

(Emery, 1999b; Hetherington & Kelly, 2002; McLanahan & Sandefur, 1994). In a meta-analysis of 92 studies, Amato and Keith (1991) found an average effect size of .14 standard deviation units when comparing children from divorced versus married families across all child outcomes. Another meta-analysis of studies in the 1990s found that the average effect size was somewhat larger than this earlier estimate, ranging from a low of .12 standard deviation units for measures of self-concept to a high of .22 standard deviation units for conduct problems (Amato, 2001).

While the effect sizes suggest a modest, average increase in psychological problems, it is important to underscore the variability in the psychological adjustment of children whose parents separate and divorce. Most children are resilient despite their parents' divorce, as indexed by measures of psychological maladjustment that do not differentiate them from children whose parents remain continuously married (Emery, 1999a; Emery & Forehand, 1994). Still, depending on the outcome, parental separation or divorce is linked with a 25% to 100% (a doubling) increase in the risk for psychological difficulties at the extremes of the distribution (Hetherington & Kelly, 2002; Zill, Morrison, & Coiro, 1993). Given the high prevalence of separation and divorce, even a modest increase in risk translates into an important societal concern.

### Nonrandom Selection Into Divorce

Still, at least some of the putative "effects" of parental divorce on children, perhaps as much as 50% of the variance, are due to nonrandom selection into divorce. Many of the problems found among children from divorced families actually are present before the parents separate (Cherlin et al., 1991) and therefore cannot be consequences of parental divorce, although this selection effect seems to be stronger in accounting for the psychological difficulties of children than for those of young adults (Cherlin, Chase-Lansdale, & McRae, 1998). Behavior geneticists have raised the strongest selection argument, suggesting that children's risk in divorce may be fully or partially attributable to the passive gene-environment correlation, because genetic factors influence divorce and may also affect children's behavior (McGue & Lykken, 1992). Despite this important concern, in one adoption study (O'Connor, Caspi, DeFries, & Plomin, 2000) and one twin study (D'Onofrio et al., in press), divorce still was associated with a diminished but increased risk for psychological problems, particularly externalizing problems, among children.

### Different Risks for Different Outcomes

Externalizing difficulties are the child emotional problems most strongly linked to parental separation and divorce (Amato, 2001; Amato & Keith, 1991; Emery, 1982, 1999b). Other emotional difficulties less strongly tied to parental marital status include depression; anxiety; poor school behavior and per-

formance; and difficulties in romantic relationships, including an increased risk for divorce among offspring (e.g., McLanahan & Bumpass, 1988). A significantly increased risk for troubled family relationships, especially between children and their fathers, also accompanies divorce. One national study found that fully 65% of young adults between the ages of 18 and 22 whose parents were divorced had poor relationships with their fathers; only 29% of those whose parents were married had poor relationships with their fathers (Zill et al., 1993).

Scientific research notwithstanding, some clinical investigators point to case studies indicating that the adverse consequences of divorce for children are unexpectedly large (e.g., Wallerstein, Lewis, & Blakeslee, 2000). We believe that this conclusion, and much of the debate about it, is due to confusion of psychopathology with what one of us has termed psychological distress or "pain" (Laumann-Billings & Emery, 2000). Even resilient, well-functioning young people whose parents divorce report considerable distress in regard to their memories of their childhood ("I had a harder childhood than most people"), feelings about their current family relationships ("Sometimes I wonder if my father even loves me"), and concern over events where both of their parents will be present ("I worry about big events like graduations or weddings where both of my parents will have to come"; Laumann-Billings & Emery, 2000). Thus, even if resilience—as defined by the absence of mental health problems—is the normative outcome of divorce for children, children's resilience often is colored by painful memories of the past, difficult ongoing feelings about family members, and concerns about future family interactions. There is increasing agreement that making this distress-versus-disorder distinction may help clear up much of the controversy about the consequences of divorce for children (Kelly & Emery, 2003; Wallerstein, 2003).

