Post Divorce Fighting – Can It Be Predicted?
Divorce and Children at Risk

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Few psychologists or psychiatrists would question the fact that many children of divorce suffer the effects of the loss of a parent. In the 2003 Law Notes, I wrote on this topic in more detail. The first four pages here are just a summary of that discussion. Anything society can do to reduce the stresses of divorce should be undertaken. This article discusses research I have done suggesting two factors that can be found in the divorce file that predict over seventy percent of the parents who are going to fight after the divorce. The beauty of these two factors is that they can be found in the file within the first thirty days. We have in this state Section 9-12-322 where the judge can order parents into mediation or parenting classes. It is submitted here that this is all too late.

The beauty of these two factors is that they can be found in the file within the first thirty days. We have in this state Section 9-12-322 where the judge can order parents into mediation or parenting classes. It is submitted here that this is all too late. The lack of financial resources of the single parent creates its own problems. It may cause the disruptions that result from moving from home, changing schools, and changing friends. Even if home and school do not change, lack of financial resources can be stressful in itself. The custodial parent may have been at home with the children prior to the divorce. With the divorce, that parent will have to join the work force or get an education in preparation of working. In many states alimony is no longer available in most cases. Add to this mix the fact that both parents are not at their best as parents during the divorce. Children can feel abandoned. This short-term suffering can be seen in the worry, anger, guilt, lack of self esteem and loneliness often evidenced by the children within the first eighteen months after a divorce. Boys between the ages of six to twelve often seem to be the most affected. Girls in this age group seem to get back to normal more quickly. While going through this process, children can be inattentive and disrupting at school, filled with angry outbursts,

1. **Judith S. Wallerstein & Joan B. Kelly**, *Surviving the Breakup: How Children and Parents Cope with Divorce* 45-51 (1980). This is one of the earliest and perhaps the most well known of the longitudinal studies examining the impact of divorce on children. It began in 1971. Her most recent discussion of this sample that she has followed for 25 years is in **Judith Wallerstein, Julia Lewis & Sandy Blakeslee**, *The Unexpected Legacy of Divorce: A 25 Year Landmark Study*, Hyperion 2000.

2. *Id.* at 48.

3. *Id.* at 165.
sleepless, complaining, and antisocial. The younger children often have tantrums. The older children are more likely to have angry outbursts. Depending on the age, the child can feel guilty, frightened, lonely, worried, and conflicted. Resolution of the loss is the hardest thing for the child to do. One study suggests that the death of a parent was easier for the child to deal with than the loss of a parent through a divorce. With remarriage, one study suggests, the impact on the children is similar to divorce. But this time the girls have more disruptive behavior than the boys.

Whether there are longer-term problems is more debated. Some studies find long-term problems and others do not. There is also some evidence that the girls have a better chance of suffering from the divorce later in early adulthood. Ten years after their par-

4. Judith S. Wallerstein, *The Psychological Tasks of the Child*, 53 Am. J. Orthopsychiatry 230 (1983). This article provides a logical explanation of what children will face psychologically when their parents divorce. It is the one article that could be digested for client use. Part of the counseling function of all attorneys should include providing information to divorcing parents of what they may expect in the behavior of their child. According to Wallerstein the child must work through the psychological stages and this will take time. All of the studies that have focused on the welfare of the children of divorce have failed to come up with an approach or program that ameliorated the effects of divorce on the children. But there are documented things that can make the process worse, and one of the worst is for parents to continue to fight after the divorce is finished. Janet R. Johnston, Linda E.G. Campbell & Sharon S. Mayes, *Latency Children in Post-Separation and Divorce Disputes*, 24 J. Am. Acad. Child Psychiatry 563 (1985)(finding “children who are the subject of lengthy post-separation disputes between their parents have been identified as the most “at risk” group among the divorcing population” Id.). Linda J Skitka & Michele Frazier, *Ameliorating the Effects of Parental Divorce: Do Small Group Interventions Work?* 24 J. Divorce & Remarriage 134 (1995) (finding that children who went through the Rainbows for Kids program do no better than the children who did not participate in the program.) While the studies have not found something that can improve the functioning of the children, studies do suggest that programs can help the parents be better parents during this process. Marian Busse, *Impact of Kids First Seminar for Divorcing Parents: A Three-Year Follow-Up*, 26 J. Divorce & Remarriage 145-47 (1996) (finding that educating parents does help the parents to be more aware of the problems their conflict can cause, but the sample is very small). A bigger sample was examined one year after a 32 page booklet was mailed to 358 divorcing largely lower-middle-class urban parents. One year later, the parents who received the booklet were more likely to communicate positively with their children and their former spouse than was the case with the parents in the control group. Jack Arbuthnot, Cindy J. Poole & Donald A. Gordon, *Use of Educational Materials to Modify Stressful Behaviors in Post-Divorce Parenting*, 25 J. Div. & Remarriage 117-18 (1996).

