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H. Patrick Stern M.D.

Michael W. Mellon Ph.D.

Beth O. Butler L.C.S.W.

Suzanne E. Stroh R.N.P.

Nicholas Long Ph.D.

*See next page for additional authors*

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## Battered-Child Syndrome: Is It a Paradigm for a Child of Embattled Divorce?

### Authors

H. Patrick Stern M.D., Michael W. Mellon Ph.D., Beth O. Butler L.C.S.W., Suzanne E. Stroh R.N.P., Nicholas Long Ph.D., and Jerry G. Jones M.D.

# BATTERED-CHILD SYNDROME: IS IT A PARADIGM FOR A CHILD OF EMBATTLED DIVORCE?

*H. Patrick Stern, M.D.\**

*Michael W. Mellon, Ph.D.\*\**

*Beth O. Butler, L.C.S.W.*

*Suzanne E. Stroh, R.N.P.*

*Nicholas Long, Ph.D.*

*Jerry G. Jones, M.D.*

## I. INTRODUCTION

The concept of the battered-child syndrome resulted from an evolution of scholarly work exploring unexplained physical injuries of children.<sup>1</sup> The first paper relating fractures of long bones to subdural hematomas in children was published by Caffey in 1946.<sup>2</sup> In 1953, Silverman published a paper on intentional infliction of injuries to children.<sup>3</sup> In 1955, Wooley and Evans blasted the medical profession for not accepting that injuries were being committed willfully to children.<sup>4</sup> Kempe published his research on child abuse during the 1950s.<sup>5</sup>

A classic 1962 article reframed society's concept of physical abuse of children.<sup>6</sup> The authors cautioned "there is reluctance on the part of many physicians to accept the radiologic signs as indications of repetitive trauma and possible abuse."<sup>7</sup> Fortunately, Kempe and others' work in identifying the battered-child syndrome led to a tremendous increase in professional recognition and treatment of the physical abuse of children.

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\* Department of Pediatrics, East Tennessee State University; Department of Psychiatry and Behavioral Sciences, East Tennessee State University. The authors extend special thanks to Michelle Rogers and Michelle Wilkerson for their patience and help in the preparation of this manuscript.

\*\* Doctor Mellon, Ms. Butler, Ms. Stroh, Doctor Long, and Doctor Jones are members of the Department of Pediatrics at the University of Arkansas for Medical Sciences.

1. See C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MEDICAL ASS'N. 17-24 (1962).

2. See John Caffey, *Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma*, 56 AM. J. ROENTGENOL 163 (1946).

3. See Frederick N. Silverman, *The Roentgen Manifestations of Unrecognized Skeletal Trauma*, 69 AM. J. ROENTGENOL RADIUM THERAPY & NUCLEAR. MED. 413 (1953).

4. See Samuel X. Radbill, *Children in a World of Violence: A History of Child Abuse*, in *THE BATTERED CHILD* 3, 17 (C. Henry Kempe & Ray E. Helfer eds., 3d. ed. 1980).

5. See *id.*

6. See Kempe et al., *supra* note 1.

7. See Kempe et al., *supra* note 1.

This article will review the impact of divorce on children, especially in high conflict families, and present some key historical developments leading to the present management of child abuse. Using the battered-child syndrome as a paradigm, clinical criteria which raise the suspicion of psychological abuse will be proposed for a child of embattled divorce. The potential for improvement of the care of children experiencing high conflict divorce and drawing attention to the concept of psychological abuse of children will be discussed.

## II. THE RELEVANCE OF CHILD ABUSE TO PARENTAL DIVORCE

As the epidemic of divorce evolves in the United States, the experiences which some children of divorce encounter (*i.e.*, exposure to intense interparental conflict) could meet the definition of psychological abuse. Unfortunately, our society may have become desensitized to the repetitive emotional trauma some children experience and accept it as part of the normal divorce experience. Historically, there have been numerous examples of accepted adult behaviors within many cultures which retrospectively are considered child abuse. Examples include swaddling, abandonment, apprenticeship, and infanticide.<sup>8</sup> Acts now considered sexual abuse such as castration, sexual defloration rights, childhood prostitution, pederasty, and sadomasochism have also been accepted historically.<sup>9</sup>

Although the concept of the "best interests of the child" in divorce litigation was first written in a court decision in the United States in 1881 and reaffirmed in 1925,<sup>10</sup> historically, laws alone have not protected children from abuse. Professionals and professional organizations have provided the impetus for reforming societal standards. It was not until Kempe became chairman of the Program Committee of the American Academy of Pediatrics and established a conference in 1961 with the emotive title "Battered-Child Syndrome" that model child abuse laws were adopted by every state in the country.<sup>11</sup> Otto and Melton wrote in 1990 the following conclusion: "Although most states had passed specific maltreatment laws by the early 1920s, it was not until publication of a 1962 article describing the '[B]attered-[C]hild

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8. See Michael Robin, *Historical Introduction Sheltering Arms: The Roots of Child Protection*, in CHILD ABUSE I (Eli H. Newberger, M.D. ed., 1982).

