most common reason parents gave for refusing to participate was that the topic was too personal or too painful to discuss. Several parents expressed concern that it might stimulate conflict or "stir things up." Two men said that their new wives did not want them to participate. Two women initially agreed to participate, but when called back to set up an appointment, they refused because they had just gotten into an argument with their former spouses and felt it was wiser to minimize any possibility of involvement.

One parent was very suspicious of the study and the investigator even though he agreed to participate. This father had recently initiated litigation for child support. He was suspicious about the timing of the interview, and began the interview by stating his concern that the investigator was a spy for his former wife. When the interviewer responded by suggesting that, under the circumstances, the interview be terminated, he seemed reassured that his fears were unfounded. He had chosen to have the interview conducted in the investigator's office, and he had

taken particular notice that she had been personally greeted by the secretary, which seemed to reassure him that she was legitimate. He said he wanted to continue with the interview.

Description of the Sample

The subjects in the sample were white, and predominantly middle- to upper-middle class. The mothers ranged in age from 30 to 42 years with a mean age of 37 years; the fathers ranged in age from 32 to 45 years with a mean age of 39.5 years. The fathers' income at the time of the negotiations ranged from 0 to \$50,000 with a mean of \$21,733; the mothers' incomes ranged from 0 to \$40,000 with a mean of \$13,066. The couples had been married from 4 to 19 years with a mean of 10 years, 8 months. At the time of the interview, the couples had been separated between 8 months to 6 years with a mean of 2 years, 11 months. Eight of the couples had two children and seven couples had one child. At the time of the interview, nine of the cases had joint legal custody, two cases had sole father custody and four cases had sole maternal custody. It should be noted that one couple changed from joint custody to father custody after the initial custody negotiations were completed, hence the difference from Table 2, which describes custody at the time the initial negotiations were completed. This was the first marriage for all but three husbands, and two of the wives. The age, income, education, occupation and religious preference of the sample are listed in Table 1.

Data Collection Procedures

Data were collected from each parent individually, using semi-structured interviews. Interviews were taped, and averaged three hours in length, and ranged between two and five hours. In order to promote a free-flowing discussion, participants were informed that they were regarded as informants who had a story

Table 1

Sample Characteristics

	Father	Mother
Age (current) (in years)		
31--35	2	4
36--40	9	7
41--45	4	4
Education		
High school	2	4
A. A.	3	2
B. A.	4	7
M. A.	3	1
M.D. or PhD.	3	1
Occupation		
commercial artist		small business owner
small business owner		computer programmer
self employed		small business owner
small business owner		secretary
repairman		nurse
self-employed salesman		dental assistant
newscaster		saleswoman
nurse		nurse
contractor		mid-level executive
accountant		homemaker
hospital adminis.		paralegal
corporate executive		office manager
dentist		commercial artist
physician		homemaker
college professor		college professor

Table 1 (continued)

	# of cases
Religion	
Protestant	11
Catholic	4
Jewish	4
Athiest	5
Pagan	2
Length of Marriage (in years)	
1-- 4.9	1
5-- 9.9	5
10--14.9	5
15--19.9	4
Length of Separation (in years)	
less than 1	2
1--1.9	2
2--2.9	2
3--3.9	3
4--4.9	3

to tell, rather than as respondents who were expected to respond passively to a set of structured questions (Furstenberg & Spanier, 1984).

A small pilot study of four interviews (three individuals and one couple) was done in order to develop the questions for the current study and identify areas that needed to be assessed. A number of context variables influencing the custody decision-making process were identified: parenting, legal, financial, divorce, and marital history factors.

Both an unstructured format, which allowed informants to tell their own story and express themselves freely, and a series of specific open-ended probes were used (See questions 1–66 in Appendix C). Some parents were hesitant storytellers, and the structured probes were more effective in drawing them out. Other informants elaborated richly detailed accounts, and the structured probes were less necessary. Specific probes were essential for collecting comparable data from each parent so that cross-case analyses could be done (Miles & Huberman, 1984).

The interviews were consistently initiated by a deliberately ambiguous request for parents to tell the interviewer what they thought she needed to know in order to be able to understand how they came to make the decisions they did. They were encouraged to "start at the beginning, and describe the progression of events, including your thoughts and feelings, until the divorce agreement was made" (See Appendix C). Parents were asked to recall and describe specific discussions. Most parents recalled specific discussions and interactions, including things spouses had said to each other. Parents were also asked to recall what kinds of arguments they had used to support their positions.

A series of 66 specific questions were asked after parents had finished their spontaneous account (which typically took one to one and a half hours). The

probes focused on obtaining a concrete description of events over time (if this was unclear from the spontaneous account), starting with each parent's initial custody preferences, what the areas of disagreement were, what negotiation strategies were used, and how differences were resolved. A series of questions about marital history, parents considerations about the possibility of going to court, how the divorce decision was made, parenting role during the marriage, and the relative importance of their career and parenting were included. Questions such as "how," "when," "what," and "who" were used to elicit descriptions which are better able to tap processes than "why" questions which tend to elicit a "vocabulary of motives" with stereotyped responses (Kleinman, 1984, personal communication). The interviewer probed responses which were vague or contradicted previous statements. From time to time, the interviewer summarized her understanding of the parent's account, or shared her hypotheses for their opinion, as a way of checking the accuracy of her understanding of what the parent was saying or emerging theoretical hunches.

After the interview was completed, the parent was asked to fill out a written questionnaire (Appendix D). In addition to basic demographic data (age, education, occupation, income, religious preference), the questionnaire requested information on the dates of the marriage, separation and divorce and the sex and age of the children. A series of questions about employment were included to help assess the informants' work and parenting priorities. Informants were offered a choice of filling out the written questionnaire then or of mailing it in a stamped envelope provided by the investigator. This evolved as the investigator experienced how long the interviews lasted and how tired both the informant and the interviewer were at the end of a three hour interview. Most of the subjects chose to do the written questionnaire at a later time and all questionnaires were returned.

Data Analysis Procedures

Step 1. Analysis of Individual Cases. The first step in data analysis was the construction of individual family case studies. Interview tapes were transcribed and a family case was constructed using both parents' accounts (for the 11 cases where couple data were available) to outline the sequence of key decision-making events. Chronologies are invaluable in focusing on events or decisions that need to be explained (Yin, 1981) and they provide a graphic picture of how family patterns evolve over time.

A qualitative content analysis was done. The process of coding involved a thorough examination of the data for coding categories and emerging themes. The coding categories used were: physical and legal custody decision, property division, child support, the divorce decision, negotiation strategies and bargaining chips, guilt and blaming, the marital relationship, equity concerns, legal concerns/attorneys, parenting, help/advice received, issues causing conflict, and outcome statements (children's adjustment, parental relationship since negotiations completed, fairness of the divorce agreement). Each transcript was coded with colored pens, and statements which related to key variables (the coding categories) were noted on an index sheet which noted page number and a brief summary sentence. This was done to simplify the retrieval of data. The specific details about how the interviews were coded is described in the chapters 3 and 5 (also see Appendix E).

The use of multiple sources of data often results in contradictory data. Schwartz and Jacobs (1979) suggest that one answer to the problem of contradictory data is a more sophisticated understanding of the notion of "accounts," which are stories that individuals construct as an explanation or perception of what happened. An account is neither "true" nor "false" in any objective sense; it tells what the person reporting perceives, so the factual

correctness of what is reported is irrelevant (Zelditch, 1969). While the basic outlines of the story were obtained when only one parent was interviewed, the story was necessarily incomplete because it tapped only one parent's perspective. For example, socially unacceptable information about affairs or coercive bargaining strategies was often provided by spouses about each other because of the natural tendency for people to try to save face. Consequently, in the four cases in which only one spouse was interviewed, the investigator believed that details, particularly about the negotiation process, were missing which detracted from the richness of the data and from a more complete understanding of the dynamics of the situation.

In constructing the case studies in the 11 cases in which both spouses were interviewed, the spouses sometimes directly contradicted each others' accounts of what happened. Overall, however, couples' accounts did not so much contradict each other as they added to the full story. As might be expected, spouses' accounts differed most markedly in the case which had the highest level of conflict. Differences in accounts were also striking in two of the low conflict cases where spouses were actively avoiding conflict. Even in these three cases however, there was considerable agreement between the two accounts.

In those cases in which spouses differed on more objective fact, for example, whether one spouse was having an affair at the time of separation, the perceptions of the spouse reporting that there had been an affair were accepted, and the case was coded as one spouse having an affair. For example, two wives in the study denied that they were having an affair at the time of the separation, yet their husbands gave detailed descriptions of the concrete evidence that they had.

After a case was coded, an individual case analysis was written which identified the factors which seemed to influence the level of conflict in the initial custody negotiations, the bargaining chips and strategies used, the factors which

seemed to influence parents' preferences about the type of custody they wanted, and the factors which seemed to influence subsequent parental conflict.

Step 2. Cross Case Analysis. The second step in analysis involved dividing the cases according to the level of conflict (low, moderate, or high) couples experienced in the initial custody negotiations, and then searching each conflict group for commonalities which could help explain the level of conflict. At this point, it was necessary to define conflict precisely, and to clarify the decision rules or criteria by which the cases were placed in the groups. This topic is discussed in chapter 3, which details how the coding categories for conflict were developed as the analysis progressed.

The interviews were coded on the following points: (a) level of conflict (as indicated by substantive conflicts, bargaining style, emotional tone of hostility or amiability and the timeframe of the negotiations); (b) intensity of the marital relationship; (c) roles in the divorce decision, and the effects of guilt on the divorce negotiations; (d) how parents' perceptions of going to court affected their negotiations; (e) financial dependency of one spouse; (f) marital partnership style; (g) parental conflict outcomes; and (h) parent's evaluation of the fairness of their divorce agreement. The coding rules for categorizing couples were made explicit during the cross-case analysis and are presented in detail in the following three chapters. A guide for coding the interviews was developed (See Appendix E).

Step 3. Searching for Explanatory Hypotheses. Once all of the cases were rated on the relevant variables, it was possible to move to the third step in data analysis, the search for explanatory hypotheses. Campbell (1975) described how to construct explanations based upon even a single case study, a research design he had previously discredited (Campbell & Stanley, 1966). Searching for an explanation is a kind of "pattern-matching" process (p.182) which can be applied

with even a single case because the case has to fit the multiple implications derived from the explanation or theory. The hypotheses, which are derived from the data, generate predictions or expectations on a number of aspects of the case and the hypothesis is not retained unless most of these expectations are confirmed. The many observations in each case study are analogous to having a large number of cases, and can be used to evaluate theory (Campbell, 1975).

For example, hypotheses about factors influencing the initial level of conflict in the negotiations were checked against each case, and were reformulated or dropped if they did not fit the cases. In searching for the commonalties among the high conflict couples, it was first hypothesized that one spouse having an affair was a possible explanation for high conflict, since in each of the three high conflict cases, the wife had had an affair. However, that hypothesis was modified when it was noted that in seven other cases a spouse had been involved in an affair and yet the couples had not experienced high conflict. Next, it was hypothesized that the total opposition of one spouse to the separation was the key factor contributing to high conflict. Again, this hypothesis was discarded, because one father in the moderate conflict group was totally opposed to the separation. Finally, the factor which perfectly distinguished the high conflict cases from all the other cases, was the intensity of the marital relationship. The hypothesis about conflict was thus modified as follows: Conflict in the initial negotiations is more likely when the couple had an unusually intense relationship, one spouse had an affair, and the other spouse is totally opposed to the separation.

Step 4. Writing the Research Report. A major concern in writing up the research report was to protect the identities and the confidences of the people who had opened up their lives to the investigator. To this end, names were changed, occupations were changed to a comparable occupation, and at times other

identifying data were altered to protect a subject's identity. Cases were referred to by number only when necessary to orient the reader. In general, quotations were not identified by case number. Further protection of confidentiality was provided by asking each parent at the end of the interview, if there was any material that they did not want to have included, if their case was one selected for an extensive case write-up.

Validity and Reliability Issues

The validity and reliability of the categories and coding of the cases was checked by spelling out the steps used by the researcher to analyze the data and by clearly defining operational definitions, coding categories, and decision rules so that an "auditor" (Miles & Huberman, 1984) can retrace the researcher's steps. This was done in two ways. First, based upon the fact that the investigator was a female mental health clinician with a feminist value system, it was essential to check for possible biases in case interpretation related both to being a female and being a clinician. Consequently, one case was rated by four auditors: a male mental health clinician and a male nonclinician; a female mental health clinician and a female nonclinician. These four raters were given a randomly selected case transcript and asked to code the case using the coding guide (See Appendix E for Rater's Guide). The agreement rate among three of the auditors and the investigator was 100%. The fourth auditor (female nonclinician) misunderstood the directions and rated the case according to her own interpretations rather than precisely following the coding guide. When the task was clarified, this rating also agreed 100% with the investigator's rating of the case.

The second reliability check was to have two auditors, a male and a female, read five randomly chosen cases, one from each of the bargaining style groups, to check whether the bargaining styles could be reliably distinguished one from

another. An auditor did not have to have exactly the same interpretations as the investigator, but should find nothing in the data to contradict the interpretation. The case used in the first reliability check was included in the second reliability check, so a total of five cases were checked. The agreement rate on bargaining style between these two auditors and the investigator was 100%.

Limitations of the Study

Although the major limitations of this study are methodological—small sample size, convenience sample, retrospective data, some of its major strengths are also in the methodology. An understanding of the complex dynamics of couple's decision-making about their children in the crisis atmosphere of divorce, and of the myriad factors which influence it, could best be achieved through the intensive study of a small number of cases that tapped the perspectives of both parents (in 11 of the 15 cases). Obtaining a "living description" of these processes provides the basis for the development of a substantive theory of custody negotiations, and its impact on the subsequent parental relationship. This study represents a first step in that enterprise.

The biggest threat to validity in the study, in addition to the small sample size and nonrandom sampling, were the biases and assumptions the investigator brought to the interpretation of the data. Other raters were used, as detailed in the section on validity and reliability, in an attempt to check for this threat to validity.

The small sample size, which resulted in some categories of only one couple, plus the nonrandomness of the sample, make it impossible to generalize the findings beyond the 26 individuals in the sample. Although the study does not presume to be generalizable to all divorcing parents, it does contribute to the base of knowledge about custody negotiations for divorcing parents and the professionals to whom they turn for assistance.

CHAPTER III

PATTERNS OF BARGAINING IN THE INITIAL CUSTODY NEGOTIATIONS

This research contributes to the development of a theory of custody negotiations by identifying the relevant context, process and outcome variables from which to begin building it. The study focuses specifically on identifying the context factors influencing parental conflict and parents' bargaining strategies in the custody decision-making process and identifying the links between the bargaining process and subsequent parental conflict. This chapter describes the bargaining styles that were identified in the content analysis. It also describes how couples were placed into low, moderate and high conflict groups so that context factors affecting level of conflict in the initial custody negotiations could be analyzed. The context factors affecting parental conflict during the initial custody negotiations are discussed in chapter 4. Finally, the links between parents' bargaining styles, perception of equity of the divorce settlement and subsequent parental conflict are presented in chapter 5.

Couples were initially placed into low, moderate and high conflict groups based upon the investigator's overall assessment of the level of conflict they experienced during their divorce negotiations. The next step was to identify the underlying dimensions that had served as the basis for categorization. This was not an easy task since four different dimensions of conflict were identified, and they were not always perfectly correlated with each other. As the dimensions of conflict were examined more closely and the rules for categorization were made explicit, couples were moved to fit the emerging definitions of conflict level.

The most obvious dimension of conflict was the amount of substantive disagreement between the spouses on specific issues involving custody. However, while substantive conflict distinguished between the low conflict couples, who had very little substantive disagreement, from the rest of the sample, it did not differentiate the moderate and high conflict couples. The high conflict couples did not disagree on a greater number of substantive issues than the moderate conflict couples, nor were they further apart on their initial positions.

Two other dimensions of conflict were identified: (a) the coerciveness of the bargaining strategies that parents used to influence each other and (b) the emotional tone (friendliness/hostility) of their negotiations. Although these two dimensions of conflict were closely associated, they were not perfectly correlated; thus couples might be placed in different conflict groups depending upon whether one looked at the emotional tone of their interactions or the coerciveness of their bargaining strategies. For example, one couple in the low conflict group spontaneously agreed on all major substantive issues and had little need to bargain, but the wife was extremely angry with her husband (who had left her for another woman) and their interactions were frequently hostile (with shouting, name-calling, angry tears).

The length of time of the negotiations was a fourth possible indicator of conflict, but there was not a direct linear relationship between the length of negotiations and parental conflict. The moderate conflict group actually completed their negotiations in less time ($\bar{x} = 2.82$ months) than the low conflict group ($\bar{x} = 4.85$ months). It appeared that the low conflict parents, who felt less threatened by each other, sometimes also felt less urgency about getting matters settled. As might be expected, however, the high conflict couples usually took longer to complete their negotiations ($\bar{x} = 10$ months). In one case that took 14 months to

reach a settlement, the timeframe reflected the couple's intense opposition and resistance to each others positions. In the other two cases, the timeframe was influenced by the litigation process. However, while a more lengthy negotiation period might indicate high conflict, it did not necessarily do so. For example, a couple with one of the highest levels of conflict (child-napping, physical violence, litigation) took six months to litigate their separation agreement, while one of the most amiable couples in the sample took nine months to meticulously plan their separation agreement. The timeframe of the negotiations sometimes varied for reasons that had little to do with the level of conflict parents were experiencing: the compulsiveness or impulsiveness of their planning, delays caused by attorneys, "foot-dragging" because of ambivalence about the separation, or the wish to avoid any final conflict.

Turning to the conflict literature for guidance in assessing conflict when the different dimensions of conflict did not correlate or adequately distinguish between low, moderate and high conflict, the investigator found confusion about the meaning of the term conflict. As Straus noted in his classic article on conflict (1979), some theorists (Dahrendorf, 1959) have used the term "conflict" to refer substantive conflict and the term "conflict management" to refer to the means of advancing one's interest, while others (Coser, 1956) have used the term "conflict" to refer to the means or behaviors actors use to pursue their interest.

Straus (1979) argued that it is essential to distinguish between several closely related phenomena, all of which are called conflict: "conflict of interest," "conflict," and "hostility." He defined conflict of interest as the substantive issues on which people differ and conflict as "the method used to advance one's own interest; that is, the means or the tactics used to resolve conflict [of interest]" (p.

76). Hostility was defined as a "the level of negative cathexis (feeling of dislike or antipathy) between members of the family group" (p. 76).

Straus resolved the problem of incomplete correlation between the different dimensions of conflict by limiting the definition of conflict to the tactics people use to influence each other. However, this approach did not provide an adequate definition of conflict for the purposes of this study. The decision was therefore made to assess parental conflict holistically, using all four dimensions of conflict: (a) bargaining style, (b) emotional tone, (c) substantive conflict, and (d) the timeframe of the negotiations. Figure 1. illustrates the dimensions of conflict and the behavioral indicators of each level of conflict.

1. Bargaining style was defined as the bargaining strategies parents used to advance their interests, that is, the methods, means, and tactics they used to influence each other. The key dimension along which bargaining styles were considered to vary was the degree of coerciveness (to compel by force or fear) of parents' bargaining strategies. Bargaining style was the dimension which best distinguished the three conflict groups during the initial negotiations.

Cooperative bargaining strategies included: listening to each other, offering alternative suggestions about custody, discussing the potential costs and benefits of alternatives, stating the reasons and rationales for their positions, and appealing to the principle of fairness or the best interests of the children.

Moderately coercive bargaining strategies included: forcing the spouse to agree by using threats, such as nonpayment of child support, litigation, or exposing the spouse's affair in court; bluffing about one's willingness to litigate; actually initiating litigation but then quickly dropping it; rejecting the other or threatening to bear a grudge; demanding compensation for being the injured party; inducing guilt; disparaging or shaming the other; or harming the spouses' reputation.

Dimensions of Conflict

Behavioral Indicators of Conflict

	low	moderate	high
Substantive Conflict	little to no substantive disagreement	substantive disagreement that required bargaining	
Hostility of Emotional Tone	<ul style="list-style-type: none"> • reserve • civility 	<ul style="list-style-type: none"> • name calling • yelling and screaming 	<ul style="list-style-type: none"> • hitting • threats to call police • refusal to talk to spouse
Coerciveness of Bargaining Style	<ul style="list-style-type: none"> • spontaneous consensus • conflict avoidance 	active bargaining	<ul style="list-style-type: none"> • litigating • prolonged haggling
Timeframe of Negotiations	settled within 1-6 months		lengthy negotiations- more than 1 year

Figure 1. Dimensions of Conflict and the Behavioral Indicators of Low, Moderate and High Conflict

Highly coercive bargaining strategies included child–napping, litigation, and harassing phone calls and refusing to leave negotiations.

Five patterns of bargaining were identified and are listed below in order from low to high coerciveness: (a) spontaneous agreement/consensus development (used cooperative bargaining strategies), (b) spontaneous agreement/conflict avoidance (refused to bargain and acceded to their spouse's position) (c) active bargaining (used both cooperative and moderately coercive bargaining strategies), (d) prolonged haggling (used cooperative, moderately coercive and coercive strategies), and (e) litigation (used highly coercive bargaining strategies such as going to court and child–napping). Thus, spontaneous agreement and conflict avoidance were considered to indicate low conflict, active bargaining was considered to indicate moderate conflict, and prolonged haggling and litigation were considered to indicate high conflict.

2. Emotional tone of parental interaction was defined as the friendliness or hostility parents directly expressed in their interactions with each other. Low hostility was indicated by the relative absence of hostile behaviors and a restrained, civil emotional tone; moderate hostility was indicated by behaviors such as name–calling and yelling; high hostility was indicated by behaviors such as threatening to call the police, hitting, or by the refusal to even talk with one's spouse.

It should be noted that, contrary to Straus, verbal and physical abuse was defined as an indicator of hostility rather than as a bargaining tactic used to influence the other parent. Parents did not speak of screaming and hitting as purposeful strategies used to influence one's spouse, but rather, as frustrated emotional outbursts over which they had little control.

3. Substantive conflict (what Straus called "conflict of interest") was defined as the degree of difference between parents' initial preferences regarding physical

and legal custody, child support and division of property. Substantive conflict was essentially a dichotomous variable. Little to no substantive disagreement indicated low conflict while disagreements that resulted in bargaining behavior indicated either moderate or high conflict. Substantive conflict was only useful in differentiating between the low conflict couples and the rest of the sample.

4. Timeframe of the negotiations was defined as the time between the decision to separate (or in some cases, the decision to divorce) and the time when agreement was reached as indicated by either an oral agreement between the spouses or the signing of legal separation papers. Negotiations that were completed within six months or less (counting only the period of active negotiations and not the "down time" caused by spouses' delaying having the legal agreement drawn up) were considered to indicate low to moderate conflict. Negotiations that lasted for more than one year of continuous bargaining implied an intense opposition and resistance to each other's positions and were considered to indicate high conflict. The timeframe of negotiations was most useful in differentiating between the high conflict couples and the rest of the sample.

Couples were assessed on each dimension of conflict and assigned to low, moderate or high conflict categories depending upon whether they were rated to be low, moderate or high conflict on the majority of the indicators. More specific details on how conflict was rated are discussed later in this chapter (also see Appendix E). Where these dimensions did not correlate completely, bargaining style was used as the primary indicator of conflict. Thus, spontaneous agreement and conflict avoidance were considered to indicate low conflict, active bargaining was considered to indicate moderate conflict, and prolonged haggling and litigation were considered to indicate high conflict. Table 2 illustrates the type of physical and legal custody arrangements parents chose; the three conflict levels as indicated by

Table 2

Level of Conflict in the Initial Custody Negotiations as Indicated by Bargaining Style, Emotional Tone, Substantive Conflict and Timeframe

Case	Custody Type ^a	Bargaining Style ^b	Emotional Tone ^c	Substantive Conflict	Timeframe ^d
<u>Low Conflict</u>					
2	JC (50/50%)	SA/CD	L	none	9 mo. LA
4	JC (50/50%)	SA/CD	M	none	6 mo. LA
7	JC (H = 95%)	SA/CA	L	none	8 mo. LA
10	MC (W = 85%)	SA/CA	L	none	1 mo. LA
15 ^f	MC (W = 100%)	SA/CA	L	none	1 wk. OA
<u>Moderate Conflict</u>					
1	JC (50/50%)	AB	M	% phys. cus. prop. div.	6 mo. LA
3	MC (W = 90%)	AB	M	H wanted JC W's moving child support	3 mo. LA
6	JC (W = 87%)	AB	M	child support	13 mo. LA*
8	JC (W = 75%)	AB	M	% phys.cus legal cus. child support	3 mo LA
9	FC (H = 87%)	AB	H	Neither wanted phys. or legal custody	2 mo. LA
12 ^e	JC (50/50%)	AB	M	W wanted MC prop. div. % phys. cus.	3 wk. OA
14 ^f	MC (W = 100%)	AB	L	visitation	2 mo. OA
<u>High Conflict</u>					
11	JC (50/50%)	PH	H	% phys. cus. prop. div.	14 mo.LA
5	JC (50/50%)	LI	H	legal cus. child support prop. div.	6 mo LA
13 ^e	JC (W = 80%)	LI	H	H wanted FC W wanted JC % phys. cus.	10 mo.LA

^aCustody Type: JC (Joint Custody); MC (Maternal Custody); FC (Father Custody); (percent of physical custody) H (Husband); W (Wife).