5. Wallerstein, supra note 4 at 237-38.

6. Id. at 238.

7. E. Mavis Hetherington, Margaret Stanley-Hagan & Edward R. Anderson, *Marital Transitions, A Child’s Perspective*, 44 Am. Psychologist 302 (1989).This study provides not only information about a longitudinal study being conducted but discusses the process and is one of the first studies to examine not only the divorce’s impact on the children but also the remarriage’s impact on the children. Unlike the rosy view taken by some of a now two-parent household, remarriage of the custodial parent, in particular, can cause additional problems for the children. “In the early months of remarriage, custodial mothers report being less effective and more authoritarian in their child rearing than non divorced mothers (Bray, 1988). Compared to non divorced mothers and like newly divorced mothers, newly remarried mothers report poorer family communication, less effective problem resolution, less consistency in setting rules, less effective disciplining, and less emotional responsiveness.” Id. at 308.


9. Id. at 127-28.
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ents divorce, almost one half of the children in one study had reconciliation fantasies. This is not to belittle the effects. One study found that five years after the family split up, over one third of the children exhibited moderate to severe depression. It also reported at the five year examination that thirty percent of the children were progressing more slowly than the average child of the same age developmentally. The author noted that this was especially interesting in that the children in this longitudinal study had not been identified as needing help before the divorce. In fact the children selected were screened for chronic psychological problems initially and were considered by their parents and teachers to be behaving within normal developmental limits.

Examining whether divorce caused long-term problems in the children is studied in two quite different ways. First are what is called longitudinal studies similar to the ones mentioned above. These are the type that follows a group of children over time to examine long-term problems. These studies are fewer in number and tend to involve fewer subjects. These studies often involve direct contact between the professional researcher and the children, their parents and sometimes the children’s teacher.

Other types of studies use questionnaires given to groups of children, especially school children. It is these types of studies that have questioned whether divorce has any long-term harm. I call these questionnaire studies “snap-shot studies.” Unlike the longitudinal studies, these studies measure the children at a particular point in time. The students answering the questions are varying lengths of time from their parent’s divorce. One such study specifically mentioned excluding from the study any students whose parents divorce was within two years of the beginning of the study.

There is one way divorcing parents can help their children. Everyone seems to agree that children in families that continue to fight long after the dust has settled on the divorce are in the worst position. These children are often called the children of Armageddon. “There is evidence from many studies that intense parental conflict poses severe threats to

10. Judith S. Wallerstein, Children of Divorce: Preliminary Report of a Ten-Year Follow-up of Young Children, 54 Am. J. Orthopsychiatry 444, 457 (1984). This is a further examination of a portion of the children in the sample with which Wallerstein started. The sample she used was remarkably stable. This article only examines the children who were between 2 ½ and 6 at the time of the divorce and reports on their progress ten years later. There were 34 children in the study at this age group at the time of the divorce. Ten years later Wallerstein is able to locate 31 of the original children. Id. at 445. Three of five of the clinicians who interviewed these children at the time of separation, eighteen months later, and five years later were still there to do the interviews that resulted in this ten-year examination. Id. at 446.

11. Judith S. Wallerstein, The Long-Term Effects of Divorce on Children: A Review, 30 J. Am. Acad. Child & Adolescent Psychiatry 353 (1991). This article has a review of the major longitudinal studies up to this point. It synthesizes each study for easy access. It would be useful for any attorney who is litigating custody to read and have a copy of this article. It would be a shame if the basis for a change in custody is child behavior such as a drop in grades that is probably solely due to the divorce rather than bad parenting.

12. Id.

13. Id.

14. Jean M. Muransky & Darlene DeMarie-Dreblow, Difference Between High School Students from Intact and Divorced Families, 23 J. Divorce & Remarriage 187, 194 (1995) (finding no significant differences between the two groups when looking at the students views about beliefs about divorce, family environment, inter parental conflict and self-depiction).
the psychological health of children, whether the family is divorced or remains married.”