9. See Radbill, *supra* note 4, at 8-11.

10. See Andre P. Derdeyn, M.D., *Child Custody Contests in Historical Perspective*, 133 AM. J. PSYCHIATRY 1369 (1976).

11. See Radbill, *supra* note 4, at 17.

[S]yndrome' that legislators and health care professionals paid considerable attention to the problem of child abuse and neglect."<sup>12</sup>

### III. THE IMPACT OF DIVORCE ON CHILDREN

The annual United States divorce rate has risen dramatically since the advent of recording divorce statistics in 1870.<sup>13</sup> Currently, more than one million marriages disintegrate each year.<sup>14</sup> It is estimated that 40% of all children will experience divorce, with more African-American children than white children (75% versus 38%) experiencing divorce prior to age 16.<sup>15</sup>

Children involved in a separation or divorce of their parents have been reported to suffer psychological maltreatment. Klosinski proposed four ways in which this happens: (1) one parent trying to ally with the child against the other parent, (2) using a child to meet a parent's needs, (3) abducting a child, or (4) parents physically abusing each other in front of the child.<sup>16</sup> Although O'Hagan makes a distinction between psychological and emotional abuse,<sup>17</sup> for purposes of this paper, the definition of psychological abuse proposed by the American Professional Society on the Abuse of Children (ASPAC) will be used. ASPAC defines the term as "a repeated pattern of caregiver behavior or extreme incident(s) that conveys to children that they are worthless, flawed, unloved, unwanted, endangered, or are only of value in meeting another's needs."<sup>18</sup> Psychological maltreatment is further clarified to occur as acts of commission or omission, and can occur alone without the co-occurrence of physical or sexual abuse, or neglect.<sup>19</sup> Psychologi-

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12. Randy K. Otto & Gary B. Melton, *Trends in Legislation in Case Law on Child Abuse and Neglect*, in CHILDREN AT RISK: AN EVALUATION OF FACTORS CONTRIBUTING TO CHILD ABUSE AND NEGLECT 55, 55 (Robert T. Ammerman & Michael Hersen eds. 1990) (internal citations omitted).

13. See ROBERT E. EMERY, MARRIAGE, DIVORCE AND CHILDREN'S ADJUSTMENT 16-32, 25, 71-104 (1988).

14. See Myron E. Wegman, M.D., MPH, *Annual Summary of Vital Statistics-1993*, 94 PEDIATRICS 792, 797 (1994).

15. See Larry Bumpass, *Children in Marital Disruption: A Replication and Update*, 21 DEMOGRAPHY 71, 74 (1984).

16. See Gunther Klosinski, *Psychological Maltreatment in the Context of Separation and Divorce*, 17 CHILD ABUSE NEGLECT 557 (1993).

17. See Kieran P. O'Hagan, *Emotional and Psychological Abuse: Problems of Definition*, 19 CHILD ABUSE NEGLECT 449 (1995).

18. American Professional Society on the Abuse of Children, *Psychosocial Evaluation of Suspected Psychological Maltreatment in Children and Adolescents*, PRACTICE GUIDELINES (1995).

19. See *id.*

cal maltreatment also "produces both acute and long term negative effects"<sup>20</sup> and is "deplorable regardless of the degree to which a child is damaged by them or is coping with them."<sup>21</sup> Thus, a child being psychologically abused may not show any symptoms while experiencing the abuse. A "painful divorce" is cited as an example of an incident which can lead to psychological maltreatment.<sup>22</sup> Children of divorce can display a constellation of symptoms which may be emotional, cognitive, or physical. Emotional symptoms can include fighting, stealing, running away, drug use, promiscuity, declining school achievement, withdrawal, depression, emotional liability, ADD and ADHD symptoms, and self blame.<sup>23</sup> Cognitive symptoms can include changes in memory, recognition, perception, attention, imagination, and moral development.<sup>24</sup> Physical symptoms reported in adults include increased complaints of headaches, back aches, nonspecific pain, increased use of inpatient and outpatient health care, increased medication use, exacerbation of existing disease, more difficulty in controlling diabetes, and an increased incidence of accidents.<sup>25</sup> Symptoms may begin pre-divorce or emerge years after the divorce.<sup>26</sup>

Amato and Keith contributed significantly to our understanding of the effects of divorce on children in their meta-analysis of 92 studies from the divorce outcome literature involving more than 13,000 children.<sup>27</sup> They concluded that the average effect of divorce on children across measures of well-being (*i.e.*, school achievement, conduct, self-concept, relations with parents, etc.) was modest, yet significant. Conduct and the relationship between children and their fathers were most adversely affected. Emery interpreted these modest adverse effects as evidence for the resiliency of children of divorce but acknowledged the significant costs in terms of high levels of situational distress and bad memories lasting for a lifetime.<sup>28</sup> Emery has also

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20. *Id.* at 3.

21. *Id.* at 4.

22. *Id.* at 5.

23. See Karen E. Anable, M.S., R.N., *Children of Divorce: Ways to Heal the Wounds*, 5 CLINICAL NURSE SPECIALIST 133 (1991).

24. See O'Hagan, *supra* note 17.

25. See Domeena C. Renshaw, M.D., *Divorce Sequelae in Clinical Practice*, 20 COMPREHENSIVE THERAPY 84, 84-88 (1994).

26. See Paul R. Amato & Bruce Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, PSYCHOL. BULL., July-Nov. 1991, at 26.