^bBargaining Style: SA/CD (Spontaneous Agreement/ Consensus Development); SA/CA (Spontaneous Agreement/Conflict Avoidance); AB (Active Bargaining); PH (Prolonged Haggling); LI (Litigation).

^cEmotional Tone: L (low hostile); M (moderate hostile); H (high hostile).

^dTimeframe of Negotiation: LA (Legal Agreement); OA (Oral Agreement).

^eHusband only interviewed

^fWife only interviewed.

* 8 months delay.

bargaining style, emotional tone, substantive disagreement(s), and the timeframe of the initial negotiations, and the type of agreement that was reached (oral agreement or written separation agreement).

An inclusive definition of conflict using all four of these dimensions was adopted in order to maintain some consistency with how other divorce researchers have defined parental conflict. Ahrons (1980) measured parental conflict with four questions, two of which related to the emotional tone of interactions (frequency of a hostile, angry feeling tone and stressful, tense conversations) and two of which related to substantive disagreements (frequency of arguments and basic differences of opinion about child rearing). Wallerstein and Kelly (1980) described a group of extremely angry parents (20% of their sample) who argued frequently (substantive disagreement); felt intense hatred or experienced physical violence (emotional tone); and used such behaviors as child-napping and custody battles (bargaining strategies). Luepnitz (1982) assessed conflict with items that focused on the frequency of fights and a high level of tension, occurrence of physical violence and occurrence of violence in front of the children or children's awareness of violence. However, none of these studies focused on conflict during the initial custody negotiations, nor have the investigators grappled with the conceptual definition of conflict or with the measurement issues involved in categorizing parents into levels of conflict.

The three levels of parental conflict in the initial custody negotiations are described in this chapter. The major factors influencing the level of initial conflict are discussed in chapter 4, and the explanations of the quality of the subsequent parental relationship are discussed in chapter 5.

Low Conflict Couples

Low conflict couples (n=5) were characterized by little to no substantive

disagreement, low to moderate levels of directly expressed hostility, and a cooperative bargaining style that involved discussions and problem—solving rather than threats. All of these couples experienced a high level of spontaneous agreement about what they wanted to do. That is, they discovered that their initial preferences about what they wanted to do were in agreement. However, in three cases, one or both of the spouses were assiduously avoiding or denying conflict and refused to actively bargain for their preferences. These three cases were characterized by both a high degree of spontaneous agreement and by a strong theme of conflict avoidance. The two bargaining styles of spontaneous agreement/consensus development and spontaneous agreement/conflict avoidance are described below.

Spontaneous Agreement/Consensus Development

The two couples in this group experienced a high level of spontaneous agreement about their initial preferences for physical and legal custody. Discussion was unnecessary because they just assumed and both agreed on what they would do. Division of property was a matter of discussion and consensus development, which involved little opposition or resistance. Consensus development is defined as the development of an agreement with little opposition and resistance and consists of a series of suggestions, ideas, proposals or options that fall under the heading of discussions (in contrast to bargaining which implies some resistance and opposition) (Scanzoni & Szinovacz, 1980).

Both of these couples had had very egalitarian marriages, where ideals of equality were major themes in their marriage. There was no question that they would have joint legal custody and that each parent would have the child 50% of the time. This wife's comment is typical of these two couples:

As you were just talking about actually making the decisions about custody,

I was thinking that in some ways I don't feel like we ever made a decision. That we ever sat down and made a decision. It was just assumed that it would be equal. There was never any question that one of us would get Mary [5 years old] and the other would only have her part time. . . . But we just said, "OK. You get her one week and I'll get her another week."

The husband said, "So it [childcare] was certainly an extension, it certainly wasn't a departure from what we'd been trying to do [in the marriage]."

Spontaneous Agreement/Conflict Avoidance

The three couples in this group were characterized by both a high level of spontaneous agreement, and by a strong theme of conflict avoidance throughout their accounts. These parents either denied any conflict existed, or one parent decided not to bargain for his/her preferences and acceded to all the spouse's demands, or one parent made promises that both parents knew were totally unrealistic, given their situation.

These three couples spontaneously agreed that one parent wanted primary parenting responsibility and the other parent did not. Two of these couples had fairly traditional marriages in which the mother was the primary parent. In one case, the husband had never really wanted children, was minimally involved with parenting during the marriage, and did not want custody when he left his wife to be with his girlfriend. The wife said:

After we were married, three years later we had our first child. When anything, when I asked him to do anything concerning the kids, get up at night or get them ready for bed cause I was busy washing dishes, whatever, he would always say, "they're your responsibility. You wanted them." So he has never really felt a part of my kids. I say "mine" now because I have them, but he never had time for them. He never would give them any of his time. And so when we separated, there were no, he, he was not—he didn't want to take them. In fact when we separated, he was very glad to have the freedom of the single life again. And all this had already started during our marriage. And so he didn't want any—he still did not feel any responsibility for the kids.

The third couple agreed that the husband should take the children (9-year-old boy and 10-year-old girl); he wanted them and she did not. However, the

wife's preference for not having custody was couched in other terms: he was the better parent, she was stronger than he was and was better able to cope with not having the children, or he was stronger than she was because he could manage the children better. The husband wanted custody of the children because he thought that he was the more responsible parent, with the most to offer the children in terms of emotional and financial stability and intellectual development. At the same time, he felt much inner conflict about being the primary parent because of his traditional belief that "children should be with their mothers." This couple explained their decision to themselves more in terms of parental fitness. However, toward the end of her interview, the wife confided that she really did not want custody of the children because she was devoted to her job and her boss.

So anyway, that gets back to my original premise that, I knew the kids would be very happy—good with him. I knew they would be very well taken care of, I had no fears of that. So I knew they were fine. They really didn't need me because they had Jim. And that was okay. And again, looking back, not then, at the time I felt he needed them 51% and I needed them 49%, because he was less strong than I. But looking back, I find I would have resented them. This way I could have both, if I lived here, I could visit them and have them down to Florida whenever I wanted to, at Jim's discretion, and yet I could have my life down there too. So I chose the latter, I chose to go down there.

It was difficult for parents, especially mothers, to acknowledge openly that they did not want to play a major role in parenting their children. Parents felt guilty, they worried about whether they were being selfish, and so the decisions were framed in more acceptable terms, such as circumstances, or the best interests of the children. This finding has serious implications for research methodology. Clearly, one cannot adequately study the factors influencing parents' choice of custody simply by asking them to state the reasons for their decision (Marschall & Gatz, 1975; Lowery, 1985). The reasons that emerged after intensive interviewing were often different from the reasons that parents initially gave. That is not to say

that parents did not seriously consider what was best for their children. With few exceptions, the parents in this sample made their decisions in light of what they believed was best for their children, and for themselves.

Conflict avoidance was most dramatically exemplified by one couple: it characterized their marriage, their decision to separate, their divorce negotiations, and their interaction since the divorce. This couple went to such extreme lengths to avoid conflict that they even denied that they were actually separating. The husband summed it up when he said, "I'll eat shit to avoid conflict!" The wife said:

. . . I don't know that there was any negotiating going on, it was almost as though, well, that's just the natural way for things to be and there was not a questions of well, "How are we going to do this and what are we going to do?" I would have to say that he always is, [asking about what we are going to do] but I would always defer to his negotiating abilities, so if there is any or was any [thing] to be negotiated or questioned, then he would be [the one to do it]. . . It's as though we didn't even have to talk about it. He relates what his thoughts are, and I say, "Well I thoroughly agree." . . . He tells me, to be courteous and just to inform me, and I say, "Well, you always do what you think best because you know darn well, I'll agree with you."

Looking back on the divorce negotiations, the husband reflected, in response to a question about whose interests he had in mind as he negotiated:

I would say I was in the middle [thinking about everyone pretty much just the same]. . . Let me say that that was a mistake. We should have been more, there should have been more of an adversary relationship on the issues. I was doing her thinking for her.

This couple had (or seemed to have) a remarkably amiable relationship on the surface, but serious conflicts simmered unacknowledged. The husband has continued to try to get his wife to participate in decision making, and he deeply resents that she defers all decision making responsibility to him.

In another case, the husband wanted joint custody, but the wife insisted on sole custody and the difference in their initial positions was immediately resolved when the husband acceded to the wife's demand for sole custody. He did not resist or oppose her position, he did not bargain for what he wanted, nor did he consult a

lawyer. He signed the separation agreement formulated by his wife and her attorney after one visit with his wife's lawyer and a brief perusal of the agreement in the lawyer's office.

A number of factors contributed to the husband's desire "not to fight." He just wanted out, to get it over with, and to avoid conflict. He was afraid of a "knock-down, drag-out fight." He said that his wife had told him that she wanted the house and the children and that she "would sue his pants off" if she did not get what she wanted. However, her version of this initial discussion differed markedly from his. She said that he asked her what she wanted, and she told him the house and the children.

Several other factors seemed to influence his refusal to bargain for his preferences. He believed he didn't have any bargaining chips, and that that if they went to court, his wife would win because "the courts favor mothers." He was very depressed at the time of the separation and just wanted to get things over with as simply and quickly as possible. Therefore, he acted very quickly and separation papers were signed within a month from the time of separation. The wife speculated that he did things in such a hurry, that he did not have time to think about the long-term consequences of his decisions. "He not only burnt bridges, he dynamited the land around them. I mean you couldn't even rebuild them again."

The husband commented about his negotiation style:

. . . . my negotiating style--which I've certainly done some thinking about changing, is, I tend to give away the first round, just to show good faith. And you know, OK. If somebody accepts that good faith, or whatever, then, and comes back with a reasonable alternative, fine and dandy. We're home free. You know, the alternative obviously is to ask for more than you hope to get and play hardball with that, and then back off. . . . I need to, you know, sometimes I risk too much on that initial giveaway show of good faith. Certainly it has been true in terms of, you know, show good faith or whatever at the separation time. Went and signed that thing [separation agreement] that said, custody [to the wife], period. . . . now usually if

somebody doesn't take my show of good faith and whatever, and comes back hard, then OK. We're going to play hardball.

He seemed to see only two extreme types of negotiation: either you show good faith and give in to the other's demands in the hopes that they will later reciprocate and meet some of your demands, or you "play hardball." This father deeply resented not having joint legal custody, and later, when his wife ignored his input regarding the discipline of the children, he began litigation for joint custody. Part of his anger seemed to stem from feeling that he had unwisely given away too much at first, and that his wife had betrayed his show of good faith by not allowing him the control over the children's discipline to which he felt entitled. This couple had always had strong differences in values about how their children should be raised, which was one reason why the wife had insisted on sole custody. She commented:

. . . I would just defer to Peter [during the marriage]. Because there was just no persuading him. . . I just didn't want—if we weren't going to stay together and try to work things out, then I would . . . raise the children. I'd been raising them and there would no longer be this armchair critic who would periodically decide to get involved.

It is not surprising that when a couple's preferences regarding physical and legal custody spontaneously mesh, there is little conflict. Neither is it surprising that when one or both spouses' overriding goal is to avoid conflict, they will experience low levels of conflict in their initial negotiations. Many parents in the moderate conflict group also made a point of wanting to avoid conflict. What differentiated the conflict avoidance group, however, was the almost total absence of bargaining by one or both spouses. Whether or not that low level of conflict bodes well for the future by setting the stage for future cooperation is addressed in chapter 5.

Moderate Conflict Couples

Active Bargaining

The couples in the moderate conflict group ($n = 7$) actively bargained to get what they wanted, focused on realistic differences, took clear stands about their preferences while generally taking into consideration their spouses' demands. Active bargaining was defined as the use of both cooperative and moderately coercive bargaining strategies. Cases were placed in this category if (a) they experienced substantive disagreement that was dealt with by active bargaining, (b) if they settled the dispute between themselves within six months of active bargaining without going to trial, and (c) if they expressed anger and hostility toward each other primarily through verbal rather than physical means.

To give a setting in which to discuss the bargaining, the focus of these couples' substantive conflicts is presented first. Conflict was generated in four cases because each spouse wanted the children to spend the majority of time with him or her. In another case, neither the husband nor wife wanted primary parenting responsibility or custody and their dispute centered around the husband's futile attempts to shame the wife into assuming more parenting responsibility. Another couple's conflict focused on the husband's desire to keep the wife from moving out of state with the children, the amount of child support, and legal custody. In another case, conflict centered on visitation; the wife adamantly opposed the husband taking their 11-month-old child away from her home for visitation.

All of the moderate conflict parents described angry, hostile verbal confrontations consisting of name-calling and screaming, but they were able to exercise enough self-control so that they were able to keep their long-term goals in mind. Parents in this group seemed to be guided by a clear goal of restraining conflict for the good of their children, which tempered their behavior. Several

parents described cooling off periods, where they tried to reason with themselves or with an objective third party.

For example, one father said:

H: I mean the classical distinction in moral philosophy is the struggle between reason and passion. And that my passions were running very high at this time and so very often my passions clouded my reason and my main passion was anger and anger, revenge, vindictiveness and all these kinds of things. And so I was consciously struggling in my calmer moments to put those passions aside.

I: Were you aware of how you did that: What enabled you to do that or how you did that?

H: No. I would do that, ah, I would let my passions sometime work myself up into a frenzy and become obsessed and angry, and then I would lapse into a period of calmness and then I would say, hey, wait a second, you know this is what is right and this is what is wrong. . . . So I know what I wanted and then I want to make sure that there is sort of a coherent moral justification so that what I wanted was not morally unreasonable.

Another wife managed her anger by distinguishing between her husband's behavior and who he "really" was. She wanted to be sure that her husband, whose serious drinking problem had become much worse in the months preceding the separation, was not portrayed as a "terrible" person. She stated:

. . . and at that time in his life, he was really terrible but he really isn't a terrible person. . . . His behavior is really aberrant but it was just—I don't think he really had that much control over it. You know, just some "devil chasing him". . . . I just want that to come across. You know, that he did get into a lot of trouble and he had a lot of things going on in his life, but at that particular time he didn't really care. He was just so depressed and so self-destructive. He just really didn't care what he was doing and who he was doing it with. And that's what made the whole thing a lot less bearable, because you know that was not really the real person in there. And if it was, my God! You know where has he been all of these years. Because I've never seen him before. And it was real scary to see that.

This woman was struggling to excuse and understand her husband's extreme, erratic behavior at the time of their separation and negotiations. She was able to take his perspective, and in spite of his "terrible" behavior, she did not see him as a "terrible person."

Bargaining Strategies and Bargaining Chips

Bargaining Strategies. The moderate conflict parents used both cooperative and moderately coercive bargaining strategies to resolve their differences.

Cooperative strategies included: listening to each other, offering alternative suggestions, discussing the potential costs and benefits of alternatives, appealing to the principle of fairness, taking stands on what they knew they could not live with long term, and deliberately tempering their passions with periods of more objective rationality. These couples also used moderately coercive bargaining strategies such as: threats to expose a spouse's infidelity in court (two husbands), threats of nonpayment of child support (one husband), threats to sever all but essential communication (one husband), threats of litigation (one wife, two husbands), or actually initiating litigation but quickly dropping it (two wives).

Bargaining Chips. Bargaining chips were conceptualized as the material and emotional resources parents had available to use in trying to influence each other. Some of the most powerful bargaining chips were the emotional ones that derived from the divorce situation itself: guilt over one's role in the breakup and the threat to expose a spouse's infidelity in court. Parents' assessment of the legal context, which included perceptions about the spouse's willingness to go to court and an estimate of what would happen if they went to court, was both a potent emotional and financial bargaining chip. Money was another potent bargaining chip, but was used less frequently ($n = 3$) than might be expected. The use of guilt about the divorce, child support, and threats of going to court are analyzed in detail in chapter 4 of the report. Two patterns of bargaining were found in the moderate conflict group: (a) both spouses had bargaining chips, and (b) only one spouse had bargaining chips.

When Both Spouses have Bargaining Chips. In five cases couples were able to strike mutually agreeable bargains because each spouse had a bargaining chip that was important to the other. Two cases exemplify how these couples struck mutual bargains. One couple made their bargain during a walk on the same day they decided to separate. There was spontaneous agreement that the wife should be the primary parent (the children would live with her most of the time), because the husband's drinking problem at the time of separation was so severe that he was missing work and suffering blackouts. Their disagreement centered on legal custody (wife wanted sole custody, husband wanted joint custody) and whether the wife would move back to her home state. The wife commented:

So, we decided that if I promised not to take the kids "back to Mama" in [state], he would be as supportive as he could financially, and of course, for keeping the kids in a stable environment in North Carolina, and that I could stay in the house and raise the kids and that they would have their friends and their school and all the activities. And it would be less disruptive for them. So, in return for that, he promised not to give me any hassle with money. So, we got a pretty good relationship because we have kept our bargains.

The husband talked about how much better he and his wife related now than when they were married. He said,

I think we respect each's other position now. And maybe in a way, we are more important to each other in the respect that she can really kick my (inaudible) as far as the children goes, and I could, if I worked at it, cause her economic problems. And I think that balance is now so obvious, but it isn't always obvious in the marriage. But it's sure obvious when you separate, that it keeps both of us in line. I was very careful not to get into any kind of argument or whatever, because of this thing she might pull on me [not let him see the children or move]. I think she is more careful around me. . . . It's more like dealing with an associate. In marriage you always feel like you can say anything you want to. And maybe that's one of the pitfalls of marriage, you fall into that and are careless about what you say to each other. . . . So, yeah, we are fairly careful around each other. It's not like walking on eggs or anything but I think we show each other more respect than we did when we were together.

This husband articulated how the balance of power each perceived in the situation motivated them to deal with each other in a more respectful way than they

did in the marriage, when they never listened to each other. In this case, the balance of power clearly decreased conflict, even some necessary conflict. For example, the wife reported that she has never set certain limits (which had been strongly recommended by the son's therapist) on the father's behavior when he visits the children every Sunday in the family home. She feared that if she insisted on a change in his behavior, he might retaliate financially.

In one case (interview with wife only), the spouses made an extreme bargain. They agreed that the husband would not have to pay any child support in return for voluntarily giving up his parental rights to his 11 month-old child. The wife was desperate to prevent the father from physically removing the baby from her home for weekend visitation. She was still nursing the baby, and she felt the father was an unreliable caretaker because he sometimes was not responsive to the baby's crying when he was drinking. She wanted him to visit the baby in her home, which he did for about two months. She even allowed him to bring his new girlfriend. She acknowledged that it was a very uncomfortable situation and did not blame him for not wanting to continue it.

After two months, the husband insisted that as long as he was paying child support, he was entitled to his visitation under his own terms. The wife recognized that child support might be an effective bargaining chip as the husband was paying child support to his first wife and was already interested in marrying his new girlfriend and starting a family with her. With technical advice from her attorney on how to accomplish her goal of complete control over visitation, the wife proposed to the husband that he would not have to pay her child support, with the understanding that, after a one year period, she would take him to court to have his parental rights revoked on the basis of non-support. He agreed.

An observer, looking at litigation for revocation of parental rights (a rarely used legal procedure reserved for cases of abuse, drug addiction, etc.), would assume that this couple were bitter enemies who had a high level of conflict. This was not the case. Instead, they had cooperated to get what they wanted from the legal system and they have continued to abide by their agreement to have no further contact with each other. The wife remains satisfied with the bargain she made, and believes that she acted in the child's best interests, although the enormity of depriving the child of its father is beginning to haunt her. The father refused to be interviewed, saying that he and his new wife had decided against "dredging up the past—the past is past."

Mutual bargains were struck when each spouse had something to offer that the other wanted. Both spouses made sacrifices to get what they wanted, and the couples, with one exception, seemed generally satisfied with their bargains. Not all of the bargains were as clear-cut as in the two cases described above, but in each case, there was the sense that both parents had gotten some of what they wanted and that both had compromised.

When One Spouse Has No Bargaining Chips. In two of the seven moderate conflict cases, one spouse had no effective bargaining chips. In one case, the husband had all the bargaining chips; the wife was a housewife and so was completely dependent upon her husband financially, and she feared the husband's threat of exposing her affair in court. She acceded to all his demands and felt that she was "bullied" into her decision for joint custody.

In the second case, the couple's initial preferences were in complete opposition because neither one wanted custody or the responsibility of being the primary parent. This couple had been in conflict about parenting from the beginning—the wife had not wanted children, and had reluctantly gone along with

her husband's desire for a child because she felt it was her obligation to do so. Soon after the baby was born, the wife returned to her career against her husband's wishes. There was an intense and ongoing conflict about her "selfish" desire for a career of her own and many quarrels about putting the baby in daycare. Finally, the wife moved out, leaving the 18-month-old son with her husband.

The husband unwillingly took over the role of primary parent, a role he had pushed on his reluctant, but subservient wife during the marriage. The wife had given in to her husband's wishes in the marriage because of her traditional beliefs about a wife's obligations fostered by her conservative religious upbringing. She turned the balance of power upside down when she moved out and refused custody of the child. The husband was devastated by the loss of his wife and angry about the responsibility being thrust upon him.

The husband had no effective bargaining chips. One cannot take a spouse to court to force her to have custody, and the wife had already "given him everything" because she felt so guilty about leaving. He tried moral persuasion, public shaming, and guilt induction, but nothing worked. He accepted the reality of the situation fairly rapidly, and decided to seek sole custody to protect himself in the event that his wife changed her mind sometime in the future.

It might be expected that such a one-sided decision making process would likely lead to ongoing parental conflict and animosity. It did not. This couple was able to work out a cooperative parenting relationship and even a personal friendship. The wife gradually took a much more active role in parenting, and the husband quickly found a new girlfriend who, as his wife said, "nurtured him back to sanity." He also began to enjoy his relationship with his son and the admiration of his friends for being the valiant single father. An analysis of the factors which seemed

to contribute to subsequent parental cooperation and friendliness is further discussed in chapter 5.

High Conflict Couples

Three cases were categorized as having high conflict. Couples were categorized as having high conflict in their initial custody negotiations when they met two of the following three criteria: (a) argued about substantive issues for more than one year (substantive conflict and timeframe); (b) directly expressed intense hostility in their interactions through such behaviors as hitting, threats to call the police, or the hostile refusal to even discuss issues with one's spouse; or (c) engaged in extremely coercive bargaining strategies such as child-napping or litigation. Going to court is commonly regarded as an indicator of high conflict by divorce researchers (Ilfeld, Ilfeld and Alexander, 1982). The bargaining styles used by these couples are described below.

Prolonged Haggling

One couple had a bargaining style characterized by prolonged haggling. They argued intensively for 14 months about how much time their five-year-old son would spend with each of them and about division of property. The husband was enraged at his wife for abandoning him and for "coming out" about her lesbianism. During the first year of their separation, the husband called the wife three to four times a day. Although there was no hitting, both reported that there was poor emotional control with frequent screaming and yelling. He would shout angrily and refuse to leave, and she would threaten to call the police.

The wife argued that her husband's depression and severe anxiety attacks were harmful to the son and that he would be better off with her. She experienced much inner turmoil because her realistic concerns for her son conflicted with her strong egalitarian/feminist values of fairness. The husband argued that a boy

needed his father, and played on her guilt by arguing that he should be entitled to more time since she was the one who wanted out. This was the only high conflict couple that really bargained with each other, and used bargaining chips such as guilt, and what was in the son's best interest.

The intense and prolonged nature of this couple's conflict was influenced by several factors: the intensity and dependency which characterized the marriage and continued to characterize the postdivorce relationship; the husband's total opposition to the divorce; both spouses' intense need for their child; and finally, both spouses' desire to avoid going to court because they both thought they might lose. Each of these factors is analyzed in detail in chapter 4 of this report.

Several factors restrained this couple from escalating their conflict by litigating for sole custody, a move which they both seriously considered. First, they feared losing their son if they went to court. They were concerned that if the wife discredited the husband because of his mental health, and he argued that she was an unfit mother because she was gay, the court might consider them both unfit parents and take custody. Second, the father did not want to ruin the mother-son relationship by litigating and revealing that his wife was gay, which was his main bargaining chip. He thought that the outcome of litigating for custody would be that the son would grow up hearing what an awful person his mother was and he did not want that. He also realized that litigating for custody would preclude any future friendship with his wife, which was an important goal for him. In other words, both parents actively considered the emotional costs of litigation. Third, the father made a conscious effort to temper his intense rage at being abandoned by his wife by deliberately avoiding talking to people about the fact that his wife was gay. He realized that he was vulnerable to "getting more stirred up." Fourth, the couple had to reconcile their custody preferences to the strong feminist/egalitarian value

system that had prevailed during their marriage. Both parents felt philosophically bound to having joint legal custody, although both at times had threatened to sue for sole custody. The wife commented:

We try to be fair with each other. We don't believe in a double standard, or more rights for the woman or more rights for the man and so we had to carry our own philosophy through for our own personal integrity and that's what it came down to, you know, as much as we didn't want to not have our son for half of the time, we had our own value systems that we had to fit into our own minds. And since we both did see the world in the same way, it [joint physical and legal custody] was the only thing we thought would be fair in that situation.