Discussing one longitudinal study of these children, Wallerstein says “the findings are so grave from a clinical perspective that without intensive treatment along with major family change, it is highly improbable that the clinical condition of such children can substantially improve.” Steps taken to reduce the fighting could help these children substantially.

If some system other than the court system is to be used for divorcing parents, should all divorces with children proceed through the alternative program? This is not the case in the current jurisdictions. If just some of the divorces with children are sent into the alternative system, how are these people chosen and when are they chosen?

The next part of this article discusses the result of regression analysis done by the author looking at the question of whether any fact or facts available in the early pleadings or later during the divorce would predict post-divorce fighting between the parents. The data for this study were collected from divorce files that indicated that the parties had children. Data of six months of these files were analyzed resulting in 188 case entries. The files utilized were filed from January through June of 1995 in Fayetteville, Arkansas. This earlier date was chosen to give the parties many years in which to fight. The fighting of these families after their divorce was recorded up until June 2001. The fighting recorded was fighting in court pleadings. Obviously, the parents could be physically or emotionally fighting and the data recorded would not pick it up. It is an assumption of this study that court-pleading fighting is symptomatic of parental fighting in general. This assumption had to be made since no interviewing of the parents was done. Entries were recorded from information provided in the pleadings and legal action taken by the parties during the divorce. These were turned into independent variables. A regression equation was estimated to examine the relationship of these actions taken by the parents during the divorce and post-divorce fighting of those parents. Post-divorce fighting was the dependent variable. Note again that the post-divorce fighting included was fighting in court pleadings. Other types of fighting could not be recorded.

As is the case with many scientific studies, the relationships were considered significant if the regression met the ninety-fifth percentile confidence level. This study is the basis for the article’s recommendations. This is the only study I known to examine this problem this way. It would be interesting if the study had found that no facts available from the divorce files had a statistical relationship with post-divorce fighting. In fact, two variables were found to have a relationship. The most

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15. Wallerstein _supra_ note 11 at 354. In the actual study, custody fights were the basis for the referral of the children to the psychologist writing the report. They were also fights within the divorce. Janet R. Johnston, Linda G. Campbell, and Sharon S. Mayes, _Latency Children in Post-Separation and Divorce Disputes_, 24 J. AM Acad. Child Psychiatry 563 (1985). The study in this paper is looking at post-divorce fighting, and the definition of fights covers custody, visitation, support and property fights. The term children of Armageddon was coined by Andrew S. Watson, _The Children of Armageddon: Problems of Custody Following Divorce_, 21 Syracuse L. Rev. 55 (1969-70). Watson is urging the courts to use psychological analysis when dealing with the legal test of the best interest of the child.

The surprising finding of the study was which two independent variables were statistically related to post-divorce fighting. These were being married less than seven years and/or filing of a counterclaim. Perhaps more interesting is what in the files was not related to post-divorce fighting. For example filing for a protective order was not related to post-divorce filing. This is surprising. Would not a filing that said that the other person was so violent or troubling that a protective order was necessary show parents likely to fight? This was not the case at least in this study. This study, its structure and findings constitutes the remainder of this discussion.

Since continued conflict can harm the children, is there a way to reduce post divorce fighting? Many articles in the last decade have suggested that mediation is the answer to reducing divorce fighting. Many states have placed mediation along side the courts in dealing with divorce. In Arkansas we have a provision in section 9-12-322. It provides for up to two hours of parenting classes or submission to mediation dealing with parenting, custody and visitation issues. It is submitted here that this is too narrow. We should send to mediation parents who are likely to fight on any of the divorce issues. It is also too late. The judge sends appropriate parents to mediation or education. It is suggested here that waiting for a judge to know the parents are in trouble will be later in the divorce and after the parents have hardened their position. Would it not be a great thing for the court system to reduce the number of parents who are litigating over custody?

Should the parties be forced to mediation? Most people would agree that if parents are to be sent to mediation or some other program, the earlier the parents are sent the better off they will be. In many states referral to mediation is made by the judge in the divorce action. Yet a judge does not see the parties until late in the divorce. No doubt judges are selected since they can see the divorcing parents interact. Are the parents already influenced by the fighting by the time the judge can evaluate them? It is submitted here that this is too late.

Divorce and Harm to Children: What Factors in the Early Divorce Pleadings Will Predict Post-Divorce Fighting If Any?