27. See *id.*

28. See Robert E. Emery, Workshop on *Research on Children and Divorce* (November 17, 1995).

pointed out the significant adverse economic impact of divorce on children and the custodial parent, usually the mother.<sup>29</sup>

Johnston describes divorce conflict as having three dimensions.<sup>30</sup> These include the domain of conflict, tactics used in conflict expression, and attitudinal or emotional states exhibited.<sup>31</sup> Families are distinguished as having typical or high levels of conflict based on the duration and developing patterns of conflict expression.<sup>32</sup> Conflict is expected to be higher immediately prior to separation and the final divorce decree.<sup>33</sup> High conflict divorce is defined when disagreement about different domains, such as finances, custody, child rearing or property, continues intractably, and when parents attempt to resolve conflicts by using tactics such as verbal aggression, physical coercion, and recurrent litigation.<sup>34</sup> Johnston notes high conflict divorce may suggest preexisting individual and family psychopathology.<sup>35</sup>

Further analysis of the divorce literature by Amato and Keith, selecting for high conflict families and the subsequent effect on functioning of children of divorce, identified ongoing and intense conflict as the most reliable finding leading to adverse outcomes.<sup>36</sup> On the same measures of well-being (*i.e.*, school achievement, conduct, self-concept, relations with parents, etc.), the negative effects increased three to four times. Other authors have provided convergent evidence in their qualitative reviews of the literature involving high conflict divorced families and the effects on children which were consistent with the findings of Amato and Keith.<sup>37</sup>

As the battered-child syndrome was noted to be "a significant cause of childhood disability and death,"<sup>38</sup> studies involving families embroiled in high conflict divorce also describe worrisome effects on the children's functioning.<sup>39</sup> Many of these children became highly

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29. See EMERY, *supra* note 13.

30. See Janet R. Johnston, *High Conflict Divorce*, 4 CHILDREN OF DIVORCE 165 (1994).

31. See *id.*

32. See *id.*

33. See *id.*

34. See *id.*

35. See *id.*

36. See Amato & Keith, *supra* note 26.

37. See EMERY, *supra* note 13; Robert E. Emery, *Interparental Conflict and the Children of Discord and Divorce*, 92 PSYCHOL. BULL. 310 (1982); John H. Grych & Frank D. Fincham, *Marital Conflict and Children's Adjustment: A Cognitive Contextual Framework*, 108 PSYCHOL. BULL. 267 (1990).

38. See Kempe et al., *supra* note 1.

39. See Janet R. Johnston et al., *Ongoing Postdivorce Conflict: Effects on Children of Joint Custody and Frequent Access*, 59 AM. J. ORTHOPSYCHIATY 576 (1989).

distressed with severe somatic complaints upon witnessing parental conflict, developed many externalizing behaviors such as increased aggression and heightened depression with prolonged exposure to their parents' conflict, and demonstrated maladaptive ways of coping in their interpersonal relationships.<sup>40</sup> Further, Radovanovic indicated that high levels of parental conflict were related to severe behavior problems and diminished competence in children on standardized self-report measures.<sup>41</sup> Overwhelming evidence indicates that much of the negative impact of divorce on children is related to conflicting parental interactions. Emery has concluded that future research should focus not on whether there is an adverse effect of high conflict divorce, but on identifying the causal mechanism.<sup>42</sup>

Since about 50% of marriages are now ending in divorce, most people including those who read this article have experienced divorce in their immediate family or by a member of their close extended family. The impact of divorce and the way in which an individual copes with the stress varies from person to person. A common stress necessitates the majority of people cope with it successfully for society to survive. This may result in a frequent stress being perceived as a normal component of life. The danger of a common stress is that it may desensitize individuals and society to the infrequent occurrence of serious emotional trauma inflicted on some children. Professionals serving children of divorce will likely be reluctant to accept behavioral signs as indications of repetitive emotional trauma and possible psychological abuse, as previously noted, regarding the radiologic signs of physical abuse.<sup>43</sup> This article attempts to identify a small subset of children of divorce who appear to have experienced psychological abuse. These children need to be identified rather than avoided so their special needs can be better served.

#### IV. DEFINITION OF CHILD OF EMBATTLED DIVORCE

Authors of the classic paper, "The Battered-Child Syndrome," presented two case reports to exemplify the clinical manifestations of

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40. *See id.*

41. *See* Helen Radovanovic, *Parental Conflict and Children's Coping Styles in Litigating Separated Families: Relationships with Children's Adjustment*, 21 J. ABNORMAL CHILD PSYCHOL. 697 (1993).

42. *See* EMERY, *supra* note 13, at 71-104.

