

Family Law Education Reform Project

Hofstra Cross Examination-Expert Witnesses

OVERVIEW

This exercise will introduce students to the complexity of the lawyer's task, and how much planning and thought an effective cross examination can take. It should encourage students to participate in more advanced trial techniques courses

EXPLANATION AND COMMENTS

For purposes of this exercise, students represent Dr. David Allen (David), the plaintiff in *Allen v. Allen*, an action for divorce in which Dr. Allen seeks to be designated the primary residential parent of his children, Jane, age 13 and Joey, age 11 over the opposition of his wife Lynne Allen (Lynne), the defendant in the case.

ABOUT THE AUTHOR

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Professor Schepard is the Chair of the Family Law Education Reform Project co-sponsored by Hofstra Law School and the Association of Family and Conciliation Courts. He is an attorney member of the Judicial Conference of the State of New York. Professor Schepard is also Program Director for the National Institute of Trial Advocacy's course in Modern Divorce Advocacy and has served as Program Director for NITA's Child Advocacy, Deposition and Trial Advocacy courses.

Professor DiFonzo has had a wide-ranging two decades of law practice before becoming a full-time professor, including stints as a federal prosecutor and as a litigator in the areas of family law, criminal defense, negligence, and professional malpractice. In all, he conducted over 30 jury trials and several dozen appeals. He has taught at Hofstra since 1995. From 1995-2003, he served as Director of the Criminal Justice Clinic. From 2005-2008, he served as Director of the LL.M. Program in Family Law.

Teachers Manual

Cross Examination of a Court Appointed Mental Health Parenting Evaluator

Curricular Objectives

This exercise is designed to help students:

- (1) become familiar with the unique role of a court appointed mental health expert in a parenting dispute;
- (2) better understand the great scope of discretion involved in applying the factors involved in applying the best interests of the child test to a particular family;
- (3) better understand the impact of the adversary process on parents and children;
- (4) become familiar with the idea of a case theory and the importance of creating a cross examination that reflects a theory;
- (5) become familiar with the skill of asking short, leading questions on cross examination that logically progress to a substantive goal.

Note that, as with all of the exercises, participation in this one will not result in students becoming the equivalent of Johnny Cochran, Atticus Finch or Rumpole of the Baily. On the other hand, this exercise will introduce students to the complexity of the lawyer's task, and how much planning and thought an effective cross examination can take. It should encourage students to participate in more advanced trial techniques courses.

Overview of Exercise

For purposes of this exercise, students represent Dr. David Allen (David), the plaintiff in *Allen v. Allen*, an action for divorce in which Dr. Allen seeks to be designated the primary residential parent of his children, Jane, age 13 and Joey, age 11 over the opposition of his wife Lynne Allen (Lynne), the defendant in the case.

Allen v. Allen is on the docket of the family division of the Superior Court of the mythical state of NITA. All attempts at settlement of the parenting dispute outlined below have failed. David and Lynne's lawyers have not been able to convince their clients to agree on a parenting plan. Mediation has not resulted in an agreement, and both parents have already attended the court's mandatory parent education program.

The case is now on the trial calendar for a hearing on parenting issues alone. The first witness at trial is scheduled to be Dr. Pat Nolan, the court appointed forensic mental health evaluator for the Allen family. Dr. Nolan's report was distributed to the lawyers in advance of trial, and excerpts from it are contained in the enclosed exercise.

The report is adapted from one created for a National Institute for Trial Advocacy (NITA) case file used skills training program for divorce lawyers and mental health professionals.[•] It is important to note that Dr. Nolan's report is not a model for how mental health forensic evaluation reports should be written. It was created to be good enough to be credible, but also raise issues and concerns that allow for cross examination.

David is strongly opposed to Dr. Nolan's recommendation that Lynne be the primary residential parent for Jane and Joey. He believes that he should be the primary parent, or alternatively, he and Lynne should be joint custodians. Lynne takes the position that she should have sole parental responsibility and be designated the primary residential parent. She is thus basically satisfied with Dr. Nolan's report and recommendations.

Under the procedures of the State of NITA, there is no jury in parenting disputes. The Court will have read Dr. Nolan's report before the hearing and it will be marked as Exhibit 1. Dr. Nolan will be called as a court witness. There will not be a direct examination of Dr. Nolan. Both sides will have the opportunity to cross examine Dr. Nolan, but David as the plaintiff goes first.

NITA has adopted the Federal Rules of Evidence. For purposes of this exercise, it is stipulated that Dr. Nolan is a court appointed expert witness under FRE 706. Rules 701-705 apply to the examination of Dr. Nolan. It is helpful for students to review these rules while completing this exercise.

The student's task is to prepare a cross examination of Dr. Nolan on behalf of David. The facts set out in Dr. Nolan's Report (as opposed to the conclusions) are stipulated to be true. To prepare a cross examination, a student must create a theory of the case and prepare questions for cross examination of Dr. Nolan. The student must also anticipate what Dr. Nolan's expected answer to each question will be and how that answer will be used in summation to the court to help David's case.

Integration With Course and Substantive Law

The logical place to assign this exercise is after you have covered the legal standards regulating parenting after divorce and separation and any material you assign about the role of mental health experts in the parenting after divorce and separation judicial decision making process.

Key points which you might emphasize in assigning the exercise:

- *Parenting trials are rare.* Most (98%) parents settle their disputes before a hearing. Few parents have the economic resources to afford a full hearing. Mediation and parent education have increased the likelihood of settlement, as have court appointed child custody evaluations.
- *Parenting trials are still important.* They articulate and shape the rules for the other cases, which are determined "in the shadow of the trial."

[•] ANDREW I. SCHEPARD, GREGORY FIRESTONE, LOUIS ORTIZ, ARLINE S. ROTMAN, PHILIP M. STAHL, ALLEN V. ALLEN: ADVOCACY IN DIVORCE DISPUTES IN A MULTI DISCIPLINARY ENVIRONMENT: CASE FILE AND PROBLEMS (National Institute for Trial Advocacy 2006). We are grateful to NITA for permission to adopt the case file for these materials).

