

Commentary: Factors Predicting Family Court Decisions in High-Conflict Divorce

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Factors that predict custody and visitation decisions are an important area of research, especially in the context of high-conflict divorce. In these cases, youths are at significantly higher risk for exposure to ongoing conflict, violence, and triangulation in their parents' disputes. What variables courts and evaluation clinics use to make custody decisions and whether they are the most salient requires further study. The work by Raub and colleagues in this issue extends our understanding of important factors considered by the courts and custody evaluators in high-conflict divorce and points to directions for future research in this area.

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Custody and visitation decisions in the context of high-conflict divorce are areas much in need of research. As Raub and colleagues¹ describe in their current study, there is ample evidence that high levels of conflict and aggression between parents before, during, and after divorce have significant impact on the psychological functioning and development of children.^{2–4} Examination of factors used by custody evaluators and the courts to make custody and visitation decisions is imperative for understanding what factors are considered and ascertaining whether these factors are the most appropriate. The current paper adds to the literature in important ways by looking at positive communication between parents, a crucial factor that is often ignored. With an increased focus on joint custody and trying to facilitate co-parenting in divorced families, parents' capacities to communicate with one another are crucial. This aspect of the study was a unique contribution. The authors also highlighted gaps in our knowledge and the significant work that is needed to understand whether the factors that evaluators and judges use to make custody determinations are appropriate and are given the correct weight in the decision-making process.

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High-Conflict Versus Physically Violent

In cases of high-conflict divorce, there are often concerns about intimate-partner violence (IPV). Studies have indicated high rates of IPV (ranging from 25 to 50 percent) in samples of high-conflict divorce.⁵ IPV adds very complicated concerns to custody and visitation decisions. Problems of power and control, manipulation of children, and ongoing exposure to psychological and physical violence at the time of custody and visitation exchanges all must be considered. Careful assessment is needed in these cases. Guidance has been provided by experts in the field with regard to assessment strategies and parenting interventions,^{6,7} as well as the use of visitation centers,⁸ and should be followed when IPV is a factor in custody evaluations.

A gap in the current study by Raub and colleagues¹ was an understanding of which cases involved IPV. The authors examined involvement with child protective services and histories of restraining orders together. Seventy percent of fathers and 27 percent of mothers had a history of restraining orders, but, in the analysis, these were also combined with a history of involvement with child protective services. Certainly, these concerns co-occur,⁹ but the implications for custody of children may be better understood by examining these two factors separately. There are undoubtedly cases in which fathers are horrible partners, but have good parenting skills. What must be

considered in the context of a history of IPV is the nature and severity of the history of abuse and whether fathers are able to put their children's best interests first. If a father is not able to share custody without significant conflict and continued aggression and manipulation, then there are reasons to consider granting sole custody to the mother.

The lack of attention to IPV in this study was surprising, given the high number of restraining orders, which suggests that IPV was present in the sample. That fathers' histories of restraining orders or involvement with child protection did not seem to influence custody or visitation decisions for fathers was an unexpected finding. A significant predictor for fathers was history of arrests. The authors do not provide information about the nature of prior arrests and whether these were associated with the restraining orders. It is likely that history of arrest correlated with history of restraining orders and may suggest that the decision to grant sole custody to the mother was influenced significantly by an IPV history. This finding would be important, given the call for clear guidelines concerning custody and visitation in cases involving IPV. Some in the field have suggested that these cases may be served best by giving primary physical custody to the nonviolent parent.^{5,7}

Differential Treatment of Mothers and Fathers

Raub and colleagues¹ highlight differences in the treatment of mothers and fathers in custody decisions that may be due to the biases of custody evaluators or judges regarding criminal behavior, mental health problems, and substance abuse in mothers versus fathers; however, it may also be that these factors manifest differently in men and women and should be treated as such. Substance abuse, criminal behavior, and mental health problems are of concern in parenting by both mothers¹⁰⁻¹³ and fathers.¹⁴⁻¹⁸ The high co-occurrence of IPV in the context of substance abuse,¹⁹⁻²¹ especially for men, may account for the lack of findings related to substance abuse in paternal custody decisions. Without knowing the overlap of the factors presented in the sample, it is hard to disentangle their meaning. It may be that those fathers with significant criminal histories (the primary deterrent for paternal sole custody) were the same fathers with histories of restraining orders and abuse of substances. Certainly, the findings suggest that criminal history had the strongest statistical im-

pact, but it is likely that those three factors co-occurred regularly in the same fathers.

The rates of co-occurring substance abuse and IPV are not as well documented in women, suggesting that these problems differ by gender. However, there is ample evidence that substance abuse co-occurs with other psychiatric and mental health conditions, especially trauma, in women.²²⁻²⁵ The instances of mental health treatment and hospitalizations were higher in mothers in the current sample, whereas arrest rates were lower than those of fathers. This difference could signal a sample of mothers struggling with abusive relationships or histories of trauma leading to mental health needs. It would be unfortunate if mental health services sought by mothers as a result of IPV resulted in custody decisions against them. The literature has cautioned against this possibility in relation to child placement and custody research.^{6,7} Future studies are needed to understand how co-occurring problems such as IPV, arrest, and substance abuse, as well as mental health and substance abuse, play out in custody decisions. Larger samples in which co-occurring factors could be explored and followed longitudinally would be beneficial to our understanding of how custody decisions are made and how these decisions affect the adjustment and well-being of children.

Primary Physical Custody versus Visitation

The current study also highlights a need for further understanding of the visitation allowed parents when sole physical custody is awarded to one parent. Having a child live with one parent but with ample contact with the other can be a very appropriate and healthful arrangement. Awarding physical custody does not mean that the other parent has no contact with the child. A full picture of the various visitation decisions would be of interest. Studies of custody and placement should define clearly what visitation arrangements are awarded. There is a significant difference between multiple unsupervised visits per week and one hour, bi-weekly supervised visits.