43. *See* Kempe et al., *supra* note 1.



the battered-child syndrome.<sup>44</sup> Utilizing case reports from the authors' clinical work, APSAC's definition of psychological abuse, the risk to children of high conflict divorce, and the history of child abuse, criteria are postulated which suggest psychological abuse may be occurring to a child involved in a high conflict divorce. High conflict divorce was defined as intractable conflict involving multiple domains in which a parent uses inappropriate measures to resolve the conflict.<sup>45</sup>

The initial step in defining the clinical manifestations involved the authors' clinical team, including a behavioral pediatrician, psychologist, psychiatric social worker, and nurse practitioner, listing by consensus the hostile behaviors of their patients' parents observed in high conflict divorce cases, without reviewing any individual case.<sup>46</sup> This team provides care for many divorcing or divorced families who are self-referred or referred by other professionals including physicians and attorneys; some of the evaluations are court ordered. It was noted that adult psychiatric evaluations of parents in a high conflict divorce often revealed at least one parent has had a psychiatric disorder such as borderline personality, depression, narcissism, paranoid schizophrenia, co-dependency, or sociopathy which may have promoted conflict. Psychiatric disorders of the perpetrators of the battered-child syndrome were also reported by Kempe et al.<sup>47</sup>

Hostile actions were attempted toward professionals treating physically or sexually abused children before good faith reporting laws were passed. Particularly in high conflict cases in which the authors have had long term involvement, the professional team has likewise experienced numerous hostile actions directed toward one or more individuals. Team members have been threatened with physical, emotional, and professional harm. Clinical work has been accused of being biased and misrepresented to other professionals and families. Complaints have been filed to the state licensing board, the National Institute of Health, the hospital medical director, and the chairman of the department. Malpractice suits have been filed primarily by parents who are not attorneys. Every complaint and suit which has been reviewed has been dismissed. Parents with economic means have refused to pay bills or not allowed insurance to make payment, or criticized therapy when children were achieving therapeutic goals. The hostile action was usually preceded by support from that parent and occurred after a

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44. See Kempe et al., *supra* note 1.

45. See Johnston, *supra* note 30.

46. See Appendix I.

47. See Kempe et al., *supra* note 1.

recommendation was made contrary to the parent's wishes. The literature<sup>48</sup> and informal discussions with other professionals serving children in high conflict divorce suggest the team experiences are typical in exemplifying challenges in caring for these children.

The clinical criteria were defined based on the behaviors of both parents and/or stepparents during a separation or divorce which raise the suspicion of psychological abuse of their children. In addition to Klosinski's proposals,<sup>49</sup> additional behaviors were selected by reviewing the authors' high conflict divorce cases in which the children were displaying symptoms of psychological stress or placed under severe, chronic stress because of the hostility of the parents and/or stepparents. The adult behaviors usually endangered the children physically or emotionally, or used the children to fulfill needs of that parent. As a result, the child felt endangered, worthless, flawed, unloved, and/or unwanted. The behaviors of parents and/or stepparents are listed as major criteria<sup>50</sup> and minor criteria.<sup>51</sup> The major criteria are more purposeful, active behaviors which constitute a greater immediate threat to the physical or emotional well-being of another person, especially the child. By consensus the team proposed that psychological abuse be considered when either five major behaviors existed at any time, three major and four minor behaviors existed at any time, or six minor behaviors persisted for more than six months, although any given behavior did not have to continue for that full period of time. This was done so raising the suspicion of psychological abuse would result from more worrisome behaviors while acknowledging less worrisome behaviors inflicted on children especially over time can have deleterious affects. The major and minor criteria should not relate to a parent if the behavior is court ordered.

## V. SUMMARY OF CASE REPORTS

In order to determine if the authors' cases would fit the criteria proposed for raising the suspicion of psychological abuse, the authors'

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48. See American Academy of Pediatrics, *The Pediatrician's Role in Helping Children and Families Deal with Separation and Divorce*, 94 PEDIATRICS 119, 119-21 (1994); Melvin G. Goldzband, *Dual Loyalties in Custody Cases and Elsewhere in Child Adolescent Psychiatry*, in 3 REV. CLINICAL PSYCHIATRY & L. 201, 201-07 (Robert I. Simon ed. 1992); Robert L. Halon, *The Comprehensive Child Custody Evaluation*, 8 AM. J. FORENSIC PSYCHOL. 19, 19-46 (1990).

49. See Klosinski, *supra* note 16.

50. See Appendix II.

51. See Appendix III.

surveyed their own divorce cases. Initially all divorce cases for whom long term care had been provided were listed. Ten cases were selected by consensus of the team which appeared to exemplify high conflict divorce as defined by Johnston,<sup>52</sup> and ten divorce cases were selected because they lacked high conflict. The average length of time medical care was provided for high conflict cases was 31 months (range 17 to 59) and for low conflict cases was 50 months (range 9 to 117). In all of these cases the major stressor causing the children's presenting symptoms appeared to be divorce related. Presenting symptoms of children in both high and low conflict cases were comparable and similar to those previously reported.<sup>53</sup> Emotional symptoms such as anxiety, withdrawal, regressive behavior, pseudo-maturity, and sleep problems occurred. Cognitive symptoms included inattentiveness and school failure. Physical symptoms included enuresis, encopresis, and an increase in atopic symptoms. Families in which kidnaping occurred were excluded by chance, although this has occurred in at least 3 of the authors' cases. Chart reviews were then conducted.