After many arguments over what would be a fair division of property, the wife finally agreed to give the husband the house in exchange for a clear title to the business. The wife said:

W: [I agreed] just to shut him up. At that time I really didn't think it was fair. And he knew I didn't think it was fair and he was really mad at me for not thinking it was fair and he wouldn't rest until he knew that I actually did think it was fair. It wasn't good enough that I agreed to it. . . . It was impossible to put a value on years lost and it is a mutual mistake to stay in a relationship that's not working and basically it takes two to tango and I couldn't put a price on his anxiety attacks and how much pain and suffering he had been through because I had [girlfriend] or how much I had been through because he had seen [girlfriend] when I was pregnant. You cannot put money values on what you do to each other.

I: It sounds like you were trying to figure out who should bear more of the cost based upon past pain and suffering. I mean in terms of trying to be fair and looking at the overall thing.

W: Yeah, and I think I did sort of adopt some of that philosophy later. . . . I knew that if I didn't agree to [exchanging house for clear title to the business] that he would dog me till my dying day.

I: How would he do that, I mean, how does he dog people?

W: I knew that I would have to continue seeing him until [son] was 18, and I didn't want him to bear a grudge against me because when he bears a grudge he can be always mad at you and I didn't want anymore of his anger. I mean it was worth getting rid of his anger to give up \$6,000.

The intensity of this couple's arguments can be seen in the wife's comments that her husband was not satisfied with a mere substantive agreement. He not only wanted her to agree with his position, but he wanted her to agree that their settlement was fair. Fairness was a central value for both parents. And, as the

wife's comments reveal, deciding what was fair was not a simple matter. It depended upon what one put into the equation, and it was difficult to put a monetary value on pain and suffering.

The dispute about physical custody continued until it was finally resolved when the parents moved back together, with the agreement that both were free to lead their own private lives. This unusual arrangement has been satisfactory to both parents, and both parents report that their son likes having them live together again.

This case points up the complexity of assessing parental conflict in divorce negotiations. This couple never used physical violence, and they did not use highly coercive bargaining strategies such as child-napping or litigation. However, there was a high level of verbal hostility, strong substantive disagreements, and they argued for a prolonged period. Because the intensity of their conflict was qualitatively different than the couples in the moderate conflict group, they were placed in the high conflict category.

Litigation

Two couples in the sample chose the coercive bargaining strategy of litigation rather than to negotiate directly with each other. One husband was so angry and threatened by his wife's decision to leave him for another man that he refused to negotiate with her at all, and initiated a suit for sole custody in spite of her attempts to settle matters between them. This traditional man, with a conservative Christian background and values, felt he had lost control of his life and viewed his wife as a completely unstable person who had turned her back on her children. The wife's departure precipitated drastic losses and change. He not only had to adapt to the typical losses of wife and time with the children, but to the institutionalization of his severely handicapped daughter. He felt his life was

blowing up around him and he became seriously suicidal and had homicidal fantasies. He desperately tried to regain some control over his life by seeking sole custody of his one remaining child. The wife's initial position was that they share custody on a 50/50 basis. She felt extremely guilty and was trying to work out a mutual agreement. However, several months after the separation, in response to the husband's suit for sole custody, and the urging of her sister to fight back, she reciprocated his hostility and countersued for sole custody.

The judge awarded the couple joint custody, with physical custody to the wife. The judge's decision did not mention the holidays, and this has continued as a source of conflict, because the wife changes her mind at the last minute about where the daughter will spend the holidays. This man is very bitter about the court system, and feels he "got screwed." The parents have continued to feel a lot of hostility toward one another, which they have tried to control in front of the children. They continue to have some financial conflicts which may end up in court.

The third couple in the high conflict group experienced the most intense and prolonged conflict of any couple in the sample. They have been to court at least five times since the original settlement was signed six years ago. Both the husband and wife described an intense marriage where they did everything together. They were apart only one weekend in 13 years of marriage.

The wife initiated the separation, and moved out of the house with the understanding that she would help take care of children when she found a place to live. The husband began his interview with the statement, "She left me and she left me with the children." The husband became extremely depressed and almost nonfunctional after his wife left. He went to see a counselor for short-term therapy. He had few friends, lived in an isolated area, had no job and the responsibility for the children, aged 2 1/2 and 5-years-old. The wife refused at

times to help with the children because every time she returned home, there were intense emotional outbursts that involved some hitting and pushing, shouting and angry accusations. Finally, in desperation, he moved back to his parents' home in the midwest where he intended to relocate.

The wife found an apartment about six weeks later, and the day she went to pick up the children, she found a note on the door telling her that he and the children had moved. The wife was "enraged" and "kidnapped" the children back, then went to court for sole custody and child support. They agreed on joint custody at the last minute, in the lobby of the courtroom.

Over the next three years, this mother sued the father several times for child support, until he eventually countersued for sole custody in order to "protect myself from legal harassment." He was awarded sole custody of the two children. The oldest child, with the mother's support, wrote the judge several angry letters accusing him of treating the mother unfairly. This child was caught in the middle between the two parents and often served as the communicator between them.

The bargaining styles identified in the present study are very similar to the four negotiation patterns identified by Kressel and his colleagues (1980). The conflict avoidance pattern is similar to what Kressel called the "autistic" pattern in which conflict avoidance was the primary characteristic. The active bargaining pattern was similar to what Kressel called "direct conflict" pattern (focus on realistic concerns, mutual problem solving, high overt conflict, frequent and open communication). There was no direct counterpart to what Kressel called the "disengaged conflict" pattern which was characterized by low levels of attachment between the spouses. The prolonged haggling style was similar to what Kressel called the "enmeshed" pattern, which was characterized by "prolonged squabbling"

(p.107) over minutiae, which seemed related to their desire to hold on to the relationship.

CHAPTER IV

CONTEXT FACTORS INFLUENCING THE LEVEL OF CONFLICT IN THE INITIAL CUSTODY NEGOTIATIONS

This chapter discusses the major context factors that appeared to influence the overall level of conflict, including the choice of bargaining strategies (dependent variable), in the initial custody negotiations. The research questions which guided this part of the analysis were: What context factors influenced the degree of parental conflict in the initial custody negotiations? and What factors influenced whether parents bargained between themselves or turned to the courts for resolution? Five major contexts (independent variables) were identified: (a) parenting context, (b) marital relationship context, (c) divorce context, (d) legal context, and (e) financial context. Each of these factors is analyzed in the following sections, and is illustrated in Figure 2.

Parenting Context

Two strong themes related to the parenting context emerged in the content analysis: the general continuity between preseparation and postseparation parenting roles, and parents' profound need for their children.

Continuity of Parenting Roles

While parents' gender role preferences seemed to have little impact on parents' use of coercive bargaining strategies during the initial custody negotiations, they profoundly shaped the type of parenting roles parents negotiated. Parents had, for the most part, worked out the parenting roles, and the balance of work and parenting that they preferred during the marriage and tended to continue that preference after the separation. Gender role preferences were assessed based on

CONTEXTS OF THE CUSTODY NEGOTIATION

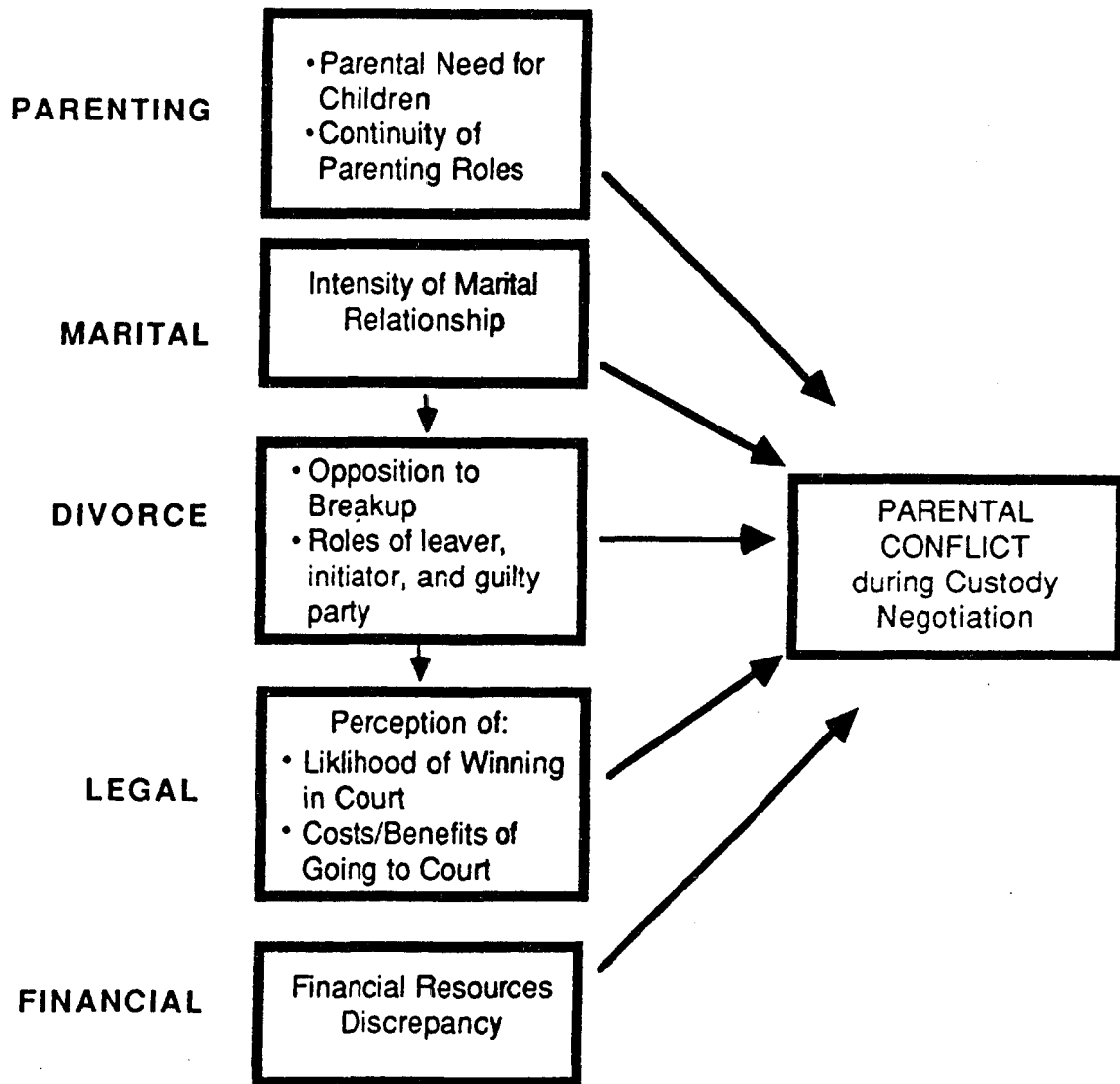


Figure 2. Relationship Between Context Variables and Conflict in the Custody Negotiation Process

what parents said about their parenting and work roles during the marriage using the typology of partnership styles developed by Scanzoni and Szinovacz (1980). This typology consists of two dimensions: (a) the degree of preference for traditional gender roles or modern gender roles expressed by husbands and wives in their relationship, and (b) each spouse's access to income (see Appendix E for specific details). Scanzoni and Szinovacz (1980) distinguished three partnership styles based upon the wife's contribution to the family income and the couples' gender role preferences: (a) the traditional head-complement pattern (wife as homemaker, husband as provider), (b) the junior partner-senior partner pattern, (wife works but her job is secondary to husband's job and she is the primary caretaker of home and children), and (c) the equal partner pattern (both parents are considered co-providers with equal responsibility for providing economically as well as for household chores and childcare).

There was much more continuity between preseparation and postseparation parenting roles than there was discontinuity. Parenting roles changed substantially in only 4 of the 15 cases. This does not mean that there were not profound changes in parenting arrangements; just that there was continuity in the kinds of parenting roles the spouses assumed. Parenting roles were judged to have continuity when the parent who was in the primary parenting role in the two years prior to the separation continued to have a major proportion of the parenting responsibility or when both parents continued to share parenting responsibilities much as they had during their marriage.

The cases of discontinuity were as follows: In one case, the mother (9), who had been the primary caretaker during the marriage, left the young toddler with the husband because she resented her husband's continued opposition to her career and being forced into a traditional mother role. Her husband's constant criticism of her

mothering contributed to her own self doubts about her ability to be a good mother. Another mother (8), who had been the primary wage earner during the marriage while the husband was the primary parent, remarried a wealthy man, quit work, and became the primary parent after the divorce. One of the arguments she used with her husband was that she could now be a full time mother, whereas if he had physical custody, they would have to spend more time in daycare. A third couple (12), who had had a traditional head–complement marriage, agreed to a 50/50 physical custody arrangement, at the husband’s insistence. Although they had a traditional division of labor, the father had always been very involved and devoted to the children. After the separation, he took on a much more instrumental role in terms of daily childcare. In the fourth case (13), the mother had been a traditional homemaker with primary responsibility for raising the two children, but this pattern had changed in the two years prior to the divorce when she went to work, had an affair with her boss, and according to the husband, was never at home. During these two years, the father estimated that he did about 90% of the childcare (the wife was not interviewed in this case). After the separation, the father litigated for sole custody and the couple was awarded joint legal custody with primary physical to the mother. In this case, continuity was difficult to evaluate, but since the father was the primary caretaker in the two years prior to the separation and the mother became the primary caretaker after the separation, it was placed in the discontinuity category.

However, while parents’ gender role preferences shaped the type of custody and visitation arrangements parents wanted, they seemed to have little impact on the type of bargaining strategies that parents used or the overall level of conflict they experienced. Scanzoni and Szinovacz (1980) hypothesized that egalitarian couples are less likely to experience hostility caused by coercive bargaining

strategies such as threats and unilateral actions. However, in this study, there was no relationship between partnership style and the level of initial custody conflict as measured by the use of coercive bargaining strategies, since the partnership style of couples was almost equally represented in all three conflict levels.

Parental Need for the Children

When parents separate they face the inevitable fact that they will have less time with their children, and for many parents, this is a profound loss. Rosenthal and Keshet (1981) assert that adults need children to be complete individuals, just as children need adults. It is obvious that children need their parents, but parents' need for their children is usually not directly acknowledged. However, parents' need for their children was a major theme in the interviews with both mothers and fathers. Several parents made a graphic analogy between the loss of their children and losing a part of their body. It was as if they felt that their very selves were being destroyed. Of the ten couples who experienced substantive conflict during the initial custody negotiations, seven couples (1, 8, 9, 11, 12, 13, 14) disagreed about the amount of time each parent would spend with the children (disagreed about visitation or the percent of physical custody each parent would have), and in six of those cases, the dispute was caused by both parents wanting more time with the children.

Parents spoke of their need for their children in the following comments. One mother (equal partner marriage, high conflict group) talked about how they started off having their son every other day and then every two days, because, "that was as long as we could stand to be without him." She described her husband as being very dependent on their son because he had little contact with other adults and no job. She said:

For two days not to have his "little buddy" there was a big absence, I mean

he [son] was his main companion, the only person he would see for most of the day. . . . And I didn't like not having my little buddy with me either. . . . So the reason we were bouncing him back and forth so quickly was that neither one of us wanted not to see him for a longer span of time than was absolutely necessary.

The father said:

The worst problem we had, like I said, was the weeks when the one of us who didn't have Jake, you know, just going through withdrawal or whatever you go through when you don't have your kid. . . . We tried a lot of things, at first just did it like one or two nights at a time so that we would feel like if we didn't have him today, at least we would have him tomorrow. We were real tight with it and we even dickered over the amount of hours in this day as opposed to the amount of hours in that day, or if he got out of school early we would have more time to spend with her than the other. . . . Jake was the thing we both wanted to hang on to. . . . it just seems kind of fair to tear it down the middle and also he [Jake] would be that way. He is really into being fair too— not giving more affection to the dog or to the cat or to his dad or to his mom.

Given the intense need both parents expressed for their son, and their isolated lifestyle with few outside sources of support, it is not surprising that this couple experienced a high level of conflict about physical custody.

Another couple (equal partner marriage, moderate conflict group), separated only eight months, both wanted a major part of the time with the children. The father had been the primary caretaker during the marriage because the mother worked much longer hours. The wife said, "They (the children) are his (husband's) life." She described her distress at not having her children most with her most of the time:

. . . I missed the kids and I was—oh, I was really emotional because I missed them so badly. . . . I was just lost without the kids. I was miserable. I had to do something to get them back. And it was, this summer I had some really hard spells. And there was one time when I thought I could have killed him. If I'd seen him, I swear I would have killed him.

Another father, who went to court for sole custody (high conflict group, junior/senior partner marriage) said one of the reasons he went to court was that he couldn't bring himself to "sit down and talk about chopping up my children." He

described his anguish about the judge's decision to award primary physical custody to his wife as follows:

. . . it was like the story of Job. I can appreciate the way he felt, because it felt like somebody had taken my heart out and chopped it up in four pieces— one piece was fed to the dogs, one piece was sent 100 miles down the road [his handicapped daughter had to be placed in a nursing home as a result of the separation] and the other piece was living with somebody that I didn't even know who they were—the moral character, the type of person, the environment. And then the little piece that I had left which was mine.

Another couple in the moderate conflict group (equal partner marriage) had significant conflict about the amount of time each would have their nine-month-old infant. Although egalitarianism and equal rights for women had been a strong theme in the marriage, the wife had envisioned a 30/70 time split which she felt reflected their actual involvement in childcare prior to separation.

I anticipated he would want a lot of involvement, but I never dreamed he would want 50/50. I knew I would have to agree to it if he wanted it, but I didn't expect it. Have to because I would feel he had the right to that if he wanted it.

Her voice quavered on the edge of tears as she described what it was like being away from the baby or having the father leave with the baby.

I mean it's just like big big chunks have ripped right out. It's not much different now than it was in the beginning except that I know now that Wednesday will come up again quickly. I know that I'll be busy and before I know it she will be back and I know she knows who I am. I went through a lot of insecurity about, you know, will I make any difference to her.

This couple's conflict suddenly escalated when the father demanded that the mother live up to her original agreement to share physical custody for a precisely equal amount of time. He demanded the extra evening that she had been having and she panicked. "And it was just more than I could, I just couldn't do it. I just couldn't stretch any farther at the time. And he got really explosive and threatening." The husband felt betrayed when the wife, in desperation, got a

temporary order for sole custody pending a hearing for sole custody. The husband stated:

Sarah is a fine mother. She loves Suzy, just as I love Suzy. I mean, you name it, I have—I have bathed her, I have fed her, I've taken her for her shots, you name it. So we have this egalitarian marriage, two very liberated people. Two counselors that are into this relationship of equality, and I'm getting screwed. I mean to me, to read this thing the sheriff delivers to me at work, taking custody of my child and I'm going to have to pay her all this money including her attorney's fees, I mean, come on, I'm going, "Save me from these pseudo-liberated women." It's really, I think the central focus you will find in marriages based on equality, not just hypothetical equality, but I'm talking about the ones you can verify where both parties will say that, not only in child caring but in household chores and that sort of thing, if there's anything less than equitable distribution of not only custody but property, you will find some very cynical males out there. Because the reality is we gave up a lot in that relationship based on equality in the sense of physical comforts. I mean, my dad had it made. My mom did everything for him. I mean, I don't want that type of relationship, but you can't have your cake and eat it too. If you're going to enter into an egalitarian, quote, "modern" relationship with a man—if a woman wants that, and if she's got any brains, she will—that also carries with it a responsibility not to fall back on the Scarlett O'Hara "poor me, oh my God, little baby girls just got to be with their mother," you know, it just makes me want to vomit.

He said that his wife would probably feel that he got more than his share in terms of custody because she feels that she made the greater sacrifice, because of the greater expectations placed on mothers about parenting. He quoted her as saying:

"Hey, I made a big sacrifice, I'm the woman and everybody gives me a hard time because they say how can I give you joint custody, how could I do that?" So she thinks she's making a real sacrifice, as if my sacrifice is not equal to hers. Which I think is a crock of shit!

This husband understandably was angry because he felt his wife betrayed the egalitarian values of their marriage. But, whether or not he wished to acknowledge it, mothers and fathers do come to a division of custody with vastly different social pressures and expectations. In general, the mothers who had their children half time were more likely than fathers to experience that as a loss from the expected, given current social norms for physical and legal custody. Despite recent changes in

custody norms, many of the mothers still expected that they would have their children more of the time.

Another mother of an infant echoed similar feelings about having her infant taken away from her even for short visits. She initially emphasized that her concern for her 11-month-old child's safety (her husband would sometimes drink to the point of having difficulty being aroused by the baby's crying) had been the major reason for not wanting the father to have visitation in his home. With further probing, she said:

W: Like I said, I had such strong maternal instincts that just sort of overwhelmed me that I just couldn't bear the thought of [infant] leaving either. There were some legitimate concerns as far as the [husband's] drinking and the safety and the whatever, but there was also the element of I would just feel like part of my arm would have been ripped off if he would have taken her. . . .

I: What if he had been a very responsible, competent guy? What would you have done?

W: [big sigh]

I: I mean from what you have just said, it sounds like that would have been very hard.

W: Yeah, it would have been just as hard for me to emotionally let go of [infant] for that length of time. If Tommy had been five years old when the separation had occurred it would have been different, because now Tommy can stay gone half the day and stuff and that doesn't bother me, going to school is not going to bother me, but the actual physical taking away of a baby from his mother, I mean I was breast feeding, what was I going to do for a weekend while my child was gone So if a competent father had left at three months, I would have felt the same way. If he'd have left at five years or four years it might have been different. He would have an established relationship with the child, my [laughs] mothering aspect as far as that overwhelming, I don't even know how to describe it, I never felt anything like it. I told one of the girls at work about it and she had the same sort of experience, I mean it just sort of engulfed me and it would be just like rippin' my arm off and taking it.

The mother finally admitted that her basic motivation in bargaining with the father to give up his right to visitation and his parental rights was that she couldn't bear having the baby taken away from her. Thus, in two cases the mothers' reluctance to be parted from their infants contributed to the level of parental conflict.

What motivated the father to agree to never see his child again? He refused to be interviewed because he didn't want to dredge up a painful past, but in the telephone conversation he said, "I decided to let her have [the baby], he was young and not that close to me and it was best to go our separate ways and start over." With this brief comment, he seemed to be expressing his wish to make a fresh start without past encumbrances. During the time of the negotiations about visitation, he became involved with a new woman whom he planned to marry and start a new family. He may have been much less likely to give up his relationship with his infant had he not had a new relationship and the possibility of a new family to sustain him.

New relationships may, for some parents, serve to ameliorate their need for their children. Another father, who had been the primary parent during the marriage and had initially considered going to court for sole custody, suddenly backed off. He commented:

H: And she [fiance] didn't want to be a mother again—little kids. . . . And she's very good with them, but I don't think she could have stood to have them all the time. And even though she said go full custody, she knew how much I wanted it, and I started doing that—then part of the reason I backed off was because I don't think it would have been good for her or our relationship. Also Sandy [his wife] made it clear again that she would go to court if I pressed that issue [of having sole custody], regardless of what I told her I had [evidence of her affair]. But I didn't want to tell her every—I tried to be real ambiguous.

I: So she didn't know exactly what you knew or anything, she just—

H: No. Still she said she would go to the court, and my lawyer looked at all that stuff and said, still he had gotten those four out of five cases, but I still didn't have an open and shut case. It was not guaranteed and it could go either way, and it was going to cost \$5000 and it might take X amount of time. So essentially I went back to the vacation/school year split but adjusted it more in my favor, at least the property settlement. She wasn't going to give up on the kids, but I made it financially more to my advantage, was the main thing I gained.

This husband's comments demonstrate the complex interplay of many factors

influencing his decision not to push for sole custody. But the new relationship was an important factor.

. . . . but at that point I was starting to wonder if it was going to work for me to have full custody. . . . If I made enough money and if I didn't have Margaret [fiance], I probably would have gone for it. Cause then I would have just had the kids, and that would have been what was important.

Paradoxically, the presence of new partners sometimes decreased the conflict parents had over their children ($n = 2$) because the parents had someone else to be close to, which helped assuage their loss and loneliness. In other cases ($n = 2$), it increased parental conflict over custody because one parent anguished over what kind of influence the new partner would exert over his/her children, and what kind of competition for the children's affection they would present. In the latter two cases, both parents were conservative Christians who viewed their spouses' affair as morally reprehensible. But the threat of competition and loss of the children's love may have been the most important factor. One mother poignantly told of her fear of losing her children, which lurked beneath her concerns about her husband's negative influence.

I just don't want the bad influence of he [husband] and Rita [girlfriend] and her girls. I just want to protect my girls, I guess. And I don't want their bad influences. . . . Maybe it's just that I don't want my girls to be with her. Because I, I know now that I don't have any reason to feel inferior to her. But the night that I met her, my girls were drawn to her. And I could see that my husband was. And I prayed to die that night . . . [crying]. . . . When she took my husband, and I guess I feel, I fear that she would take my children too.

