

Brief Parent Education Programs in the Family Courts: A Good Faith Human Experiment but Does it Work?

Dana E. Prescott¹

Abstract

In response to the frequency and intensity of child custody litigation, family courts began to mandate brief parent education programs [BPEPs] beginning in the 1980s. Among various objectives, BPEPs were intended to improve parental cooperation and reduce iterations of litigation. For the most part, however, courts have constituted a “black box” for evidence-informed policy design and unilaterally imposed interventions, like parental capacity evaluations or parent education, without research methodologies specific to the construct of parental conflict or the influence of the court as host environment. Interventions which rely upon folk-wisdom, anecdotal evidence, or policy convenience may not only fail to reduce child custody conflict but may be insensitive to differences attributable to culture, race, religion, socio-economic status, sexual orientation, or the presence of interpersonal violence. Using BPEPs as a conceptual template, and integrating literature and research from social science, the author explores interpersonal violence and forgiveness theories as examples of constructs which may more precisely shape future research, as well as intervention design and assessment in family courts.

Keywords: Parent education, child custody, courts, forgiveness, interpersonal violence

1.0 Introduction

On behalf of several generations of children caught in the throes of custody quarrels, family law courts have imposed an assortment of interventions intended to improve cooperation and reduce iterations of litigation.

¹ JD, MSW, PhD is an attorney licensed in Maine and Massachusetts, a Fellow of the International and American Academies of Matrimonial Lawyers, and an adjunct faculty member at the Simmons Graduate College School of Social Work. Correspondence may be addressed to Dana E. Prescott, 37 Beach Street, P.O. Box1190, Saco, Maine 04072 or dana.prescott@simmons.edu

This statement implicates two social policy prongs: (1) there is a better way than an adversarial trial to decide child custody cases when parents fail to privately agree and (2) there are a set of interventions which properly trained professionals can engage to mitigate (not eliminate) the consequences to children of parental choice.² Although there are variations, the most frequently employed interventions tend to fall into one of three conceptual frameworks.

In one conceptualization, a court may order parents to participate in alternative dispute resolution (e.g. mediation, judicial settlement conference, parent coordination) as a means of attaining a parenting plan without trial.³ In another form, psychologists, clinical social workers, or other qualified professionals may, by court order, forensically examine parents in the context of personality and social constructions subject to psychometric measurement and observational analysis. This second intervention may be found in what has become more broadly known as child custody evaluations [CCEs].⁴ A forensic report may then connect the evaluation to the best interests' factors and, if admitted into evidence, used by a judge to render a court judgment allocating physical or legal custody of a child.

² See ROBERT J. LEVY, *Custody Investigations in Divorce-Custody Litigation*, 12 J. FAM. L. STUD. 431, 449 (2010).

³ See ROBERT E. EMERY & KIMBERLY C. EMERY, *Should Courts or Parents Make Child-Rearing Decisions?: Married Parents as a Paradigm for Parents Who Live Apart*, 43 WAKE FOREST L. REV. 365, 369 (2008) ("Due to the large number of cases and severely limited judicial resources, which result in backlogged court dockets, various interventions have been developed with the hope of reducing custody litigation, most notably ADR, including such relatively new procedures as mediation, collaborative law, and parenting coordination."); LYN GREENBERG & MATTHEW J. SULLIVAN, *Parenting Coordinator and Therapist Collaboration in High-Conflict Shared Custody Cases*, 9 J. CHILD CUSTODY 85, 88 (2012) ("With the appropriate legal authority, a PC can assume responsibility for making decisions about the child within the PC process when parents cannot agree."); NANCY VER STEEGH, *Family Court Reform and ADR: Shifting Values and Expectations Transform the Divorce Process*, 42 FAM. L.Q. 659, 671 (2008) ("Fifty years ago, no one had heard of parenting education, mediation, early neutral evaluation, parenting coordinators, interest-based negotiation, or collaborative law. Today use of these processes has become the norm.").

⁴ DANA ROYCE BAERGER ET AL., *Methodology for Reviewing the Reliability and Relevance of Child Custody Evaluations*, 18 J. AM. ACAD. MATR. L. 35, 36 (2002) ("Commentators have criticized the quality, reliability, and utility of CCEs by noting the lack of scientific methodology, empirical grounding, and psycholegal relevance common among these reports.") (footnotes omitted).

The third form of intervention, and the one which will be the focus of this paper, are brief parenting education programs [BPEPs].⁵ In virtually every state today, parents who file, or respond to, a child custody petition are now required to attend a BPEP of less than 4 or 5 hours.⁶ Although program content and practices do vary from state-to-state, parents are generally provided a mixture of written information, role-playing, and class room interaction with judges, lawyers, social workers, psychologists, or mediators.⁷ The roots of BPEPs may be found in the 1960s, when courts began to mandate parent training in child protection cases involving abuse or neglect on the proper assumption that such training was “a linchpin of governmental responsibility.”⁸ By the 1980s, however, this parent *training* model was adapted and extended to a parent *education* model required of virtually every parent engaged in child custody litigation.⁹

What matters generally is that each form of intervention is not a mere thought experiment or the result of accidental design.