## PREDICTORS OF CHILDREN'S PSYCHOLOGICAL ADJUSTMENT TO DIVORCE

Average outcomes are an important backdrop to our discussion, but the prediction of individual differences in children's psychological well-being is more directly relevant to custody evaluations. In the following sections, we review research on different risk factors, relying primarily on secondary versus original sources because of space limitations and the large number of studies.

### Parental Conflict

A large body of research demonstrates that conflict between parents is associated with an increased risk for psychological problems among children in all families, whether the parents are married, separated, or divorced (Ahrns & Miller, 1993; Ahrns & Tanner, 2003; Amato & Keith, 1991; Emery, 1982; Johnston & Roseby, 1997; Otto, Buffington-Vollum, & Edens, 2003). Although non-

random selection cannot be completely ruled out, many analogue experiments demonstrate that conflict simulated in the laboratory or recorded systematically at home directly causes some adverse reactions among children (Cummings & Davies, 1994; Davies, Harold, Goeke-Morey, & Cummings, 2002).

Parental conflict often precedes a separation or divorce, and various studies demonstrate that children fare better psychologically if they live in a harmonious divorced family than in a conflict-ridden two-parent family (Emery, 1982). Because separation can bring relief from the struggles of living with parents in a conflict-ridden marriage, we therefore must add improved psychological adjustment to the range of variability found in children's psychological outcomes following their parents' divorce. This "relief hypothesis" is supported by research findings that show children's improved adjustment after separation in high-conflict marriages. However, a new and important twist is what happens to children from low-conflict marriages: Several recent studies have found that children fare better following separation from a high-conflict marriage but worse when their low-conflict parents separate (Amato, Loomis, & Booth, 1995; Peris & Emery, in press). In fact, Amato (2001) argues that, in close to half of divorces, the marriage had been "good enough" from the children's perspective. That is, parental conflict had been sufficiently well contained that the children do more poorly following their parents' separation than they would have done had their parents stayed together.

Whether or not more parents could stay together for their children's sake, these data point to the psychological importance of conflict and to the fact that parental separation does not necessarily decrease it. Conflict can, in fact, increase following separation, continue for years, and come to focus more squarely on children who are a point of connection between former partners (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001; Johnston, 1994).

Parental conflict can affect children directly by creating stress and anxiety (Kelly, 1998) and indirectly by undermining parenting quality and the children's relationship with one or both parents (Otto et al., 2003). As with divorce itself, conflict after divorce is linked with a variety of short- and long-term psychological problems among children, ranging from conduct problems to depression (Emery, 1999b; Schmidtgall, King, Zarski, & Cooper, 2000). However, not all conflict is equally disruptive to children's emotional well-being. The results of systematic analogue studies (Cummings & Davies, 1994), together with field research (Grych & Fincham, 1990) and clinical experience (Emery, 2004), suggest that conflict is least destructive when it (a) is contained between parents; (b) is relatively infrequent; (c) is less intense emotionally or physically; (d) resolves; (e) is not about the children or childrearing; and (f) does not involve the children—which includes not arguing in front of or around the children, not asking children to carry messages between parents, not deriding the other parent to the children, not expecting the children to take sides, not making a child a scapegoat or a me-

diator, and not asking children to make decisions that the parents themselves cannot make (Emery, 2004). Another brief excerpt from the Deer-Doe case illustrates the sort of conflicts that can be all too familiar in separation and divorce.

### Conflict and the Deer-Doe Case

As continued legal maneuvering delayed what he thought would be the speedy implementation of the recommendations made in Dr. Hagan's custody evaluation, John Deer-Doe grew extremely frustrated with his children's mother, with the legal system, and especially with not being able to see his children regularly. As a result of several letters from his lawyer and angry e-mails with Jane, for the first time since the separation, he had the children with him for a long, 3-day holiday weekend. John had a great time with Carlos on his Friday off and on Saturday, but he was deeply disappointed by Isabella's persistent distance and moodiness. His frustration erupted on Saturday evening when he asked Isabella why she didn't spend more time with him and answered his own question by blaming her mother's interference. Before Isabella could even react, he asked, "Wouldn't you like to live with me half of the time?" At this point, Isabella exploded. "I told Mom a hundred times. I want to live with her! I don't want to *see* you! I want to *go home!*"

Hurt and angry, John screamed back, "Fine!" He threw Isabella's things into her backpack, and returned her to her mother's house. They drove in silence, but as Isabella opened the car door, John told her, "You can tell your mother that I'll bring Carlos back tomorrow . . . maybe." Isabella burst into tears, slammed the car door shut, and ran to her mother's front door. John drove away before the door opened, not knowing whether Jane was even home or not.