Other Studies

This researcher could not find other regression studies trying to predict post-divorce fighting. There have been, however, efforts to predict such fighting. Elizabeth B. Brandt discusses the attempt to change the approach the Idaho courts took to domestic relations disputes by steps taken toward mediating some of the divorce cases with children. They first set it up with the judge determining who was to go to mediation and then they changed. As mediation became more accepted, the reformers within the state soon realized “that the most difficult cases were still winding up in the {adversarial} system to the detriment of the children involved.” They concluded that having the judge determine which couples would be sent to mediation came too late. The judge did not see the parties until well into the divorce. As Brant notes “[b]y the time courts had an opportu-
nity to order mediation at a Rule 16 pre-trial conference, the parties in the most conflicted cases had already engaged in a course of strategic, litigation oriented behavior that caused polarization and undermined the possibility that mediation could be successful." Since the program was still in its beginning stages, the reformers were able to fine tune it before the Idaho Supreme Court became involved in the effort.

Now in Idaho, one of three types of behavior early in the case triggers an evaluation to see if mediation is appropriate. These three things are: 1. a request for a temporary order; 2. an answer filed by the defendant; and 3. a failure to file a parenting plan within thirty days of the date the parents attended the Divorce Parenting Orientation. If one of these three things happens, the parents are sent to an evaluation. This evaluation is done by court-annexed family services staff. None of the judicial districts outside of Boise have such a staff. Since only Boise, Idaho’s biggest city, has such a staff, in other areas of Idaho the evaluation is done by mental health personnel who are hired as independent contractors by the state. This independent evaluation program was begun with grant funding and has since been continued by use of a combination of grant funding and legislative funding.

It should be noted that Idaho takes two different types of actions to minimize parental fighting. The Divorce Parenting Orientation is immediately ordered once a complaint seeking custody of a child or children is filed with the Idaho court. All divorcing parents with children must take this course. The few studies on the effectiveness of a general education effort found that educating parents works better than educating the children. But unlike the situation in some states, Idaho does not stop with parental education. They look to see if one of three tell-tale signs is present. Recall, these three things are an answer filed by the defendant spouse, a request for a temporary order, and a failure of the parents to file a parenting plan within thirty days of attending the Divorce Parenting Orientation. If the parties do one of these three things, the parties are ordered to an evaluation. One of the difficulties that Brandt notes is that this family services staff cannot be set up in all rural counties since the trained experts are not available. Nonetheless, she suggests that the tentative result is that the program is a success. But the evaluation process is uneven due to the unevenness of the expertise of the evaluators especially in the rural part of the state.

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20. Id. at 372.
21. Id. at 373. All of this effort necessitates funding. The Idaho change was funded in part by grants and in part by legislative funding. Id. at note 49.
22. Id. These independent contractors are local health providers. This allows them to be funded partly by this and other work they do in the community. Otherwise they would be underemployed.
23. Id. at 327-73.
25. Brandt supra at note 244 at 373.
26. Id.
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It is the role of this evaluation to suggest immediate mediation; further education, or anger management before mediation; or, if the case is not appropriate for mediation, then the case is set for trial. This system has a clear advantage. The potential for mediation in these families is determined early in the case instead of later when the judge finally sees the parties. A number of researchers suggest that this would be a good idea.27 One of the concerns of mediation is power imbalances between the wife and the husband. Abusive situations are not appropriate for mediation. By sending some divorcing families to evaluation by a trained professional, these cases can be set for trial.

Another education effort that Brand says is necessary is the education of the bench and bar. Brant was instrumental in producing a protocol. This was in turn adopted by the Idaho Supreme Court. The process just described is part of the protocol. The protocol is about managing custody cases. This effort in Idaho is also limited.28

Having an evaluation by a trained professional is expensive. It would therefore be a good idea to try and predict what parents are likely to fight. In Idaho, they use the filing of any temporary orders, an answer and the failure to file a parenting plan within thirty days after the parents have been to the Divorce Parenting Orientation class. The current study looked at temporary filings and the filing of an answer as well as other filings made in the divorce file. Since Arkansas does not require parents to file a parenting plan this could not be tested. Discussed below are the independent variables collected from the divorce files. These independent variables were regressed on post-divorce fighting to see if any were statistically related to post-divorce fighting in court. Neither temporary order requests nor filing of an answer were related to post-divorce fighting. If the results in the current study are replicated, Idaho may wish to revise the types of behavior they use to select which parents should be sent to the evaluator.