- *Judicial determination of post divorce parenting arrangements generally rests in the sound discretion of the trial judge, which is wide.* The relevant statute of the state of NITA is attached. It is modeled after the current statute of Florida. Like many modern era parenting after divorce statutes it uses “parenting responsibility” rather than “custody and visitation” as its basic terminology. It presumes that parenting responsibility should be “shared by both parents”, unless the court finds that “shared parenting responsibility is detrimental to the child.” The statute also authorizes the court to order “sole parental responsibility, with or without visitation rights.., when it is in the best interests of the child.” The statute lists factors that the court can consider in making a “parenting responsibility” determination. As is typical, however, the statute does not presume any factor to be more important than any other factor in making that determination. It also allows the court to consider “[a]ny other ... considered to be relevant.” Given the wide range of judicial discretion in custody decision making, effective advocacy is especially important.
- *The appointment of a court mental health expert in parenting disputes is an important and increasingly routine procedure in most family courts that helps courts focus on the best interests of children.* The appointment of a court expert recognizes that the mental health expertise is an important component to the court’s determination of the “emotional best interests” of the child and is best presented by an expert beholden to the court, not either party. In most civil litigation, parties hire their own experts; the appointment of a court expert paid for by the parties is relatively rare. Court appointed experts, however, are becoming the norm in parenting disputes for good reasons. Most parents cannot afford to hire their own experts (indeed, the cost of a court appointed expert is often too much for them). Mother’s expert generally does not get cooperation from father and vice versa. Both parents have to cooperate with the court expert, who gets to interview everyone.
- *On the other hand, the increasing importance of court appointed mental health experts raises questions about the accountability and transparency of their role in the parenting decision making process.* You will often hear lawyers say that “psychology is not an ‘exact science’.” While mental health professionals provide valuable input into the judicial decision making process, the court is ultimately responsible for the determination of the child’s best interests and for regulating the quality of the experts that it appoints. Concerns have been raised that judges abrogate parenting decisions to non elected, not accountable experts. Concerns have also been raised about the qualifications of experts and whether psychological reports meet the reliability standards of *Daubert* for admission of expert testimony. You might note in this connection that forensic mental health examiners have developed standards for their work. See, for example, those created by the Association of Family and Conciliation Courts available at:

http://www.afccnet.org/resources/standards_practice.asp

What is a Good Cross Examination?

It is also important that the students understand that cross examination is a planned, purposeful advocacy activity, not a series of unrelated questions about small points. It is also not a discussion. An effective cross examination furthers counsel’s theory of the case – why the court should order what the client wants. In effect, cross examination is testimony by the lawyer, through

a series of short, assertive statements in the form of questions to which the lawyer seeks the witnesses' agreement. Generally, a cross examiner does not ask a question on cross examination he or she does not know the answer to. Cross examination is not the time for interesting investigation.

In a famous lecture, Irving Younger identified the *Ten Commandments of Cross Examination* which can be summarized as:

1. Be brief
2. Use plain words
3. Use only leading questions
4. Tie the questions to a theory of the case
5. Listen to the answer
6. Do not quarrel with the witness
7. Avoid repetition
8. Do not allow the witness to explain
9. Do not ask a question you do not know the answer to
10. Save the ultimate point for summation

Others have condensed Younger's *Ten Commandments* to three:

1. Leading questions only
2. One new fact (not characterization) per question
3. Questions should logically progress towards a specific goal

Some have even condensed the "rules" for effective cross examination into a single phrase **KISS- K(EEP)I(it)S(simple)S(fill in your own word).**

Students should thus ask Dr. Nolan a series of short, leading questions that lead to a logical conclusion that further their argument about why, despite Dr. Nolan's opinion, David should be the primary decision maker and residential parent for Jane and Joey.

Note also a distinction between "constructive" and "destructive" cross examination. There are elements of Dr. Nolan's report that are favorable to David's position. His lawyers might thus use leading questions on cross to point those out and affirm them. Destructively, however, there are portions of Dr. Nolan's analysis that support the conclusion that Lynne should be the primary parent that have to be attacked on cross.

Finally, note that Dr. Nolan's cross examination is being conducted before a judge, not a jury. The judge has already read Dr. Nolan's report, and has appointed Dr. Nolan as the court's expert. Appeals to emotion, and snide attacks on Dr. Nolan's competence and credibility thus run the risk of backfiring. The court also is even less likely to be tolerant of long, rambling questions that do not lead to a logical conclusion.

What the students must do

To complete this exercise students have to:

- Read the distributed material
- Draft a memorandum to their case file setting forth their theory of the case, questions for cross examination of Dr. Nolan, anticipated answers and how those answers tie in with their anticipated summation. We suggest that you put a five page limit on the memo.

Preparatory case theory session

If you are willing to devote the time to the subject, you may want to have a class session after the students read the report to discuss it and identify a theory of the case and possible pathways for cross examination to support the theory. A “theory of the case” is the basis for and advocate’s strategy- a blend of law, facts and moral concerns that provides a blueprint of how she expects to persuade a court to rule in favor of her client. A persuasive case theory is logical, simple and credible. Since all of the students represent David, you can treat the class as a “brainstorming” meeting of the law firm in preparation for trial. Go around the room and ask the students to identify one good fact for David in Dr. Nolan’s report. Make a list of those good facts without evaluating them. Then, go around the room and ask for the “bad” facts for David. Then ask the student who proposed the entry to explain why he or she so described it. Then, ask students to articulate what, in light of the good fact/bad fact evaluation what they would like to say about Dr. Nolan and his report in summation to the judge based on their analysis of the strengths and weaknesses of their case. If you know a psychologist, particularly one who has been appointed as a parenting evaluator, it would be a wonderful idea if he or she could join you for the session and serve as a consultant to your law firm in preparation for the trial.

Suggestions for evaluation

[To be drafted].

Evaluation criteria

Review the student’s memorandum and evaluate:

- Does the student understand Dr. Nolan’s report?
- Does the student understand the discretionary nature best interests test?
- Does the student understand the strategic dilemmas in cross examining a court appointed expert?
- Has the student articulated a coherent, persuasive theory of the case for Dr. Allen’s having primary legal and residential parenting of Jane and Joey?
- Are the student’s questions short and leading setting forth facts, not conclusions?
- Do the student’s lead to a logical conclusion that support the student’s theory of the case?

Possible Theories for Dr. Nolan’s Cross Examinations by David

What follows are some overall destructive theories for Dr. Nolan’s cross examination. If a student adopts any of these theories, he or she should fit it into an overall case theory and ask short factual based leading questions that will help convince the court to view Dr. Nolan and her report in that manner.

- Dr. Nolan’s methods and analysis were flawed and did not meet professional standards for conducting a child custody evaluation
- Dr. Nolan undervalued the risk that designating Lynne as the primary residential parent will cause further deterioration in David’s relationship with Jane
- Dr. Nolan undervalued the risk that Jane’s anorexic like condition will become more severe if Lynne is the primary residential parent
- Dr. Nolan did not fully take the importance of David’s relationship with Joey into account by recommending that Lynne be the primary residential parent
- Dr. Nolan did not adequately take into account the degree to which Lynne has neglected her parenting role to focus on her career

Materials for distribution to the students

Attached hereto are:

- (1) a memorandum to the students describing the exercise, much of which repeats what is above. It includes a a brief note about what makes an effective cross examination
- (2) the parenting statute of the state of NITA
- (3) Dr. Nolan’s resume
- (4) Dr. Nolan’s edited report to the court, which has been distributed to all parties

Memorandum

To: Family Law Students

From: Professor

Re: Allen v. Allen cross examination exercise

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Cross examination begins from a “theory of the case”. A case theory is the basis for an advocate’s strategy- a blend of law, facts and moral concerns that provides a blueprint of how she expects to persuade a court to rule in favor of her client. A persuasive case theory is logical, simple and credible. It is the overriding theme for what you want to say to the court in summation about why David should win. Cross examination of each witness, including Dr. Nolan, should stem from a case theory and reflect what you want to say about Dr. Nolan in your summation to the court.