Using the proposed definitions (*i.e.*, five major, three major and four minor, or six minor persisting more than six months) to determine if the authors' cases would fit, the ten cases which clinically appeared to have high conflict met at least one of the three proposed definitions, while the ten cases that did not seem to have high conflict did not meet any one of the definitions.<sup>54</sup> The high conflict cases averaged a frequency of over six major criteria and minor criteria while the low conflict cases averaged a frequency of 1.4 major criteria and 2.1 minor criteria. The frequency of the major criteria in high conflict cases ranged from four to nine, while the frequency in low conflict cases ranged from zero to three. The frequency of the minor criteria in high conflict cases ranged from four to eight, while the frequency in low conflict cases ranged from zero to four. Nine of the ten high conflict cases met the definition of five major behaviors at any time, all ten cases met the definition of three major and four minor criteria at any time, and five of the cases met the definition of six minor behaviors persisting over a period of six months. None of the ten cases selected which did not appear to have high conflict met any one of the three ways in which the definitions were defined.

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52. See Johnston, *supra* note 30.

53. See O'Hagan, *supra* note 17; PRACTICE GUIDELINES, *supra* note 18; Anable, *supra* note 23.

54. See Appendix IV.

Each high conflict case included the major criteria of recurrent court hearings, an adult with an active psychiatric disorder likely to promote high conflict behaviors, and concrete objective evidence of a parent purposely trying to turn a child against another parent or use a child to meet a parent's needs. Minor criteria which were found in each high conflict case included a legally contested initial divorce, indirect evidence of a parent trying to turn a child against another parent or use a child to meet a parent's needs, and a parent refusing to engage in the evaluation or therapy or trying to interfere with the child receiving therapy when the need had been identified. No major or minor criteria applied to all ten low conflict cases, although having indirect evidence of a parent trying to turn a child against another parent or use a child to meet a parent's needs was found in nine out of ten cases.

## VI. DISCUSSION

As the epidemic of divorce continues in the United States, children are frequently being subjected to significant stress which at times is severe. Children involved in high conflict divorce are more likely to develop symptoms from the stress than children in low conflict divorce demonstrating an added risk from conflict not just the divorce itself.<sup>55</sup> The adversarial nature of the legal system may catalyze hostile behaviors in a parent with an aggressive personality and financial means who believes these actions will fulfill the individual's goals in the divorce at the expense of the children. This environment and the increased risk to children has created circumstances which may lead to psychological abuse in high conflict divorce by making a child feel worthless, flawed, unloved, unwanted and endangered, or that their only value is to meet parental needs.

Although in theory the "best interests of the child" should guide the courts in focusing on the needs of children, in reality this frequently does not occur. It was found that 50% of judges do not use the "best interests of the child" in their decision making at all, and it was only one of the top five things considered by the remaining judges.<sup>56</sup> More often,

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55. Robert E. Emery, *SOME CULTURAL, HISTORICAL AND DEMOGRAPHIC PERSPECTIVES, MARRIAGE, DIVORCE AND CHILDREN'S ADJUSTMENT* 16-32, 25, 71-104 (1988); Paul R. Amato & Bruce Keith, *Parental Divorce and the Well-being of Children: A Meta-analysis*, 110 *PSYCHOL. BULL.* 26 (1991); Robert E. Emery, *Interparental Conflict and the Children of Discord and Divorce*, 92 *PSYCHOL. BULL.* 310 (1982); John H. Grych & Frank D. Fincham, *Marital Conflict and Children's Adjustment: A Cognitive Contextual Framework*, 108 *PSYCHOL. BULL.* 267 (1990).

56. See Robert D. Felner et al., *Party Status of Children During Marital Dissolution:*

the judicial system focuses on parental rights rather than on the needs of children who in many court proceedings may have no rights at all.<sup>57</sup> Laws to protect children from physical abuse were not effective until a national conference on physical abuse was held and "The Battered-Child Syndrome" was published.<sup>58</sup> Similar events are likely needed for the "best interests of the child" laws to be enforced.

The battered-child syndrome and other aspects of the evolution of society's approach to child abuse can be used as a paradigm which may help guide management of children of high conflict divorce at risk for psychological abuse in the following ways. The history of child abuse makes it clear that at one point in time a society may condone behavior which retrospectively is considered child abuse. Reconceptualizing common practices from being acceptable to being harmful was required for physical and sexual abuse of children to be addressed. Physical and sexual abuse laws alone did not insure that children were protected by the legal or medical systems; likewise the "best interests of the child" standard which now exists is not always used in divorce litigation. The persistence of unacceptable parental behavior may make that behavior abusive, especially in psychological maltreatment of children. Naming and defining a syndrome, required reporting supported by legal sanctions, and legal immunity from civil liability for good faith reporting had to occur before physical and sexual child abuse began to be routinely addressed. Finally, advocacy for children by a prominent, credible, national organization, the American Academy of Pediatrics, was needed to lead the country to serve children who were being abused. The history of child abuse, especially the work leading to the definition of the battered-child syndrome, can be used as a guide to serve children being psychologically abused in high conflict divorce. Defining psychological abuse criteria in high conflict divorce may also lead society to more consistently recognize and address this form of child abuse which many professionals believe may not be happening at this time.

The presenting symptoms of children in high conflict divorce were not used to define the criteria. Parental behavior alone can define psychological abuse which does not require a coincident maladaptive

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*Child Preference and Legal Representation in Custody Decisions*, 14 J. CLINICAL CHILD PSYCHOL. 42, 42-48 (1985).