⁵ BPEPs frequently reference divorce only which, of course, implicates possible differences in program efficacy between non-married parents who number in the millions today. See e.g. AMANDA SIGAL ET AL., *Did Parent Education Programs Promote Healthy Post-Divorce Parenting? Critical Distinctions and their Review of the Evidence*, 49 FAM. CT. REV. 120 (2011).

⁶ There are more intensive forms of parent education. See SYLVIA A. MALCORE ET AL., *Predictors of Continued Conflict after Divorce or Separation: Evidence for High-Conflict Group Treatment Programs*, 51 J. DIVORCE & REMARRIAGE 50 (2010); KATHERINE M. WHITE & LARNE WELLINGTON, *Predicting Participation in Group Parenting Education in an Australian Sample: The Role of Attitudes, Norms, and Control Factors*, 30 J. PRIMARY PREVENTION 173 (2009).

⁷ See TAMARA A. FACKRELL ET AL., *How Effective are Court-Affiliated Divorcing Parents Education Programs? A Meta-Analytic Study*, 49 FAM. CT. REV. 107 (2011).

⁸ RICHARD P. BARTH ET AL., *Parent-Training Programs in Child Welfare Services: Planning for a More Evidence-Based Approach to Serving Biological Parents*, 15 RES. SOC. WORK PRAC. 353, 353 (2005).

⁹ See PETER SALEM ET AL., *Taking Stock of Parent Education in the Family Courts: Envisioning a Public Health Approach*, 51 FAM. CT. REV. 131, 131 (2013) (“Parent education programs emerged in the 1980s and 1990s as a part of what Singer (2009) has labeled the ‘velvet revolution’ in which the law-oriented, judge-focused adversary model in family law was replaced with more collaborative, interdisciplinary, and future-focused dispute resolution processes.”); VER STEEGH, *supra* note 3, at 661 (“Over the last thirty years, parenting education programs have become commonplace.”).

Each exists within objectives determined and imposed by family courts as the host environment for child custody conflict; not the scientific universe of the lab or the therapeutic couch.¹⁰ Each is a policy solution interposed to mitigate a complex social welfare problem. Each is a function of good intentions across professional disciplines but not necessarily a function of evidence-informed research that accounts for the most basic elements of scientific methodology.¹¹ While often acting within the “black box” of constitutional authority,¹² when a court is imposing an obligation to attend BPEPs, or more intrusive interventions such as CCEs, then that act of authority should be subject to evidence-informed theory, design, and evaluation.

The alternative is that interventions which rely on folk-wisdom, anecdotal evidence, or policy convenience may not only fail to reduce conflict but may not account for differences attributable to culture, race, religion, socio-economic status, or interpersonal violence.¹³

¹⁰ The phrase “host” environment is borrowed from others but I find it a good fit for discussions about courts and the transfer of professional knowledge. See DANA E. PRESCOTT, *Social Workers as “Experts” in the Family Court System: is Evidence-Based Practice a Missing Link or Host-Created Knowledge?*, 10 J. EVIDENCE-BASED SOC. WORK 466 (2013).

¹¹ Although the terms evidence-based and evidence-informed are often used interchangeably, evidence-informed reflects broader forms of policy research which connect scientific methodology to program design subject to some form of evaluation. See ROSS C. BROWNSON ET AL., *Understanding Evidence-Based Public Health Policy*, 99 AM. J. PUBLIC HEALTH 1576, 1576 (2009) (“Policy change involves both science and art and, therefore, evidence for policymaking can take several forms.”).

¹² The phrase “black box” derives from a methodology called Realistic Evaluation and means the evaluation of program effects without addressing the components of the program. See MANSOOR A.F. KAZI, *REALIST EVALUATION IN PRACTICE: HEALTH AND SOCIAL WORK* (2003).

¹³ See KAREN BOGENSHNEIDER & THOMAS J. CORBETT, *EVIDENCE-BASED POLICY MAKING: INSIGHTS FOR POLICY-MINDED RESEARCHERS AND RESEARCH-MINDED POLICY MAKERS* 4 (2010) (“To simplify matters, we approach the topic with an initial premise that there is a set of scientific methods that serious scientists and scholars agree constitutes a proper way for helping us distinguish fact from belief.”). ROBERT F. KELLY & SARAH H. RAMSEY, *Child Custody Evaluations: The Need for Systems-Level Outcome Assessments*, 47 FAM. CT. REV. 286, 286 (2009) (“Surprisingly little research has been reported on custody evaluations as a systems-level human service.”); THOMAS M. MEENAGHAN ET AL., *POLICY, POLITICS, AND ETHICS: A CRITICAL APPROACH* 274 (2013) (“There is a haunting, though often intuitive sense that many elaborate designs presuppose what works and what does not.”).

In such circumstances, the social problem of parental conflict is too often treated in the courts as if it occurs in a vacuum apart from the lived-lives of parents and children. BPEPs, therefore, are engaged as a vehicle for shaping future research relevant to parents-in-family-court, as well as culture, race, socio-economic status, or interpersonal violence. To connect the social problem to the objectives of the intervention, this paper elicits themes from BPEP research as a means to explore two alternative conceptual frameworks: Intimate Partner Violence [IPV] and Forgiveness Theories. The focus on these particular constructs is not intended to exclude others. Each construct, however, shares common elements with parental conflict over custody of a child: iterations of control, coercion, or a chronic inability to move forward without retribution.