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Family Code of the State of NITA

§ 61.058. Parenting of children following dissolution of marriage

1. Following dissolution of marriage, the court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for visitation as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.
 - a. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include primary residence, education, medical and dental care, and any other responsibilities that the court finds unique to a particular family.
 - b. The court shall order sole parental responsibility, with or without visitation rights, to the other parent when it is in the best interests of the minor child.
2. For purposes of shared parental responsibility and primary residence, the best interests of the child shall include an evaluation of all factors affecting the welfare and interests of the child, including, but not limited to:
 - a. The social history of both parents;
 - b. The marital and parenting history;
 - c. The history of interparental conflict including any incidents of domestic violence;
 - d. If domestic violence is an issue, consider each parent's capacity:
 1. For impulse control;
 2. To change problem solving style;
 3. To empathize with children;
 4. To create and maintain a safe environment.
 - e. The age and developmental stage of each child;
 - f. The health of each child and the parties with particular reference to any special needs or problems, including any effects on the children from witnessing violence between the parents;
 - g. The interests and activities of each child and the role each party plays in encouraging and developing such interests;
 - h. The demonstrated capacity of each party to foster the growth and development of each child and to understand the individual needs of each child;
 - i. The relationship and attachments of each child to his or her parents, siblings and any other person who may have a significant effect upon the child;

- j. Each party's demonstrated ability to provide continuity and stability of environment;
- k. The demonstrated capacity of each of the parties to support an ongoing relationship between each child and the other parent.
- l. Any personality dysfunction that would impair either party's ability to mediate or co-parent.
- m. Any other fact considered by the court to be relevant.

Curriculum Vitae of Parenting Evaluator

PAT NOLAN

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Email: pnolan@greatshrink.com

EDUCATION AGP University, Ph.D. in Clinical Psychology, August, 1994.
AGP University, B.S. in History, May, 1988.

FELLOWSHIP & INTERNSHIP Clinical Psychology Intern, NITA Mental Health Institute, 1994-1995, (APA approved Internship)

LICENSE & CERTIFICATION Licensed Psychologist (PY9999999), Board of NITA Examiners

PUBLICATIONS Nolan, P. (1997) The Importance of Parent Education for Divorcing Parents: Family and Conciliation Courts Review, Vol. 35(2), pp. 223-238.
Nolan, P. (2000) Parental Conflict and Children of Divorce, Family and Conciliation Courts Review, Vol. 38(1), pp. 28-43.

MEMBERSHIPS Member, Association of Family and Conciliation Courts.
Member, NITA Psychological Association.

EXPERIENCE

9/97 To Present: Clinical Psychology Practice including individual and family psychotherapy, forensic psychology, and mental health

9/94 To 9/97: Assistant Professor, AGP University, NITA, USA.

AWARDS Phi Beta Kappa, 1988
Outstanding Teacher Award, AGP University, 2002

TRAINING Dr. Nolan has attended over seventy hours of advanced continuing education in the areas of parenting evaluation, forensic evaluation of children, divorce and family mediation. In addition, Pat Nolan, Ph.D. has presented at numerous conferences including the Association of Family and Conciliation Courts and the NITA Psychological Association.

Excerpts from Parenting Evaluator’s Report

Note: This report has been heavily edited. It is not a model for how a report should be written.

Pat Nolan, Ph.D.
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**Confidential Report: For Attorneys
And The Family Court Only!**

PARENTING EVALUATION

Name: Allen, David and Lynne
Dates of Evaluation: 6/9, 6/20, 6/23, 6/30, 7/8, 7/14, 7/22, 7/29, 8/6, 8/14, 8/22, 8/25, 10/06/2005
Evaluated by: Pat Nolan, Ph.D.
NITA Case No: **03-12345**

EVALUATION PROCEDURE

This evaluation consisted of the following:

- Conjoint interviews, Dr. and Ms. Allen, (Each approximately 1 hour) 6/9 and 10/06/05.
- Individual interviews, Dr. Allen, (Each approximately 1 ½ hours), 6/23, 7/14, 8/25/05.
- Conjoint interview, Ms. Norma Starks and her children, Jim (age 8) and Kelly (age 5), (approximately 1 hour), 7/29/05.
- Individual interviews, Ms. Allen, (Each approximately 1 ½ hours), 6/20, 7/22, 8/22/05.
- Office interviews with children (Each approximately 2 hours), 6/30, 7/8, 8/6, 8/14/05. Father brought the children on 6/30 and 8/6 and mother brought the children on 7/8 and 8/14. During the interview on 6/30, the children were seen conjointly for 30 minutes and individually for 45 minutes each. On 7/8, the children were each seen individually for 1 hour. On 8/6, the children were seen individually for 30 minutes each and one hour was spent conjointly with the children and their father. On 8/14, the children were seen

individually for 30 minutes each and one hour was spent conjointly with the children and their mother.

- Review of written materials supplied by Dr. and Ms. Allen and/or their attorneys. Since both sides were copied on all materials, a listing of materials is not included in this report.
- Brief conjoint phone calls with attorneys on 5/27 and 6/29.
- Collateral phone calls with:
 - Dr. Green, school psychologist 7/19 (15 minutes)
 - Dr. Henne, family pediatrician 7/20 (15 minutes)
- Letters on behalf of Dr. Allen were sent by Dr. Allen's father, and friends and colleagues Jim Thornton, Mark Heller, and Ruth McVay.
- Letters on behalf of Ms. Allen were sent by Ms. Allen's mother, and friends and colleagues John Marleau, Susan Ricci, and Jane Shanahan.

OVERVIEW

In October 2004, Dr. David Allen commenced an action for divorce from his wife, Ms. Lynne Allen.

The Allens have been married for fifteen years and have two children together, Jane, age 13, and Joey, age 11. Dr. Allen and Ms. Allen live in the home together. Dr. Allen moved out of the residence for about a month but returned because he feared living apart would negatively impact his relationship with the children. The Allens sleep in separate bedrooms and Dr. Allen spends some nights during the week at his girlfriend's house. The children know that their parents are having marital problems and have overheard them arguing. There is no history of domestic violence between Dr. Allen and Ms. Allen.

Dr. Allen, a radiologist, told Ms. Allen, a radio programmer, that he wants a divorce in order to pursue a relationship with his x-ray technician, Ms. Norma Starks. Dr. Allen and Ms. Stark's have been having an intimate relationship for three years. Dr. Allen began seeing Ms. Starks after Ms. Allen entered the work force four years ago. Ms. Allen's job at the local radio station required Dr. Allen to become more involved with the day-to-day care of the children, from preparing meals, to putting them to bed. As a result he was not able to spend as many hours at his job. Dr. Allen felt like Ms. Allen was not spending enough time with him or the children. She refused to talk about their marital problems, and Dr. Allen would yell at her while she remained silent.