57. See Arlene B. Schaefer, *Forensic Evaluations of Children and Expert Witness Testimony*, in HANDBOOK OF CLINICAL CHILD PSYCHOLOGY 47 (C. Eugene Walker & Michael C. Roberts, eds., 1992).

58. See Otto & Melton, *supra* note 12.

behavioral response of the child.<sup>59</sup> Maladaptive behavior may not be evident in a child who has been physically or sexually abused, and a sexually abused child does not always have physical findings. Symptoms in serious physical and psychological disorders such as AIDS and PTSD may not appear until years after the infection or stress occurs. Symptoms alone are rarely if ever pathognomonic of any psychological disorder. Thus parental behaviors alone rather than symptoms of the children were used to define the criteria.

The authors did not find a difference in the kind of symptoms the children in the reviewed cases had in high and low conflict divorce. No attempt was made to rate the magnitude of symptoms. Differences in symptoms may not exist because children presenting for evaluation and treatment in low conflict families had greater symptoms than children in other low conflict families making them indistinguishable from children in high conflict families. Although researchers indicate a greater risk of symptoms occurring in children in high conflict families,<sup>60</sup> more vulnerable children in low conflict families may manifest similar symptoms from the stress of divorce alone. Children stressed by high conflict divorce may use coping mechanisms and not show distinguishing symptoms while experiencing psychological abuse,<sup>61</sup> but have a "sleeper effect" in later life<sup>62</sup> not found in children struggling in low conflict divorce. The lack of finding different symptoms in children presenting in high and low conflict cases likely reflects that children display a limited range of symptoms regardless of the type of psychological stress with which they are struggling.

Multiple questions can be asked about the proposed criteria to raise the suspicion of psychological abuse of a child in high conflict divorce. First, the authors have not empirically validated the defining criteria. One major criterion, kidnaping, was not found in any of the selected cases. Another major criterion and multiple minor criteria were also found in relatively equal numbers of high and low conflict families. A criterion may not be detected because of the relatively small number of cases the authors reviewed. Other criteria may occur in similar frequency in high and low conflict divorce, but may still help identify a suspicion of psychological abuse as a common sign like bruising may

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59. See PRACTICE GUIDELINES, *supra* note 18.

60. See Emery, *supra* note 13; Amato & Keith, *supra* note 26; Emery, *supra* note 37; Grych & Fincham, *supra* note 37.

61. See PRACTICE GUIDELINES, *supra* note 18.

62. See Judith S. Wallerstein, *Children of Divorce: Report of a Ten Year Follow-up of Early Latency Age Children*, 57 AM. J. ORTHOPSYCHIATY 199 (1987).

help identify possible physical abuse. Some criterion are behaviors not directed at the child. Witnessing trauma to a loved one or the effect of the trauma on the interplay of the loved one with the child can make a child feel worthless, flawed, unloved, unwanted, and endangered. As occurred with the battered-child syndrome, this paper is a preliminary report based on case studies intended to stimulate awareness in professionals about when to begin to raise the suspicion of psychological abuse of children in divorce, but the criteria do not diagnose it. Clearly the proposal is only one of the steps needed to further define the psychological maltreatment of children involved in high conflict divorce. Research to determine the validity of the proposed criteria, consideration of further criteria, and refinement of the proposed definitions are needed.

Concern can also be raised that defining criteria to raise the suspicion of psychological abuse in high conflict divorce will add a large number of cases to an already overburdened child protection system. A hostile parent in a divorce may report the divorcing spouse for a suspicion of abuse inappropriately. There is the danger of false positive identification and with high risk labeling. Professionals may be reluctant to report suspected psychological abuse of children of divorce because of lack of objective physical findings. Although these are valid issues with which the child protective system already grapples today, defining criterion to raise suspicion of psychological abuse in high conflict divorce should not be avoided because of challenges serving children within the present system. Professionals in the medical, legal, social, and mental health systems should focus on serving the "best interests of the child" in divorce, especially when high conflict exists.

No systematic study could be found and no attempt was made in this paper to determine what percentage of divorces are high conflict. Although high conflict divorce has been quoted as being as common as 6 to 10 percent of divorcing parents,<sup>63</sup> the defining criteria would likely identify a much smaller percentage.

Just as the battered-child syndrome did not diagnose physical abuse, parental behaviors which meet the criteria do not by themselves indicate a child is being psychologically abused. The proposed definition is intended to alert professionals to look for the criteria of suspected psychological abuse in selected children experiencing the

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63. See Albert J. Solnit et al., *Best Interests of the Child in the Family and Community*, 42 PEDIATRIC CLINICS N. AM. 181, 184 (1995).

divorce of their parents. The professional should also consider all available information regarding the child and family. If a reasonable suspicion develops using APSAC's definition of psychological abuse, suspected child abuse should be reported to the mandated agency under the laws of the state. Following reporting, a multi-disciplinary team of professionals working in conjunction with appropriate agencies should be responsible for determining if the child has been psychologically abused. Using the multifactorial definition which may include a temporal component to raise the suspicion, such as the format used in the *Diagnostic and Statistical Manual of Mental Disorders - IV*,<sup>64</sup> should increase the likelihood suspected abuse exists when a report is made, rather than using a single criteria as Klosinski proposed.<sup>65</sup> A more structured, detailed definition than proposed for the battered-child syndrome is likely needed because psychological abuse is based on behavior rather than tangible physical findings making professionals more reluctant to acknowledge its existence.