As this vignette illustrates, hurt, anger, and conflict between separated parents can take many forms, and can erupt even in the absence of the other parent. The vignette also shows how the conflicts that may undermine relationships between separated parents can lead to conflicts between parents and children that undermine crucial parent-child relationships as well.

### Parent-Child Relationships

In most studies of children from divorced families, the quality of the relationship between a child and his or her primary residential parent is the strongest predictor of that child's psychological well being (e.g., Buchanan, Maccoby, & Dornbusch, 1996; Hetherington & Kelly, 2002; Martinez & Forgatch, 2002). The most widely accepted classification of parenting groups caretakers into four categories based on the degree of warmth and control they offer to their children (Lamborn, Mounts, Steinberg, & Dornbusch, 1991; Maccoby & Martin, 1983; Novak, 1996; Steinberg, 2001). *Authoritative* parents are warm and involved, and they consistently and democratically enforce developmentally appropriate rules and discipline. *Authoritarian* parents offer their children low warmth and high control, using

more frequent and autocratic punishment (Novak, 1996). *Permissive* parents are loving but indulgent, and they offer children little guidance and discipline about controlling their behavior. Finally, *neglectful* parents provide children with little affection or discipline.

Research on two-parent families consistently indicates that children of preschool age through adolescence who are raised by authoritative parents fare best on indicators of psychological and behavioral health, while the children of neglectful parents fare worst (Lamborn et al., 1991; Maccoby & Martin, 1983; Novak, 1996; Steinberg, 2001). Research on children in divorced families also shows that authoritative parenting by the primary residential parent is linked with better postdivorce adjustment (Buchanan et al., 1996; Fauber, Forehand, Thomas, & Wierson, 1990; Hetherington, Cox, & Cox, 1982; Hetherington & Kelly, 2002; Thomson, Hanson, & McLanahan, 1994). We should note, however, that more authoritarian parenting styles are found to be equally or more effective in certain contexts, for example among minority families living in potentially dangerous environments (where increased parental vigilance and authority may be needed; Deater-Deckard, Dodge, & Bates, 1996). Authoritarian parenting also predicts lower levels of substance use among adolescents living with divorced parents (Buchanan et al., 1996).

#### *Mothers Versus Fathers*

As noted above, most children live primarily with one parent following separation and divorce—approximately 75% live with their mothers and 10% live with their fathers. Although some early, small-scale studies indicated that children who lived with their same-gender parents were better adjusted than their counterparts living with opposite-sex parents (e.g., Santrock & Warshak, 1979), these findings have not been replicated in more recent research employing large samples (Buchanan et al., 1996; Downey & Powell, 1993). In general, researchers find that children of both genders function equally well living primarily either with their mothers or fathers (Downey, Ainsworth-Darnell, & Dufur, 1998); however, a few investigators have found that children do somewhat better in sole-mother residence than they do in sole-father residence (Buchanan et al., 1996). Still, differences between primary-mother versus primary-father residential arrangements, if they are found at all, are not large in magnitude. Thus, neither parental gender, nor the interaction between parent and child gender, has been found to moderate children's well-being in an important way.

The extent to which children's relationships with their "other" parents predicts their psychological well-being, particularly when there is parental conflict, is one of the most controversial issues in custody law (e.g., favoring or opposing joint physical custody) and in custody evaluations. Data are not conclusive, but there is research relevant to these issues. Given that the issue is so pressing, we believe it is important to draw some clear, if qualified, conclusions from the available research.