Ms. Allen responded to Dr. Allen's anger by telling him he didn't take her career or her feelings seriously. Since Ms. Allen would not talk about her feelings, Dr. Allen felt they were at an impasse. Dr. Allen confided his problems with Ms. Allen to Ms. Starks. Dr. Allen and Ms. Starks spent many hours working together, and Dr. Allen learned that Ms. Starks was President of her children's P.T.A. and greatly involved in her children's lives. Dr. Allen was impressed by her ability to excel at her profession and at parenthood. They soon began a sexual relationship.

Further strain was placed on the Allen's marriage when Ms. Allen was promoted to full-time Assistant Programming Director three years ago. On a number of occasions, Ms. Allen called Dr. Allen at work to ask that he take care of the children so that she could stay late at the station. This required Dr. Allen to give up research sessions so that someone would be home with Jane and Joey. On two occasions Ms. Allen arrived home extremely late smelling of alcohol. This concerns Dr. Allen because it is out of character for Ms. Allen. When Dr. Allen commented on her drinking, Ms. Allen made light of it, saying she was only trying to relax.

Dr. Allen and Ms. Allen are arguing more frequently, and often in front of the children. Jane and Joey's personalities have changed greatly as a result of the tension in their parents' relationship. The school psychologist told the Allens that Jane and Joey's teachers have expressed concern about changes in the children's behavior. Meetings with appropriate school personnel have reinforced these concerns.

Where Jane was once intensely interested in school and friends, she has become critical of her teachers and peers. She spends a great deal of time at gymnastics and recently put herself on a strict diet and began losing weight. Over the past three months, Jane has lost nearly 15 pounds. She is now 5'1" and weighs 102 pounds. Dr. Allen expresses concern about his daughter's weight loss, although Ms. Allen thinks she looks fine without her baby-fat.

Jane is angry with her father over her parents' marital problems and refuses to spend any time with him, especially when Ms. Starks is around. Jane is upset that Ms. Starks has made comments like "think of me as a second mother" and "feel free to call me Mom". She told her family that she wants to live with Ms. Allen no matter what happens.

Joey takes his dad's side. He thinks that either Ms. Allen or both parties are to blame. Joey and Jane used to get along well, but now they quarrel often. Joey, on the other hand, thinks Ms. Starks is "friendly, sweet, and cool" and likes that she is interested in their lives. Joey complains about Ms. Allen staying late at work. He has great difficulty sleeping, regularly waking up with nightmares and sometimes wetting the bed. He is ambivalent as to whether he lives with his mother or father after the divorce.

Dr. Allen and Ms. Allen have agreed to a temporary parenting plan pending the court's final parenting order in which Dr. Allen blocks out three evenings during the week to spend with Joey and one day during the weekend. He tries to spend time with Jane but she refuses to participate in any activities with him.

CLINICAL OBSERVATIONS

Dr. David Allen

Clinically, based on all available information, Dr. Allen presents somewhat of a mixed picture. On the surface, he has some basic insight into his emotions and the children's feelings and needs. There is no evidence of any major psychopathology and he generally functions well in his life.

At the same time, Dr. Allen shows evidence of defensiveness and a strong desire to present himself in a favorable light. More than anything, his self-centered style permeates all of the issues in this evaluation. He shows strong evidence of a self-centered style, especially as he focused on the need for his children to develop an independent relationship with Ms. Starks. He has little awareness of the way in which others see him, and he tends to blame Ms. Allen for the children's reactions and responses to the tension. He is unable to see his own contribution to any of the problems with the children or the issues between him and his wife.

This self-centered style became obvious when he was upset with Ms. Allen's return to work, as it upset him when she wasn't available to meet his needs. Similarly, his desire to have the children instantly accept his new relationship doesn't take into consideration the fact that Jane (and perhaps Joey) might have a legitimate reason of their own for not being in a hurry to accept her. Instead, he simply blames Ms. Allen for their reluctance to quickly accept Ms. Starks.

In addition to this self-centered style, he has the most difficulty when experiencing strong emotions, which tend to overwhelm and confuse him. He appears to have a coping style in which he maintains distance from others, often appearing aloof and detached. Lacking insight into this, he tends to blame others when relationships do not go as he would like. Most troublesome in this evaluation was the fact that he has no insight into how his affair with Ms. Starks has affected the children or Ms. Allen and no insight into the difficulty his children might independently have in connecting with Ms. Starks.

Dr. Allen perceives himself as able to set appropriate limits on Joey's behavior and thinks that he is able to communicate effectively with Joey. He also described more than average interest in Joey's interests and satisfaction in parenting Joey. All of this is consistent with Joey's descriptions of his father.

Dr. Allen's caregiving skills are fairly good. He has good insight into the children's non-divorce related needs, though his view of their divorce-related needs is affected by his self-centeredness and the conflicts between him and Ms. Allen. He was an effective parent when taking care of the children, especially in recent months when Ms. Allen has been more detached. There are indications that Dr. Allen is able to focus on the needs of others, a particularly important asset in parenting since effective parenting often requires one to put aside one's own needs in favor of those of a child.

Dr. Allen has been a supporter of the children's academics for years, as evidenced not only by his own statements but those of the children and school personnel. He supports their friendships and activities and recognizes the need to continue those friendships and activities after the divorce is final. He relates well with the children and enjoys playing with and spending time with them. While Jane is quite angry with him right now, he manages these feelings reasonably well. There is some concern that he does not understand the children's need for a healthy relationship with their mother. Finally, he has been the primary supporter of their medical needs. Given all of this, it appears that his self-centeredness is the only factor that would interfere with his having parenting responsibility.

Ms. Lynne Allen

Clinically, based on all available information, Ms. Allen also presents somewhat of a mixed picture. On the surface, she has some basic insight into her emotions and the children's feelings and needs. There is no evidence of any major psychopathology and she generally functions well in her life, both as a parent and more recently in her life outside the home.

Underneath, however, she appears to be struggling with her emotions. She is extremely angry with her husband and she's struggling with her own ambivalence toward him. Her lack of insight into her own role in the problems with the children and Dr. Allen surfaced in the interviews. She is naive in her thinking about the way in which her own anger and frustration is contributing to the children's difficulties, especially Jane's weight loss and anger at her husband and Ms. Starks.

While she's been working to improve herself with her work (and this has been quite valuable for her self-esteem) she has also let her relationship with her husband and the children take more of a backseat. She appears to be struggling with a conflict between doing what meets her own needs versus doing what others expect of her. This conflict on wanting to rely on others and help others while also wanting to separate from them to achieve her own goals is a major conflict for her. It permeates her relationships with both her husband and the children. While she's extremely angry with her husband for his affair, she ignores the fact that she's had her own affair. The difference, of course, is that she is currently unsure about the future of that relationship and she is currently anxious and insecure about Ms. Starks and her fear that Ms. Starks will be a good stepmother and take over her parenting role.