In contrast to the advocacy position taken by the American Academy of Pediatrics regarding child abuse, the Academy of Pediatrics has assumed a different position relating to children of high conflict divorce. The American Academy of Pediatrics' position statement "The Pediatrician's Role in Helping Children of Families Deal with Separation and Divorce" includes the following sentence regarding "contentious situations"<sup>66</sup> which in this paper is called high conflict divorce. "In complex legal situations, the pediatrician should consult with his or her own attorney."<sup>67</sup> The statement does not clarify why an attorney is recommended but highlights an environment that has likely made many professionals reluctant to become involved in the psychosocial care of children of divorce. Goldzband may have clarified the need for an attorney when he wrote the following about divorcing parents who state their support of the "best interests of the child:" "Those statements are usually outright lies. Of course, each parent really wants me to side with him or her. My loyalty to the child is fine, they each reason, as long as it is loyalty to their side."<sup>68</sup> Halon clarifies that the typical role of an attorney in a divorce case when a client does not agree with the professional's conclusions and recommendations is to be "vicious" and

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64. See AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* (Michael B. First ed., 4th ed. 1994).

65. See Klosinski, *supra* note 16.

66. American Academy of Pediatrics, *supra* note 48, at 120.

67. American Academy of Pediatrics, *supra* note 48, at 120.

68. Goldzban, *supra* note 48, at 204.



“come at you with their best shot.”<sup>69</sup> He concludes this “often makes custody work threatening and not worth the effort.”<sup>70</sup> Many professionals and professional organizations may avoid high conflict divorce for these reasons. A hostile attack can discourage further treatment of these families which may result in a professional abandoning children who are in great need of help. If this occurs, the hostility of that parent will be successful in compromising the well-being of the children, likely perpetuating what had occurred in the pre-divorce family. Clearly, the professional who attempts to care for children involved in high conflict divorce can also become a target of the hostility which may lead to psychological abuse of the child.

The adversarial nature of the legal system combined with a high conflict divorce with two parents having diametrically opposed positions each of whom want the professional on their side appears to be the basis of the recommendation of the Academy of Pediatrics that pediatricians consult with his or her own attorney in contentious situations. Consulting an attorney promotes the adversarial process rather than keeping the focus on the “best interests of the child.” This is not a practical solution because of the monetary and time costs which result for the professional. The classic model observes that physicians who were reluctant to report physical abuse may have kept that disorder from being addressed if legal immunity for professionals for good faith reporting had not become the law of the land.<sup>71</sup> Since professionals would have legal immunity under existing laws of the state for good faith reporting of suspected psychological abuse in high conflict divorce, they should be willing to report suspicions of abuse in these cases. Professionals are also protected by judicial immunity when court ordered to perform an evaluation of a child in high conflict divorce. Although legal immunity based on present statutes may not extend to treatment of children of high conflict divorce, professional awareness of the incidence of psychological abuse of children in high conflict divorce may help reframe high conflict divorce into the hostile legal environment which exists. This may be particularly important for professionals treating children of high conflict divorce because legal proceedings typically occur in civil court which may be more adversarial than juvenile court where child abuse cases are typically heard. Frivolous attempts by a hostile parent to improperly manipulate a system, such as

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69. Halon, *supra* note 48.

70. Halon, *supra* note 48.

71. See Kempe et al., *supra* note 1.

attacking the professional, will more likely be recognized for the true intent of that parent. Furthermore, the involvement of a multi-disciplinary professional team and appropriate agencies required to evaluate and treat abused children makes it more difficult to isolate one professional as a target for harassment.

## VII. CONCLUSION

The battered-child syndrome appears to offer a useful paradigm for a child of embattled divorce. The scholarly articles leading to the national meeting in this Review should help define criteria and draw professional attention to a small subset of children involved in high conflict divorcing families who are at high risk for psychological abuse. Defining criteria to aid in identifying these children should accomplish a number of positive outcomes. This subset of children in high conflict divorce will be reframed conceptually from children being stressed by divorce alone to children being stressed by psychological abuse and divorce. It will help clarify what may be a frequently unrecognized form of psychological abuse of children which requires reporting by professionals. Existing systems, including medical, mental health, legal and social services, need to be mobilized to help identify and serve children of divorce who are experiencing psychological abuse before symptoms develop. Professionals will have to develop new interventions to serve the complex needs of the child of embattled divorce. Mobilizing these resources should reduce the psychological and physical morbidity and the physical mortality of these children. Both federal and state laws grant immunity for good faith reporting of child abuse. Reporting child abuse in high conflict divorce should lead to the involvement of a multi-disciplinary team and other systems in the care of the abused child. This should help ensure professionals are better protected from legal harassment in their attempts to care for the child of embattled divorce. The high frequency of divorce, the hostility which may be directed at professionals and the fact that psychological abuse is defined behaviorally should not desensitize professionals from identifying this small but needy group of children entangled in high conflict divorce. The broad concept of psychological abuse may be given more credibility by society by defining criteria which may lead to psychological abuse in high conflict divorce as occurred in physical abuse after the battered-child syndrome was defined. The child of embattled divorce definitions which use a DSM-IV format may help further clarify an approach to raise the suspicion of psychological abuse

of children which many professionals believe is the central issue in all forms of child abuse. Defining further criteria should also promote research of this form of psychological maltreatment of children.