2.0 The Social Welfare Problem and BPEPs

By its simplest definition, a social policy is “defined as a collective course of action, set by policymakers, involving the use of sanctions to address the broader needs of some group of people.”¹⁴ Who or what has the authority to define a social problem as a “need” and the “policy solution” as fulfilling that need is a political matter beyond the scope of this paper.¹⁵ What is of consequence when examining any intervention is that solutions disconnected from the demographics of the population to be served is table-chatter, not a means to assure the efficacious and ethical delivery of positive change for parents and children. Thus, there is a recurring tension when attempting to connect the *precise elements* of a social problem to the *precise elements* of an intervention.

In the United States, over half the divorces occur in families with minor children and research suggests that parents in cohabitating unions are even more likely to dissolve at shorter intervals than marriages, such that a substantial proportion of children under age 12 commonly experience the separation of birth parents.¹⁶

¹⁴ JERRY D. MARX, SOCIAL WELFARE: THE AMERICAN PARTNERSHIP 4 (2004).

¹⁵ See RICHARD HOEFER, ADVOCACY PRACTICE FOR SOCIAL JUSTICE 25 (2ND ED. 2012) (“A political scientist, Harold Lasswell, wrote that politics is the process by which it is decided ‘who gets what, when and how’”).

There is always a risk of oversimplifying the association between demographic changes in a society and the evolution of social problems like parental conflict and child custody litigation. What can be fairly extrapolated from the literature are two relevant outcomes. First, the frequency and fluidity with which parental relationships vertically and horizontally reform has increased the complexity and intensity of parental conflict across multiple developmental stages. Second chronic conflict between parents introduces an attendant and critical risk of negative educational, psychological, and social outcomes for children.¹⁷

What is generally accepted as well is that families-in-conflict not only use litigation as a proxy but that these same families consume a disproportionate level of court resources, with estimated costs nationally to the judicial system and social service systems of billions of dollars annually.¹⁸ Unfortunately, evidence-informed policy was not a practice embedded in the courts when, by the 1970s, the first wave of divorce and cohabitating adults entered underfunded and unprepared family court systems seeking the division of their assets, income, and children.¹⁹

¹⁶See PAULA Y. GOODWIN ET AL., MARRIAGE AND COHABITATION IN THE UNITED STATES: A STATISTICAL PORTRAIT BASED ON CYCLE 6 (2002) OF THE NATIONAL SURVEY OF FAMILY GROWTH, VITAL AND HEALTH STATISTICS. SERIES 23, DATA FROM THE NATIONAL SURVEY OF FAMILY GROWTH 28 (2010); SHEELA KENNEDY & CATHERINE A. FITCH, *Measuring Cohabitation and Family Structure in the United States: Assessing the Impact of New Data From the Current Population Survey*, 49 DEMOGRAPHY 1479 (2012); ROSE MARIE KREIDER & RENEE ELLIS. *Living Arrangements of Children: 2009 (Current Population Reports, P70-126)*, WASHINGTON, DC: US CENSUS BUREAU (2011); JONATHON VESPA ET AL., *America's Families and Living Arrangements: 2012*, U.S. DEPARTMENT OF COMMERCE, ECONOMICS, AND STATISTICS ADMINISTRATION, U.S. CENSUS BUREAU (2013).

¹⁷ See HYUN SIK KIM, *Consequences of Parental Divorce for Child Development*, 76 AM. SOCIOL.REV.487 (2011); MARSHA KLINE PRUETT ET AL., *Family and Legal Indicators of Child Adjustment to Divorce among Families with Young Children*, 17 J. FAM. PSYCHOL. 169 (2003).

¹⁸ This is a difficult form of cost data to compile because the assumptions will guide the total but researchers have offered their analysis. See ALAN J. HAWKINS, *A Proposal for a Feasible, First-Step, Legislative Agenda for Divorce Reform*, BYU J. PUB. L. 215 (2012); FACKRELL ET AL., *supra* note 7; DAVID G. SCHRAMM ET AL., *Economic Costs and Policy Implications Associated with Divorce: Texas as a Case Study*, 54 J. DIV. & REMARRIAGE 1 (2013).

¹⁹ As most parents discover, litigation is not an inexpensive, certain, or elegant process. See e.g. *Cyr v. Cyr*, 432 A.2d 793, 796 (Me. 1981) (“To choose the greater of two goods is admittedly no easier than to identify the lesser of two evils. Nevertheless, the judge is obliged to make the choice. He must seek not merely to preserve the child from harm, but to discern, ‘as a wise, affectionate and careful parent,’ what

Over the ensuing decades, and against a backdrop of cultural upheaval, economic cycling, and various forms of war in foreign lands, political, legal, and social struggles were influenced by the demands of women for protection from interpersonal violence, a shift from the amputated father to recognition of the value of both parents irrespective of gender, societal acceptance of child abuse as a social evil and not a matter of “family” privacy, and recognition of civil rights in family matters.