In summary, while parents' gender role preferences seemed to have little impact on the level of conflict in custody negotiations, they ~~profoundly~~ shaped the type of custody and visitation arrangements parents wanted. Parents had, for the most part, worked out the balance of parenting and work they preferred during the marriage and tended to continue that preference after the separation. There was much more continuity between pre-separation and post separation parenting

arrangements than there was discontinuity. Parenting arrangements changed substantially in only 3 of the 15 cases. Parenting arrangements were judged to have continuity when the parent who was in the primary parenting role in the two years prior to the separation, continued to have a major proportion of the parenting responsibility.

Marital Relationship Context

The one factor which was related to a spouse's total opposition to the divorce, and which exclusively characterized the high conflict couples was the unusually intense quality of the marital relationship. The intensity of the relationship was rated as high when one spouse made direct, unsolicited statements about the intensity of involvement in the relationship. For example, the wife in one of the high conflict couples, made comments about how she and her husband were "mentally as close as twins" and "were together as inseparable twins," and described their friends as telling her that her husband was overly dependent on her. Another husband in the high conflict group described his marriage as follows:

I: Well, help me, I'm still kind of puzzled about something and that is how, or why the two of you didn't do any talking to each other before going to court. . . .

H: What it amounts to—I guess I was totally put out, hurt or whatever. . . . If ever there was a married man, I was married. I mean, I was married to her and her alone and, and you know, absolutely nothing else involved, and I guess I felt like my total dedication to this person for, what? 22 or 23 years that I had known her, and had no earthly idea that I would ever be living with any, living with somebody else or living without her. I was—I was mad, but not really. . . . [not] mad really, but hurt.

Later in the interview he commented:

Well, I think, I think it [wife] was not bad, but irresponsible. I mean a responsible person would not have done that . . . would not have abandoned the children—well, I say "abandoned." That's not totally accurate. But would not have turned their back on the children in that manner.

In fact his wife, who saw the children regularly, had not abandoned the children, she

had abandoned him. In response to a question about how he would characterize his relationship with his wife now, he said:

As far as I'm concerned, that woman that I married and lived with for all those years is dead. And that's the way I view it. I mean, my interpretation of love is not like the soaps. I mean, love is forever. So the person that I married and loved for all those years is dead and gone. There is another person walking in her—clone, or image—that I don't know—I don't have any idea who they are. So that's the only way I can handle it.

Another husband in the high conflict group characterized his marriage as follows:

Well, my idea of marriage was that the two of us formed our own little world and had very little to do with the outside world. And that's how I wanted it. And we did everything together for years. The first couple of years we traveled, and we were inseparable for 24 hours. And then we started [own small business] and again, we were together for—the idea of having outside interests at the time was totally foreign to me. . . . I never saw divorce. My parents marriage I guess is a, I never saw my parents fight. If you look at it, my mother is almost totally subservient to my father, but I think only on the outside. I think they get along as friends, the like to be with each other. And divorce was something I had no experience with at all, never could dream about it.

His wife described their relationship similarly:

W: See, we had the kids at home together, we didn't have a very typical marriage, I don't think. . . . we had our kids at home together, he helped with the delivery, he was staying at home, I was working, it was really fairly atypical. . . . we chose to [start a small business together] because we wanted to be together. We enjoyed being together . . . and we had been together for 24 hours a day, all the time. . . . We were very close, I mean we were always together. So, you can imagine why I needed some space from him, I guess—

I: And he just couldn't understand it.

W: All of a sudden, "What is this person that all of a sudden needs some room and [big sigh]. . . . My friends laughed at me. "You are so into marriage, I don't believe it!" And so I changed.

This couple experienced and continue to experience an extremely high level of conflict as reflected in four subsequent court fights over child support and custody.

In summary, all of the couples in the high conflict group were characterized by the unusually intense nature of the marital relationship. It is striking that all of the high conflict cases were characterized by angry husbands who were strongly

opposed to the breakup of the marriage. Should it be inferred that men are more likely than women to resort to coercive bargaining strategies and extreme hostility when they are left by their spouses? This finding may be skewed by the fact that the wives were twice as likely (8 wives, 4 husbands) than their husbands to initiate the separation, so husbands had more opportunity to fill the role of angry victim. This intriguing question of gender role differences in coerciveness of bargaining in custody negotiations when in the role of the victim being left needs to be explored further, using a larger, more representative sample.

The Divorce Context: Leaver/Left Issues

One of the most striking findings in the study was the profound effect that guilt over one's role in the breakup had in weakening one's bargaining position in the negotiations. Three roles in the separation process were identified: leaver, initiator and guilty party. The "leaver" was defined as the spouse who wanted and pushed to get out of the marriage. The spouse who first suggested separation, or took the first action to separate was designated as the "acting initiator." The role of "guilty party" was assigned to spouses who either identified themselves or were identified by their spouses as having had their bargaining positions influenced by guilt.

Spouses assumed the role of guilty party for different reasons: by being the leaver (the one who really wanted out of the marriage), by actually initiating the separation, or by having an affair. The role of guilty party could not be determined in one case (14) because of insufficient data. There was no guilty party in only one case (2). The leaver did not assume the role of the guilty party in only two cases (8, 12). In both of these cases, the wife assumed the role of the guilty party (in spite of the fact that the husbands wanted out of the marriage) because the wives were involved in an affair. Table 3 summarizes the effects of the divorce decision

Table 3

Effects of Guilt on Bargaining Position

Case #	<u>Roles in Separation Decision</u>			<u>Effect on Bargaining Position</u>
	Leaver Role	Acting Initiator Role	Guilty Party Role	
<u>Low Conflict</u>				
2	B	B	N	none
4	H	H	H*	acceded to W's request to keep house
7	W	W	B	gave W 1/2 of assets
10	H	B	H	H acceded to W's demands
15	H	H	H*	H gave W "everything"
<u>Moderate Conflict</u>				
1	W	W	W	W settled for only 50% physical custody
3	H	B	H	H acceded to all W's demands
6	W	W	W*	H's anger increased conflict over child support
8	B	W	W**	W would have pushed harder for sole cusdody
9	W	W	W*	W gave H "everything"
12	H	H	W**	W acceded to all H's demands
14	H	H	?	insufficient data to evaluate
<u>High Conflict</u>				
11	W	W	W*	W would have pushed harder for sole custody
5	W	W	W*	W gave H "everything"
13	W	W	W*	H very angry, went to court

* affair, but not overtly used as bargaining chip

** affair used as bargaining chip or threat in court

B both

N none

—making process on the couples' negotiations.

Another striking finding was how few of the separations were mutually negotiated decisions. In only three cases did both spouses report that they had mutually negotiated their decision to separate. However, the only case in which it appeared to the investigator that the desire to divorce was truly mutual was a couple who had separated three years prior to the legal negotiations and then had three years of couple's therapy, after which they mutually decided to divorce. Even though two other couples said that their decision to separate was mutually decided, what they meant was that they had mutually agreed to separate, not that both spouses desired to end the marriage. Evaluating the degree of mutuality in the separation was not an easy task. The couples sometimes disagreed with each other's ratings about the degree of mutuality/opposition to the separation, and the descriptions parents gave about the separation in the interviews sometimes contradicted their self-rating, with a trend for spouses to rate the divorce as more mutual than the interview data seemed to warrant. In assessing the mutuality or opposition to the divorce, a couple's self-rating of mutuality was accepted when both parents reported it was a mutual decision, except when a spouse's statement in the interview directly contradicted the self-rating, in which case, more weight was given to the totality of the interview data.

Covert Negotiations about the Initiator Role. The decision to separate caused much inner conflict and guilt, especially about the effects of the divorce on the children and concerns about hurting the spouse. Some parents agonized, sometimes for years, about their decision because of the fear of what it would do to the children.

One-third of the couples engaged in a process of covert negotiation about who would take the initiator role. In the five cases described below, the spouse who

wanted out of the marriage consciously decided not to take the role of initiator. In three of the five cases, one spouse (two wives and one husband) deliberately tried to provoke the other spouse into taking the role of the initiator (the provokers); in two cases, the husband decided to wait things out and do nothing in the hopes that the other spouse would sooner or later take the initiative (the waiters). The following quotations from these five couples illustrate parents' inner conflicts about initiating the separation, their covert negotiations with each other about who would assume this onerous role, and their concern about how assuming the initiator role might harm their bargaining position in the divorce.

The Provokers. The wife (prolonged haggling, high conflict group) in the first of these three cases said:

At the time our marriage was breaking up, it was clear to me before it was clear to Jack that we probably would be separating, and so I didn't want to lose custody of my child, and didn't expect that I would be losing custody because at the time Jack was undergoing some pretty severe psychological problems which was part of why I stayed in the marriage so much longer to be of support to him because he was having personal difficulties with the marriage breaking up. [It] was causing a fair amount of that depression and anxiety, but beyond that he was having more of a mental breakdown that would be expected because of a marriage breaking up, I mean he was dealing with a lot of personal problems and so I had to stick by him as a friend even though I had come to the decision that we were not going to be husband and wife anymore, but I didn't want to cause a lot of hostility. And I was afraid that he would get vengeful and try to get major custody. And I didn't want to do that, so also partly I sincerely didn't want to cause him a lot of pain and be the "bringer-on" of disastrous psychological problems and yet to continue to be his wife when I didn't want to wasn't helping his self esteem either. So there was a point at which I had to withdraw and be firm. It was very hard for me to know when you are being firm and being cruel. And how far away is drawn away enough so he can grow on his own and how far away is so far away that you're abandoning someone that needs your help?

Two themes are evident in this statement: her concern for hurting and abandoning her husband and the fear of harming her bargaining position regarding custody by creating a hostile, vengeful spouse. She felt extremely guilty about

breaking her marital commitment and angry that her husband would not agree to a mutual separation.

I was really mad at Jack for forcing me to stay in the marriage and I saw no end to it at that time. I felt, he gave me an out [before they married], I decided to stay with him and have a kid. "You made your bed now sleep in it. This is it. This is your life. You have decided." And I was very hard on myself to not go back on that commitment. But I was angry about it, I felt that he had me over a barrel and that there was no way I could escape.

She tried to provoke her husband into taking the initiator role by flaunting an affair in front of him, but he refused to respond to the provocation, and she eventually initiated the separation. The husband's perspective on their covert negotiations follows:

I: As a result of who wanted out of the marriage, did you and Jane assume any roles?

H: Roles, um. . . Well I think she may have assumed the role of provoking me to want to leave. I remember times when . . . she would get me so mad that I would start packing my bags and I'd always stop short of actually leaving. So I would think of her as pushing the limits . . . but I think leaving the house is kind of like leaving the family, which means leaving Heather. . . . But I think if she could get me to do it, that would have been, you know, better. And then I could take the blame so it wouldn't be because Jane was gay, it was because I up and left, you know.

Two other couples handled the decision to divorce like a hot potato, tossing the responsibility for making the decision back and forth between them. One wife (moderate conflict) said that her husband wanted out in the worst way, although he never said so when he was sober. What he did instead was to escalate his drinking and outrageous behavior (pounding on walls, living by himself in the downstairs, putting his fist through her bedroom wall when she was asleep, and missing work). She thought he was deliberately provoking her to take the initiative to separate. When asked how she knew he wanted out if he never said so, she replied:

W: I guess just because of his attitude. I mean he was never really in it. He didn't want to get married in the first place. . . .

I: But did he ever say to you, "I want out?"

W: Several times, but like I say, he was usually bombed on his ear when he did it. So, then he wouldn't remember the next day. And usually he would

turn that around and say, "If you're so unhappy, you get out!" Like, "I want you to make the decision. I don't want to do it." And I always had the feeling that this drunken spree was something like a catalyst . . .

Her husband tried to put her in the role of the "bad guy" by blaming her for "running home to mama" which he felt was the "ultimate betrayal." She said, "I broke first, so he won," yet both spouses rated the decision to separate as completely mutual. So although the husband succeeded in provoking the wife into mutually agreeing to the separation, he did not succeed in getting her to assume the role of guilty party. She said:

W: He folded on just about everything.

I: Why do you think that is?

W: Guilt!

I: Very simple, right?

W: Yeah, yeah, there is no doubt in my mind.

Her husband said:

H: I think what took place as to who was going to crack first as far as who was going to walk out on who first and say, "I can't handle this anymore." . .

I: And what, why was it so hard to be the one to say—-who was going to leave? I mean, why was that an issue?

H: Primarily for the children. We both felt very strongly, we had an obligation to the marriage, that's what kept drawing us back together, whatever, would be the fact that we felt we owed it to the children to stay together.

A third couple (low conflict) went to extreme lengths to avoid taking the responsibility for ending the marriage, although the wife had clearly wanted out for a long time and was spending long hours at work with her boss. She said, "The decision to divorce because neither one wanted to drop—-[make] an end to something. You know, we are really kind of funny that way." Over and over in the interview, she said, "I couldn't tell him. I didn't want to hurt him." She said that if her husband hadn't moved (he moved to another state to change jobs) at the time of separation she does not think that she ever would have had the courage to initiate a separation.

I don't know that I would have done it, because everything fell into place perfectly, he was moving and that afforded me, that didn't in my mind, I wasn't leaving. Because in my mind, if I was leaving I would be the physical one to walk out of the house. And I wasn't. He was the physical one to leave, even though it was the circumstances, so the circumstances played perfectly. If he had stayed in Philadelphia, I don't know that it [the separation] would have occurred then. . . . Things just fell right into place, that I didn't have to, in my mind, leave. I wasn't leaving. Jim was the one who was moving. I wasn't. So I was just continuing to exist as I was, which was irrational thinking but it got me through it!

She said they never sat down and discussed their decisions in a deliberate way.

. . . it's such a big step that you don't like to make a big deal out of it, make a bigger step than it really is, knowing it's a big step. It just evolved and evolved and came to that conclusion. And we had been separated for quite awhile, and he said, he kept saying, "Well, should I, it's past the 18 month separation thing, shall I go ahead and go to the lawyer and go ahead?" And I could never really say yes, not that I didn't want to, but it's a hard thing to say yes to, it's a hard thing to finalize it. Neither one of us wanted to be the one to say, "Yes, go ahead." And I'd say, "Well, if you really think it should be." [and he would say] "Well, do you want me to, well, do you really think I should?"

Her husband, who first played the role of the victim and then the role of initiator articulated the pros and cons of each role. The husband said:

. . . I decided to take it out of her hands, ah, and that was to say that it was no longer her decision, and she wasn't welcome to come here. I had put up with the limbo long enough and finally had had it, and I had to get on with my life. It was a very agonizing thing to say that because, ah, you must understand that as long as she decided not to be with me, I didn't feel any guilt. As soon as I was the one who said, "You are not going to be welcome here, then I began [he changes subject]. . . . [The role of initiator was] not more difficult, I felt guilty about it. Up until that point she was calling the shots. She was the determinant of whether she was going to be in the family or not. . . . So when I told her, "This is enough, I can't take it anymore.", now I felt as if I'm denying her the kids. I am denying her the benefit that should accrue to a woman who supported a man in business. . . . I couldn't, I never have been able to feel, genuinely feel, completely that I acted morally and uprightly and all the rest of that. . . . Before the switch [from role of victim to role of initiator] I felt impotent. Ah, afterwards, I felt like I'm finally getting control over my own life again, so from that point of view it was a lot more comfortable. . . . [but] I took on the responsibility that a chief of state must have when he bombs civilians in another country, you know, it's an awesome thing. I mean, my little piddley marriage here doesn't compare with that, but its the same feeling though.

The Waiters. Two fathers (moderate conflict group) stated that they deliberately avoided the initiator role, and chose to wait things out in the hopes that their spouse would make the first move. They decided not to initiate a separation partly out of guilt about what it might do to the children, but also because of concern about the negative effect it might have on their bargaining position. One of these fathers stated:

Part of me that wanted to get close to somebody else, and I felt the deep, deep malaise while I was married that I was never going to experience any kind of closeness with another person. And that when I discovered that she was involved [with someone else] it gave me the freedom to have another life. . . . And this gave me a reason to get out. . . . And I wanted to live a life too. But as I said, the guilt, the guilt that I would have felt if I had just walked out, because you see if I had walked out, I—

I: So you must have had very mixed feelings then about finding this [wife's affair] out.

H: Yes, very mixed feelings.

I: In some ways, really kind of like it was a release.

H: Liberation. It was liberation. . . . The thing is that if I had walked out, then the kids would have stayed with her [the mother], I would not have any claim, she would have gotten sole custody, and I would have gotten I was thinking about it [separating] during this period, late 70s early 80s, of being unhappy. I mean, I never actually sat down and said, "Well, listen, if I walk out what is going to happen?" But I had a sense that if I walked out then I would be the secondary parent.

A second husband stated:

And I had gotten totally fed up with our relationship over the last year, year and a half, and had decided that the next time she brought it [divorce] up I was going to jump at the chance. And I wasn't going to bring it up. And I wasn't going to drive her to bring it up. I mean, I tried not to change our relationship at all. But I just assumed that what would work out would work out, and that'd be great. But—if she brought it up, I was going to jump at it. . . .

I: Let me ask you, what made you decide not to be the one to bring it [the separation] up?

H: Because I thought that would hurt my chances of getting the kids, as much as I might otherwise, if I initiated the divorce and moved out.

Later in the interview, he stated:

H: Well, it [not being the initiator] made me feel like I was in a stronger position. That's why I avoided being the initiator myself. I probably didn't take much advantage of it, but at least I felt better about it.

I: Do you have any sense of how it influenced your negotiations?

H: If I had left, I probably would have had to have gone to court and probably would have done it. To get anything. Because she probably would have forced it.

However, at another point in the interview he confided that he had successfully used the wife's initiation of the separation as a bargaining chip.

I was putting most of the financial burden on her. Partly, one, because she makes more money than I do, and, two, because she initiated it. So it was a twofold thing.

Even when spouses believed that their mate wanted out of the marriage as much as they did, and were consciously trying to avoid the "guilt trap", the guilt still could affect their bargaining position. A wife (moderate conflict group) who felt guilty about her role in the breakup commented:

No, there was no victim. And I wasn't the bad guy. He was, he was as ready for it as I was. He just wouldn't—like anything else, he wouldn't take the initiative. . . . Because I did feel some degree of responsibility for that [initiating the separation]. And occasionally he would throw that in my face. "Look, you're the one who wanted this now. You're going to have to pay for it."

I: So he tried to use that as a bargaining chip?

W: Occasionally, yes. Little lever. I wouldn't say it was significant. I wasn't going to fall into that trap.

But, later she said:

I guess the biggest problem [during the custody negotiations] was that I felt so guilty and it was such an emotional time. He—I tend to be one that likes to go on guilt—lay guilt trips on myself. He knew that, and he took full advantage of it.

I: Guilty because you decided to—

W: Because I had initiated it.

In summary, covert bargaining about who would be the initiator occurred in all three conflict groups: low conflict (n = 1 wife), moderate conflict (n = 3 husbands), and high conflict (n = 1 wife). Thus, there did not appear to be a strong relationship between covert bargaining and overall level of conflict. However, two of the moderate conflict husbands believed that, had they assumed the role of initiator, they would have had to litigate in order to get the kind of time they

wanted with their children, so that waiting for their spouse to take the initiative may have had the effect of decreasing potential litigation. Waiting was a more effective strategy for getting the spouse to assume the initiator role or guilty party role (the ultimate goal) than trying to provoke the spouse, perhaps because it was less obvious to the spouse. Three of the five spouses succeeded in getting their spouse to either mutually agree (one moderate conflict husband) or to initiate the separation (one low conflict wife, one moderate conflict husband). Thus, the data on who initiated the separation was not significantly skewed by the collusive bargaining.

The one—down bargaining position of the guilty initiator was also a strong theme among the other cases in which one spouse assumed the role of initiator without a power struggle. One husband said, in response to this question asked by the interviewer:

I: What roles did you and Sally assume as a result of how the decision to divorce was made? And let me give you some examples. Did you feel like you came out of there [the decision to separate] and one was neutral, or one was sort of the good guy and one was the bad guy, or one was the victim and one was the, you know, kind of

H: (interrupting) I think I played the martyr and the victim, and Sally was the bad guy, because she was the one who was leaving. I think that's true of whoever leaves. Whoever stays in the house, whether it be man or wife, I think that signifies to the community and friends that, "Hey, I'm still here and the other person is the one that's leaving, you know." So I think you naturally fall into those roles, whoever stays there at the house. . . . Usually the one that walks out of the marriage, usually—more so now than it used to be—is the one who leaves the physical vicinity and proximity of the home. Because I think men are wising up. I sure did. And I think women are, too. If your spouse says, "Hey, it's not working. We need to separate." Well, ta—ta, you know, "You're the one that's [leaving], you're pro—action.

This husband articulately described another finding in the study. The guilty party moved out of the family home in 12 cases. The three exceptions involved a husband who wanted to move to another city, and two couples who alternated between staying in an apartment and in the family home, because both parents

refused to leave the family residence for fear of harming their bargaining position by opening themselves to charges of abandonment. In none of these cases, did the spouse who felt most guilty about the breakup stay in the family home when the other spouse wanted to stay.

This same husband goes on to describe the impact the roles of "martyr/victim" and "bad guy" had on their negotiations.

Well, I think it put her in a more vulnerable position than she would have been in, had I been the one who left. You see, when the man leaves, particularly with a small child like that, it wouldn't have made any difference whether Sally was the biggest bitch in the world, the popular perception probably would be, 'How could he do that, okay, with a ten month old child?' There's that same thing with Sally when she left, whoever leaves is naturally the villain. And that's a very simplistic way to look at it, but without being privy to the ins and outs of the relationship, people normally look at it superficially, and I think whoever leaves is the bad guy. . . . If the roles had been reversed, I don't think I would have had a leg to stand on [in court].

He went on to tell how being the parent to stay in the home gave him the argument of stability—being the parent who was able to provide continuity for the baby.

And I could make the argument that, well, look you know, I'm still at home. This is the bed that Johnny has been in and slept in every night until we separated.

One factor which consistently characterized the high conflict couples was one spouse's total opposition to the divorce. All three of the high conflict husbands rated themselves as being totally opposed to the breakup of the marriage. However, while total opposition to the divorce may be a necessary factor, it is by itself insufficient to explain parental conflict in the custody negotiations, since one husband in the moderate conflict group and one wife in the low conflict were also totally opposed to the divorce.

One spouse being involved in an affair does not seem to be a key variable influencing the level of conflict in the custody negotiations. This conclusion is

based upon the fact that of the nine couples who reported that one spouse knew of the other spouse's affair at the time of the initial negotiations, six couples were able to work out their parenting arrangements with low or moderate levels of conflict. Most parents were able to separate out their own pain, anger and desire for revenge and focus on what seemed best for their children and what parenting arrangements suited their particular lifestyle. The effects of having an affair may cancel each other out. It increases the level of anger and thus the potential for conflict, but it simultaneously gives the party being left a powerful bargaining chip, which can be used as a threat to coerce the guilty party to give in to the other's demands. Thus, at times, an affair may serve to reduce conflict by discouraging litigation. It should be noted that these dynamics were in the legal context of North Carolina divorce law and that bargaining strategies are likely to be very different, for example, in California where there is a strong presumption for joint custody and parents are required to mediate before they can even go to court. Such a legal context would certainly decrease the threat of exposing a spouse's affair in court, since with mandatory mediation, fewer couples end up in court.

Shiller (1984) found that, when both parents desired custody, joint custody was more likely to be chosen when the mother was both the initiator and felt guilty about her role in the break-up. This finding was strongly substantiated for both mothers and fathers in this study. When both parents desired custody, parents who felt guilty about their role in the separation were more likely to accede to their spouses' preference regarding custody. Two fathers (low and moderate conflict groups) who initially preferred joint custody accepted their wives insistence on sole maternal custody with little resistance. All three mothers (two moderate conflict and one high conflict) who had preferred sole custody at some point during the negotiations, but felt guilty about their role in the breakup, eventually agreed to

joint custody. Thus, particularly in the moderate conflict group, a spouse's guilt served to dampen conflict, particularly among those parents for whom fairness was an important value. These parents seemed to be following the implicit rule that the guilty party should pay.

Guilt did not operate in the same way in the high conflict litigation group as it did in the moderate conflict group and in the prolonged haggling case. In the litigation group, the wives initially felt very guilty and amenable to what their husbands wanted, but eventually reciprocated their husband's intense hostility and coercive bargaining strategies with their own. It seemed that for guilt to be an effective bargaining chip, the victims should not overplay their hand. Tactics such as child-napping and litigation turned guilty spouses into victims, and hardened their position. This confirms Burn's (1973) hypothesis that a combination of negative-other and positive-other orientations is unstable and tends to become symmetrical, with both spouses having jointly held positive or negative orientations.