**APPENDIX I****HOSTILE BEHAVIORS**

- Multiple contested court hearings for custody, visitation, alimony and/or child support
- Placing children in physical danger, e.g. driving recklessly, smoking marijuana, unsafe use of weapons, driving three wheelers, unsafe living conditions, leaving a child with unsafe caregiver
- Physical and sexual abuse of children pre-divorce and post-divorce, and physical assault of adults
- Conscious attempts of parent to turn children against other parent and stepparent
- Parent continues to verbally attack other parent in therapy and cannot be redirected by therapist
- Parent kidnaps children
- Parent stalks and harasses the other parent and children
- Parent threatens physical and/or emotional violence to other parent and/or children
- Parent frequently has children late and/or unavailable for visitation
- Parent consistently does not pay alimony and/or child support when able to afford payment
- Parent bars contact of other parent with children while in his/her care

**APPENDIX II****MINOR CRITERIA**

1. Parents unable to settle their divorce without a court hearing.
2. A parent threatens physical and/or emotional violence to other family members.
3. There is indirect evidence of a parent trying to turn a child against another parent, stepparent, or sibling, or use a child to meet a parent's need, e.g. spy, parentification, etc.
4. A parent refuses to engage in an evaluation or therapy, or tries to interfere with a child having therapy when its need has been identified.
5. A parent consistently has a child unavailable or significantly late for the exchange at visitation.
6. A parent refuses to allow a child to take possessions to the other parent's home which may be a gift from that parent.
7. A parent does not give the other parent access to the child or him/herself by refusing to provide a phone number, an address, or to return calls.
8. A parent does not pay alimony or child support or meet other financial responsibilities when having the ability to do so.
9. A parent threatens to abandon a child if the parent does not get what he/she wants.
10. A parent threatens to do physical, emotional, or professional harm or verbally harasses the professional staff.

**APPENDIX III****MAJOR CRITERIA**

1. A parent initiates recurrent court hearings especially to contest custody, visitation, and/or finances.
2. A parent engages in dangerous behavior that threatens the physical safety of the child, e.g. driving recklessly, abusing drugs in child's presence, unsafe living conditions, driving three wheelers, leaving child with unsafe caregivers, unsafe use of weapons, lack of supervision, etc.
3. A parent has an active psychiatric disorder likely to promote high conflict behavior, especially a diagnosis such as narcissism, borderline personality, co-dependency, and/or sociopathy.
4. A parent has a history of physical and/or sexual abuse and/or violent behavior which occurred before or after the divorce.
5. There is concrete objective evidence of a parent trying to purposely turn a child against another parent, stepparent or sibling, or use a child to meet a parent's needs, e.g. spy, parentification, etc.
6. A parent attempts to manipulate a professional or system to meet their personal goals related to the divorce, e.g. tries to influence a judge illegally, files frivolous complaint to a medical or judicial board, raises false allegation of abuse, etc.
7. A parent in the evaluation or therapy continues to attack the other parent or stepparent and is unable to focus on the process at hand in spite of consistent redirection by a therapist.
8. A parent kidnaps a child.
9. A parent harasses or stalks other family members, and/or gets another person to do so.

## APPENDIX IV

## SUMMARY OF DIVORCE CASES

| MAJOR CRITERIA |                  |                  | MINOR CRITERIA |                  |                  |
|----------------|------------------|------------------|----------------|------------------|------------------|
| Number         | High Conflict    | Low Conflict     | Number         | High Conflict    | Low Conflict     |
|                | (n=10)           | (n=10)           |                | (n=10)           | (n=10)           |
| 1              | 10               | 2                | 1              | 10               | 5                |
| 2              | 5                | 4                | 2              | 7                | 0                |
| 3              | 10               | 3                | 3              | 10               | 9                |
| 4              | 8                | 3                | 4              | 10               | 3                |
| 5              | 10               | 0                | 5              | 3                | 1                |
| 6              | 6                | 0                | 6              | 5                | 2                |
| 7              | 6                | 2                | 7              | 6                | 0                |
| 8              | 0                | 0                | 8              | 2                | 1                |
| 9              | 7                | 0                | 9              | 1                | 1                |
|                |                  |                  | 10             | 7                | 0                |
|                | Average=6.8/case | Average=1.4/case |                | Average=6.1/case | Average=2.1/case |
|                | Range (4 to 9)   | Range (0 to 3)   |                | Range (4 to 8)   | Range (0 to 4)   |

\*This table summarizes the frequency of the major and minor criteria found in the ten high conflict and ten low conflict cases from the authors' clinical work. Cases were selected based on team consensus of whether high or low conflict appeared to exist. The numbers for the major and minor criteria correspond to the numbers listed in Table 2 and Table 3. The range is the total number of criteria for each family leading to the results in the column.