The Current Study

The fact that no other regression studies examining prediction of post-divorce fighting were found is not surprising, since recording information from hundreds of court files is both time consuming and a little dull. There are always surprises. On the phone this researcher was told that the divorce files were given a different number to differentiate them from the other equity filings. At the time, Arkansas was one of the last states to have separate courts for equity and law. Thus, the filings in equity had different numbers and, in fact, different filing drawers. Upon arrival, it was found that all the equity filings had the same numbers; the phone in-

28. Brant supra at note 244 at 372-374.
formation was inaccurate. A lot of time was taken looking through files that turned out not to be a divorce file let alone a divorce filing with children. In states where the equity cases have been merged with the legal ones, i.e., us now too, will now find all of the cases may be under the same numbering system. This would make the research effort much more time consuming. The Arkansas computer files were not organized as divorce files so a computer search would not have helped. Computers may provide more help in another state to pick the files. The files still need to be pulled and examined. Imagine working on files in a place like New York City where a request has to be made to a person who then retrieves the file. This can take considerable time. Only a few files could be ordered at one time. Collecting raw data from files under this type of system would have been too time consuming. In Arkansas, one can go to the drawers in the Clerk’s office and take out files, sit down by the computer and record information. Many studies have students do this repetitive task. This researcher used a student to record information for another study from bankruptcy case files. This study demonstrated the difficulty of using one student to collect the data. The best student data gathering system is one that has more than one student work on each file. This creates more accuracy since the students can compare the information they have separately collected from the file. It is also important to remember, one study does not make science. Given the limits of regression analysis, the finding in the current study may be no relation at all and correlated purely by chance. Science is made by many studies on different samples coming up with the same or similar correlations. More studies are needed if we care about predicting the divorcing couple that will likely fight post divorce. At least the current study gives hope that some things found within the first thirty days will be as strong a predictor of post-divorce fighting as were marriages of fewer than seven years and the respondent filing a counterclaim.

The current study is based upon the assumption that channeling some parents into mediation earlier in the divorce rather than later in the divorce is a good idea. This study was done to see if court pleadings filed earlier or later in the divorce were correlated with post-divorce fighting between the parents. The data for this study was one hundred and eighty-eight divorce files in the Washington County, Arkansas courthouse. These represented the filings for divorce by families with children. This was all of such filings for the six months from January through June in 1995. This time was selected to provide the families years in which to fight. The data were collected in the summer of 2000 and the cutoff for recording fighting was June 1, 2000 when the research was begun. Property fights tended

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29. This researcher collected data from bankruptcy cases in New York City in 1996. This was the file retrieval method used at the time. It was a laborious process.

30. Janet A. Flaccus & Bruce L. Dixon, Arkansas Chapter 12 Filings: An Analysis, 1994 Ark. L. Notes 9. This was an analysis of the chapter 12 cases that had been filed up to that point. A student collected the information in the files. Unfortunately the files and schedules were filled out incompletely and not carefully. This made it difficult for the student to systematically record information.

31. Using two students to collect information from court files is shown in Teresa A. Sullivan, Elizabeth Warren, & Jay Lawrence Westbrook, As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America, (1989). In the back of the book the authors discuss their methodology.
to happen fairly quickly in this data. Support, visitation and custody disputes could happen years later.\textsuperscript{32}

The actions that were considered fighting were placed into four groups. These groups included property, support, visitation and custody court fights. These were combined into one dependent variable in the primary regression equation. This research was a specification search.\textsuperscript{33} This variable was structured such that it took the value of one (1) if any one or more of the four types of fighting had occurred by June 30, 2000. Otherwise, the dependent variable had a value of zero. Logistic Regression was used to regress the dependent variable on a number of independent variables. These independent variables included the length of marriage, sex of petitioner, temporary restraint requests, motions to dismiss, counterclaims, differences in grounds for divorce, conflicting custody demands, demands for interrogatories and depositions, subpoenas, and requests for separate maintenance.

One fact was very visible. Moms filed for divorce more than twice as often as the Dads. This is illustrated in Illustration 1.

Yet the sex of the petitioner was not correlated with fighting in any of the regression models. The grounds for divorce turned out not to be helpful either. The vast majority of grounds for the divorce were based on general

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32. The raw data collected is available from the researcher. It is in three sections. These three sections need to be connected to see all of the information for any given file. In this format, this information is available from the researcher.