#### *Contact Between Children and Nonresident Parents*

An important demographic issue that we have not addressed, but that bears in a very important way on parent-child relationships following a separation, is the extent of contact between children and their nonresidential parents. Seltzer's (1991) analysis of the 1987-88 round of the National Survey of Families and Households data provides detailed and high-quality, if somewhat dated, evidence on this issue, especially on the frequency of contact between children and nonresidential fathers. Three broad trends characterized the findings from this national survey. First, contact between nonresident, separated, or divorced fathers and their children was not terribly frequent, even immediately after the separation. For example, only 43% of fathers separated for 2 years or less saw their children on a weekly basis or more frequently, while 30% of fathers separated for less than 2 years saw their children several times a year or less. Second, contact dropped off substantially over time, such that 6 to 10 years following separation, only 19% of nonresident fathers saw their children weekly or more, while 62% had face-to-face contact with their children several times a year or less. Third, higher contact levels were predicted by a variety of factors including less geographic distance between the parents' households, a shorter length of time since separation, absence of remarriages, the child having been born into a legal marriage instead of out of wedlock, and the child being older rather than younger (Seltzer, 1991). Other evidence from national samples shows that nonresidential mothers maintain somewhat more frequent contact with their children than nonresidential fathers do (Zill, 1988).

Some commentators believe that father contact has increased dramatically in the last 15 years, but the relatively modest increases in sole father custody and joint physical custody (reviewed earlier) make us skeptical that there have really been any dramatic changes. In the most recent national data we could locate, an analysis of 1998 U.S. Census data, 40% of nonresident fathers and 22% of nonresident mothers had had no contact with their children in the previous year. Among the 60% of nonresident fathers who had seen their children, contact occurred on an average of 69 days per year. The 78% of nonresident mothers who saw their children did so more often, an average of 86 days per year (Child Trends, 2002). These data were not disaggregated by levels of contact, overnight visits, or time since separation, and they included parents who did not live with their children for a variety of reasons (e.g., divorced, never married). Still, the evidence indicates that, even in a recent cohort, a substantial number of nonresident parents maintain little contact with their children, and contact in the range considered to be joint physical custody (about 100 overnights per year) is not the norm.

#### *Nonresident Fathering and Children's Psychological Well-Being*

The normative backdrop is important in considering the question of whether more frequent contact with nonresident parents predicts better psychological adjustment among children. A

meta-analysis of 63 studies examining the relationship between children’s psychological well-being or academic success and different dimensions of the relationship between a child and his or her nonresident father (i.e., payment of child support, amount of contact, feeling close to the father, and authoritative parenting) indicated that the amount of contact is a poor predictor of children’s psychological well-being (Amato & Gilbreth, 1999). As shown in Table 1, the weighted effect sizes (product–moment correlations) between contact levels and three indices of children’s psychological well-being were uniformly very small. For externalizing problems and academic success, a fathers’ payment of child support was a better predictor of his children’s adjustment than was a father’s contact with his children. In contrast, authoritative parenting and, to a lesser extent, closeness to the father consistently accounted for a significant if statistically small proportion of variance in all three measured outcomes.

The authors tested for a number of variables that might moderate these relationships, including child gender, age, race, divorce versus nonmarital birth, and remarriage of the parents, but none of these variables moderated the effect sizes in any meaningful way. Although the meta-analysis did not test for the moderating effects of parental conflict, Amato and Gilbreth (1999) discussed the critical role of parental conflict, including research indicating a positive effect of contact when parents cooperate and a negative effect when parents are in conflict (Amato & Rezac, 1994; Hetherington, Cox, & Cox, 1982).

*Joint Custody and Children’s Psychological Well-Being*

Whether joint physical custody is linked with better psychological adjustment among children is an important question in its own right, and if children fare notably better under joint

physical custody than in other arrangements, a nonlinear relationship also might explain the weak association between non-resident-father contact and child outcome. Children may benefit from spending more time with their fathers only when contact reaches some high threshold (see, e.g., Cabrera, Tamis-LeMonda, Bradley, Hofferth, & Lamb, 2000; Lamb, 1999; Lewis & Lamb, 2003). Surprisingly, relatively few investigators have examined how joint physical custody is associated with children’s well-being. A recent meta-analysis (Bauserman, 2002) located only 11 published studies and 22 unpublished studies (21 of which were unpublished dissertations) with a combined sample size of 814 joint-custody children and 1,846 sole-custody children. Combining the results across measures, Bauserman reported a study-level overall effect size of .23 standard deviation units, slightly above what is traditionally considered to be a small effect. This analysis included both joint physical and joint legal custody, but surprisingly these arrangements did not differ significantly in their effects when compared to sole custody (joint physical,  $d = .29$  for 20 studies; joint legal,  $d = .22$  for 15 studies).