She is also in some denial about Jane. She accepts Jane's sudden weight loss with no concern about how risky it is. She doesn't recognize how her anger is contributing to Jane's rejection of her father. She's so angry with her husband that she allows Jane to reject him, rationalizing it by saying that Jane should have a say in whether or not she sees her father. Her statement that she would never force the children to see their father suggests that she could easily support an unrealistic rejection of their father. This lack of awareness of her own feelings and their potential for difficulty was also evident in the defensiveness scores on the MMPI-2. In all of these areas, she shows strong evidence that her emotions are interfering with her functioning at this time.

On a measure of parent-child relationships completed by Ms. Allen for Joey, results are valid and useful for interpretation. Her results also indicate that she feels supported in her role as a parent, perceives herself as able to set appropriate limits on Joey's behavior and sees herself as able to communicate effectively with Joey. Two areas of concern that surfaced are less than average interest in Joey's activities and less than average satisfaction in parenting Joey. While her results on this instrument suggested these traits, these results are inconsistent with her description of her parenting and inconsistent with Joey's descriptions of her throughout the years.

Except for her anger and the way it's affecting the divorce issues, and some concern about her lack of concern regarding Jane's weight loss, she appears to be functioning well as a mother. Until she got involved with her new boyfriend and became increasingly involved in her work, she was always actively involved in the children's lives and their activities. She has supported their friendships and extra-curricular activities and generally made good decisions for them. I am concerned that she has been withdrawn from the children in recent times, especially as a way of avoiding the conflicts with

her husband. At the same time, it is probable that after the divorce issues are settled she will return to her previous patterns of parenting.

THE CHILDREN

Jane Allen

Per both parent's reports, it appears that Jane was the product of a normal pregnancy and delivery. Developmental milestones were achieved within normal limits. Both parents report that she is interested in usual teen extra-curricular activities, such as gymnastics, soccer, shopping, and boys. She is noted to be artistic and has a good sense of humor.

Jane appears to this evaluator to be a bright, mildly depressed, but thoughtful girl who related reasonably well. She was hesitant to talk about her feelings, except for her anger at her father. She appears to be blaming him for the divorce, largely because of his affair with Ms. Starks. Jane tends toward being dramatic and talking in extremes, which is not unusual for an adolescent experiencing frustration at the breakup of her family. She is angry about the divorce because it is "ruining" her life and she wouldn't mind if she "never" saw her father again. She is also angry with her mother, but wants to live with her because her mother has fewer rules than her father and lets her stay out with friends. Jane denies drug usage, but acknowledges that her grades have suffered in the past few months. She described that she has been limiting her food intake because she feels "fat". She reports that she has lost about 15 pounds over the past 6 months. She is unconcerned about this weight loss. She reports that she doesn't sleep very well and it's also reported that she doesn't get along well with Joey at the present time, in part because he loves his father and wants to live with him.

Jane talked a bit about the history of her family relationships. She used to enjoy spending time with her dad and was able to remember some enjoyable times with him when she was younger but she clearly doesn't want to see him much now. She is glad that her mother doesn't "make" her see her father, adding, "to be honest, I don't really like her very much either. She's always at work and doesn't seem that interested in what I'm doing any more". As she talked more about all of this, she sounded quite sad. She denied being depressed and said that talking to her friends helps her with her feelings. She reports that she has never entertained suicidal thoughts, though she acknowledged feeling sad when she thinks about her life and how it's "falling apart". Like many sad feeling teenagers going through a parenting evaluation, she was clear that she didn't want to talk about these issues and wanted to be left alone.

When seen with her mother, she was observed to be respectful and appropriate. She talked in a mature and relaxed manner and seemed to have a warm and relaxed relationship with her. She was polite to Joey during that observation. She made it clear that she wants to live with her mother. In contrast, when seen with her father, she was observed to be rude and detached. She did not want to participate in discussions and she was clearly angry with him. She blamed him for the divorce and sat in a sullen and non-responsive manner, regardless of her father's efforts to engage her. She was also rude to Joey in that interview.

Jane has always been a bright but headstrong girl. In past years, when her parents' relationship seemed stable, she was intensely interested in school and friends. She was close to both parents but

not demonstratively affectionate. Recently, she has become critical of teachers and peers. She is heavily involved in gymnastics and her teachers and her father became alarmed when she placed herself on a strict diet and began losing weight. She has stopped inviting friends home. Jane is very attached to her mother and she vocally blames her father for her parents' marital difficulties and for "ruining" her life. She refuses to spend any time with her father. She has repeatedly told her parents and her friends that she intends to live with Ms. Allen no matter what the court decides.

Joey Allen

Per both parents' reports, it appears that Joey was also the product of a normal pregnancy and delivery. Developmental milestones were achieved within normal limits. Both parents report that he is interested in usual pre-teen activities, such as little league, soccer, and video games. He has more friends than Jane. He is also noted to be playful and silly, and he has always had a good sense of humor.

Joey appears to this evaluator to be a rather shy but self-confident boy who has always done extremely well in school and has had many friends. He usually admires his older sister and in the past he has identified with her attitudes. But with the onset of the marital problems in the Allen household, Joey has come into increasing conflict with Jane. When Jane blames their father for the problems, Joey quarrels with her, especially when they are with their father. He reports that he sometimes tells Jane that their mother is to blame but at other times he feels that both parents are to blame for the forthcoming divorce. He tries to restore balance in Jane's view of the parental conflicts. Joey complains frequently about Ms. Allen's being away at work in the evenings. Joey has also been having great difficulty sleeping -- often waking with nightmares -- and has recently wet the bed several times.

Joey appears to be a bit clingy. He was more open than Jane about his feelings, and was more aware of the sadness that he feels. He loves both of his parents and doesn't want them to get divorced. He doesn't understand why they argue so much and he doesn't like it when they do. He gets extremely frustrated with Jane and her angry attitude toward their father. Like many children involved in a parenting dispute between his parents, he was able to describe a number of things that he likes and dislikes about each of his parents. He hates it when his parents say bad things about each other and he doesn't like it when his mother tries to get him to choose to live with her. Joey appears ambivalent about any proposed parenting plan. He said that he didn't care who he lives with, as long as he spends enough time with each of them. Such ambivalence is not unusual in children of divorce.

There were few observed differences in the observations with his mother and his father. He was polite and affectionate with both and willing to talk about family issues. He was upset by Jane's treatment of their father, at times trying to get her to be nicer to him. There was no evidence of any particular problems in observing Joey's behavior or relationships with either parent.

Joey indicated that he likes school but sometimes has a hard time concentrating. He used to do much better in school. He attributes the change to the divorce and his frustrations regarding his parents. His mother worries that Joey might be showing symptoms of ADHD but Dr. Allen rejects that idea, believing that Joey simply is reacting to the divorce. We also talked about his interests in extra-curricular activities. Like many youngsters his age, he is interested in sports and video games.