33. Mark Klock, Finding Random Coincidences While Searching for the Holy Writ Truth: Specification Searches in Law and Public Policy or Cum Hoc Ergo Propter Hoc?, 2001 Wis. L. Rev.1007. This article criticizes specification searches. These are using several models to see if different independent variables are correlated with the dependent variable until some independent variable is correlated. The examples professor Klock uses are using regression analysis to predict medical problems like cancer. One of the examples he uses is the collection of data on 100 different variables. These then are each run against the dependent variable which is a type of cancer. His concern is that if enough variables are tested against the dependent variable a correlation will appear that may well be totally based on chance and not truth at all. \textit{Id.} at 1026-1030. The current research used no more than fifteen searches. Sometimes, regression analysis can only be done by specification searches.
indignities. Twenty-five other divorces were based on living separate and apart for eighteen months,\textsuperscript{34} four were based on adultery and one was based on the felony ground. This left one hundred and fifty-seven couples with children divorcing by showing general indignities. The files provided the data on both the dependent fights variable and the various independent variables. Then each case was followed for post divorce fighting and the types of fights were placed into the four categories.

As can be seen by the illustrations not all of the files gave all of the information that was being recorded. For the regression analysis only one hundred and eighty three of the cases could be used. The types of fights broke down to 15 property fights, 25 visitation fights, 20 custody fights and 55 support fights. Obviously not all of the cases involved post-divorce fighting and some cases fought in more than one type of fight. Moreover, only fighting in the legal system could be counted. There was no way to check for other types of fighting.

All studies have limitations. Moreover this study is subject to the additional limitation that Washington County is not typical. This county has the University of Arkansas with approximately sixteen thousand students at the time of this study. This could mean that the average age of the divorcing parents in 1995 was lower than it would have been elsewhere. Length of marriage was one of the independent variables to try to deal with this. Illustration number two has the distribution of the length of the marriages. Note that the medium length of marriage was seven years. Thus the seven years and older category had slightly more case files than the six year and under category of cases.

\textsuperscript{34} This is considered the one no fault ground in Arkansas. All other grounds for divorce in Arkansas involve fault in some degree. Although the general indignities ground in statutory language looks hard to prove it is not. The statutory language is “shall offer such indignities to the person of the other as shall render his or her condition intolerable” Ark. Code Ann. § 9-12-301(4) (2002). Construction of the statute occurred in 1849 where the Arkansas Supreme Court in Rose v. Rose, 9 Ark. 507 (1849) held that indignities included vulgarity, rudeness, studied neglect, physical injury, malignant ridicule, settled hate or estrangement. It had to endure for at least as long as habitual drunkenness which must go on for one year. \textit{Id. at 515-16}. Today, compare Poore v. Poore, 76 Ark. App. 99 (2001)(finding arguments over the husband’s job that kept him away from home was not sufficient to show general indignities) with Vanzant v. Vanzant, 1997 WL 177826 (Ark. App. 1997)(finding telling children of husbands alleged infidelities was sufficient to show general indignities.) If the divorce is contested, the plaintiff needs to supply corroborative evidence of the ground they are relying on. This means testimony by someone else who has seen the behavior. Ark. Code Ann. § 9-12-306 (2002).
All of the independent variables were regressed on the individual types of fights first and no correlation at the ninety-fifth confidence level was found. The independent variables were then regressed on the total fights dependent variable as defined above. This correlation uncovered two independent variables that became correlated. To understand correlation one needs to understand that it does not imply causation. For example there may be a strong correlation between eating ice cream and crime decline. This does not suggest that eating ice cream causes crime to decline. It could be that really hot weather causes people to eat more ice cream and causes criminals to commit fewer crimes because they become lethargic. As this example illustrates, a regression correlation is always subject to the risk that another independent variable not collected and used in this study does a better job at predicting post-divorce fighting. The research is always limited by the data available. For example, the data available for this study did not indicate systematically the social-economic status of the divorcing couple. It could be argued that a richer couple is more likely to fight in court because fighting in court is expensive. But would this really predict the parents who are going to continue to fight? This study could not answer this question. The case files did not have this information reliably. Having a regression software package is also very helpful. This researcher used a program called EViews version 2.0. This can be purchased from Quantitative Micro Software, Irvine, CA. This is software usually used by economists.  

Undergoing any type of research like this runs the risk that no independent variables are correlated with post-divorce fighting. This result would be of interest in that, if replicated, it would indicate that any attempt to single some parents out from others would be over or under inclusive. However, two independent variables were correlated at the ninety-five percent confidence level in this study. These two variables were being married for fewer than seven years and the fact that the respondent parent filed a counterclaim. Counterclaims are filed with answers but not all answers have counterclaims. In Idaho by sending all answer filers to the evaluator they are being over inclusive.