Importantly, neither presence of past parental conflict (5 studies) nor that of current parental conflict (14 studies) accounted for significant variance in the joint-custody effect sizes; perhaps of more importance, however, joint-custody groups had lower levels of both past and present conflict than sole-custody groups did (Bauserman, 2002). As Bauserman noted, this suggests the very important possibility that self-selection into joint custody may account for part or all of the results. We cannot extrapolate from voluntary joint physical custody to circumstances when joint physical custody is imposed upon parents by laws favoring joint physical custody, by evaluators who recom-

**TABLE 1**  
*Meta-Analysis of 63 Studies Showing How Strongly Different Relationships Between Children and Nonresident Fathers Predicted Children’s Academic Success and Psychological Well-Being (Adapted From Amato and Gilbreth, 1999)*

Child well-being index	Dimension of nonresident father–child relationship			
	Payment of child support by father	Amount of contact between child and father	Child feeling close to father	Authoritative parenting by father
<b>Academic success</b>				
Effect size (weighted $r$ )	.09***	.03*	.06*	.15***
Number of effect sizes	17	17	7	11
Sum of sample sizes	7,156	4,918	1,212	1,185
<b>Externalizing problems</b>				
Effect size (weighted $r$ )	-.08***	-.02	-.05*	-.11***
Number of effect sizes	8	37	12	26
Sum of sample sizes	2,917	6,808	1,586	2,657
<b>Internalizing problems</b>				
Effect size (weighted $r$ )	-.01	-.03*	-.07*	-.12***
Number of effect sizes	8	43	14	13
Sum of sample sizes	1,916	4,841	1,617	545

\* $p < .05$ . \*\* $p < .01$ . \*\*\* $p < .001$ .

ment that arrangement, or by judges who order it. Finally, it is important to note that, although conflict differences did not account for the advantage of joint over sole custody in the meta-analysis, this analysis does not address the possibility that joint physical custody may be the right solution for the wrong people in contested-custody or other high-conflict situations (Emery, 1999b). At least some research shows that high conflict predicts worse child adjustment within joint-physical-custody groups (Johnston, Kline, & Tschann, 1989).

Thus, our conclusion about the potential benefits of joint physical custody is a cautious one because of (a) the important and unanswered question of whether low-conflict couples self-select into that arrangement; (b) concerns about the potential damage to children caused by likely greater exposure to parental conflict in such an arrangement; (c) the null results for father contact found in a more extensive body of research where self-selection is less of a concern; and (d) the continued low prevalence rates of joint physical custody despite two decades of experimentation. We believe that joint physical custody benefits children when parental conflict is contained. Therefore, more parents who want to attempt joint physical custody (and therefore are likely to be fairly cooperative) should be encouraged to try it. However, joint physical custody seems to be a workable arrangement only for a minority of parents and should not be encouraged as the fair solution for parents who dispute custody or otherwise are in high conflict. Finally, we note that there is no clear line defining when joint physical custody is potentially beneficial or potentially harmful for children. The field would benefit greatly from research on what kinds and levels of parental conflict and cooperation distinguish “good” from “bad” joint physical custody.

#### *Parents' Mental Health*

The Uniform Marriage and Divorce Act explicitly indicates that the mental health of all parties should be a consideration in determining children's best interests. Statutes offer little more than this general guidance, however, thereby leaving much room for interpretation. Thus, although mental health professionals can assess mental health with adequate reliability and validity, questions arise about the specific relevance of parents' mental health problems for children, parenting, and custody arrangements.