The extent to which the court loomed in the background of the decision to end the marriage, influencing parents' decision-making long before they actually separated was a surprising finding, not found in the initial pilot study. Wives are most frequently the initiators of divorce (Zeiss, Zeiss & Johnson, 1980) and one commonly offered explanation is that women are more sensitive to problems in the relationship and therefore are more likely to initiate ending the relationship (Hill, Ruben, & Peplau, 1976). Perhaps husbands' perception that the courts favor mothers is another reason husbands avoid the role of initiator.

The Legal Context: Factors Influencing the Decision to Litigate

Parents must decide to negotiate their parenting arrangements between themselves (either directly or through their attorneys) or in court where a judge

decides for them. The legal context is defined simply as parents' perception of who would win if they went to court and their assessment of the costs and benefits of going to court. The legal context provides the pervasive backdrop against which the private negotiations take place. The prevailing legal norms for custody, child support or property division give the bargaining couple some notion of what the court would impose if they failed to reach agreement (Mnookin and Kornhauser, 1979). Most of the parents ($n = 13$, 86.6%) kept their initial custody negotiations in the private arena. This sample is comparable to the population of divorcing couples; it is generally estimated that 10% of divorcing parents go to court over custody (Kressel, 1985; Weitzman & Dixon, 1979).

Based on a review of the literature, one research question dealt with the extent to which the legal context influenced parents' custody negotiations. The legal context was a major factor influencing couples' initial negotiations in over half ($n = 8$) of the cases (see Table 4). The legal context was judged to have influenced the negotiation process if: (a) parents stated a belief that the court favored the parent of the opposite sex and that belief had made them hesitant to bargain for what they wanted (H10, H3); (b) if either parent had actively considered going to court (8, 11, 12), or (c) if either parent had begun litigation by filing a suit for custody, but quickly dropped the suit (W1, W8); or (d) when the case went to trial (13) or was settled immediately prior to going to court (5). Four of the couples either initiated or completed custody litigation during the initial negotiation period. How the legal context affected parents' initial negotiations is illustrated in Table 4. The frequency of litigation after the initial negotiations were completed is illustrated in Table 5.

Why Parents Did Not Go to Court

Parents expressed a number of factors that influenced their decision to avoid

Table 4

Consideration of Legal Context in Initial Custody Negotiations

<u>Case #</u>	<u>Spouse</u>	<u>Legal Action Considered or Taken</u>
3	H	Hesitant to bargain, because believed courts favored women
10	H	Hesitant to bargain, because believed courts favored women
8	H	Actively considered litigation for sole custody
11	H	Actively considered litigation for sole custody
11	W	Actively considered litigation for sole custody
12	H	Actively considered litigation for sole custody
12	W	Actively considered litigation for sole custody
1	W	Initiated litigation for sole custody but dropped suit
8	W	Initiated litigation for sole custody but dropped suit
5	W	Litigated for sole custody, settled day of trial
13	H	Went to trial for sole custody

Table 5

Frequency and Focus of Subsequent Litigation

Case #	Spouse	Action Taken
10	H	Initiated litigation for joint custody but action dropped because H felt he could not win
5	W	Went to trial for child support 3 times
15	W	Went to trial for child support 2 times
5	H	Went to trial for sole custody (had joint custody)
14	W	Went to trial for removal of father's parental rights based upon nonpayment of child support*

*cooperative private agreement

going to court. A number of parents mentioned the influence their attorneys had on their decision about going to court. One husband said that his wife became very conciliatory and willing to compromise after her initial visit with her attorney. He surmised that the attorney had informed her that her chances of getting what she wanted (sole custody and the house) in court were slim. Another wife said her attorney advised her to stay out of court if she could. On the other hand, another husband said that his attorney was "gung ho" about going to court because he thought the husband had a good case because he could prove infidelity and he had been the primary parent during the marriage. Another husband reported that his attorney never directly told him whether or not he should go to court, but nevertheless, the attorney's attitude influenced his decision.

I: And you were trying to get a sense of, you wanted, basically your question to him [his attorney] was, "What are my chances in court?" Is that fair to say?

H: Yeah. And it was sort of unclear, I don't know, it's hard to say, I've been trying to remember. But, I mean, it's hard to say, but if he had said to me, "You know, if you go to court, we have a very good chance of getting the house, let's go to court," I would have gone to court. But he never said that. . . . I got the sense that he did not want to go to court. Which made me think that I should not go to court. And I want him to be very enthusiastic about the chances of winning. . . .

In this statement the husband said that he would have gone to court if his attorney had encouraged him. But his intense ambivalence about going to court and the multiple factors that influenced his decision were revealed a little later in the interview.

I: It sounds like there was enough uncertainty so you didn't do it [go to court], because if you had been really, really sure, you might have done it. Is that a fair statement?

H: No, it's because I didn't want to fight. The fight was too painful. I mean basically, if they ever put the kids on the stand, the kids would not prefer me to their mother, I knew that. . . . see what I should do is basically what I did do [compromised rather than litigate], but what I wanted to do was to get the house for myself. So you know, there are two reasons why I didn't get the house. One reason is because I did what I should have done, and the other reason is because I was afraid of the fight. And if I'm honest

with myself, it's because I'm afraid of the fight, so I did what I should have done, not because out of any kind of moral principle, but because I want to avoid the conflict.

One father who was initially in the high conflict/prolonged haggling group said he deliberately avoided talking about his situation with other people because he realized that he was vulnerable and it wouldn't have "taken much to get myself stirred up." He didn't want to let others "get me gung—ho" about litigating for sole custody. He finally decided to see a therapist to have someone objective with whom to talk. When he was asked how he had avoided escalating the conflict (litigating for sole custody) since his anger about the separation had been so intense and prolonged, he stated:

Yeah, because I had time to think about it. . . . I think one of the ways I keep from getting too angry is just thinking about what I don't want to be, just using negative reinforcement. "Do you want to be like these people you see in court? No!" Seriously, like one of the things that kept me off of Jane's back is reading some of these cases where lesbian mothers have lost their children, and just how badly it does. I certainly don't want to be like this person I just read about, you know. I'm in the same position, you know, what I can do not to be like that.

His wife had given him articles to read which described the devastating consequences of court fights for gay mothers and their children. He was confronted with what the probable outcome of a custody fight would be: his wife's estrangement from himself, the extended family, and most important, his son would lose his mother. He decided it was too big a price to pay for sole custody. So, although this couple was categorized as high conflict because of the prolonged and harassing nature of their negotiations, they also utilized a number of positive negotiation strategies such as appeals to fairness, suggesting alternatives, making rational arguments, and pointing out consequences of alternative courses of action. This high conflict couple ended up with a cooperative/friendly parental relationship.

Overall, only three attorneys actively encouraged their clients, two fathers

and one mother, to litigate for custody. Kressel (1985) found little evidence for the popular image of attorneys as "gladiators" pushing their clients to fight and the evidence from the present study supports his findings.

One couple (high conflict group) who had argued for months about physical custody, mutually agreed to keep their negotiations in the private arena. The wife said:

We both agreed that we didn't want a lawsuit and we could both see that our situations had enough problems in them that were we to have a lawsuit, which we thought would be bad for Heather, and neither of us could afford it, it was questionable as to who would win, because he [husband] had severe mental problems and was living in a shack with no running water and no electricity and had been seeing a shrink, and I was a lesbian. So you know, we both had ammunition to throw at each other if that happened. We both agreed that we didn't want to have ourselves or the other person smeared so we pretty much thought we better not even think about that. . . . I thought that I might win because my lawyer told me, I asked him and he told me that he thought that I would win. He said "You know, with Jack [husband] having mental problems and having been in the hospital and the place that he is living now, I really don't think the court would award custody to him", but I had heard that there was very few lesbian, openly lesbian mother[s] awarded children in _____ at all and I was afraid that the state might take the kid away from both of us because if the state feels that lesbian parents are horrible, and I adequately proved that Jack was horrible, we would have destroyed our entire lives by openly having the court step in. And I doubt that would have happened, my lawyer said he didn't think that would happen cause I'm a really good parent, but you never know. The courts are really weird about sexuality.....So I didn't want to find out.

Another couple also mutually agreed to keep their negotiations out of court.

The wife stated:

The lawyers really didn't have much to do with it. We were trying to keep them out of it. We were trying to keep the thing out of court. We felt that we should be able to reach a better. . . . decision than the courts could. And I don't think either one of us wanted to take a chance on a judge. They are too unpredictable. . . . I did not want to go before a judge and have all of our dirty laundry aired before the whole world. And all the charges that are made, and you just end up hating—everybody just hates everybody. And my lawyer said, "Well, you know, in this particular case the judge may just say, "I can't even render a decision. You two go figure it out." And we would have spent all that time and money and emotionalism in a courtroom, and still have the judge say "Go work it out." Tom was so cheap, he'd do anything to keep from going to court, because he didn't want to pay for it because it would have cost a lot of money. Um, we did try to, we did really

try to keep in mind what would be best for the kids. . . . I wanted to avoid court at all costs, because I was afraid that he would get the kids. He wanted to avoid it because he didn't want to pay the money. So we both had different reasons, but we both wanted to keep it out of the court.

Another husband said:

H: I think I have always gone on the premise that going through the legal process she could get pretty much whatever she wanted—rightly or wrongly, I made that assumption. . . .

I: What do you think your reasons were for not wanting to go to court?

H: It's hard on the kids. It's also expensive. I think we found it would cost us probably both about \$5,000 each to go to court. And we may end up with an agreement that neither one of us liked as much as we could work out ourselves. Cause you sort of throw yourself on the mercy of the courts.

In summary, parents voiced a number of reasons for not going to court: it would be hard on the children; they didn't know what the court, which they saw as capricious, might do; they felt they didn't have the emotional or financial resources to sustain a court battle; they didn't want to "air their dirty laundry in public"; they thought their chances were no better than 50/50 and they didn't like to gamble on the outcome. The bottom line for those couples who actively considered going to court but decided against it was that they didn't want to run the risk of going before a capricious authority who might well give them something worse than they could get from each other. They decided it was wiser to try to negotiate a settlement with their spouse.

Why Parents Did Go to Court

The two cases (5, 13) in which custody was the focus of serious legal conflict (the case either went to trial or was settled in the courtroom just prior to going to trial) had several similarities. In each case the wife had had an affair and had left the husband, who then assumed the role of the injured party. The men were hurt and furious at being abandoned by their wives. But this did not, in itself explain the custody litigation, since six other husbands and two other wives were in the same situation, and did not go to court.

Several factors contributed to the decision to litigate custody in these two cases: (a) refusal of one party to privately negotiate either because of a sense of powerlessness (1 wife) or from a sense of moral outrage and the self-righteous belief that they were "right," (2 husbands); (b) the strong expectation that they would win in court and the support of their attorney to litigate; and (c) no expressed concerns about how litigation would affect the children or desire to avoid conflict.

One husband received much advice from friends, family and his lawyer about going for sole custody. The family was very polarized and actively took sides, with each parent being coached by his or her group of supporters. The husband's attorney was sure he would win his case, and he flatly refused to negotiate privately with his wife who was initially willing to share physical and legal custody on a 50/50 basis. In response the question, "Was there a conflict for you in any of those decisions?", he said:

H: Oh yeah. It was to . . . file suit against that woman that I had loved and lived with so many years. I mean, you know, it was hard [for] me to, to do that. Cause knowing that I may hurt that person. And that just, that wasn't something that I wanted to do.

I: So that was a real conflict for you. How did you finally make a decision?

H: I guess by actually just sitting there listening to the attorney. He says, "Jerry, you have got to get on with your life. You cannot continue and have the uncertainty of your wife, what she's going to do, where she may carry the children. So you need to go ahead and do something."

This husband felt that the fact that his wife left him for another man meant that she was unstable. The father feared what kind of influence this man might have on his child, and that they might move away. His fear of losing his children, along with his anger toward his wife, and the polarization of their extended family (he received the active support of his father-in-law), along with the encouragement of his attorney and the expectation that he would win in court, all contributed to his decision to go to court. He lost his suit and was very angry about the outcome. Afterwards, he regretted that he had not negotiated privately with his wife.

Another wife explained her refusal to negotiate directly with her husband as follows:

You should say who is the more articulate, because that has everything to do with negotiations. Unless you have more power, but I'll say he was the more articulate, and he had all the power. . . . Legally he had the power, he had the kids, he had the house [because it was in his parents' name], and because the policeman come and said "Well, look, you don't have a place to put the kids", I felt like I had, I felt like I didn't have the power.

She described how she felt during the negotiations, "Well, anger and, mostly anger probably because of the helplessness." She made the decision not to negotiate directly with her husband, with the encouragement of her therapist.

. . . there was no more negotiation, there was no way left. The only things he said were things to try to make me feel guilty or to hurt me and even though, and then there were physical things he would do to try to push me, and I couldn't, I would not put myself in another helpless situation again, I would not.

After this wife's decision to stop talking directly to her husband the couple negotiated only through their lawyers. On the day of the court hearing, she compromised on joint custody instead of sole custody primarily because she was fearful and uncertain about the outcome of the trial. Each parent viewed the other as having a hostile, spiteful orientation to the other (Burns, 1973). The wife said:

So I would say he is still angry and he's still trying to hurt me and he's still trying to take it out on me and all that crap. I've seen a lot of people divorce and I've seen a lot of interaction and I've never seen anybody so (inaudible) and so vehemently opposed, so out to get me, I mean he just doesn't stop.

In discussing their property negotiations, she said:

He laughed and said that he didn't care if it was fair or not. Actually two years before we separated, he said, "If you ever leave me, you will never get the kids and you will never get the [business], and he was right.

This husband said that his wife was very angry with him, but he was confused about why. He also believed that she was trying to "punish" him by her several law suits for child support.

H: I mean she just was crazy when it came to this issue.

I: And this issue being?

H: Me. Me. Anything that had to do with me. And so we went back and forth.

I: Why was she so angry with you, Tony?

H: I don't have the slightest idea. I really don't. . . . She has no reason to be angry with me at all.

He seemed unaware of the effects of moving the children out of state, and of not giving the wife any share of their joint property. She responded by litigating for custody. The mutual coerciveness of this couple's initial negotiations continue to cast a long shadow.

The Financial Context

How did the financial disparity between the spouses affect the level of conflict in the initial custody negotiations? Five wives and one husband were financially dependent upon the other spouse. Spouses were considered to be financially dependent when they: (a) were not employed outside the home, (b) were working but not generating any income, (c) directly expressed that they were financially dependent on their spouse, or (d) one spouse contributed one-third or less to the total family income. The one exception to this last criteria was case 13. In this case the father was not categorized as being financially dependent because he did not view himself as being financially dependent on his wife. In addition, although he was litigating for sole custody, he was not seeking any child support from his wife. The father's income was temporarily low because he had recently started a new business and he expected a substantial increase in income over the next year. Parents' incomes at the time of the initial negotiations, the difference between their incomes, financial dependency, child support as a focus of conflict, and the use of child support as a bargaining chip are shown in Table 6.

Financial Dependency and Level of Conflict in Negotiations

As illustrated in Table 6, the financial dependency of one spouse did not

Table 6

Couple's Income During the Initial Negotiations (in thousands)

Case #	Wife's Income (% of total income)	Husband's Income (% of total income)	Income Difference (in thousands)
<u>Low Conflict</u>			
2	40 (58)	30 (42)	+10 wife
4	20 (50)	20 (50)	0
7*	0 (0)	50 (100)	-50 wife
10*	7 (29)	24 (71)	-17 wife
15*	0 (0)	0 (0)	0
<u>Moderate Conflict</u>			
1	22 (54)	19 (46)	+ 3 wife
3* a	0 (0)	32 (100)**	-32 wife
6 a	16 (35)	30 (65)	-14 wife
8 a	35 (60)**	25 (40)**	+10 wife
9	17 (38)	28 (62)	-11 wife
12*	0 (0)	32 (100)	-32 wife
14	25 (50)**	25 (50)	0
<u>High Conflict</u>			
11	3 (50)	3 (50)	0
5* a	7 (100)	0 (0)	+ 7 wife
13	20 (67)	10 (33)	+10 wife

* One spouse financially dependent on other spouse

** Spouse used child support as a bargaining chip

a Conflict about amount of child support

appear to be related to a couple's initial level of conflict. Three (50%) of the financial dependency cases were in the low conflict group, two cases (33.33%) were in the moderate conflict group, and one case (16.6%) was in the high conflict group.

Four couples had disputes over child support during their initial negotiations. In two cases (3, 5) one spouse was financially in need and financially dependent upon the other spouse. In the other two cases (6, 8), one parent was potentially much more affluent than the other, either because of an inheritance from parents, or because of remarriage to an affluent fiancé. One father, who expected a substantial inheritance from his parents, was concerned that the amount of child support be "just right" because he wanted the money to benefit his child, not his former wife. Their main conflict was about an escalation clause that his wife wanted to have based on his future income and he wanted to have based on the cost of living index. He said:

You know, if I were to have other income, you know, some kind of financial windfall at some point down the line, and you know, I wanted to have it benefit David [son], somehow I'd find some other way than child support to . . . you know. . . a college education or tuition fund or something like that.

Of the two wives who subsequently litigated for child support, both were in financial need at the time.

Child support was not an issue in couples where feminist/egalitarian values during the marriage (1,2,4) were a major theme in the interviews and when the spouses earned similar incomes. These parents chose 50/50 physical custody and joint legal custody and they just assumed that each parent would pay for the children's expenses when the children were with them. Neither of the two fathers who were in the role of primary custodial parent asked for or received child support.

On the basis of the above data, the following hypothesis is suggested:
Substantive conflict over child support is more likely when there is a discrepancy

between parents' current or expected future financial resources. In summary, the financial dependency of one spouse was not related to the overall level of conflict couples experienced during the initial negotiations. This is not surprising, since there is no reason to think that the financial need of one parent would necessarily influence spouses' degree of coerciveness in the bargaining. Financial need or unequal affluence, however, did contribute to substantive conflict about child support, and in some cases to increased hostility.

Child Support as a Bargaining Chip

A number of legal observers (Mnookin & Kornhauser, 1979; Neely, 1984; Polikoff, 1982; Reece, 1983) have expressed concern that fathers may use custody as a bargaining chip for decreasing the amount of child support they pay (i.e., "I'll give you custody if you accept less child support"). Finances were used as a bargaining chip by three couples, but contrary to what one might expect from the literature, in two of the three cases, it was the mother who first suggested trading increased time with the children in exchange for decreased financial obligations for the father. In one case, the mother proposed that the father would have no financial obligations if he would voluntarily give up his rights to all visitation and he accepted.

In the second case, the wife first suggested paying the husband a large cash settlement in return for letting the children live with her (with regular visitation for the father). This proposal angered and insulted the husband. Later, when he realized that his wife would go to court if she did not have the children at least 75% of the time, the husband decided to focus on trying to get the most favorable financial settlement he could in exchange for the wife gaining more time with the children. In the third case (3), the father threatened not to pay any child support if the wife moved to her parents' home out of state.

The findings discussed in this chapter about the factors contributing to conflict in the initial divorce negotiations are summarized below:

1. Parenting Context. There was considerable continuity between preseparation and postseparation parenting roles (only 4 cases of discontinuity). Parents had, for the most part worked out during the marriage the balance of parenting and work roles that they wanted. When both parents wanted extensive time with the children and a major parenting role, parents were more likely to experience substantive conflict about parenting arrangements. The young age of the child appeared to increase mothers' need for their children. A poor social support system also increased parents' need for their children. New partners sometimes increased and sometimes ameliorated conflict.

2. Marital Relationship Context. Conflict was increased when the parents had an unusually intense marital relationship that was unilaterally ended by one spouse in the face of total opposition by the other spouse. These spouses seemed to experience a greater sense of personal threat when the marriage broke up, which increased their opposition to the marriage ending and influenced the choice of more desperate and coercive bargaining strategies.

3. Divorce Context. The marital relationship strongly influenced the divorce context, particularly in terms of the amount of opposition to the breakup. The divorce decision-making process affected the negotiation process through the creation of powerful bargaining chips such as guilt and threats of revealing marital infidelities in court. Feeling guilty about one's role in the breakup consistently weakened a spouse's bargaining position in the divorce negotiations. Spouses assumed the role of guilty party for different reasons: by being the one who really wanted out of the marriage, by actually initiating the separation, by having an affair.

Having an affair increased spouses' anger and hostility toward each other, but did not necessarily influence the bargaining style parents chose or their overall level of conflict. However, it may have contributed to the choice of coercive bargaining strategies in couples with an intense marital relationship.

4. Legal Context. Parents' assessment of what would happen if they chose to litigate affected more than half of the couples in the sample. Most parents chose to keep their negotiations in the private arena, rather than go to court. Parents who chose to litigate did so because they expected they would win, one spouse refused to negotiate either from a sense of powerlessness or from a sense of moral outrage, and they expressed few concerns about how litigation might affect the children or the parental relationship.

5. Financial Context. Parents were more likely to experience conflict about child support when one parent was financially dependent upon the other or when one parent was potentially or currently much more affluent than the other parent.

CHAPTER V
LINKAGES BETWEEN THE INITIAL CUSTODY NEGOTIATIONS
AND SUBSEQUENT PARENTAL CONFLICT

This chapter focuses on the linkages between the initial custody negotiations (process) and subsequent parental conflict (outcome). Subsequent parental conflict is defined as conflict that occurred after the initial negotiations were completed to the time of the interview. The analysis examines the influence of bargaining style during the custody negotiations and the parents' perceptions of the fairness of the divorce settlement (independent variables) on subsequent parental conflict (dependent variable). The findings are compared to the outcomes predicted by two theoretical explanations of conflict: conflict theory as discussed by Straus (1979) and equity theory (Walster, Walster & Bersheid, 1978).

Two predominant themes in parents' accounts of their postnegotiation relationship were identified: (a) a cooperative–uncooperative dimension and (b) a friendly–hostile dimension. The cooperative–uncooperative dimension related to parents' ongoing decision–making about their children (amount of substantive conflict); the friendly–hostile dimension related to whether parents saw themselves as personally friendly or hostile, and reflected the emotional tone of their interactions with each other. Couples were assigned to one of four outcome groups: (a) cooperative–friendly, (b) cooperative–hostile, (c) uncooperative–friendly, and (d) uncooperative–hostile. Cooperative–friendly relationships were considered to indicate low conflict, cooperative–hostile relationships and uncooperative–friendly relationships were considered to indicate moderate conflict, and uncooperative–hostile relationships were considered to indicate high conflict.

Interviews were coded for parental conflict outcomes based upon the way parents described their overall relationship since the divorce settlement was reached. Parental relationships were categorized into one of the four outcome groups based on the preponderance of statements in the interview which reflected a general stance of cooperativeness or uncooperativeness about ongoing parenting decisions, and a hostile or friendly orientation toward the other spouse (see Appendix E). For example, parents made statements like, "We can't agree on anything," "We have a very cooperative arrangement," "I am a lot more optimistic that we'll be able to be cooperative and to maintain a fairly friendly relationship," or "I hate him!"

If parents either initiated or completed litigation, they were automatically categorized as having an uncooperative–hostile relationship. Bargaining style, however, was a less dominant theme in the descriptions of postnegotiation conflict than in the initial custody negotiation period. This was in part due to the fact that much less detailed data were collected about postnegotiation conflict than about conflict during the custody negotiations. The timeframe of negotiations was not mentioned by parents and was not used in assessing subsequent parental conflict. Substantive disagreements and emotional tone emerged as stronger themes in assessing conflict during the post–settlement period than bargaining style.

Thus, while the researcher's conceptual definition of conflict did not change from that used during the initial negotiation period, the relative importance of the behavioral indicators of conflict did change. The findings of the current study suggest that different indicators of conflict may be more or less relevant at different points in the divorce process, which has methodological implications for how parental conflict should be measured at different points in the divorce process.

The Relationship between Bargaining Style and
Subsequent Parental Conflict

In the low initial conflict group, the two couples who had a bargaining style of spontaneous agreement/consensus development both developed cooperative/friendly parental relationships. However, the three conflict avoidance couples all ended up with substantial parental conflict. Two of these couples subsequently litigated; one mother twice went to court for child support and one father initiated litigation for joint custody, but then dropped the suit before going to court, because several lawyers advised him that he would not win. These two couples were categorized as having an uncooperative/hostile parental relationship.

The pattern of covert conflict and conflict avoidance continued in the third couple who have continued to deny their conflicts as they did in their marriage and in their initial negotiations. This couple was categorized as having an uncooperative/friendly relationship, though that seems both illogical and emotionally inconsistent. Overtly, the parents were unusually friendly and cooperative about the children's free visitation back and forth, and their willingness to change schedules to meet each others needs. However, they were unable to resolve a serious covert disagreement about how to deal with their son's severe emotional problems. The wife was proud of how amiable their relationship was, while the father, who was the primary parent, was frustrated and angry at his ex—wife (although he did not directly express it to her) for deferring all decision—making responsibility to him. At one point, he speculated that his ex—wife:

exaggerated the closeness of our relationship, the cordiality of our relationship [because] it takes the sting out of it. . . and it makes it sound to the outside world that she is more involved than she really is.