The fact that families that have been married fewer than seven years is correlated with post-divorce fighting may be explained by the fifty-five support fights in the cases. There were more than twice as many support fights than any other type of fighting. When children are younger, the number of support years is longer and more expensive and more worth arguing about. Illustration number 3 shows the strong likelihood that most families in the sample had one or two children at the time of the divorce. This is shown on the above Illustration.

The greater number of minor children at the time of the divorce also will have an impact on the level of support. This might be the explanation. The best way to analyze the support burden is to determine the amount of support based on the age of children and the number of children and regress this information on the dependent fight variable. The age of children was not regressed on the

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35. This software was used because it happened to be on our home computer because my husband, an econometrician, works with this software. Other types of software packages that provide regression analysis could easily have been used. Many researchers use SPSS. The regressions all work the same way.
dependent fight variable in this study because data did not show whether the children in the file were either the children of the divorcing couple or adopted by the step parent. Step parents who have not adopted the child or children do not usually have support obligations. Eighty-two percent of the couples married six or fewer years had at least one child five years old or younger at the time of the divorce petition. Whereas, only forty-two percent of the couples married seven or longer years had at least one child five years old or younger. This greater frequency of young children in the six years and under category may explain this category’s predictive power.

Yet, none of the independent variables, including being married fewer than seven years, was correlated with support fights tested separately. Moreover, the number of children is also important in establishing the support amount in addition to the age of the children at the time of the divorce. The couples married seven or more years even though they tended to have older children tended to have more minor children. While almost seven percent of the couples married six or fewer years had three or more minor children, twenty percent of the couples married for seven or more years had three or more minor children. Fifty-nine percent of the six or fewer years group had only one minor child. Only twenty-seven percent of the seven and more group had only one minor child. In other words seventy-three percent of the shorter marriages had more than one child. This would make the overall support bill higher per year for those larger families more prevalent in the couples that were married seven and more years. Yet, length of marriage after the sixth year was negatively correlated with post-divorce fighting. In other words, the longer the parties were married after the sixth year the less the likely hood of fighting.

Length of marriage was placed in three-year groups. The first two groups were positively related to fighting. These two groups were those married one through three years and those married four through six years. The seven through nine years of marriage group started to be negatively correlated as were all of the subsequent three-year groups. Thus, although age of children and number of children was not regressed on post-divorce fighting, the fact that the longer married group has more children cuts against any argument that it is the support obligations in the marriage that made the six and under group correlated with post-divorce fighting.

Perhaps the real explanation for the correlation of marriages for six years and fewer years and post-divorce fighting is the observation that younger people are more willing to fight. Feistiness of the parents was not noted in the court files, so it could not be tested. Nor was the age of the parents provided by the court files. It could be that a number of the couples married for six or fewer years were older people on their second or more number of marriages. In the end, an explanation for the correlation is not necessary. If this result is found in other divorce-file-data sets, then couples with children married fewer than seven years should be sent to mediation.

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36. Of course the actual amount of support paid is a function of the income of the payor spouse. The support amount is often a percentage of the income. Information about the payor-spouse’s income was not available systematically in the files examined so not collected.
Filing counterclaims and its correlation might be explained by the fact that a counterclaim might indicate that the respondent was contesting custody. However, the respondent filing a pleading contesting custody was recorded separately in this study. This contested-custody independent variable was not correlated with any of the individual fights or the collective fight dependent variable.

On the other side, I would have thought that in addition to contested custody, filing a temporary restraining order asking the judge to keep the other spouse away from the house, workplace, etc. would indicate the sort of couples who would continue to fight. Yet, this independent variable was not correlated with either the individual fights variables or the total fights variable. It is interesting to note that this is one of three bases for putting Idaho parents into an evaluation by a health professional. Idaho also includes as a marker for sending parents to an evaluation the filing of an answer or a preliminary motion. Recall, some of the files examined in the current study had an answer and a counterclaim. But filing an answer alone was one of the independent variables tested. This too was not correlated with post-divorce fighting or any individual fights; only the counterclaim was.

Fighting during the divorce was evaluated by recording pleadings in the divorce. Recorded data included depositions, interrogatories, and subpoenas and none of these were correlated with any individual fight or the collective fight dependent variable. The results in this study are somewhat surprising. One of the unrecorded information that might be explanatory is the amount of money the divorcing parents had. No data was recorded on this factor because it was not reliably in the files. The filing of interrogatories, subpoenas and depositions may indicate that the divorcing parents had money to pay for this. Yet none of these correlated with post-divorce fighting.