The admixture of these events still ripples through American society with all the attendant consequences to the safety and stability of children. Although the historical significance may seem plainly obvious to contemporary readers born in the aftermath, nothing of the sort was so plainly true at the time. Tensions between gender and oppression, race and prejudice, preferences and entitlements, and social justice and privilege remain today a core source of controversy in family law practice and policy design which should engage a science-of-difference.²⁰ What is of particular consequence here is that the rapid and cyclic dissolution and reformation of family systems over the past three generations implicated and engaged state judicial systems in a deluge of parental litigation, which reflected the confluence of these social and demographic forces.

As family courts struggled to manage the subsequent influx and iterations of child custody litigation, the core function of the court system, designed by its creators for adversarial adjudications of fact applied to law, intersected with contemporary parents who required much more frequent judicial supervision, observation, and investment beyond mere adjudications of fact.²¹

custody arrangement will further the child's best interest.”); *Ohland v. Ohland*, 442 A.2d 1306, 1309 (Vt. 1982) (“The youngest minor in this case has been dealt with much as a shuttlecock in a game of badminton....The lower court may well have wondered if defendant's true concern was in fact for the child, rather than his own personal desires. We think the child is entitled at last to whatever stability the court, in its best, albeit human, judgment can provide him. The alleged immoralities of the plaintiff may be appropriate for consideration, and while they may be sordid and not to be condoned, neither are they necessarily conclusive standing alone.”) (citations omitted).

²⁰ See CAROL R. SWENSON, *Dare to Say “I”*: *The Personal Voice in Professional Writing*, 93 J. CONTEMP. SOC. SERV.: FAM. SOC. 233, 235 (2012) (“Much of the traditional scientific writing in the past has assumed that what applies to whites applies to persons of color, that what applies to men applies to women, and so forth. This has made the powerless, the invisible, in very important social senses, not real.”).

²¹ For an earlier discussion of that topic by the author, see DANA E. PRESCOTT, *Unified Family Courts and the Modern Judiciary as a “Street Level Bureaucracy”: To What End For the “Mythical Role” of Judges in a Democracy?*, 27 QUINNIPIAC L. REV. 55 (2009).

In this capacity, family courts today *directly* allocate personal rights (pick up is at 6 p.m. at the police station or the significant other cannot get haircuts) and economic resources (earnings and net worth) amidst divorce, cohabitation, child protection, and interpersonal violence.²²

For family courts, already overwhelmed by a lack of staffing, limited funding for mediation or evaluation, and ever-emerging case loads, a policy solution was needed which engaged interdisciplinary and community resources at relatively little implementation or supervisory cost. BPEPs met this operative goal by providing parents-in-child-custody-conflict with an inexpensive and feasible means to encourage co-parenting, diminish parental conflict, enhance child well-being, and reduce iterative litigation strategies.²³ From these good faith beliefs derived the hope that some form of parental education, however brief, may actually sustain positive change in parental attitudes and behaviors.²⁴

²² See EMERY & EMERY, *supra* note 3 at 376 (Why do we make judges decide the most “mundane” parenting concerns and thereby permit parents to “petition for judicial resolution of some detail of everyday parenting.”); see also Rahn v. Norris, 820 A.2d 1183, 1197(Del. Fam. Ct. 2001) (“Court already noted its concerns about father’s domestic violence. At the same time, although nothing that the mother did justified the father’s outrageous conduct, the Court is concerned that mother previously exhibited towards father and in the presence of David a lesser form of domestic violence.”); K.B.J v. T.J., 359 S.W.3d 608, 617 (Tenn.Ct.App. 2011) (“We also agree with Wife that the trial court’s parenting determinations appear to be based to a degree upon frustration that Wife would not agree to the continuation of the 50/50 parenting arrangement set in place by the temporary parenting plan.”); Paugh v. Paugh, 718 S.E.2d 793, 798 (W.Va. 2011) (“The primary issue before the Court in this case is quite simple: did Ms. Paugh violate the parenting agreement when she enrolled the children at St. Patrick against Mr. Linger’s wishes, without first attempting to resolve the dispute through counseling or mediation?”).

²³ For an historical summary, see KAREN R. BLAISURE & MARGIE J. GEASLER, *Educational Interventions for Separating and Divorcing Parents and their Children*, in MARK A. FINE & JOHN H. HARVEY (eds.), *HANDBOOK OF DIVORCE AND RELATIONSHIP DISSOLUTION* (2006); SUSAN L. POLLET & MELISSA LOMBREGLIA, *A Nationwide Survey of Mandatory Parenting Education*, 46 FAM. CT. REV. 375 (2008).

²⁴ The acceptance of mandated parent education as an effective policy solution is now international. See BRANKA RESETAR & JOSIP BERDICA, *Divorce in Croatia: The Principles of No-Fault Divorce, Parental Rights, Parent Education, and Children’s Rights*, 51 FAM. CT. REV. 568, 575 (2013) (“This first step-mandatory education-should be the most important part of the divorce process.”).