Four of the seven moderate conflict couples who actively bargained for what they wanted, using both cooperative and moderately coercive bargaining strategies,

have developed cooperative/friendly parenting relationships. Two of the active bargaining couples, however, have developed cooperative/hostile parental relationships. Both of these couples were bright, well-educated and dedicated parents who were aware of the importance of cooperation, and the harmfulness of exposing the children to their hostility. They have established regular routines which require little parental negotiation other than planning for vacations and changes in the schedule. In both cases the husband had threatened to expose the wife's infidelity in court. However, since a number of other factors were involved in both cases, it is difficult to know what factors contributed to the ongoing hostility that the parents felt toward one another. The seventh couple in the active bargaining group was omitted from this analysis because of their cooperative agreement to have no further contact.

In the high conflict group, the couple who used prolonged haggling (lengthy, intense negotiations) eventually worked out a cooperative/friendly relationship. They resolved their ongoing dispute over how much time the son would spend with each of them by moving back in together, thus removing the source of their conflict. They remain divorced with separate private lives. Their unorthodox solution seemed to work for them.

The two high conflict couples who refused to negotiate with one another and chose to litigate have continued to have a hostile—uncooperative relationship with one another. One couple went to court four times about child support, and the father successfully litigated for sole custody. In the other case, the wife is currently demanding an additional \$10,000 property settlement through her attorney and this issue may well end up in court. They do not speak to each other except for necessary details about scheduling, and they communicate by letter through their attorneys. In addition, the wife has refused to let the husband have the children

other than the times specified by the court (every Friday and every other weekend). Since the judge did not specify how holidays or summer vacations should be handled, the husband is subject to the wife's whims on these matters.

Bargaining style was thus a useful predictor of subsequent parental conflict. When the five bargaining styles were examined closely, it became apparent that the bargaining strategies of conflict avoidance and litigation were surprisingly similar on one dimension: neither group was able to discuss or actively bargain about issues with each other. On the other hand, the spontaneous agreeers, the active bargainers and the prolonged hagglers were all able to talk things out, however angrily. Thus, when parents' initial bargaining styles were reduced to the most simplistic underlying dimension, they could be dichotomized into two groups: the "talkers" and the "nontalkers." Note in Figure 3 that the talkers were much more likely to have a cooperative/friendly outcome, while the nontalkers consistently had uncooperative outcomes.

One might expect that a low level of conflict during the custody negotiation period would lead to a cooperative—friendly parental relationship, while a high level of conflict would be more likely to lead to an uncooperative—hostile parental relationship. Surprisingly, the initial level of conflict did not necessarily predict how cooperative or hostile parents would be later on; that depended on how the low level of conflict was achieved. If the parents were avoiding conflict and not dealing with the issues, then conflict eventually erupted, however covertly. The evidence from this study thus corroborates Luepnitz's (1982) finding that level of conflict during initial negotiations did not predict later conflict. Bargaining style was a much more effective predictor of subsequent parental conflict.

The empirical evidence from this study strongly supports the hypothesis posed by some conflict theorists that there is a curvilinear relationship between the

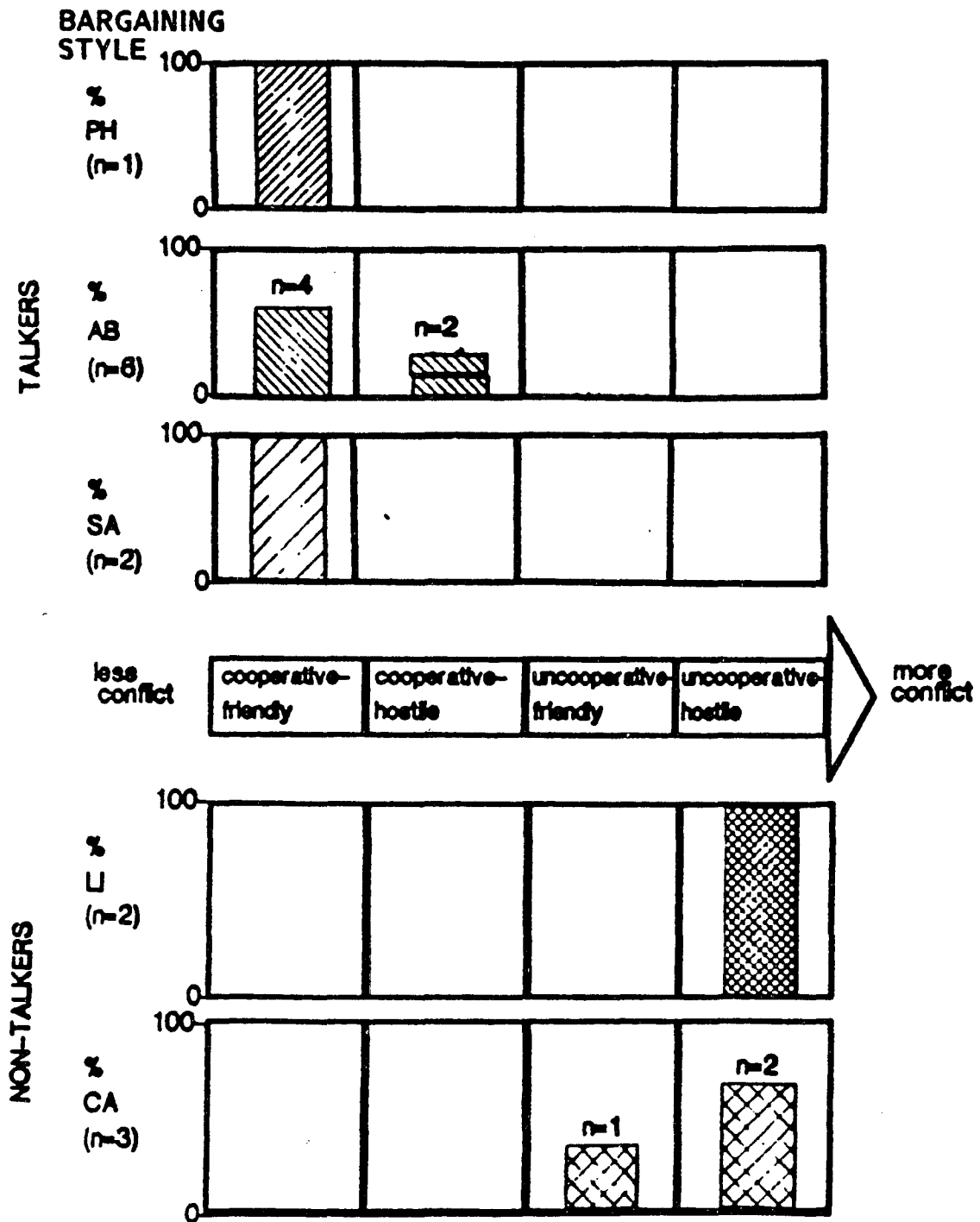


Figure 3. Relationship between Bargaining Style and Parental Relationship Outcome

amount of conflict and group well-being (Straus, 1979). When substantive conflicts were avoided in the initial negotiations, or when conflict was extremely high, the ability of the parents to cooperatively negotiate subsequent decisions was jeopardized. Straus (1979) hypothesizes that when conflicts of interest are denied, hostility is likely to develop because conflict avoidance prevents the parties from achieving goals that are important to them. In the absence of true spontaneous consensus (when important differences are not being denied or avoided), moderate levels of conflict, as reflected in the active bargaining group, may be necessary for creating workable parenting arrangements which both parents can live with over time.

However, while bargaining style was an effective predictor of ongoing parental conflict, it would be simplistic to assume that bargaining style adequately explains the subsequent parental relationship. It is useful to compare cases 5 (litigators) and 9 (active bargaining) in order to identify other factors which seemed to contribute to such different outcomes. In both cases, the mother initially left the children with the father, and the husbands were both very opposed to ending the marriage. However, one couple (9) developed cooperative parenting and a friendship, while the other couple (5) continued to experience numerous substantive disagreements and hostility. There were two important intervening variables, namely, adequate financial resources, and a strong support system. For example, in case 9, the father had both solid financial resources and a strong support system. Husband 5, on the other hand, had no income because his small business was failing, he had no friends, and he lived in an isolated rural area. One of the other high conflict fathers also had few financial resources and a poor social support system. In trying to identify the factors affecting ongoing parental conflict after divorce, one must consider a broad range of factors.

The Relationship Between Perception of Equity of the Divorce Settlement and Subsequent Parental Conflict

The data in this study strongly supported the outcomes predicted by equity theory (Scanzoni, 1979; Walster, Walster, & Bersheid, 1978). Couples in which one or both spouse(s) thought the separation agreement was basically unfair were more likely to experience ongoing parental conflict than those couples who thought that their agreement was generally fair. Most of the couples were satisfied that their separation agreement was basically fair. One or both spouses expressed a major theme of dissatisfaction with the fairness of their separation agreement (W5, W8 & H8, H10, H13, W15) in only five cases.

It should be noted that the couples who thought that their divorce agreement was unfair, with one exception (8, active bargaining), either litigated their initial agreement (5, 13) or used the bargaining style of conflict avoidance (7, 15), so there is considerable overlap between the two variables of bargaining style and perception of unfairness in explaining subsequent parental conflict. It is reasonable to assume that if parents were avoiding conflict and agreed to things they could not live with over time, they would also view their settlement as unfair. The couples who litigated also thought their agreement was unfair. In fact, none of the couples who went to court, either during the initial negotiations, or subsequently, were satisfied with how their case was handled or decided.

Perceptions of inequity contributed to the decision to litigate in three of these cases (uncooperative–hostile parental outcome); two mothers went to trial for child support (5, 15) and one father (10) initiated but later dropped a suit for joint custody. The other two couples (8, 13) had a number of less severe parenting conflicts, but basically had a hostile relationship with their former spouses. One

couple was categorized as having a cooperative—hostile relationship, and the other an uncooperative—hostile relationship.

The couple with the most inequitable settlement in the sample also experienced the highest level of conflict. The wife stated:

I was fighting to get the kids back because he had everything at the time so I guess he didn't have to fight for anything because he was sitting fairly pretty, except that he didn't have me which I guess was a terrible thing, but other than that, he had the kids, he had the house, and I had a car that was in his name and I was fighting to get the kids back.

Another mother went to court twice for child support because she felt her husband's failure to provide any child support was morally reprehensible and unfair.

One husband, who had agreed to sole custody when his wife adamantly refused to consider joint custody, and who subsequently sued for joint custody, deeply resented his wife's expectations that he would help out with the children when they were sick or needed a ride. He commented:

H: [I] Always took the garbage out, and yeah. . . . Daddy can't have, you know, joint custody, but Daddy can pick up the pieces. Ooh, that sound victimy!

I: You probably have some anger about that.

H: Yeah. Oh, I do. Not [as] much as I used to. I mean, hell, that's the way it is. But yeah. I do have some anger about that. That—felt like that a whole lot in the marriage. Happens less with less contact with Susan. But yeah, I have some, some difficulties with—you know, get to pick up the pieces but don't get to make the decisions. [I] don't like that. Tend to confront that. Tend to feel much more comfortable recently just confronting that. Confronting that in a non—angry way.

He told his former wife:

Listen, if Ronnie is sick at school, you have custody of Ronnie, you have authority to, you know, do the medical stuff. It's been very clear that, you know, you're not willing to share that. Oh, well, OK. Gee, I understand that you're at work, I'm at work too. We all have busy lives.

In the fourth dissatisfied couple, both parents got what they bargained for: the wife bore most of the children's expenses, but had the children nine months a year; and the father had few expenses, but had much less time with the children.

Each parent had to live with the negative aspects of their bargain. Both spouses thought that their agreement was unfair, both have expressed considerable resentment about aspects of their agreement, and they have had a number of conflicts about scheduling and access to the children during the other parent's time. However, this couple has been separated for less than a year and so it is difficult to predict what their level of conflict eventually will be. However, they have experienced more parental conflict than another recently separated couple who had similar levels of conflict during the negotiation period, but who both viewed their agreement as basically fair.

In the fifth case, a father who went to court for sole custody and lost ended up extremely dissatisfied with the judge's decision for joint custody (physical custody to the wife) and the amount of child support. He was bitter about the legal system, and felt that no matter what the situation was, the mother would get the children. There have been several financial conflicts which have been handled through the attorneys and remain unresolved.

In summary, the data support the predictions of equity theory that couples who are generally satisfied with the overall fairness of their divorce settlement will experience less subsequent conflict than those couples who feel that the divorce settlement was basically unfair.

CHAPTER VI

SUMMARY, CONCLUSIONS, and DISCUSSION

Summary

The custody decision—making process is a relatively uncharted area of investigation. This research contributes to the development of a theory of custody negotiations by identifying the relevant context, process and outcome variables from which to begin building it. There is a clear need for a better understanding of the complex factors that influence parental conflict and bargaining in the custody decision—making process and the linkages between the bargaining process and subsequent parental conflict.

Since this exploratory study sought to understand the unknown properties of the custody decision—making experience, a qualitative research methodology was required which enabled the investigator to examine parents' custody decision process in a small number of cases ($N = 15$) to identify the most salient variables for explaining parental conflict, both during the initial negotiations, and in the postnegotiation period. The investigator considered it essential to gather data from both the husband and the wife (11 cases) in order to understand the complex dynamics of the decision—making process. However, four cases (two husbands and two wives) in which only one spouse agreed to participate were also included in an effort to identify any systematic bias in the sample due to the possible exclusion of high conflict couples. A total of 26 spouses were interviewed (13 husbands and 13 wives).

The data from each spouse were integrated into a family case study (in four cases, data were available from only one spouse) and the factors influencing

bargaining and conflict in the decision—making process were identified. Five context variables that influenced parental conflict in the custody decision—making process were identified: parenting context (continuity with pre-separation parenting roles and parental need for the children), marital context (the intensity of the marital relationship), divorce context (degree of opposition to the separation and role in the separation decision), legal context (perception of outcome if the couple litigated and assessment of the costs and benefits of going to court), and financial context (discrepancy in parents' economic resources and financial dependency of one spouse on the other).

Five bargaining styles parents used in the initial custody negotiations were identified: spontaneous agreement/consensus development ($n = 2$), spontaneous agreement/conflict avoidance ($n = 3$), active bargaining ($n = 7$), prolonged haggling ($n = 1$), and litigation ($n = 2$). In order to facilitate analysis of the influence of context factors on the bargaining process, the cases were then grouped into three categories according to level of conflict (low, moderate or high) parents experienced during their initial negotiations. Four dimensions of conflict were identified: (a) substantive conflict (which distinguished between the low conflict group and the rest of the sample); (b) bargaining style (which varied along a continuum of increasing coerciveness); (c) emotional tone of couple's direct interactions (hostility or amiability of the negotiations); and (d) the timeframe of the negotiations (amount of time of continuous negotiations). Bargaining style was the main indicator of level of conflict during the initial custody negotiations.

Low conflict parents (5 cases) were characterized by little to no substantive disagreement and generally low levels of directly expressed hostility. All of these couples experienced a high level of spontaneous agreement. However, in three cases one or both of the spouses were assiduously avoiding or denying conflict and refused

to actively bargain for their preferences (conflict avoidance bargaining style). The bargaining styles of spontaneous agreement/consensus development and spontaneous agreement/conflict avoidance were considered to indicate low conflict.

The moderate conflict group (7 cases) was characterized by active bargaining (active bargaining style) about clearly defined substantive issues. While this group at times expressed considerable hostility in their negotiations (shouting and yelling, name-calling), they used both cooperative and moderately coercive bargaining tactics (threats of litigation, nonpayment of child support, and avoiding future contact), and the level of coerciveness in bargaining was qualitatively different than in the high conflict group.

The high conflict couples had high levels of hostility (hitting, threats to call police, refusal to talk with spouse) and either used highly coercive bargaining strategies to resolve their conflicts of interest (child-napping, going to court) or they harassed each other (calling three to four times a day) and argued intensively for over a prolonged period of time (more than one year). This group used the bargaining styles of litigation and prolonged haggling.

The bargaining strategies of moderate and high conflict couples differed in two important ways. In addition to using less coercive bargaining strategies, moderate conflict couples also used positive bargaining strategies, such as appeals to fairness, proposal of alternatives, offering something in return for something else, and the consideration of long term consequences of their choices.

Since the sample was a small, non-random sample of convenience, the findings cannot be considered generalizable to the general population of divorcing parents. The sample included a diverse selection of white middle to upper-middle class families, hence the findings should not be considered applicable to black families or to upper or low income families. The sample included parents with both

low and high levels of conflict. When the investigator realized that some parents with conflictual relationships were refusing to participate because they were unwilling for their former spouses to be interviewed, the criteria for inclusion were changed so that individual parents could be included in the study. It is generally estimated that 10% of divorcing parents go to court over custody (Kressel, 1985; Weitzman & Dixon, 1979) which is comparable to the percentage of parents in this sample who litigated (13.3%). Thus, while there is no certainty that the sample was representative of the population from which it was drawn, there is no reason to believe that they were seriously unrepresentative.

Conclusions

The major conclusions and hypotheses developed from this study are summarized below. These hypotheses contribute to the beginning of a theory of custody negotiations.

I. Factors Influencing the Initial Custody Negotiations

A. Divorce Context. The divorce decision-making process affected the custody negotiation process through the creation of powerful bargaining chips such as guilt and threats of revealing marital infidelities if the spouses chose to litigate. Feeling guilty about one's role in the breakup of the marriage consistently weakened a spouse's bargaining position in the divorce negotiations, even when the guilty spouse consciously tried to avoid "the guilt trap."

In the low and moderate conflict groups guilt served to dampen conflict, particularly among those parents for whom fairness was an important value. Parents seemed to be following the implicit rule that whoever was in the role of guilty party should bear more of the costs of separation. For example, when both parents wanted custody, mothers who felt guilty about their role in the break up were more likely to settle for joint custody instead of pushing for sole custody.

Fathers who felt guilty were more likely to let their wives have sole custody instead of pushing for joint custody. However, guilt did not operate in the same way in the high conflict litigation group. Although the wives were initially conciliatory, the husbands' hostility and coercive bargaining strategies (child-napping, litigation) eventually stimulated the wives to reciprocate with coerciveness and hostility of their own.

In an effort to avoid the role of acting initiator of the breakup, one third of the couples (1 low conflict wife, 3 moderate conflict husbands and 1 high conflict wife) engaged in a process of covert negotiations in which one spouse either tried to provoke the other into initiating a separation or decided to wait things out until the other spouse made the first move.

Hypothesis 1. Spouses who feel the most guilt about their role in the breakup are more likely to accede to the other spouse's demands regarding which spouse will relocate, custody, child support and division of property.

B. Marital Context. All of the couples in the high conflict group were characterized by the intense nature of the marital relationship, and by one spouse's strong opposition to ending the marriage. A marital relationship was coded as unusually intense if there was a clear theme of emotional dependency, excluding outside interests or statements about being "like twins" and never being apart.

Hypothesis 2: Conflict in the initial custody negotiations is increased when: (a) The couple has an unusually intense marital relationship that is (b) being unilaterally ended by one spouse (c) in the face of total opposition by the other spouse.

One spouse having an affair further increased the sense of betrayal, abandonment, and anger, but was not a determinative factor since most (six out of

nine couples) of the couples in which one partner had an affair experienced low or moderate levels of conflict in their initial custody negotiations.

C. The financial context. The financial dependency of one spouse was not related to increased parental conflict as measured by the degree of coerciveness of bargaining strategies in the initial negotiations. However, substantive conflict over child support was more likely when one parent was financially dependent upon the other or when one parent was viewed as potentially much more affluent than the other parent.

Hypothesis 3. Conflict over child support is more likely when the financial status of one parent is very low, or when one parent is perceived to be actually or potentially much more affluent.

D. Legal context. Parents' perceptions of what the court would impose if they litigated affected the negotiations of more than half of the couples in the sample. Most couples ($n = 13$) decided that they preferred to negotiate with each other than face the risk of going to court. Uncertainty about the outcome or a belief that the other parent was likely to win influenced a number of parents ($n = 6$) to keep their negotiations in the private arena.

Hypothesis 4. Couples are more likely to litigate under the following conditions:

(a) One spouse refuses to negotiate directly with the other spouse either because of a sense of powerlessness or a strong feeling of moral outrage or being "in the right."

(b) The litigating spouse believes that s/he would win in court.

(c) The fewer concerns parents have about how litigation will affect the children or the parental relationship.

E. Parenting Context. Parent's need for their children increased the level of conflict they experienced about visitation, and physical and legal custody. Factors which seemed to increase parents' need for their children were: the young age of the child (2 mothers), and a poor social support system (2 fathers). Paradoxically, the presence of new partners sometimes decreased the conflict parents had over their children (2 fathers) because parents had someone else to be close to, which helped assuage their loss and loneliness. In other cases (1 father, 1 mother) it increased parental conflict because one parent anguished over what kind of influence the new partner would exert over the children.

Hypothesis 5. Parents are more likely to experience conflict about visitation or custody under the following conditions:

- (a) The younger the age of the children (increases mother's need for the children).
- (b) One or both spouses has a poor social support system.

II. Factors Influencing Parental Conflict Outcome

A. Influence of level of initial conflict on parental conflict outcome. The relationship between the overall level of parental conflict during the initial negotiations and subsequent parental conflict appeared to be curvilinear. When low conflict was achieved by conflict avoidance rather than by spontaneous or developed consensus, or when conflict was extremely high, the subsequent parenting relationship was more likely to be conflictual (i.e., more uncooperative and hostile). As Straus (1979) has pointed out, hostility is likely to be high when the existence of substantive conflict is denied, because people are unable to achieve goals that are important to them.

B. Bargaining style and parental outcome. Bargaining style was a useful predictor of the subsequent parental conflict. When the five bargaining styles were

collapsed into one basic underlying dimension or two groups, the talkers (spontaneous agreement/consensus development, active bargainers, and prolonged hagglers), and the nontalkers (litigators and conflict avoiders), the couples who talked, listened to each other and argued out their positions with each other, with one exception, ended up with a cooperative parental relationship. The nontalkers, on the other hand, consistently developed uncooperative and more hostile parental relationships. The presence or absence of positive bargaining behaviors was the factor that best distinguished between those who ended up with a cooperative parental relationship and those who did not. The use of moderately coercive bargaining strategies (verbal hostility, use of threats such as nonpayment of child support or of litigation) did not necessarily lead to later parental conflict. The use of highly coercive bargaining strategies such as litigation and child-napping, however, seemed to contribute to ongoing parental conflict.

Hypothesis 6. In the absence of true spontaneous consensus, couples who actively bargain for what they want using positive bargaining strategies as well as some moderately coercive bargaining strategies will experience less subsequent parental conflict than those couples who litigate or use conflict avoidance.

C. Perception of Equity and Parental Outcome. Parents who believed that their separation/divorce agreement was unfair developed uncooperative/hostile relationships (n = 4 couples) or cooperative/hostile relationships (n = 1 couple).

Hypothesis 7: Parents who believe that their separation/divorce agreement is unfair are more likely to experience ongoing parental conflict than those parents who believe that their agreement is basically fair.

Discussion

Theoretical and Methodological Issues in Couple Negotiation Research

One of the ongoing questions in family research is how to study the bargaining process in natural settings. One can use a qualitative approach using case studies to discover the specific context variables and bargaining processes operating in a particular negotiation situation (such as custody), or one can apply a general model of marital negotiation (hereafter referred to as the general model) such as the one proposed by Scanzoni and Polonko (1980) to test how well it explains the negotiation process. In the following discussion, the utility of the general model is critiqued, and an argument is made, given our current state of knowledge, for the need to study specific bargaining situations using qualitative methods to develop models that more accurately reflect the reality of a specific bargaining situation, which may have unique features. The question is whether a general model of marital negotiation is applicable to inherently competitive bargaining situations such as divorce.

Fishel (1985) tested the utility of the general model of marital negotiations (Scanzoni & Polonko, 1980) in explaining the custody negotiation process. She examined the influence of socioeconomic status, nontraditional gender role preference, and internal locus of control (context variables) on the negotiation process, which was measured by a 52 item negotiation scale using 19 cooperative behaviors and 33 competitive behaviors. However, the negotiation instrument did not include bargaining strategies commonly used by divorcing couples (e.g., threats of nonpayment of child support, litigation, guilt about the breakup or affairs, or more rarely used strategies such as child-napping), what events occurred as negotiations evolved over time, or the influence of the legal context. Fishel incisively critiqued the utility of the general negotiation model in explaining custody negotiations because it did not address the meaning of the divorce to the couple, and how this may have influenced the negotiations.

Zartman (1976) argues that whether one tries to work up from a specific case study or work down from a set of theorems, it is impossible to gain a solid understanding of what actually took place without a blow by blow account of who said what to whom and with what effect. The current research demonstrates the utility of a qualitative approach in describing parents' negotiations over time, their bargaining styles and bargaining strategies, and the key context variables (particularly the divorce context and the legal context, which are unique to custody negotiations) that affected the custody negotiation process.

One of the central themes in the current study was how the marital context influenced the divorce decision-making context (men in intense marriages who were being unilaterally left by their wives were totally opposed to the divorce and used highly coercive bargaining strategies), which in turn, generated bargaining chips (guilt, threats of going to court) which were then used, along with parents' perceptions of the legal context, as resources in bargaining. This in turn affected parents' bargaining power and their choice of bargaining strategies, particularly their decision about whether to litigate or negotiate with their spouse. Figure 4 outlines the context, process and outcome variables identified in this study, which contribute to the beginnings of a theory of custody negotiations.