Emery (1999b) suggested that four mental health problems among parents are of special concern to understanding the potential consequences of divorce for children: (a) depression, (b) antisocial behavior, (c) major mental illness (e.g., schizophrenia and bipolar disorder), and (d) personality disorders. Substance abuse should also be added to this list. Parental depression is associated with negative child outcomes in a number of studies (Otto et al., 2003), but the effects are likely to be mediated through parental conflict and inadequate parenting (Emery, Weintraub, & Neale, 1982). In their review of the literature, Otto and colleagues (Otto et al., 2003) reported that one of the most consistent findings is that parents who engage in antisocial behaviors

tend to have children who exhibit a number of behavior problems, particularly aggression, delinquency, and other externalizing problems. Children whose parents suffer from schizophrenia also are at a significantly elevated risk both for schizophrenia and for a range of serious emotional problems, although the increased risk appears to result primarily from genetic effects as opposed to childrearing (Gottesman, 1991). Perhaps the greatest concern in regard to schizophrenia and other major mental illness is whether the parent with the disorder is, with treatment, functioning sufficiently well to care for his or her children. A similar concern arises regarding the well-being of children who have a substance-abusing parent. Evidence shows that both genetic and environmental liabilities contribute to the increased risk for psychological problems among such children (Walden, McGue, Iacono, Burt, & Elkins, 2004), but the most pressing issue is the parent's immediate functioning and whether or not this impairs the parent's ability to care for or protect the safety of his or her children. Finally, little research is available on how children are affected by parental personality disorders, although experts in custody disputes increasingly recognize that personality disorders often are an important concern, particularly in cases characterized by chronic high conflict (Ehrenberg, Hunter, & Elterman, 1996; Johnston & Roseby, 1997).

The literatures on parents' mental health, parent-child relationships, genetic transmission, and children's psychological well-being are too vast and complicated for us to consider in any detail here. Still, several broad conclusions seem clear. First, some evidence shows that children are adversely affected when their parents have emotional, behavioral, or substance-abuse problems, but the children's problems might be caused not by their invariably troubled relationships with their parents but by genetic risk or life hardships associated with their parents' psychological problems (Jenuwine & Cohler, 1999). Second, whether or not a parent is engaged in treatment is a major consideration for serious emotional problems like severe depression, substance abuse, or schizophrenia, since appropriate treatment can do much to mitigate symptoms and improve parents' functioning. Third, although the assessment of parents' mental health is of critical and obvious importance when a parent's emotional difficulties are serious enough to necessitate the involvement of child protective services, in other circumstances (i.e., when a parent's emotional difficulties would not lead to unwanted legal intervention in a two-parent family) such assessment seems to us to be merely a search for a “tie breaker” under a vague custody rule fraught with problems. Once again, our view is that it is better to change an impossible rule than to do one's best to follow it.

In summary we conclude that, as others have suggested (Herman et al., 1997; Otto et al., 2003), a parental diagnosis is not, in and of itself, the primary concern when deciding custody; rather, what is of utmost importance is the impact of parental psychological functioning on the child's development and behavior. When a parent's emotional problems are sufficiently

severe that they would warrant legal intervention independent of a custody dispute, we have no doubt that parental mental health should be a central consideration in custody cases. In more ordinary circumstances, however, we see no obvious reason why a history of parental depression, for example, should be a determinative factor in a custody dispute unless it clearly and substantially interferes with parenting.

### *Economic Well-Being*

A family's standard of living falls after separation and divorce, if for no other reason than it is more expensive to live in two households than to live in one. We should note, however, that the average decline is greater for divorced women than for divorced men, as women typically have lower incomes and the extra expense of childrearing (Duncan & Hoffman, 1985). Economic strains can set into motion a number of changes for children, including possibly moving from the family home, changing schools, losing contact with old friends, and spending more time in childcare and having less contact with parents as the parents work to make ends meet. Not surprisingly, research shows that economic stability is an important predictor of postdivorce child functioning (Dunn, 2004; Lamb, Sternberg, & Thompson, 1997). The differences found between the adjustment of children in married and single-parent families are reduced by about half for academic measures like school attainment and by a lesser amount for internalizing and externalizing problems when income is statistically controlled for (Brooks-Gunn & Duncan, 1997; King, 1994; McLanahan, 1997; McLanahan & Sandefur, 1994).