Other important factors in studies of custody decisions are gender and age of the child. These have been found to be important in the adjustment of children in some studies.²⁶ Undoubtedly, the child's age is relevant in visitation decisions. Children's sense of time and ability to keep parents in mind are affected substantially by their age and cognitive ca-

capacity. Infants and younger children generally benefit from more frequent contact with noncustodial parents.²⁷

An unsettling finding in the current study was that the only factor that predicted visitation rights for fathers when sole custody was granted to the mother was income. Fathers with low incomes were less likely to have visitation, and when mothers had low incomes, fathers were nearly four times more likely to have visitation recommended by the court evaluation clinic. Although nonresident fathers' financial contributions have been found to affect children's outcomes,²⁸ there is ample evidence that fathers are important in a myriad of ways in children's lives.^{29–31} Even in families with histories of IPV, visitation with fathers has important implications for children's psychological functioning. A lack of contact with fathers can result in more internalizing of symptoms³² and more negative representations of mothers by young children.³³ A clearer understanding of the overlap between the predictors entered into the regression models would help in better classifying the sample. It may be that fathers with substance abuse histories or those with arrests have lower incomes, which decreases their likelihood of visits with their children. It is difficult to disentangle income from other psychosocial and mental health difficulties, yet it seems that income is the factor most in consideration during court custody evaluations. Studies that provide a nuanced exploration of not only physical custody, but the visitation arrangements, in terms of frequency and duration of visits, age and gender of the child, and impact on the child's adjustment would provide a clearer understanding of the data presented here and in other studies.

Areas for Research

Studies of factors associated with custody decisions in high-conflict divorce often do not include variables representing the parent-child relationship. A custody evaluation that focuses on the best interests of the child²⁷ is meant to review relevant data and assess the placement options with the child's best interest as the most important factor. Studies to date have not reviewed custody and placement reports or used data relevant to parent-child interactional assessments. It seems that the nature of the parent-child relationship is important in making custody decisions. How do evaluators weigh the nature of these interactions in their decisions? If a parent has a

history of substance abuse and criminal behavior, but has a play interaction that indicates a secure attachment and good parenting skills, it seems that it should influence the evaluator. Certainly, there is evidence that parents with mental illness, criminal histories, and substance abuse can have more problematic parenting, but there is also evidence that children can experience loss and difficulties when they do not have contact or relationships with these parents.

From the parents' perspective, the research literature suggests that those who are able to maintain active roles in their children's lives are more successful in substance abuse treatment^{11,34–36} and that parenting can be a motivator for engagement in both substance abuse and IPV interventions.^{17,37–39} This consideration is important in the long-term health of the family. If a custody evaluation leads to sole custody for one parent, with very limited or no visitation for the other parent, it may significantly influence the functioning of the noncustodial parent. This decision may be necessary, depending on the severity of the parent's problems and the potential for negative impact on the child. Still, if maintaining a parenting role, even if somewhat circumscribed, increases a parent's motivation to engage and succeed in needed treatment, it could be greatly beneficial for the parent and child in the long term. Further exploration of the association of contact with children and parenting activities with treatment outcomes for mothers and fathers would inform custody evaluations when substance use and other mental health concerns are involved.

The current study's emphasis on parental communication as an important factor in joint custody decisions suggests that the nature of relationships and communication are considered by evaluators when making placement recommendations. This is an important finding, given that outcomes are better for children when communication is less hostile, with better co-parenting after divorce. Examination of both parent-child and co-parent relationship factors in the same study would be an interesting next step in this line of research. Do custody evaluators weigh the parent-child relationship or the co-parent relationship more heavily when making placement decisions?

Longitudinal follow-up seems especially important in studies of predictors of custody outcomes for children in high-conflict divorce. As the authors of the current article report, studies that have compared

sole custody to joint custody for children have found that those in joint custody of their parents have more positive adjustment than those in sole custody.²⁶ Researchers have hypothesized that the reason for this finding is that families with joint custody arrangements after divorce exhibit less conflict than those with sole custody arrangements. Surprisingly, level of conflict, either at the time of the divorce or at the time of longitudinal follow-up, have not been shown to moderate poorer adjustment outcomes overall for children in sole custody.^{26,40} However, a few studies that have recruited high-conflict samples similar to the present study have not found differences in adjustment between sole and joint custody cases and have found increased contact with both parents to result in significant behavioral problems⁴¹ for those in high-conflict situations. This result is particularly salient when children are put in the middle of such conflicts between parents.^{41,42}

Still, an important finding based on a meta-analytic review of 33 studies has been that joint-custody children exhibit similar adjustment to children in intact families in longitudinal follow-up.²⁶ The current sample had a small number of joint custody arrangements overall, with only nine percent of cases resulting in a recommendation of joint custody after court clinic evaluation. Given the possibility of poorer adjustment when sole custody is awarded, following up with this sample to determine long-term adjustment would add significantly to the literature. It may be that the high-conflict nature of the sample, with many fathers who have criminal histories, restraining orders, and substance abuse, as well as high rates of maternal mental health problems yields a sample that warrants more sole custody recommendations. How this compares to other high-conflict divorce samples would be of interest. A cross-sectional study of different states would also be of importance, as it is likely that custody and placement decisions vary by different regions of the United States.

Conclusions

In the current study, the authors explored important new areas related to custody and visitation decisions and highlighted areas of continued need for research in this area. Studies are needed that can examine the overlapping problems of IPV, substance abuse, and mental health history in families, as well as parent-child relationship quality and parenting skills

and how these influence custody and visitation decisions.

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