A fundamental question in the literature on family conflict is whether conflict is more likely when there is a balance or imbalance of power between the spouses. Power is defined as the ability to obtain one's goals in the face of the partner's resistance (Scanzoni & Szinovacz, 1980). Based upon the findings of the present study, the answer is complex. When parents disagreed about their preferences and perceived a balance of power between them (e.g., the five moderate conflict couples where both spouses had bargaining chips) they chose to settle matters between themselves rather than to litigate. However, when spouses perceived that they were

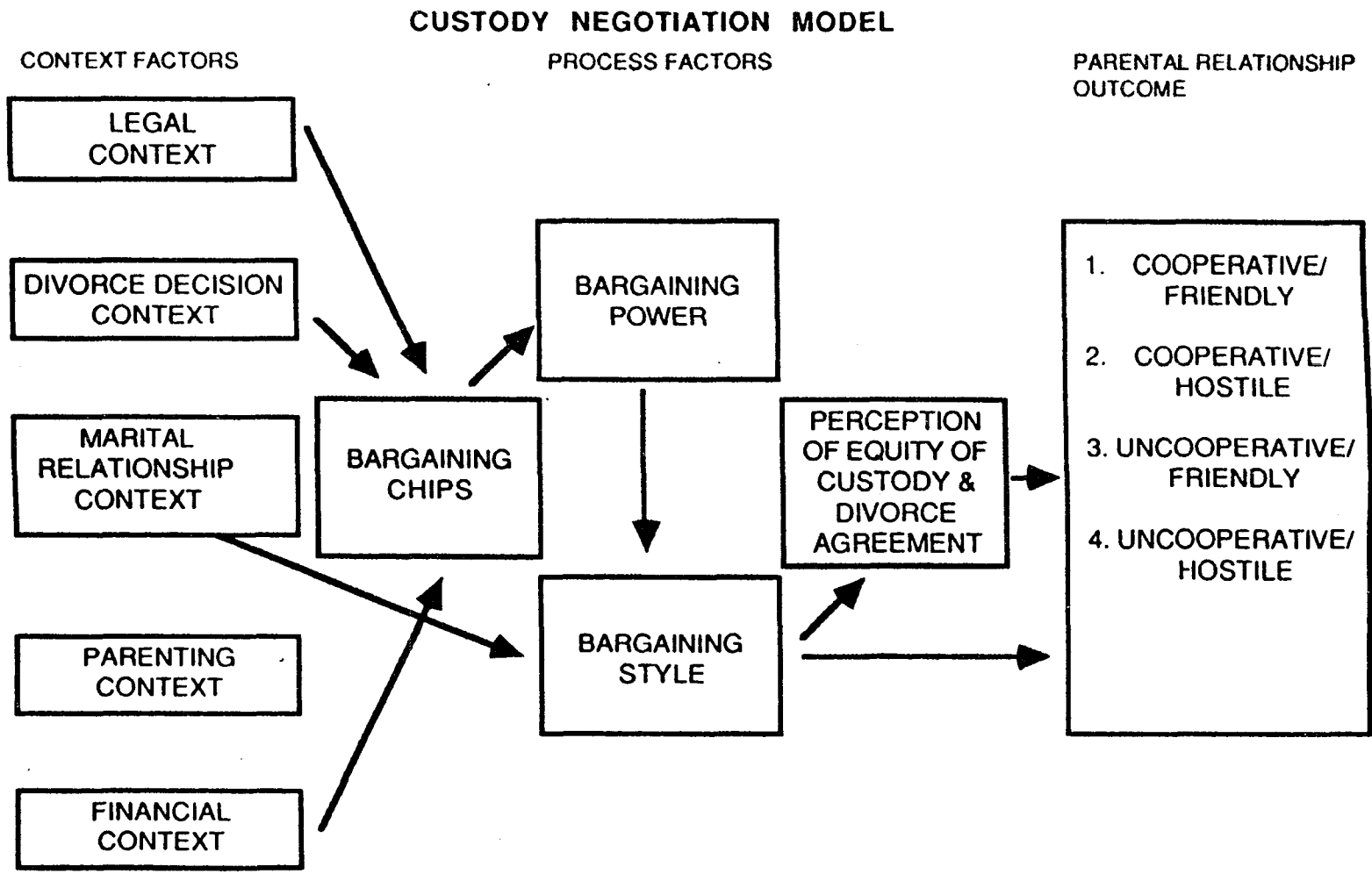


Figure 4. Custody Negotiation Model

in a powerless position vis a vis their spouse, they sometimes chose to litigate ($n = 2$) and sometimes not ($n = 2$), depending upon what they thought would happen in court. If, for example, the powerless spouse believed that the court would decide issues in their favor, they litigated. On the other hand, in two cases, the fathers believed that the courts favored mothers, and both fathers chose not to litigate for joint custody. It should be noted that in these two cases, the father had superior economic resources, but this source of bargaining power was outweighed by his sense of guilt about wanting out of the marriage and his belief that it was useless to litigate because the courts favored mothers. Thus, conflict during the negotiation period, as indicated by the decision to litigate, was sometimes reduced and sometimes increased, depending on whether parents perceived that their bargaining power vis a vis their spouse would be enhanced by going to court.

Scanzoni and Szinovacz (1980) hypothesized that egalitarian couples (equal partner pattern) with modern gender role preferences are less likely to experience hostility caused by coercive bargaining strategies such as threats and unilateral actions. However, in this study, there was no relationship between the marital partnership pattern (head-complement, junior partner-senior partner, and equal partners) and the coerciveness of parents' bargaining style.

Two factors may help account for the failure of the partnership style typology to predict bargaining style in the custody negotiations. One, it fails to address the issue of property and who owns what, which can be an important source of power in divorce negotiations. Second, Scanzoni and Szinovacz (1980) argued that a woman's gender role preference influences whether she will bargain in her own interests or in the interests of the family group. However, in divorce, both spouses are out to protect their own interests, and the wife's gender role preference

likely has less effect on her bargaining behavior in custody and divorce negotiations than it does in marriage.

Scanzoni and Polonko (1980) hypothesized that when cooperative strategies fail, couples use increasingly coercive and competitive bargaining strategies. However, in this study, the active bargaining couples used both cooperative and moderately coercive strategies, and they also were able to de-escalate from more coercive to less coercive bargaining strategies. The current study calls into question the assumption of a simple linear progression from cooperative to coercive bargaining strategies. Fishel (1985) also found in her factor analysis that couples seemed to have their own style of relating which consisted of both cooperative and competitive behaviors used over and over again. For example, when the husband was violent, the wife was understanding. The rich qualitative data from the present study illuminates the specific bargaining strategies used by divorcing couples in making their custody decisions, and provides data essential for developing a custody negotiation instrument.

In summary, in custody decision-making negotiations, the factors considered in the general model (Scanzoni & Polonko, 1980) to contribute to a spouse's bargaining power (i.e., income and modern gender role preferences) may be outweighed by the unique power dynamics created by the divorce situation itself: guilt and threats of exposing adultery in court. These bargaining chips, in turn, influenced the outcome parents expected if they went to court. When parents perceived that they had equal bargaining power, they negotiated an agreement with each other rather litigate. However, when parents perceived unequal bargaining power vis a vis their spouse, they chose to litigate when they thought they would win.

The above discussion calls into question the ability of a general marital negotiation model to explain bargaining behavior in all bargaining situations. The findings from this study demonstrate the need for and the utility of using a qualitative approach to explore bargaining in specific situations, which may have unique features. It may be that a general model of marital negotiations is less applicable to an inherently competitive situation such as custody and divorce negotiations.

Theoretical and Methodological Issues in Custody and Divorce Research

The current study demonstrates the utility of a qualitative research strategy in assessing and conceptualizing parental conflict. First, direct questions about bitterness and hostility were sometimes ineffective, especially when the hostility was unconscious as it was for several parents in the sample. Nevertheless, parents revealed their feelings, however inadvertently, in the lengthy conversational interview. Second, the study contributed to the divorce research literature by the identifying and conceptualizing the dimensions of conflict and their behavioral indicators. Ahrons (1980) has developed the most widely used measure of parental conflict, which measured parental conflict with four questions, two of which related to the emotional tone of the interactions (frequency of a hostile, angry feeling tone and stressful, tense conversations) and two of which related to substantive disagreements (frequency of arguments and basic differences of opinion about child rearing). Ahron's items tap a very limited range of possible conflict behaviors. None of the previous studies of parental conflict in divorce (Ahrons, 1980; Wallerstein and Kelly, 1980; Luepnitz, 1982) with the exception of Fishel's pioneering study, focused on conflict during the initial negotiations, nor have the investigators grappled with the conceptual definition of conflict or with the measurement issues involved in categorizing parents into levels of conflict.

Third, the findings from the present study hint that different indicators of conflict may be more or less relevant at different points in the divorce process. Bargaining style was the most useful indicator of conflict during the custody negotiation period, but was not a prominent theme in assessing subsequent parental conflict, when substantive disagreements and the emotional tone (hostility) of parental interactions emerged as stronger themes for assessing conflict. Thus, while the researcher's conceptual definition of conflict did not change, the phenomenological indicators of conflict did seem to change. It is difficult to know whether this finding indicates that once parents conclude their initial negotiations, little bargaining takes place, or whether this was an artifact of the way the data were collected, since much less detailed data were collected about postnegotiation conflict than in the initial custody negotiation period. The issue of what indicators of conflict are more relevant at what points in the divorce process certainly needs more study, but this finding raises a point for divorce researchers to consider in measuring parental conflict in divorce.

There was much more continuity between preseparation and postseparation parenting roles than was expected from the literature. Parenting roles were judged to have continuity when the parent who was in the primary parenting role in the two years prior to the separation continued to have a major proportion of the parenting responsibility or when both parents continued to share parenting responsibilities as they had during their marriage. Parenting roles changed substantially in only 4 of the 15 cases. This finding differs from that reported by Wallerstein and Kelly (1980) who found a striking and unexpected discontinuity between predivorce and postdivorce father—child relationships (Wallerstein and Kelly did not report on the percent of continuity versus discontinuity). Thus, fathers who were close to their children during the marriage might visit infrequently and distant fathers might begin

to visit regularly. Wallerstein and Kelly attributed this finding in part to the fact that fathers' visits were curtailed by feelings of depression and/or guilt. The discrepancy between the current study and the Wallerstein and Kelly study may be partly attributed to how continuity was conceptualized in the two studies. In this study, the focus was on parental caretaking roles, in the Wallerstein and Kelly study, the focus was on whether close or distant fathers visited regularly. However, the discrepancy in the two studies may also be attributed to significant changes in custody norms over the past ten years. All of the children in the Wallerstein and Kelly study were in the custody of their mothers. Now, with joint custody so much more common, involved fathers are much more likely than they were ten years ago to negotiate with their wives for joint custody and more parenting time, as did the fathers in this study.

One unexpected finding, given the discussion among legal observers (Mnookin & Kornhauser, 1979; Neely, 1984); Polikoff, 1982; Reece, 1983) about the use of child support as a bargaining chip for custody was that this was not a more prevalent factor in parents' bargaining about custody. Child support was used as a bargaining chip by three couples but contrary to what one might expect from the literature, it was the mother who first suggested trading increased time with the children in exchange for decreased financial obligations for the father. Most frequently, parents seemed to make their decisions about parenting arrangements and then bargain about finances. It is also possible that parents were reluctant to reveal the extent to which finances played a part in their negotiations, although the methodology was designed to deal with this anticipated problem by obtaining extensive descriptions rather than asking parents directly about how their financial considerations influenced their custody negotiations.

The concern that an uncertain legal context may penalize the risk averse parent who may also be the most concerned and responsible parent (Mnookin and Kornhauser, 1979), may be outweighed by the finding that, in the current study, uncertainty about who would win helped decrease litigation. Since the parents who litigated continued to experience ongoing parental conflict, it seems desirable to encourage parents to work out their custody and financial arrangements between themselves where possible.

Recommendations for Future Research

The first recommendation for future research is that this exploratory work be continued with a larger sample. The small sample size led to some categories (i.e., bargaining style and parental relationship outcomes) with only one couple in them. More qualitative work with a much larger sample is needed to further define concepts and refine the hypotheses suggested in this study. It is questionable whether the emotional complexities dealt with in this research would ever be amenable to large scale survey research using structured interviews with short answer or multiple choice responses.

It is extremely difficult to find parents who are willing to allow a researcher to interview them during their divorce negotiations. However this strategy should be pursued where possible. An alternative strategy would be to ask parents to keep a diary (either written or tape recorded) of their negotiations, feelings and thoughts about the negotiation process. The most feasible strategy would be to interview parents as soon as possible after their negotiations are completed, in order to improve the accuracy of their recollections, and then to follow parents longitudinally for five years to gain a clearer picture of outcomes.

Custody negotiations need to be studied in a number of different legal contexts, with different judicial norms for awarding custody. Parents' bargaining

strategies are likely to vary according to the legal context. For example, California has a strong legal presumption for joint custody and also mandates that couples mediate their disputes before they can even get to court. Such a legal context would likely decrease the threat of exposing an affair in court, since with mandatory mediation, fewer couples ever get to court.

The search for the antecedents of ongoing parental conflict between divorced parents should be expanded beyond negotiation process variables. For example, inadequate social support and financial resources seemed to contribute to parents' sense of desperation and escalation of conflict in two of the three high conflict cases, while a strong support network, adequate financial resources, and good coping strategies helped to decrease conflict in similar situations in which couples experienced only moderate conflict.

Future research should include individual psychological variables such as ego development which is likely to affect reactions to divorce in a variety of ways. For example, a low level of ego development may increase spouses' sense of threat to their individual identity as well as the ability to manage their anger. Anger control was a theme for some of the parents who described how they effectively coped with their intense anger. Interestingly, not being aware of one's anger and how it affected one's choice of negotiation strategies seemed much more detrimental to a rational negotiation process. Those parents who were aware of their intense anger were better able to ameliorate its effects on the negotiation process. Since an unusually intense marital relationship was the common thread among the high conflict couples, Bowen's (1976) concept of marital enmeshment might be a useful focus for further exploration and instrument development.

Recommendations for Legal and Mental Health Professionals

The central findings of this study suggest that long term parental conflict was less likely when parents were able to actively negotiate their preferences with each other, and tried to make equitable agreements that they could live with on a long term basis. The divorce settlement process and perceptions about the fairness of the legal agreement seem to cast a long shadow by helping to shape subsequent parental interaction. Professionals can encourage parents to try to work things out between themselves where possible, and to deal fairly with one another. Couples who litigate or who completely avoid necessary substantive conflict seem especially vulnerable to continued parental conflict because of the hostility generated by such bargaining processes. Parents need to be informed about the consequences of their bargaining style and encouraged to think about the long term consequences of their agreements and their bargaining behavior. Can they live with their agreement over the long term? Would they be willing to live with what they are offering the other parent? What effects will their course of action have on the children? Parents need to be actively informed about the effects of continued parental conflict on children, as well as the loss of access to the other parent.

Communities should develop services for divorcing families where mental health and legal professionals can provide information and forums for discussion of these issues. Divorcing parents are typically experiencing a severe emotional crisis. They may or may not feel comfortable with traditional mental health services. They may, however, be much more willing to utilize services designed especially for divorcing families, which do not bear the stigma of more traditional mental health services. We need to do a better job of informing parents about the long term practical consequences of custody choices. What does having sole or joint custody really mean in practical terms of daily living? For example, does joint custody give

a parent the right to tell the other parent how the children should be disciplined in that parent's home? What implications does having sole or joint custody have when one parent wants to move?

Recommendations for Divorcing Parents

Parents need to know that when they are negotiating their custody and financial arrangements, they are creating a contract that will govern their relationship and influence the well-being of their children and themselves for years to come. They can gauge the wisdom and utility of that contract by several criteria. Does the agreement protect the children's relationship with both parents, does the agreement decrease the chances for ongoing parental conflict, and is it fair enough in both parents eyes so that they can live with it over time?

Parents also need to know that how they bargain with each other has long term implications for later parental conflict. For example, in this study, parents who assiduously avoided conflict at all costs rather than try to bargain for some of what they wanted or who refused to bargain with each other at all and chose to litigate were more likely than those who actively bargained for what they wanted to experience ongoing parental conflict.

Addition to Custody Literature

In sum, this research has identified some of the basic components of a theory of custody negotiations. It identified the critical factors of the marital, divorce, and legal contexts and how the bargaining chips thus generated influenced parents' bargaining strategies. It also addressed the linkages between bargaining style and perception of fairness of the divorce agreement and subsequent parental conflict.

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APPENDIX A
Informed Consent

RESEARCH PARTICIPANT CONSENT FORM

I agree to participate in the present study being conducted by Beverly Ferreiro under the supervision of Dr. Rebecca Smith, a faculty member of the Department of Child Development and Family Relations of the University of North Carolina at Greensboro. I have been informed about the purpose of the study, the procedures to be followed and about any risks which may be involved.

I have been informed that the purpose of the study is to understand how parents make their custody decisions, the factors that influenced those decisions, and how those parenting arrangements have worked out over time. In addition to questions about the decision making experience, there will be questions about my past marital relationship, the decision to divorce, and the divorce agreement in general, including financial arrangements and property settlement. I have been informed that my former husband/wife will also be interviewed.

Because some of the questions ask about sensitive areas such as feelings and behaviors related to the divorce and the custody decision, I realize that talking about this may arouse some emotional distress. I understand that I am free to terminate my participation at any time without penalty or prejudice, and that I can refuse to answer any question.

I understand that the things I say will be absolutely confidential. Information from all of the families will be combined and reported as general findings, and any identifying details will be changed. Selected case studies will be written up and may appear in published form. I can ask that specific details not be included in any published material as an added protection of confidentiality,

The investigator has offered to answer further questions that I may have regarding this study, to spend time talking about my concerns, to recommend books written on the subject, and/or to recommend counselors if desired. I am aware that further information about the conduct and review of human research at the University of North Carolina at Greensboro can be obtained by calling 379-5875, the Office of Sponsored Programs.

Month Day Year

Signature of Participant

I would like to receive a copy of the results of this study.

_____yes _____no

APPENDIX B
Information Sheet for Participants

What is the purpose of the study?

The purpose of this study is to describe how parents make their custody decisions, the factors that influence their decision, and how their parenting arrangements have worked out. Very little is known about how parents negotiate their custody, financial and other parenting arrangements when they divorce. What parents themselves say about this important matter has not been adequately studied. Nor do we understand how parents' decision-making experiences may affect later parenting arrangements and parents' cooperation or conflict with one another. Legal and mental health professionals can improve our services for divorcing parents and their children if we better understand how parents go about making their custody and financial arrangements, and what things parents find helpful or not helpful as they go through this process. This research is for my dissertation at University of North Carolina, Greensboro.

If I agree to participate, what will I have to do?

Both the mother and the father will be interviewed. Separate interviews with each parent will be scheduled at a convenient time and place. The interview will last two to three hours, depending on how much you have to say about your experience. The interview will be audio-taped. In addition to questions about the decision making experience, there will be some questions about your past marital relationship, the decision to divorce, and the written divorce agreement (including financial arrangements, property settlement, and details about visitation, etc.).

After the interview is completed, you will be asked to fill out a written questionnaire, which should take about another 20 minutes. Since one of the questions asks about the details included in the written separation/divorce agreement, you may wish to look over your agreement prior to the interview, and may bring it with you if you want to refer to it.

Parents who have been taken part in the pilot study have told me that the interview was an interesting experience for them. This is, however, an emotional topic for many parents, and you may find that some stressful feelings are temporarily aroused. After the interview is completed, I will be glad to answer any questions that you may have about the study or to discuss any divorce-related concerns that you may have. I have counseling experience and if you would like for me to recommend books on parenting after divorce, I would be glad to do so.

What about confidentiality?

You can be sure that the things you say will be absolutely confidential. No one will ever know what you say. Some case studies will be written up and may appear in published form, but all identifying details will be changed so that confidentiality is assured.

To volunteer to participate or for further information about the study, contact:

Beverly Ferreiro, Associate Clinical Professor
School of Nursing, UNC-Chapel Hill.
Home phone: 967-6127 Office phone: 966-4280

APPENDIX C
Interview Guide

Part I: Unstructured Interview

You are an informant with a story to tell and I want to hear your story, including your thoughts and feelings as you went through the experience of deciding on custody, financial and other parenting arrangements. First, I would like for you to take as much time as you want to describe the experience of making your custody decision. When you are finished, I will ask you a number of more detailed questions about your experience. There may be some overlap with what you have already told me. Just start at the beginning and tell me, step by step the progression of events, including your thoughts and feelings, until the formal divorce agreement was made. Tell me whatever you think I need to know in order to be able to understand how you and your former spouse came to make the custody decision that you did.

Part II: Structured Interview

When the parent has finished with his/her spontaneous account, ask the following questions.

A. The divorce negotiation process

1. In thinking about what to do, what options did you consider? Explain the pros and cons as you saw them. (Inquire about both custody and financial issues.)
2. What were your initial preferences/demands? (Inquire about both custody and financial issues.)
3. Who did you talk to about your custody decision (children, friends, family, lawyers, counselors. etc.)?
4. Describe what kind of help or advice you received.
5. Compared to your spouse, did you feel you could adequately represent yourself and your interests during negotiations?
6. Overall, how would you describe the interaction between you and your former spouse during the period extending from when the decision to separate was made through the completion of the divorce process (until present if divorce not

final yet)? Do you feel it was a particularly friendly divorce, one with the usual amount of anger and bitterness between separating partners, or do you feel it was unusually bitter? Please give reasons for your rating.

1. very amiable
- 2.
3. the usual amount of anger and bitterness
- 4.
5. very bitter

7. What kinds of feelings predominated the divorce negotiations (anger, guilt, sadness, etc.)

8. To what extent were each of you able to control your feelings, especially hostile feelings? (poor, moderate, well-controlled)

9. How much did you disagree on: child support/alimony, custody, visitation, and division of property?

About how much disagreement was there on each issue?

child support

custody

visitation/living arrangements

division of property

How long did it take to resolve each issue (if resolved)?

10. If there was disagreement, how was it resolved? Describe offers/counteroffers that were made.

11. What bargaining chips did you think you had? What bargaining chips did you perceive your former spouse to have?

12. During the divorce negotiations, did your former spouse think

- only of himself/herself,
- primarily of himself/herself
- about both of you, but somewhat more for
himself/herself
- about both of us exactly the same
- about both of us, but somewhat more of me
- mainly about me
- only about me

During the divorce negotiations, did you think

- only of him/her
- primarily of him/her
- about both of you, but somewhat more for
him/her
- about both of us exactly the same
- about both of us, but somewhat more of me
- mainly about me
- only about me

B. Context Probes

1. Parent-child factors

13. What type of parenting role or responsibilities (financial, time with children, decision making input, etc.) did you want with your children?

14. How would you say your work responsibilities affected your parenting responsibilities? (importance of parenting vs. career roles)

15. What kind of parent is your former husband/wife? (irresponsible, caring, incompetent, good etc.)

16. Did you find yourself doing any comparing between yourself and your former husband/wife as to who was the best parent? (comparison of parental competence and respect for the other parents ability to parent during the marriage and now)

17. Did you ever seriously consider letting your former husband/wife have custody? Why or why not?

18. What beliefs/values about children's needs may have influenced your decision?

19. What sort of conflicts about child rearing did you typically have with your spouse during the marriage?

2. Legal factors

20. At the time of the divorce negotiations, what was your understanding of the different types of custody? (knowledge of custody options)

21. What kind of advice did your lawyer (mediator) offer you?

22. What kind of advice did your former husband/wife receive from his lawyer?

23. Who did you think would win custody if you went to court?

24. Looking back, what kind of help or information would you have liked to have had? How informed do you think you were about your options and what they really meant?

3. Financial factors

25. How would you say your economic (job and income) situation compares to your former husband's/wife's situation?

26. How does your current economic situation compare to your situation during the last year of your marriage?

27. What role, if any, did the financial circumstances of each of you play in your custody decision?

28. Parents sometimes use finances as a bargaining chip. How did this work in your case?

4. Equity factors

29. Was there a difference between what you wanted to do and thought you should do?

30. Was there a right thing to do in this situation (of divorce negotiation)?

31. Was there a conflict for you in this situation?
What was it?

32. Did you see this problem as a moral or ethical problem?

33. If you had to compare your rights as a parent with your former spouse's rights, whose would be most important? Explain.

34. How would you handle it if you got a very attractive job offer in another state and wanted to move? (Here I would be assessing whether the decision would be a mutual or unilateral decision, and whether everyone's interest would be considered in making the decision.)

35. Note any spontaneous comments re desire for fairness, but do not ask whether they considered fairness important as it is likely to elicit a socially desirable response.