But while family income no doubt is important, much of the variance in children's psychological adjustment in divorced and married families is not explained by economics. Moreover, income may exert its effects indirectly, for example by influencing parenting and other aspects of family functioning, rather than directly, for example by affecting living conditions and opportunities available to children. Results of one study indicated, for example, that divorced working mothers, but not married working mothers, provided less cognitive and social stimulation to their children than married nonworking mothers did (MacKinnon, Brody, & Stoneman, 1982), and other research indicates that parents under economic stress are less likely to be supportive (Thomson et al., 1994).

These findings suggest that caution should be exercised when using parents' incomes as a predictor of children's well-being following divorce; but we particularly call attention to a more basic issue. The suggestion that custody should go to the parent with the higher income sounds outlandish and biased; but we could, if we chose, muster arguments that living with the higher-income parent might be in a child's best interests in terms both of the correlates of greater wealth (e.g., health, well-being) and the direct benefits of greater wealth (e.g., living conditions, opportunities). We would not want to make such arguments too seriously, but we do believe they illustrate an important point: Why should parents' relative mental health, parenting skills, or any

other factor determined on a case-by-case basis determine custody? We believe that the essential problem of determining children's "best interests" based on criteria that are only vaguely specified is the same whether evaluators consider children's economic or psychological best interests. In the latter case, the difference is that the core problem is more effectively disguised.

### *Ranking Predictors*

Based on an extensive review of the literature, one of us (Emery, 1999b) concluded that the following four factors were the most consistent predictors of children's positive psychological adjustment following separation and divorce:

- A good relationship with an authoritative residential parent
- Minimal or controlled parental conflict that does not involve the children
- Economic security
- A good relationship with an authoritative nonresidential parent

Our present review is consistent with this earlier conclusion, and also with the suggestion (Emery, 1999b) that the four factors are ranked in their order of importance (defined as proportion of variance explained) for various measures of children's psychological well-being. Given this conclusion, we urge any professional intervening with separating and divorcing families to attempt to promote all four goals. Since this cannot always be accomplished, however, our rank ordering indicates that factors ranked higher should take precedence over factors ranked lower—if, that is, the objective is to minimize children's risk for developing psychological problems. This means, for example, that if parental conflict is high, and if the nature of that conflict is such that it harms children (e.g., revolves around issues of childrearing, involves the children in the parents' disputes) then frequent contact with both parents is likely to be more harmful than beneficial to children. In the face of high conflict, therefore, children would do better living primarily in one household with an authoritative mother or father and having more limited contact with the other parent. Even as we reach this conclusion, we recognize that philosophical or legal considerations might place a higher value on goals other than maximizing children's mental health—for example, the value that children should have frequent contact with both of their parents despite the presence of damaging conflict. We recognize that a degree of conflict between former partners, sometimes intense conflict, can be expected in divorce, but that conflict also can be contained, diminished, and hopefully resolved over time.

### **A Referral for the Deer-Does**

Jane Deer-Doe was frightened and infuriated when she unexpectedly found Isabella knocking on her door a day early, after her father had returned her in a fury. Jane was more angry than worried about Isabella's flood of bitter tears. In the face of Dr. Hagan's adverse custody recommendation, she thought this was her opportunity to

turn the tables on John. Secretly, she also hoped for vindication not only for all of her actions since her separation but also for the choices, mistakes, and sacrifices she had made in marriage. Enraged and not wanting to waste a moment—and with Isabella listening in—Jane telephoned her lawyer at his home and tried to tell him about what happened and about her outrage. But he was abrupt with Jane and suggested that she instead come by his office on Monday morning. There was nothing to be done on a Saturday night.

To Jane's surprise, her lawyer did not launch into a case against John, even when she finally related all of the details in his office. He listened patiently, but told Jane he needed to give her a "reality check" about what the courts could and could not do. He talked about the cost of extending the litigation process, delays in hearing dates, legal counter-tactics like bringing up any and all of her vulnerabilities as a parent and as a person (and her husband certainly knew her weak spots), and how children can get caught in the middle of such contests. He pointed out that no court was going to deny John all of his rights as a father, so she was going to have to deal with him one way or another. He also noted that local court rules mandated that parents attempt mediation before a custody hearing could be held.