This hasn't changed since the tension of the family, though he spends considerably more time playing video games than he used to. He has several close friends, one of whom also has divorced parents. However, he spends less time with his friends than he used to. Joey acknowledges that he's been more withdrawn and upset than he used to be and he'd like it if his parents just settled the divorce.

INTERVIEW WITH MS. NORMA STARKS AND HER CHILDREN

Ms. Starks was seen with her children. As she talked, her affect was pleasant and she stayed focused on the issues involved in the evaluation. They were all generally affectionate with one another and they were at ease with one another as they talked about their relationships. There were no problems noted during the interview, including when talking about her former husband, who died 4 years ago of a brain tumor. She indicated, and the children confirmed, that she and the children had mourned the loss of her husband, and that her major focus has always been on their well-being. For the first 18 months after he died, she stayed home with the children. As things settled down for all of them, she went to work in her job with Dr. Allen.

Ms. Starks and the children talked about their relationships. All of them talked about how well they get along with each other. Jim and Kelly both indicated that they get along well with one another. They miss their dad and they talked about him and his death and how it had affected them. They have met Dr. Allen and like him, though they were clear that they don't feel he will ever replace their dad. Ms. Starks also indicated that he would not replace their dad, but be a good stepfather to them. The children said that they like Joey, who enjoys playing with them, but they find Jane to be distant and sometimes "mean". They wish Jane would be nicer to them.

Both of the children were able to talk about things they liked about their mother. They find her to be funny, helpful, and "always there when we need her". They generally like her cooking and Jim described that she helps him with his homework when he needs help. They discussed the family routine, one in which Ms. Starks wakes the children up at 6:30 in the morning for school, gets them breakfast and helps get them ready. She takes them to school at 7:45 and goes to work. Both of the children go to after-school care until she picks them up at 5:00. The evening routine includes preparation for dinner, with the children helping, homework, and games or TV watching. The bedtime routine includes bathing, settling down and reading, and quiet talking. As they all talked about these routines, Ms. Starks and the children were silly and animated while talking about the games and reading that they do.

In all, Ms. Starks and her children appear to have wonderful relationships. They appear to have weathered the death of Mr. Starks reasonably well and, while the children still miss him, it appears that Ms. Starks has done an excellent job of meeting their needs. There was no evidence of any problems in their relationships noted in this interview.

COLLATERAL CONTACTS

Dr. Green (School psychologist)

Dr. Green expressed considerable concern about both of the children. Jane has been losing weight and appears overwhelmed and depressed. Joey has become more withdrawn. Both children appear

to be doing worse academically. Until their recent stressors, she felt that both parents had been doing a good job with the children. She does not have an opinion about the specific parenting plan, but instead hopes that the children's needs can once again become the paramount concern of both parents.

Dr. Henne (Pediatrician)

Dr. Henne has been the children's pediatrician since Jane's birth. She reports that the children have always been in good health and have had no particular problems. While both parents have taken responsibility for routine medical appointments, Dr. Henne has always felt a greater connection with Dr. Allen. When asked about Jane's recent weight loss, Dr. Henne expressed that she is only starting to become concerned even though she has lost nearly 15 pounds in the past six months. Jane is 5' 1" tall and weighs 102 pounds. While this weight is in the 5th percentile at her height, Jane is very interested in gymnastics and Dr. Henne noted that all of her female gymnastics patients tend to be small. Dr. Henne did feel that her Jane's should be carefully monitored and she would be increasingly concerned if Jane's weight drops below 100 pounds.

Supportive Letters of Family and Friends on Behalf of Both Parents

Without summarizing each letter, it is sufficient to report that all three letters sent on behalf of Dr. Allen and all three letters sent on behalf of Ms. Allen were quite positive and suggested that each parent has many adequate parenting skills and few deficits.

ANALYSIS, SUMMARY AND RECOMMENDATIONS

As is common in child custody evaluations, both Dr. and Ms. Allen have a variety of strengths and weaknesses related to their parenting, and both have emotional issues that are contributing to the problems being experienced. In addition, each of them has more awareness of their partner's respective contribution to the problems than their own as each of them has limited insight into his/her contributions to be problems. I will start with their strengths.

Ms. Allen has, until recently, been a primary, stay-at-home mother and during the time that she was in this role, she did a very effective job. The children functioned well, and during those times of the Allen marriage, there were no particular problems. At the same time, history reveals that Dr. Allen also contributed to raising the children as he participated daily in their relationships and with important school and extracurricular activities. Both of them have been very loving and while there are some basic differences in the way they relate and communicate, each of them has been warm and supportive of their children's emotions, academics, friendships and psychological well-being.

However, in recent years, as each of them have moved more toward their respective personal goals, they have both become detached in their relationships with the children. Dr. Allen has become more focused on his relationship with Ms. Starks than his children's feelings and he is currently very focused on his future life with her, planning to get married and move in with her and her children. This reflects a continued isolation and detachment as it relates to the children's feelings. While he is aware of the fact that the children are struggling, he displaces his understanding of the cause, as he puts primary blame toward his wife rather than their joint contributions to the conflict. His self-

centered style was quite problematic, as he lacks empathy for the children and the impact that the conflict and his actions have on them.

Similarly, Ms. Allen is more focused on her career than the children at this time. Even though she continues to be the primary day-to-day parent, she has lost sight of Jane's need for guidance and direction as it relates to her eating and doesn't seem to recognize how her own anger and frustration with Dr. Allen has contributed to Jane's anger, withdrawal, and negative feelings toward her father. If she were more secure in her own parenting role at this time, her feelings about Ms. Starks wouldn't be such a big issue for her. Both parents are aware that Joey is having difficulties, but neither of them is working to help him resolve those problems. Ultimately, neither parent is focused enough on how the children are doing **today**, as evidenced by the problems noted above.

Consideration of Factors Affecting the Welfare and Interests of the Child

- (a) *The parent who is more likely to allow the child frequent and continuing contact with the non residential parent:*

It is this examiner's opinion that there are mixed findings in this area. Both parents tend to state that they support the children's relationship with the other parent and will support frequent and continuing contact with the other parent as long as the children want such contact. While they each blame the other, it is likely that, once this dispute is settled, both will support the children's relationship with the other. However, I am concerned that Ms. Allen may support Jane's resistance toward her father and may be willing to allow her to refuse contact if things continue to worsen between Jane and her father. Similarly, I am concerned about Dr. Allen's self-centeredness and the way in which he appears to be oblivious to the impact of his actions, in particular his choice to live with Ms. Starks, has on the children. Hopefully, both parents will recognize the need for the children to have and maintain frequent and continuing contact with the other.

- (b) *The love, affection, and other emotional ties existing between the parents and the child.*

As noted above, both parents enjoy love, affection and strong emotional ties with the children. It is this examiner's opinion that the reciprocal bond between the children and each parent is relatively equal. While Jane currently prefers her mother and Joey currently prefers his father, the attachments are relatively strong for all of them.