5. Marriage History

36. How would you describe your marriage?

35. Do you see any similarities or differences in your interaction in the marriage and in the divorce?

36. What ideas about marriage, divorce and parenting in divorce did you have prior to the divorce?

37. How would you describe your parents' marriage?

38. How did this influence your perceptions about marriage and divorce?

6. Divorce factors

39. Briefly, how was the decision to separate and divorce made?

40. Was it a mutual decision or did one person push for it harder than the other? (attribution of responsibility)

- _____ 1 Father decided to divorce and mother was completely against it.
 _____ 2 Although father pushed for the divorce, mother did play a part in the decision.
 _____ 3 It was a mutual decision in which both parents participated.
 _____ 4 Although mother pushed for the divorce, father did play a part in the decision.
 _____ 5 Mother decided to divorce and father was completely against it.

41. How did you feel at the time when you first decided (or heard about your former husband's/wife's decision) to divorce?

43. What roles did you and your former spouse assume as a result of how the decision to divorce was handled: neutral party, good guy, bad guy, victim etc.?

44. How did this affect your custody and financial negotiations?

45. How do you think the negotiations might have gone differently if you (or former spouse) had been the one to leave?

46. If your former husband/wife was the first to suggest getting a divorce, how surprised were you? (suddenness of the decision)

- 1 not at all
- 2 a little
- 3 very much

47. How openly did you discuss divorce before the decision to separate?

48. Did you believe that your former husband/wife ever engaged in extra-marital sexual activities during your marriage?

- 1 yes, a lot
- 2 yes, some
- 3 yes, one time
- 4 no
- 5 don't know

49. Did you believe that your former husband/wife was involved with someone else at the time the decision to divorce was made?

- 1 no
- 2 yes
- 3 don't know

50. During your marriage, did you ever engage in extra-marital sexual activities?

- 1 yes, a lot
 2 yes, some
 3 yes, one time
 4 no
 5 don't know

51. Were you involved with someone else at the time the decision to divorce was made?

- 1 no
 2 yes
 3 don't know

52. How many times did you and your former husband/wife separate before you divorced? (ambivalence)

- 1
 2
 3
 4

53. Were there ever any attempts at reconciliation by either of you since the last separation? (ambivalence)

54. As you look back on the divorce, what feelings have predominated for you? For example, guilt, relief, sadness, anger etc.

C. Outcomes

55. How have things worked out between you and your former husband/wife? How have things worked out for the children?

56. How are parenting arrangements currently being implemented?

57. Do you pretty much stick to the specific details in your legal agreement or is there flexibility in the way you and your former husband/wife have implemented your agreement?

58. What issues or conflicts have there been and how they have been handled?

59. Overall, how fair do you think your divorce agreement was to you?
How fair do you think your former spouse thought it was to him or her?

- _____ 1. completely unfair
- _____ 2. mostly unfair
- _____ 3. half fair, half unfair
- _____ 4. mostly fair
- _____ 5. completely fair
- _____ 6. more than my share

	Self	Former Spouse
child support	S _____	FS _____
custody	S _____	FS _____
visitation	S _____	FS _____
burden of care	S _____	FS _____
decision making input	S _____	FS _____
financial responsibility	S _____	FS _____
division of property	S _____	FS _____
level of cooperation	S _____	FS _____

60. All things considered, how satisfied are you with how things have worked out?

- _____ 1. completely unsatisfied
- _____ 2. mostly unsatisfied
- _____ 3. neutral
- _____ 4. mostly satisfied
- _____ 5. completely satisfied

	Self	Former Spouse
child support	S _____	FS _____
custody	S _____	FS _____
visitation	S _____	FS _____
burden of care	S _____	FS _____
decision making input	S _____	FS _____
financial responsibility	S _____	FS _____
division of property	S _____	FS _____
level of cooperation	S _____	FS _____

61. How satisfied are you with your legal agreement and how it has worked for you?

62. Are there things you wish you had included or things you would like to have changed?

63. Are you planning any action to change anything?

64. Any final words of advice to other parents facing these decisions?

65. Is there anything else you'd like to say that I've missed asking about?

66. Is there any specific information that you have shared with me today that you would not want included in written description of you and your former husband's/wife's experience, even though all identifying details will be changed? (Here I will explain that selected cases will be described in more detail about their decision-making experience and the possibility that a couple would be able to identify themselves in the unlikely event they should read a report of the research in a professional journal.)

APPENDIX D
Background Information Questionnaire

1. How old were you on your last birthday? _____
 How old was your former spouse on his/her last birthday? _____

2. What is the highest grade in school you have completed?

elementary school	1	2	3	4	5	6	7	8
high school	9	10	11	12				
college or trade school	13	14	15	16				
graduate or professional school	17	18	19	20+				

What is the highest grade in school your former husband/wife completed?

elementary school	1	2	3	4	5	6	7	8
high school	9	10	11	12				
college or trade school	13	14	15	16				
graduate or professional school	17	18	19	20+				

3. What is the highest degree you have obtained? _____

What is the highest degree your former husband/wife has obtained? _____

4. What is your religious preference, if any?

Protestant	1
Catholic	2
Jewish	3
Other _____	4
Atheist, agnostic or none	5

5. In general, would you describe yourself as:

Very religious	1
Somewhat religious	2
Slightly religious	3
Not religious at all	4

6. In general, how frequently do you attend church services or activities?

- Usually more than once a week 1
- About once a week 2
- At least once a month 3
- A few times during the year 4
- Rarely 5
- Never 6

7. Overall, how much would you say your religious beliefs influence your life?

- Very much 1
- Quite a bit 2
- To some extent 3
- Slightly 4
- Not at all 5

8. How old were you when you married your former husband/wife? _____

9. How old was your former husband/wife when you married? _____

10. How long did you know your former husband/wife prior to your marriage?
 _____years _____months

11. How long did you and your former husband/wife date (including engagement) before you were married? _____years _____months

12. How many times had your former husband/wife been married (not including your marriage)? _____(number)

13. We would like some information regarding your past marriages(s).

	First Marriage	Second Marriage
date married	_____	_____
date separated	_____	_____
date divorced	_____	_____

14. Please fill out the following for your children.

1st child	Male _____	Female _____	Date of Birth _____
2nd child	Male _____	Female _____	Date of Birth _____
3rd child	Male _____	Female _____	Date of Birth _____
4th child	Male _____	Female _____	Date of Birth _____

15. At present are you:

- Not dating anyone 1
- Dating several people casually 2
- Dating the same person 3
- Engaged 4
- Remarried 5

16. At present is your former spouse:

- Not dating anyone 1
- Dating several people casually 2
- Dating the same person 3
- Engaged 4
- Remarried 5

17. Has your job situation changed since your divorce? yes _____ no _____

If yes, please explain. _____

18. Are you employed? yes__ no__ (If No, go to # 25).

19. How satisfied are you with your job?

- 1. _____ highly satisfied
- 2. _____ moderately satisfied
- 3. _____ neutral
- 4. _____ moderately dissatisfied
- 5. _____ highly dissatisfied

20. What is your current occupation? (if more than one job, primary job.)

21. Tell us a little about what you do in this job?

22. Do you hold a second job? yes _____ no _____

If yes, what is it? _____

23. On the average, during the last 6 months, how many hours per week did you work at your job?

- 1. _____ 1-10 hours
- 2. _____ 11-20 hours
- 3. _____ 21-30 hours
- 4. _____ 31-40 hours
- 5. _____ 41-50 hours
- 6. _____ 51-60 hours
- 7. _____ over 60 hours

24. Does your work require you to travel or be away from home on a regular basis?
Please explain. _____

25. What about do you pay or receive each month in:

child support _____
Pay Receive

alimony _____
Pay Receive

other expenditures or income tied directly to your former marriage.
please specify _____
Pay Receive

26. Here is a list of various sources of income. (All of these will not apply to you).
Please check all sources from which you have received income since your divorce.

1. _____ my own employment
2. _____ unemployment compensation
3. _____ veterans benefits
4. _____ social security
5. _____ welfare or public assistance
6. _____ assistance from other relatives
7. _____ investments (stocks, bonds, trusts)
8. _____ other financial assistance from your former husband/wife
9. _____ assistance from your parents
10. _____ alimony
11. _____ child support
12. _____ savings
13. _____ other sources

27. What is your approximate total annual personal income? (Salaries and investments before deductions). Do not include alimony and child support.

- | | |
|---------------------------|--------------------------|
| _____ 0 No Income | _____ 11 \$55,000–59,999 |
| _____ 1 Less than \$9,999 | _____ 12 \$60,000–64,999 |
| _____ 2 \$10,000–14,999 | _____ 13 \$65,000–69,999 |
| _____ 3 \$15,000–19,999 | _____ 14 \$70,000–74,999 |
| _____ 4 \$20,000–24,999 | _____ 15 \$75,000–79,999 |
| _____ 5 \$25,000–29,999 | _____ 16 \$80,000–84,999 |
| _____ 6 \$30,000–34,999 | _____ 17 \$85,000–89,999 |
| _____ 7 \$35,000–39,999 | _____ 18 \$90,000–94,999 |
| _____ 8 \$40,000–44,999 | _____ 19 \$95,000–99,999 |
| _____ 9 \$45,000–48,999 | _____ 20 over \$100,000 |
| _____ 10 \$50,000–54,999 | |

What is your former husband's/wife's approximate total annual income?

- | | |
|--|---|
| <input type="checkbox"/> 0 No Income | <input type="checkbox"/> 11 \$55,000–59,999 |
| <input type="checkbox"/> 1 Less than \$9,999 | <input type="checkbox"/> 12 \$60,000–64,999 |
| <input type="checkbox"/> 2 \$10,000–14,999 | <input type="checkbox"/> 13 \$65,000–69,999 |
| <input type="checkbox"/> 3 \$15,000–19,999 | <input type="checkbox"/> 14 \$70,000–74,999 |
| <input type="checkbox"/> 4 \$20,000–24,999 | <input type="checkbox"/> 15 \$75,000–79,999 |
| <input type="checkbox"/> 5 \$25,000–29,999 | <input type="checkbox"/> 16 \$80,000–84,999 |
| <input type="checkbox"/> 6 \$30,000–34,999 | <input type="checkbox"/> 17 \$85,000–89,999 |
| <input type="checkbox"/> 7 \$35,000–39,999 | <input type="checkbox"/> 18 \$90,000–94,999 |
| <input type="checkbox"/> 8 \$40,000–44,999 | <input type="checkbox"/> 19 \$95,000–99,999 |
| <input type="checkbox"/> 9 \$45,000–48,999 | <input type="checkbox"/> 20 over \$100,000 |
| <input type="checkbox"/> 10 \$50,000–54,999 | |

28. Which best describes your financial situation at present?

- No serious financial problem
- Some problems
- Many serious problems

29. In general, how do your finances work out at the end of the month?

- Not enough money to make ends meet
- Just enough money to make ends meet
- Some money left over (less than \$200.00)
- A lot of money left over (more than \$200.00)
- Don't know

30. Please indicate how the following property was divided as a result of your separation or divorce.

	my spouse got it all	we divided it	I got it all	NA
<hr/>				

item

furniture/appliances _____

house _____

car _____

checking account _____

savings account _____

pension plan _____

family business _____

other investment _____

APPENDIX E

Decision Guide for Coding Interviews

I. Rules for Categorizing Level of Conflict

Cases are placed into low, moderate or high conflict group according to the criteria detailed below.

A. Low Conflict

A couple was placed in the low conflict group if they fit the following four criteria:

1. They reported no or few substantive disagreements.
2. The emotional tone of their negotiations was one of low hostility with few hostile behaviors. If a couple expressed moderate hostility (shouting, name-calling), they may still be placed in the low conflict group if they fit all the other criteria for low conflict.
3. They completed negotiations in less than one year.
4. They used the bargaining styles of (a) spontaneous agreement/consensus development or (b) spontaneous agreement/conflict avoidance, which are defined below.

Spontaneous Agreement/Consensus Development

1. Parents said that there was little need for discussion and that they just knew what they wanted to do regarding legal and physical custody. Couples in this group were characterized by a true consensus on what they wanted to do.
2. Couples discussed their decisions with little or no resistance or opposition to each others' position. They used cooperative strategies (suggesting alternatives, discussed the pros and cons of different alternatives, listened to each other, appealed to fairness) and problem solving rather than threats.

Spontaneous Agreement/Conflict Avoidance

1. Parents said that they had few disagreements and dealt with the few they did have by avoiding them (or denying that any existed) and stated that they were primarily motivated by a desire to avoid conflict. Conflict avoidance couples may also have had a high degree of spontaneous consensus, but the predominant theme was one of avoiding dealing with any existing differences.

or

2. One party refused to actively bargain for his/her preferences regarding custody or child support. Instead of an active resistance or opposition, spouses in this group simply stated their preference, but made no offers or arguments to try to get what they wanted, and they almost immediately acceded to the spouse's demands.

or

3. A spouse made an offer that both spouses knew was impossible to implement, and yet they avoided discussing the feasibility of the offer. For example, a father might offer to pay the wife \$500 a month child support when he was unemployed and facing bankruptcy.

B. Moderate Conflict

A couple was placed in the moderate conflict group if they fit the following four criteria:

1. They experienced substantive conflict in their negotiations (about physical or legal custody, child support, or division of property) that was dealt with by active bargaining (defined below). The couples took clear stands on realistic differences.

2. The emotional tone of their negotiations was one of moderate hostility, which meant they expressed their anger and hostility primarily through verbal

(name-calling and yelling) rather than physical means. If a couple expressed high hostility (hitting, pushing, threats to call police, refusal to talk to spouse), they may still be placed in the moderate conflict group if they fit all the other criteria for moderate conflict, and the emotional outburst occurred once or twice rather than being an ongoing pattern.

3. They were able to settle the dispute between themselves in less than a year of active negotiations.

Note. If the couple made an oral agreement, and then there was a time lapse until the final negotiations for the written agreement, count only the duration of the actual active negotiations.

4. They used the bargaining style of active bargaining which is defined below.

Active Bargaining

Couples who actively bargained used both cooperative and moderately coercive bargaining strategies. Cooperative strategies included listening to each other, offering alternative suggestions, discussing the potential costs and benefits of alternatives, appealing to the principle of fairness. Moderately coercive bargaining strategies included forcing the spouse to agree by using threats, such as nonpayment of child support, litigation, or exposing the spouse's affair in court; bluffing about one's willingness to litigate; rejecting the other or threatening to bear a grudge; demanding compensations for being the injured party; inducing guilt; disparaging or shaming the other; or harming the spouses' reputation.

Note: A case can be placed in this category if a spouse initiated litigation for custody, but the legal action was dropped or resolved within a few weeks time. In this group, litigation was used more as a threat or bargaining strategy and was one

of several strategies used to influence the other party, rather than being the only bargaining strategy used.

C. High Conflict

Couples were placed in the high conflict category if they fit the following criteria:

1. They had substantive conflicts.

2. The emotional tone of their interactions was one of high hostility, which was indicated by such behaviors as threatening to call the police, hitting, or the refusal to even talk with one's spouse. Emotional or violent outbursts were part of an ongoing pattern rather than a one time incident.

3. Negotiations were prolonged and took more than one year. **Note:** Negotiations may have been completed in less than one year, so this criteria does not exclude cases that met the other three criteria. Rather, it is used as another indicator of high conflict, as in the case of prolonged haggling.

4. The couple used the bargaining style of litigation or prolonged haggling. One or both spouses engaged in unusually coercive bargaining tactics such as child-napping, litigation, or prolonged and harassing negotiations.

Note: Child-napping placed a case in the high conflict group; it did not necessarily indicate whether the couple used the bargaining style of prolonged haggling or litigation.

Prolonged Haggling

They argued intensively about the terms of their agreement for a prolonged time (continuously for more than 1 year), and the negotiations had a harassing quality. Fighting over minutiae seemed to be a way for the couple to maintain contact with one another. For example, one spouse called the other to argue several

times a day, or arguments often escalated into shouting matches or threats to call the police to make the other parent leave.

Litigation

1. The case actually went to trial.

or

2. The case was settled at the last minute before the trial and the negotiations were almost exclusively conducted between the attorneys.

II. Assessing the Intensity of the Marital Relationship

Intensity of the marital relationship is defined as the magnitude of the emotional closeness in the relationship. The two categories of intensity are usual and unusual. Rate the marital relationship as having the usual amount of emotional intensity if there was an absence of statements indicating high intensity. Rate the marital relationship as unusually intense if there was a clear theme of intense emotional closeness in the interview as evidenced by statements about:

1. the dependency of one spouse on the other.

or

2. excluding outside interests or the "outside world".

or

3. being unusually close (i.e, like twins)

or

4. spending great amounts of time together, doing everything together, or never being apart.

or

5. one's total dedication to the other spouse.

III. Decision Rules for the Divorce Decision

A. Leaver role

Decide which spouse was in the role of the leaver. The leaver is defined as the person who most wanted and pushed to get out of the marriage. If both spouses wanted to get out of the marriage, then both spouses may be assigned the role of the leaver.

B. Acting Initiator role

Decide which spouse was in the role of acting initiator. The acting initiator role is defined as the person who first took action towards separation, either by suggesting separation or by taking some physical action. If spouses initiated action simultaneously then both spouses may be assigned to the acting initiator role.

C. Guilty Party role

Assign the guilty party role to the spouse who:

1. expressed a clear theme of guilt about the separation/divorce, and/or made statements that indicated their guilt had influenced the way they had negotiated.

or

2. directly stated that s/he felt s/he had assumed the role of guilty party in the negotiations.

or

3. is clearly identified by the other spouse as having been strongly motivated by guilt.

Note. If both spouses expressed similar levels of guilt, or if they assumed the role at different times during the negotiations, then assign the role to both spouses.

D. Mutuality of the Decision to Separate

The decision to separate is rated as mutual when:

1. Both spouses rate it as mutual.

and

2. When the couples' self-rating is not contradicted by spontaneous statements in the interview. If there is disagreement between spouses' self-rating and descriptive statements, give more weight to the descriptive statements. When parents' statements contradict their self rating, use the following scale (Shiller, 1984) for rating.

a. ____ Mother decided to divorce and father was completely against it.

b. ____ Although mother pushed for the divorce, father did play a part in the decision.

c. ____ It was a mutual decision in which both parents participated.

d. ____ Although father pushed for the divorce, mother did play a part in the decision.

e. ____ Father decided to divorce and mother was completely against it.

Note: Nonmutuality is assumed in all cases in which mutuality is not verified.

E. Assessing the Effect of the Guilty Party Role on the Divorce Negotiations

1. Underline any statements that show the effects that being the guilty party had on the divorce negotiations.

2. Taking into account all relevant statements, briefly describe what effect being in the leaver role had on the divorce negotiations.

IV. Assessing Whether Parents Beliefs About What Would Happen if They Went to Court Affected their Negotiations.

The legal context was considered to have affected the spouses' negotiations if:

1. One (or both) parent(s) stated that his/her belief that the court favored the parent of the opposite sex had made them hesitant to bargain for what they wanted, or hesitant to go to court.

or

2. If either parent stated s/he had actively considered going to court or discussed the matter with an attorney or sought an attorney's advice, and then decided against it, after having weighed the pros and cons.

or

3. Began litigation by filing a suit for custody.

or

4. If the case actually went to trial.

V. Assessing Financial Dependency Status

A spouse is rated as being financially dependent when s/he:

1. Was not employed outside the home.

or

2. Was working but not generating any income.

or

3. Directly expressed that s/he (or other spouse) was financially dependent.

or

4. One spouse contributed one third or less to the total family income.

VI. Assessing Marital Partnership Status

Gender role preferences are defined as the beliefs and preferences about what roles are appropriate for husbands and wives, mothers and fathers. The existence of an underlying construct called gender role modernity/traditionalism (Scanzoni & Szinovacz, 1980) is assumed. The traditional pole of the continuum represents preferences for strict role specialization according to traditional patterns—women are responsible for caring for home, husband and children, and men are responsible for being the financial provider. The modern pole of the continuum represents role interchangeability according to contemporary patterns—men and women are jointly responsible for paid work and the care of home and children.

The definition of and criteria for marital partnership status are based on concepts developed by Scanzoni and Scanzoni (1976) and further elaborated by Scanzoni & Szinovacz (1980). The notion of partnership status encompasses two dimensions: (a) The degree of preference for traditional gender roles or modern gender roles expressed by husbands and wives in their relationship, and (b) each spouse's access to income.

Head/Complement pattern. The husband is the sole provider of economic resources for the family and the wife does not work in the paid labor force and is the primary caretaker of the children. The husband is the head of the household, and the wife is the complement.

Senior/Junior Partner. Wife works, but her contribution is considered secondary to that of the husband. The husband is defined as the major family provider, and the wife's work and career goals are clearly secondary. The wife is the primary caretaker of the children.

Equal Partners pattern: The husband and wife are defined as co-providers with equal responsibility for providing economically for the family. Both spouses are

also seen as responsible for household chores and childcare. These marriages are considered modern in terms of gender role preferences.

Note 1. In deciding which marital status to assign to a case, responsibility for providing or co-providing is the most salient criteria, rather than whether either party actually fulfilled that responsibility. For example, if one partner worked in his/her own business, but the business was not doing well, the couple could still be assigned to equal partner category.

Note 2. In cases where the marital pattern changed over time, assign the couple to the category which best fits their pattern during the two years preceding the separation.

VI. Assessing Co-parental Relationship Outcomes

Outcome is defined as how the parents evaluate their relationship on two dimensions: a) The parental dimension (the cooperativeness or uncooperativeness of their interactions and decisions regarding the children), and b) the personal affective dimension (the friendliness or hostility of their relationship as people).

A. Steps in Rating

1. Underline all comments that refer to the spouses' evaluation of both their parental and personal relationships (their feelings about each other, their interactions and negotiations) since the divorce negotiations were completed.

2. Decide whether the statements predominantly reflect a willingness or unwillingness to work together and accommodate to each others needs/wants regarding the children. Examples of cooperative behavior include: working out access to a child for holidays and special events such as birthdays so that both parents' need to see the child is considered, and flexibility in handling necessary scheduling changes. A parent may not always accommodate the other parent, but generally maintains a stance of cooperation. Examples of uncooperative behavior

include refusing to allow a parent access to the children except at rigidly defined times, and being unwilling to make schedule changes, etc.

Note 1. Discussions regarding the children may be hostile in tone (i.e., parents may become angry with each other, hang up the phone, disagree, etc.) but if parents reach a timely resolution of their disagreement so that the children are unaware of the conflict, and generally try to accommodate the other parent's requests regarding the children (rather than spitefully deny the other parents' requests), then they are assigned to the cooperative parental relationship category. In the situation just described, the couple would be assigned to the cooperative/hostile category since they cooperated with each other, but the tone of the interaction was hostile.

3. Decide whether the statements predominantly reflect a hostile or friendly orientation toward the other spouse. Statements reflecting hostility are: "We often shout at each other on the phone", or "Whenever she sees me, she turns the other way." Statements reflecting friendliness are: "We are good friends now." or "We had a drink together and talked about his new relationship." or "I think now we can become friends again."

4. Place the couple in the category which best represents their overall relationship since the initial negotiations were completed.

5. If parents either initiated or completed litigation, they are automatically categorized as having an uncooperative–hostile relationship.

Note 2. If parents' descriptions of their interactions contradicted the label(s) they attached to their overall relationship, give more weight to their descriptions of actual interactions than to the labels.

B. Assign couples to the following categories from the above rating:

1. cooperative parental relationship/friendly personal relationship

2. cooperative parental relationship/hostile personal relationship
3. uncooperative parental relationship/hostile personal relationship
4. uncooperative parental/friendly personal

VII. Assessment of Parents' Evaluation of the Fairness of their Divorce Agreement

Fairness is defined as the feeling that one has received the "proper" amount of benefits from the situation, relative to what is merited based upon what one has put in it (Scanzoni and Szinovacz, 1980), or the feeling that one got about as much as one gave in the situation.

Steps in rating parents' perception of the **overall** fairness of their divorce agreement (including physical and legal custody, child support, and division of property) are:

1. Underline spouses' statements regarding how fair or equitable they felt their divorce agreement was to them.
2. Decide whether the preponderance of statements reflects a subjective evaluation of the overall fairness or unfairness of the divorce agreement.
3. Compare statements made throughout the interview with parent's self-rating of **overall** level of fairness (Appendix C, item # 59). If the predominance of the fairness/unfairness statements contradicts the parent's self-rating, then give more weight to the overall impression gained from the statements.
4. If one (or both) parent(s) rates fairness as a 1 (completely unfair—less than my share) or 2 (mostly unfair), place the couple in the unfair category, if the rating is not contradicted by the preponderance of statements in the interview. If both parents rate fairness as a 4 (mostly fair) or 5 (completely fair), then place the case in the fair category, if the rating is not contradicted by the preponderance of statements in the interview.
5. If one parent rates the divorce agreement as a three (half fair, half unfair)

and the other parent rates it as a four or five, place the couple in the fair category. If both parents rate the divorce agreement as a three, then place the couple in the unfair category. In this group of couples, it is especially important to consider the overall themes of fairness or unfairness in the interview in making one's decision.

6. Place parents in the category of either fair or unfair.