3.0 Judicially-Sponsored Experiments

Even with the best of intentions, the implementation of interventions which actively engage psycho-educational or psychological strategies as a solution to a social problem suggests a need for caution. Indeed, clinically-trained psychologists have struggled with how to integrate the complexity of human behavior outside a laboratory or clinic with a science of prediction and interdiction in child custody litigation.²⁵ Because *ethical human experimentation* by the courts receives rather little attention in literature or at conferences, courts continue a “one-size fits-all” approach to families which may be scientifically unsupported, culturally biased, and value-laden. Such an approach, however, is not without historical precedent in the social sciences:

Modern parent education is characterized by the experts’ pointing out in great detail all the mistakes parents have made and can possibly make and by substituting “scientific knowledge” for the tradition of the “good old days.” An unrelieved picture of model parental behavior, a contrived image of artificial perfection and happiness, is held up before parents who try valiantly to reach the ever receding ideal of “good parenthood,” like dogs racing after a mechanical rabbit.²⁶

²⁵ JAMES N. BOW ET AL., *Testing in Child Custody Evaluations—Selection, Usage, and Daubert Admissibility: A Survey of Psychologists*, 6 J. FOREN. PSYCHOL. PRAC. 17, 36 (2006) (“Further, psychological tests are generally very limited in their ability to assess parenting capacity or specific best interest criteria.”); GEOFFREY D. CARR, ET AL., *Evaluating Parenting Capacity: Validity Problems With the MMPI-2, PAI, CAPI, and Ratings of Child Adjustment*, 36 PROF. PSYCHOL.: RES. AND PRAC. 188, 188 (2005) (“Parents who are being assessed to aid the courts in determining child custody are, understandably, strongly motivated to present themselves in a positive light, but this can obscure the data on which conclusions must rest.”); PAUL H. HARNETT, *A Procedure for Assessing Parents’ Capacity for Change in Child Protection Cases*, 29 CHILD. AND YOUTH SERV. REV. 1179, 1180 (2007) (“While adhering to best practice guidelines for assessing families in child protection cases is a priority for practitioners concerned about making valid and reliable decisions, a further, and often serious problem with reports, is that they are generally cross-sectional assessments of family life conducted over a brief period of time.”).

²⁶ HOWARD BRUCH, *Parent Education for the Illusion of Omnipotence*, 24 AM. J. ORTHOPSYCHIATRY 723, 723 (1954).

If the “dog chasing the rabbit” is contrived as policy solution then the process of mandating BPEPs remains an even more cumbersome means for reducing iterations of parental conflict. Despite decades of well-intentioned efforts by professionals from multiple disciplines, parental conflict and child custody litigation remains a rather random walk through the adversarial system. Human beings do not accept defeat easily and the lack of personal accountability affords little room for the courts to do more than sacrifice a finger at a time to plugging the dike.²⁷ Yet institutional frustration with modern family conflict is still an insufficient reason to impose interventions as *ad hoc* experiments.

Since at least the 1920s, however, the judicial system has too often embedded social science experiments into judicial decision making as a function of policy and practice; despite an absence of theory or evidence-informed, much less provide the rudiments of informed consent to court consumers.²⁸ Whether or not entry into the court portal by litigation is a tacit waiver of informed consent, or constitutional status inures a special exemption for courts, is a complex topic which should be more precisely explored by scholars. Nevertheless, the absence of informed consent, which means an actual capacity to make a choice between two alternatives without the risk of sanction, creates an ethical dilemma if “passing” of “failing” is a measure of parenting capacity. When parent education programs turned “from a fad in family courts into an established and mandatory stop on parents’ path to divorce” so as to teach parents “a lesson,”²⁹ such an outcome generated serious ethical traps.

²⁷ This metaphor is drawn from a comment by Professor Shaefer concerning a blame approach by policy makers. See TALI SCHAEFER, *Saving Children or Blaming Parents? Lessons from Mandated Parenting Classes*, 19 COLUM. J. GENDER & L. 491, 492 (2010) (“This article argues that this preoccupation with blaming parents has resulted in laws that do little to help children and much to belittle the tangible negative implications that divorce holds for parents, especially mothers.”).

²⁸ JOHN FLETCHER, *Human Experimentation: Ethics in the Consent Situation*, 32 LAW AND CONTEMP. PROB. 620, 628 (1967) (“The law and professional ethics of consent to human experimentation reflect, in part at least, the concern of society that conflict of interest may disable a scientific investigator from exercising the independent, disinterested, and conscientious judgment that alone might legitimize employing a human subject for research purposes without his knowledge or against his will.”); HANS JONAS, *Philosophical Reflections on Experimenting with Human Subjects*, in BIOMEDICAL ETHICS AND THE LAW 226 (1976) (“Medical experimentation on human subjects falls somewhere between this overpowering case and the normal transactions of the social contract.”).

²⁹ SCHAEFER, *supra* note 27, at 491.

Of course, no social welfare policy or intervention in the courts can avoid all folk wisdom or ethical traps but confusion or oversight lapses can be minimized if family courts first engage interdisciplinary and collaborative research with the policy design and assessment community.³⁰ Despite substantial research in the social science and legal literature concerning the efficacy of BPEPs, there is legitimate concern that generalizability and reliability are limited by methodological flaws such as non-standardized survey instruments and self-reporting biases.³¹ If evidence-informed research is a planned-process which is grounded in the “conscientious, explicit, and judicious use of current best evidence” developed and applied from “systematic research”³² then institutional accountability is imperative, not optional.

Although this definition is drawn from a medical-model, its guiding principles may be extrapolated to human experiments by the courts when imposing interventions for perceived social welfare problems such as parental conflict. Program content will otherwise be haphazard or wishful thinking because, if it is to be meaningful, content must “fit” and “connect” with the validated knowledge of BPEPs. In the following sections, this paper will explore the basic tenets of BPEPs and some of the research, challenges for future research, and policy implications.