- (c) *The capacity of the parent to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in lieu of medical care and other material need:*

Both parents should be able to provide the children with food, clothing, medical care and other basic needs through the remainder of their childhood.

- (d) *The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity:*

The Allen children have lived consistently under the care and guidance of both parents. While Ms. Allen was the more hands-on parent earlier in their lives, Dr. Allen has become more

actively involved in their day-to-day lives in recent years. In order to maintain continuity of this arrangement, it will be best if both parents remain active in their day-to-day lives.

(e) The permanence, as a family unit, of the existing or proposed custodial home:

The children have lived in their current home for the bulk of their childhood. It is this examiner's opinion that it will be best if they can continue living in their current community and maintain ties with friends, schools, and activities.

(f) The moral fitness of the parents:

The ability to detect the moral fitness of a parent is beyond the scope of practice of a clinical psychologist. Morality is a subjective determination and relies on the suspension of objectivity, and at times fact. The question may be better addressed in terms of the parents' behavior and psychological composition as it influences the children, to wit:

(g) The mental and physical health of the parents:

As noted above, each parent is within normal ranges of behavior. Each has more strengths than weaknesses in their respective psychological health and both tend toward authoritative, healthier parenting when they are focused on the children and their needs. While both parents have some personality traits that impact and affect parenting and their coparenting relationship in different ways, there is no evidence to suggest that either parent has any mental or physical health issues which would render one or the other more (or less) capable of meeting the children's needs.

(h) The home, school, and community record of the child:

By and large, both children have functioned well in their home, school and community. There have been some adjustment issues associated with the recent changes and conflicts within the family, but they generally show evidence of strong and healthy functioning.

Given the absence of domestic violence, child maltreatment, and substance abuse issues in this case, the remaining questions center on the risks and benefits of mother as the primary residential parent, father as primary residential parent, and shared residential parenting. It is this examiner's opinion that, as we consider these options, the risks and benefits of each option are very close. The primary benefit of father as primary residential parent would be that it would force Jane to deal with her feelings toward him and force a situation in which they find a way to resolve their differences. He also appears to have a better understanding of her current eating issues. However, the risks of father as primary residential parent is that he is so focused on his preference to build a new life with Ms. Starks that he tends to minimize the importance of Ms. Allen in the children's lives. By focusing so much on the future and these self-goals, he loses sight of the importance for the children of maintaining a healthy relationship with their mother. The biggest fear is that he will allow Ms. Starks to supplant Ms. Allen as the mother figure in the children's lives.

The primary benefits of mother as primary residential parent are continuing the potential for her day-to-day primary role. Along with this, Jane would be happier because she would be able to avoid dealing with the issues with her father. However, the risks are found in the fact that she is

spending increasing time at work away from home and therefore is less focused on and less prepared to meet the children's current day-to-day needs. In addition, she has little awareness or insight into Jane's eating difficulties and she is certainly struggling when it comes to supporting Jane's relationship with her father.

This leads to the option of shared residence. The primary benefit of such an arrangement is that the children will have access to both parents on a regular and consistent basis and continue the pattern in which both parents participate actively in the care giving. Just as if Dr. Allen had primary residence, the prospect of shared residence will force Jane and her father to resolve their issues, and it would give them a day-to-day opportunity to renew and improve their relationship. Along with this, research generally suggests that most children benefit when two relatively equitable parents stay actively involved in a wide range of their children's life experiences and activities and a shared residential arrangement would allow for this. It would also require both parents to live near one another and would effectively block Dr. Allen from moving far away if he wanted to maintain the sharing of residential responsibility.

However, in this examiner's opinion, the risks in such a plan outweigh any benefit that might come from shared residence. While it appears that they would do well to share parental responsibilities, shared residence usually does not work for two parents in such conflict. If both of them could renew their past parenting practices and rebuild their style such that they love the children more than they dislike each other and kept the primary focus and sacrifice on raising their children, this risk could be minimized. However, I am concerned that they will continue to argue about who is responsible for what in their marriage, therapists, educational issues, Jane and her functioning, etc. For this reason, I believe that shared residence will not work.

I thus recommend that Ms. Allen be the primary parent and suggest that the children see Dr. Allen on a regular and consistent schedule. While most of the factors are relatively equal, it is this examiner's opinion that Dr. Allen's self-centeredness is the most problematic factor, largely because he does not understand the impact of his actions on his children. His lack of understanding about the impact of his relationship with Ms. Starks on the children and his tendency to blame all of the marital tension on Ms. Allen is most problematic. Given these issues, it would appear that it is in the children's best interests if Ms. Allen would be the primary residential parent. While Ms. Allen needs to do a better job of monitoring Jane's weight and needs to support her going to her father's home during his residential time, it is this examiner's opinion that designating her as the primary residential parent is best for them.

Given all of the above, I offer the following recommendations:

- 1. Dr. and Ms. Allen continue sharing parental responsibility in decision making for the children. The parents should consider some "tie breaking" procedure such as a parent coordinator to resolve disagreements.**
- 2. Ms. Allen should be the primary residential parent and continue to reside with Joey and Jane in the current marital residence. This would enable the children to continue in their current community with no disruption in their day-to-day lives. If Dr. Allen remarries, and moves to NITA city or another location further away, he could have his parenting time on alternating weekends from Friday pickup from school until return to school on Monday**

morning. This could enable him to be a bit involved in their schooling, but will require him to be involved in the transportation. He could also have the children for a 3-hour dinner visit every Thursday. If he and Ms. Stark's remain closer to Ms. Allen's residence, I would recommend that his weekend parenting time extend to include Thursday overnight on his weekends.

3. The parents must settle differences regarding holidays, birthdays, and vacations.

4. Given the issues noted above, I'd recommend that the children participate in a therapeutic group program. Research suggests that group treatment for children is useful as an adjunct to resolving conflicts associated with parent's divorce. Along with this, however, both parents should continue to watch for signs in which the children need individual therapy. If Jane's eating issues don't resolve themselves soon, I'd certainly recommend evaluation and treatment for that.

5. These parents need to disengage from their conflict by trying to parallel parent the children. With parallel parenting, each parent will strive to do the best job of parenting the children during the time they are in their care, and relinquish the children to the other parent during the time they are in the other parent's care. With parallel parenting, there will be a greater focus on looking inward to find the solutions to problems, rather than externalizing blame and generating hostility. Finally, with parallel parenting, necessary communication is done via fax or email, and in a business-like manner. Certainly, emergency or timely information is communicated by phone, but otherwise, there will be limited contact between them. I would hope that the mediator will help them develop their parallel parenting style. (For more on parallel parenting, see Appendix A).

6. In the event the parents continue to remain in conflict and things do not settle down, a brief updated evaluation would be indicated and the possibility of appointing a parent coordinator.