Jane's lawyer told her that he wanted her to try mediation to see if she and John might work out at least some issues about their children without going to court. He described how mediation works and offered that, even if it failed, her effort would look good if the case did go to court. Jane's lawyer eventually told her that he had, in fact, already spoken with John's lawyer and that she agreed that they should try mediation. John's lawyer had promised she would convince John to try it. After raising a number of objections to the idea, Jane eventually accepted her lawyer's advice—but only with great reluctance and trepidation.

Research shows what the Deer-Does' lawyers intuitively recognized: The process of change, the quality of family relationships, and the management of conflict are more important to children's psychological adjustment to divorce than are the structure of custody arrangements or, indeed, the structure of the family (Ahrns, 1998; Amato & Booth, 1997; Buchanan et al., 1996; Emery, 1999b; Hetherington & Kelly, 2002). This conclusion creates a problem for lawyers in traditional practice, however, because the adversary system on which our legal procedures are based can exacerbate rather than help to contain parental conflict and can further undermine rather than promote coordinated coparenting. The dilemma for lawyers and other professionals who work with custody disputes is particularly vexing under the regime of the vague children's-best-interests standard. We briefly evaluate this custody standard in historical context before turning to our specific recommendations for reform.

### **CHILDREN'S BEST INTERESTS: A STANDARD WITH NO STANDARDS**

In theory, the "best interests of the child" standard gives judges the flexibility to craft custody decisions that are uniquely appropriate for each individual family. In practice, however, the standard has been widely criticized because it (a) encourages

litigation by making judges' decisions unpredictable; (b) increases acrimony, because virtually any evidence that makes one parent look bad may be deemed relevant (recall the morality statutes found in some state laws); (c) increases the potential for bias in the exercise of judicial discretion; and (d) limits appellate review, because the guidelines governing judicial decision making are unclear (Garrison, 1996; Mnookin, 1975). In fact, the problems with the best-interests standard have led at least one distinguished legal commentator to propose a fair and simple alternative: Flip a coin (Chambers, 1984). This flip suggestion highlights the extent of the problems that lay hidden underneath the best-interests standard's superficial appeal.

### **Historical Perspective**

Until the middle of the 19th century, custody laws were perfectly clear: Fathers were automatically granted custody of their children, who were viewed, like a wife, as a man's property (Wyer, Gaylord, & Grove, 1987). Laws began to change in the late 1800s with the emergence of the "tender years" doctrine, which held that mothers are uniquely suited to rear children (*Ex Parte Devine*, 1981; Lyman & Roberts, 1985; Mason, 1994; Wyer et al., 1987). The tender-years doctrine came to control custody decision making during much of the 20th century, but in the 1970s the presumption was challenged as sexist (Hall, Pulver, & Cooley, 1996; Mason, 1994). The subsequent decline of the tender-years presumption left courts without clear guidance in following the best-interests standard, a principle that had been in place since the beginning of the 20th century (Mnookin, 1975). For decades, children were automatically placed with their mothers in their best interests (unless the mother was "unfit"), but the desire to avoid sexism left courts without a dominant guiding principle.

As we noted earlier, some states today list factors that they deem relevant to children's best interests, at least in general terms, but the ultimate goal is never defined (Mnookin, 1975). This presents judges with an impossible practical, legal, and ethical dilemma. As noted family law professor Robert Mnookin (1975) put it:

Deciding what is best for a child poses a question no less ultimate than the purposes and values of life itself. Should the judge be primarily concerned with the child's happiness? Or with the child's spiritual and religious training? Should the judge be concerned with the economic "productivity" of the child when he grows up? Are the primary values of life in warm interpersonal relationships, or in discipline and self-sacrifice? Is stability and security for a child more desirable than intellectual stimulation? These questions could be elaborated endlessly. And yet, where is the judge to look for the set of values that should inform the choice of what is best for the child? (pp. 260–261)

### **Custody Evaluations: A Solution to Judges' Dilemma?**

Without clear guidance from the law, judges have turned to mental health professionals and custody evaluations for help in