4.0 BPEPs and Related Research

Whether mandatory or voluntary, and research suggests no difference in parental perception, parent education programs may be generally categorized as *universal* (e.g. short or long/mandated or encouraged) and *targeted* (e.g. specifically for high-conflict families).³³

³⁰As one scholar wisely noted, “[u]ltimately, of course, the collaborative challenge cannot be met with laws, programs, or procedures, as it requires the willingness of each set of professionals to be open to the other’s language, ethical perspective and worldviews.” MARY KAY KISTHARDT, *Working in the Best Interests of Children: Facilitating the Collaboration of Lawyers and Social Workers in Abuse and Neglect Cases*, 30 RUTGERS L. REV. 1, 76 (2006).

³¹ See JOHN W. CRESWELL, *RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES* (3RD ED.) 149 (2009) (“The three traditional forms of validity to look for are content validity (do the items measure the content they were intended to measure?), predictive or concurrent validity (do scores predict a criterion measure? Do results correlate with other results?), and construct validity (do items measure hypothetical constructs or concepts?”).

³² DAVIDSACKETT ET AL., *Evidence-Based Medicine: What it Is and It Isn’t*, 312 BRITISH MED. J. 71, 71 (1996).

Despite the feasibility and frequency of research, the evaluation of program content, parent attitudes and behaviors, and outcomes over various time frames remains at a nascent stage. One review recently concluded, for example, that there is little evidence that these programs are improving the “quantity of nonresidential parent-child contact, fostering the quality of parent-child relations by either the custodial or non-custodial parent, reducing interparental conflict, improving co-parenting, reducing relitigation or most importantly, improving outcomes for children.”³⁴

As expressed by this quote, the gap in current knowledge concerning parent education is rather wide because the mere conclusion that a parent reports that *something* worked for him or her is based upon self-reports by participants who respond to surveys developed, for the most part, by each researcher.³⁵ Researchers thereby report what the attendees thought they learned or, quite plausibly, what parents believed a court, as host authority, thought they should learn to be considered a “good parent.” Although consumer satisfaction surveys are certainly an acceptable form of social science research,³⁶ such an approach poses significant limitations for any policy maker seeking to modify BPEP content. This is so because the perception of an improved form of civil or cooperative communication may be a function of many factors unrelated to the BPEP, including external and unrelated events after the intervention, or a blended mixture of content and teaching strategies.

³³ See SEAN E. BROTHERTON ET AL., *Parents Forever: An Assessment of the Perceived Value of a Brief Divorce Education Program*, 51 J. DIV. & REMARRIAGE 465, 465 (2010).

³⁴ SIGAL ET AL., *supra* note 5, at 135.

³⁵ See SCHAEFER, *supra* note 27, at 502 (“While surveys and anecdotal evidence indicate that many parents profess a high level of satisfaction with classes, they do not attest to actual change in parental behavior or improvement in children’s lives. Academic studies of program effectiveness frequently lack rigor due to unavailability of control groups, protesting, and other factors.”) (footnotes omitted).

³⁶ See LU ANNA DAY & LLEWELLYN J. CORNELIOUS, *DESIGNING AND CONDUCTING HEALTH SURVEYS: A COMPREHENSIVE GUIDE* 9 (3d ed. 2006) (“Survey developers should be aware of the fundamental principles behind the good design of even small surveys. It may be a matter of what you can afford. However, it is important to remember that the costs of a poor survey design are also high.”); see also C. MITCHELL, *Are Divorce Studies Trustworthy? The Effects of Survey and Non-Response and Response Errors*, 72 J. MARRIAGE & FAM. 893 (2010).

If positive changes are related to the BPEP then there should be a connection between program content and the precise elements (or matrix of elements) possessed by the parent(s) which appear to be associated with that content. To accomplish such a task, research designs should more clearly describe theory, survey methodologies should be reliable and valid, sampling adjusted when too small or nonrandom, and matters of race, culture, marital or non-marital status, gender, socio-economic status, or sexual orientation, religion explicitly explored and not marginalized. Much of the research cited in the footnotes rarely controlled for those variables; much less the availability of grandparents or kin support, the presence of therapists, the appointment of a guardian ad litem, or the existence of interpersonal violence as predictor, outcome, confounding, mediator, or moderating variables.³⁷

For all the proper intent, the confluence of these short comings may actually enhance the risk that researchers are measuring the wrong variables or not measuring the retention of change from a more objective observation than the self-reporting of participants. Setting aside these limitations for the moment, there is general support for the proposition that BPEPs do engage positive change and provide psychoeducational benefits, as well as increasing sensitivity and responsiveness toward the other parent and the primary interests of children. In a recent meta-analysis of divorcing parent education programs, Fackrell, Hawkins, and Kay³⁸ found that nineteen studies with a treatment and no-treatment group had an overall significant moderate positive effect ($d=.39$). The authors noted that the number of mandated programs suggests that “evaluation should go hand-in-hand with implementation” so as to assure that the programs focus on “known risk factors for child (and adult) outcomes, especially reducing parental conflict.”³⁹

Why one course may work for some and not others, and how long the effects may last, remains one of many research questions available for future study?