Thank you for allowing me to be of assistance with this family.

Pat Nolan, Ph.D.
NITA Licensed Psychologist
Date of Report: October 6, 2005

Appendix A

*Cooperative Parenting or Parallel Parenting?**

Research on families of divorce suggests that there are primarily three styles of parenting for families after a divorce: *cooperative*, *conflicted*, or *disengaged*. *Cooperative* parenting is the style used by families in which conflict is low and parents can effectively communicate about their child. If you determine that your level of conflict is low, you and the other parent will probably be able to talk about your child's needs in a healthy way. You will probably agree on most parenting values, be relatively consistent in your parenting styles, and have few arguments about your child's life. You will rarely put your child in the middle, and you will solve differences peacefully. Research shows that children of divorce fare best when parents can be cooperative in their parenting. If you fall in this category, you should feel good about yourselves and know that you are helping your child immensely. There are many good books on cooperative parenting designed to help parents do a more effective job.

This book focuses on those parents who are in *conflict* and argue a lot or need to disengage in their parenting. Even if you can sometimes parent cooperatively, you find it to be difficult and are in conflict too much of the time. *Conflicted* parenting is the worst for children, who are often in the middle of the conflicts. Your children will adjust to your divorce easier if you can avoid conflicted parenting. Psychological issues that lead to conflicted parenting are many, and may include:

- **Continuation of hostility that began during the marriage;**
- **Differing perceptions of pre-separation child-rearing roles;**
- **Differing perceptions of post-separation child-rearing roles;**
- **Differing perceptions of how to parent;**
- **Concern about the adequacy of the other parent's parenting ability;**
- **An unwillingness of one or both parents to accept the end of the relationship;**
- **Jealousy about a new partner in the other parent's life;**
- **Contested parenting issues; and**
- **Personality factors in one or both parents that stimulate conflict.**

Whatever the specific source, parents' inability to separate their parental roles from prior conflict in the marriage is often a significant contribution to the conflict after the divorce. This conflict is perhaps the most important variable in determining how your child adjusts to your divorce. Do whatever it takes to change your level of conflict. The first step in this process is to learn to *disengage* from the other parent. Disengagement is one of the possible styles of parenting after divorce. If you disengage, it's like you have developed a "demilitarized zone" around your children and have little or no contact with the other parent. When you disengage, you will avoid contact with the other parent so that conflict cannot develop. You must do this first to reduce the conflict and before you can move on to the next style of parenting.

* Excerpted from Chapter 2 of *Parenting After Divorce* (Impact Publishers, 2000). © Philip M. Stahl, Ph.D.

The second step in this process is what I call *parallel parenting*. In this style of parenting, both of you will each learn to parent your child effectively, doing the best job each of you can do during the time you are with your child. You will continue to disengage from the other parent so that conflicts are avoided. If you determine that you cannot cooperatively parent because your level of conflict is moderate or high, disengagement and parallel parenting is the necessary style of parenting.

Parallel parenting gets its name from a similar concept in children's play. Research psychologists have observed that young children who play together, but do not have the skills to interact, engage in a process of parallel play. If they are in a sandbox together or taking turns going down a slide, they play *next* to one another, not *with* one another. Each child is doing her own thing with the toys, and generally ignoring the other. When they get older, they will learn to interact cooperatively and play *together*.

Similarly, parallel parenting is a process of parenting next to one another because you are unable to parent together. Before you can learn to co-parent, you will each learn to parent on your own. The first step of parallel parenting is disengagement. This means that you will not communicate about minor things regarding your child. You will not bicker over things that have always led to conflicts in the past. You will give the other parent important information about your child, but you will not get into debates about the parenting plan or about each other's parenting style.

"Important information" means the health, welfare, and interests of your child. If your child is sick, you will inform the other parent of this fact, with details on what medication is needed, what has already been administered, and when the next dose is to be given. If your child has a school field trip, you will inform the other parent of the details, and use your parenting plan to decide who might go with the child on the field trip. Each of you should develop independent relationships with your child's teachers, doctors, coaches, and friends so that you don't have to rely on the other parent for your information. Each of you should take turns taking your child to the doctor and dentist. If you are the parent who receives your child's report card, copy it and send it to the other parent. Do this with medical and extra-curricular activity information, such as your child's little league schedule. Do not complain to the other parent when she is ten minutes late for an exchange of your child, and don't argue over whose turn it is to get your child's next haircut. Have parameters in your parenting plan for some of these things and ignore the rest.

When parents are trying to disengage, but communication is necessary, it is often best if non-emergency communication is done by mail, fax or e-mail. Only use faxes if both of you have sufficient privacy where you will receive the fax. By putting your communication in writing, you will have time to gather your thoughts and make sure that the tone is not argumentative. This also lets the receiving parent take some time and gather his thoughts so that he is not impulsive or angry in his response. Sarcasm is never helpful when trying to disengage from conflicts. Don't share your e-mails and faxes with your children; they are simply meant to share important information between the parents. Try to limit non-emergency communication to twice a month, except for sharing information that is time-sensitive (like faxing a notice from school to the other parent on the day you receive it). Obviously, emergency information about illnesses and injuries, unforeseen delays in visitation (as a result of traffic conditions, for example), or immediate school concerns should be shared by phone as soon as possible. However, by reducing general communication, and by putting

necessary communications in writing, you will go a long way toward disengaging from conflict.

If you have very young children, you know it is important to share all aspects of your child's functions with the care provider when you drop her off. In the same way, it is critical for parents to share detailed information with each other upon the exchange of the child. A useful tool is a "parent communication notebook." In this notebook you will write down the highlights of your child's emotions and behaviors during the time she's with you. Fill out the notebook in great detail and pass it along to the other parent at the time of transition. Things to include in this notebook are your observations of your child's health, feeding and sleeping patterns, language issues, your child's mood, what soothes your child, what upsets your child, your daily routine, and any other detailed information about your child's functions and needs. This notebook should stay with your child so both parents can use it as a forum for preserving thoughts about your child and her needs.

Another step in parallel parenting is not telling the other parent how to parent, and ignoring (rather than arguing back) when the other parent tries to tell you how to parent. Support different styles of parenting in order to avoid conflict. Obviously, some things are very important, such as consistent discipline philosophies and techniques, adequate supervision, giving your child necessary medication, and ensuring that your child gets to school on time with homework completed. If you have concerns about these very important issues, you will need a forum for working out your differences.

There are many things that parents argue about that aren't so important. Some of this is related to different parenting philosophies and some of it is related to the difficulty of sharing your child. Accept that there is more than one "right way" to parent. Learn to be less rigid and more accepting of your child's other parent. Rather than trying to change how the other parent does his job of parenting, do your best job of parenting during the time your child is with you, without criticizing the other parent. Children are capable of being parented in two different styles, and many children of divorce adjust quite well to two very different homes. Remember, just as you will want to avoid criticizing the other parent, you will not want to deal with criticism of your parenting techniques.