Especially interesting is the fact that being married fewer than seven years and filing counter claims explain so much of the post-divorce fighting. This is shown in the following illustration.

### Probabilities of Post Divorce Fighting as a Function of Filing a Counterclaim and Being Married Fewer Than Seven Years

<table>
<thead>
<tr>
<th>Counterclaim Filed</th>
<th>Married Fewer Than 7 Years</th>
<th>Probability of Post Divorce Fighting</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. YES</td>
<td>NO</td>
<td>0.517</td>
</tr>
<tr>
<td>2. NONE</td>
<td>YES</td>
<td>0.556</td>
</tr>
<tr>
<td>3. YES</td>
<td>YES</td>
<td>0.760</td>
</tr>
<tr>
<td>4. NONE</td>
<td>NO</td>
<td>0.298</td>
</tr>
</tbody>
</table>

If one hundred couples filed in this data base, the cases that had both a counterclaim filed and had a couple married fewer than seven years would predict seventy-six percent of the post-petition fighters in that group of parents. These two variables have a powerful predictive capacity at least on the sample collected in this study. The above illustration shows the probability of fighting. If neither a counterclaim is filed and the parties were married seven or more years, these estimated models predict only twenty-nine point eight percent of the fights of one hundred people. Individually, counterclaims and marriage
fewer than seven years each predicts about half of the post-divorce fights of these hundred couples.

If the parties have been married fewer than seven years, this is a fact that can be found in the petition as soon as the divorce petition is filed. Whether a counterclaim is going to be filed should be known within thirty days. These are two facts that can be determined very early in a divorce. Nothing was found to indicate whether a regression analysis was the basis for selecting these three things used in the Idaho program. Based on this Arkansas data set, these Idaho factors would put more parents in evaluation who did not need it and would miss a greater number of parents who were going to fight. The failure to file a parenting plan, not required in Arkansas, may indicate the parties cannot agree or may merely indicate that they are busy. At least with marriage of fewer than seven years and filing a counterclaim, this could predict most of the fights. Obviously more research is needed. It would be interesting to see if these variables are correlated in a different data set. In this study’s data, approximately one half of the divorcing parents had been married fewer than seven years and one half had been married longer. This is illustrated in Figure 2. In thirty-eight cases a counterclaim was filed.

Nothing in the data suggested that fact that mom filed more than twice as often as dad was predictive of fighting. The fact that moms are filing at a rate more than twice as often is illustrated in Figure 3. What is the cause of this? Are women less tolerant of less desirable marriages? Are women less forgiving of marital infidelities? This clear dominance of women filing for divorce is an intriguing fact but explanation of it is beyond the scope of this paper.

It would have been informative to have found no independent variable correlated statistically with post-divorce fighting between the parents. The two found, if replicated in other studies, would be very easy to pull from the case file. This would be a simple step for the court clerks. The easier and least expensive it is to find the information, the more likely it will be done. Note, there is a big difference between the two independent variables found to be related in this study and many jurisdictions who just send parents into mediation if they are contesting custody of the children. None of the individual fight variables were correlated with any of the independent variables. Thus, custody fighting was not correlated with any of the independent variables. The correlation found here is with post-divorce fighting over the children, visitation, support and property. Fighting

37. Length of marriage may need to be calculated. The petitions examined in this study did not say how long the parties had been married so the parties’ length of marriage had to be calculated. The files did indicate, however, when the parties had been married. This allowed the computer to calculate how long the parties had been married. It was the first calculation made once data collection was complete.

38. The Idaho program may use the evaluation to determine who the real fighters are. But they will miss the fighters who are not sent to evaluation. The beauty of the two variables found here is that, if replicated, no evaluation may be needed. This would allow precious dollars to be used in other parts of the program.
over the children is the hardest on the children, but fighting post-divorce in general is hard on the children as well. If fighting can be reduced by actions taken at the time of the divorce, action should be taken. The studies discussed in my companion article about mediation show that mediation has promise. Time is of the essence. Sending parents off to mediation early in the divorce is important. Given the research showing potential early adulthood problems in the children of divorce, we need to address this problem sooner rather than later.

What will reduce the stress of families going through a divorce with children? A number of education programs have been tried. Some are more helpful than others. Using the above discussed factors to move parents early in the divorce proceeding into a different process should be utilized.

See my article on Mediation for a discussion on mediation and other programs trying to help children adjust to the divorce of their parents.