³⁷ For a basic discussion of these terms and their relevance to research design and interpretation, see MARK J. MITCHELL & JANINA M. JOLLEY, RESEARCH DESIGN EXPLAINED (7TH ED.) (2010).

³⁸ See FACKRELL ET AL., *supra* note 7.

³⁹ *Id.* at 115.

In fairness, extrapolating the rate, intensity, and duration of parental conflict is a complex task because there is little conceptual agreement as to what constitutes “high” or “low” or “chronic” or “transactional” conflict for purposes of measurement (in a singular moment much less over time). For example, in a study of a parent education program, Goodman et al.⁴⁰ borrowed from a seminal article by Johnston⁴¹ which conceptualized parental conflict as occurring within three dimensions: *legal*, *interpersonal*, and *attitudinal*.

Legal conflict is the ongoing recourse to litigation to resolve child custody disputes, like post-judgment motions to modify court orders or collateral litigation like protection from abuse orders or child abuse complaints to state agencies. *Interpersonal* conflict involves a range of subtle and overt behaviors that include verbal disputes, threats or acts of violence, or intimidation, hostility, and badmouthing to the children. *Attitudinal* conflict invokes the parents’ negative stance toward the other parent in the parenting role. These conceptualizations, well quite rational, have not found much consistent usage in the literature or research.

Despite the challenge of finding common conceptual grounding, some researchers have attempted to operationally define one or more of the variables which the intervention is intended (not accidentally) to influence.⁴² For example, Cookston and Fung⁴³ evaluated the Kids’ Turn community-based parent education program in the San Francisco Bay area. Although this program is not short-term but has six sessions, the methodology used pre- and post-test surveys (n=61) to assess parent reports of improvement in interparental conflict over time.

⁴⁰ GOODMAN ET AL., *supra* note 14.

⁴¹ JANET R. JOHNSTON, *High-Conflict Divorce*, 4 THE FUTURE OF CHILDREN 165 (1994).

⁴² MEENAGHAN ET AL., *supra* note 12, at 117 (“Operationalize refers to how the policy will be made ‘real.’”).

⁴³ JEFFREY T. COOKSTON & WENSON W. FUNG, *The Kids’ Turn Program Evaluation: Probing Change within a Community-Based Intervention for Separating Families*, 49 FAM. CT. REV. 348 (2011).

What was particularly unique about this study is that the researchers spent over a year of consultation with the program staff to collaboratively develop four hypothetical constructs related to co-parenting, inter-parental conflict, parental alienation, and conflict breadth. From this collaborative effort, the researchers measured the self-reports of participants and found certain constructs significantly related to program content. What was important was the effort to extrapolate variables from constructs and hypothesis that were integral to the specific program. From this collaboration, theory suggested an assessment of three outcomes in the survey: (1) participants should demonstrate greater awareness of their children's need in light of divorce and show more authoritative parenting skills and be more motivated to promote the other parent's relationship with the children, (2) change in these factors should lead to better parent-child relations and reduced levels of interparental conflict, and (3) improved child and parent functioning and fewer court actions.

The authors then measured outcomes in two waves: Wave 1 before entering program and Wave 2 after completing the course. This study of between-group changes used a series of paired sample *t*-tests related to the relationship between parents. For each significant result, the authors sought to enhance support for the internal validity of the finding while accounting for the limited power associated with a modest sample size. As a result, for each main effect, the authors conducted separate repeated measures tests with individual level constructs such as child gender, child age, parent age, and time since separation, to account for any unique associations. For the five parent relationship variables, three demonstrated significant change over time—interparental conflict, conflict breadth, and parent alienation. Subsequent models with the covariates did not affect the change over time trend nor did the addition of the covariates to the models affect the change over time trends.

In this study, Cookston and Fung captured the merits of collaboration and precision in the design and implementation of interventions. What still requires refinement are the possible connections between “parent constructs” those aspects of parental conflict which bridge the environment of the courthouse; whether as an actual physical space or as a shape-shifting cloud that hovers over families. Because parents-in-child-custody-litigation are observed and judged, the environment itself may influence thoughts and behaviors in some manner that itself influences the model, the outcomes, and the intervention.

If future research is intended to be qualitative then the theoretical lens frames the means for learning about the experiences of the participants, the educators, and the judges who impose judgment.⁴⁴ The objective is to connect those experiences to the efficacy of the intervention by understanding what consumers and professionals believe works or does not work. If the research is intended to be quantitative then theory generates the hypotheses which then generate operational variables which connect to measurement tools and statistical testing for significance.⁴⁵ Thus, much more critical reflection is needed to avoid mechanistic approaches to research which, when implemented, fails to recognize practices and methodologies that are meaningful, intentional, and interconnected.⁴⁶

In truth, theory and constructs are not the physical universe—measured by slide rule or centrifuge—so any connections between a conceptual framework, intervention design, and measurement requires rigor at each stage. As any first year calculus student understands, change is relative to the point of origin or the movement of another object relative to the other object. To develop any acceptable research strategy requires a conceptual framework for what questions should be asked or what variables should be measured. Abstract likes and dislikes may not intersect with the precise elements of BPEPs and may be insufficiently concrete.

The key is finding, in literature across disciplines, constructs and measurement tools which may help refine research. In the absence of well-grounded theories, research that attempts to explain the reported success of these programs contributes little to the growth of knowledge by, for example, developing valid and reliable survey instruments or an interpretation of variables that may be unique and predictive of child custody litigation.

⁴⁴ See JOHN W. CRESWELL, *QUALITATIVE INQUIRY & RESEARCH DESIGN: CHOOSING AMONG FIVE APPROACHES* 138 (2013) (“Qualitative research questions are open-ended, evolving, and nondirectional.”).

⁴⁵ In some of these quantitative studies, the hypotheses are not obvious or the variables insufficiently defined. What this generally means is that the measurement procedures may not relate to the variables actually being measured. See RICHARD M. GRINNELL & YVONNE A. UNRAU, *SOCIAL WORK RESEARCH AND EVALUATION: FOUNDATIONS OF EVIDENCE-BASED PRACTICE* 110 (2009).

⁴⁶ Any such, research today must also consider differences between on-line and in-person program because, like it or not, technology is part of the modern equation. See DAVID G. SCHRAMM & GRAHAM MCCAULLEY, *Divorce Education for Parents: A Comparison of Online and In-Person Delivery Methods*, 53 J. DIV. & REMARRIAGE 602 (2012).

For the reasons described below, the literature which guides IPV and forgiveness theories may provide alternative frameworks for future study.

5.0 Alternative Frameworks for Future Research?

5.1 Interpersonal Violence Theory

Interventions which seek to alter the human condition should avoid contrived or pre-conceived models of thoughts and behavior unrelated to the environment in which learning occurs. This is especially true of adversarial systems created specifically to impede the baser wants of aggression or violence.⁴⁷ What is known from years of IPV research is that positive change for couples requires adjustment in the capacity to regulate emotion and cognitively select a means of conflict reduction that is not coercive and controlling of the other partner.⁴⁸ At its most elemental, conflict in the form of aggression is governed by an elementary law of nature: what one party can do to the other the other can do as well.

More specifically for purposes of researching the efficacy of BPEPs, IPV theory further refines this elemental rule as iterations of power, coercion, and control operating within the dimensions of gender and social status.

⁴⁷ Anthropologists distinguish aggression from violence, which entails physical contact not merely the threat of harm. Conventional sociological theory categorizes forms of aggression as *affective* (usually conceived as impulsive, thoughtless emotions driven by anger); *instrumental* (usually conceived as a premeditated means to obtain some goal other than harming the victim); *impulsive* (usually conceived as thoughtless, reactive, and affect laden); *premeditated* (conceived as thoughtful, proactive, and affectless); *proactive* (occurring without provocation but thoughtful and little to no affect); or *reactive* (usually accompanied by anger and responsive to a perceived prior provocation). See CRAIG A. ANDERSON & L. ROWELL HUESMANN, *Human Aggression: A Social-Cognitive View*, in MICHAEL A. HOGG & JOEL COOPER (EDS.), *THE SAGE HANDBOOK OF SOCIAL PSYCHOLOGY: CONCISE STUDENT EDITION* (2007).

⁴⁸ For explanations in the literature, see MARY E. GILFUS ET AL., *Gender and Intimate Partner Violence: Evaluating the Evidence*, 46 J. SOC. WORK EDUC. 245 (2010); JOHN HAMEL ET AL., *Perceptions of Motives in Intimate Partner Violence: Expressive versus Coercive Violence*, 22 VIOLENCE AND VICTIMS 567 (2007); SANDRA M. STITH ET AL., *Treating Intimate Partner Violence within Intact Couple Relationships: Outcomes of Multi-Couple versus Individual Couple Therapy*, 30 J. MARRIAGE & FAM. THERAPY 305 (2004); see also MICHAEL SAINI, *Reconceptualizing High-Conflict Divorce as a Maladaptive Adult Attachment Response*, 93 J. CONTEMP. SOC. SERV.: FAM. SOC. 173, 175 (2012) (“Smoldering relations between ex-spouses, common to divorce, often become raging infernos in high conflict due to the poor emotional coping resources associated with fearful/disorganized attachment of one or both spouses.”).

If researchers consider IPV as either micro-orientated (within the family) or macro-orientated (socio-cultural environments and systems), conflict between couples may then be conceptualized and mapped as adaptive and “intricate fields of power.”⁴⁹ This conceptualization may thereby reveal “abusive and controlling behaviors including psychological abuse, sexual coercion, financial abuse, isolation, threats, stalking, and physical violence that taken together create a climate of fear and intimidation that maintain one partner in a position of domination and control with the other partner in a position of subordination and compliance.”⁵⁰

This constellation of cognition and emotion (and it is symbiotic whatever its imbalance) suggests that for BPEPs to interdict change requires that each parent learn to reduce dominance, intimidation, or coercion within those intricate fields. By no means is this task simple. Even without the compression of litigation, parents who have engaged in iterations of conflict over various time horizons may have a limited willingness to invest in positive change. For formerly intimate couples specifically, *motivational* complexity in the form of vengeance may erode the capacity for emotional regulation through betrayals of trust and cycles of punishment.⁵¹

It is these distortions or perceptions, well-known to mental health professionals, lawyers, and judges, which may reflect black-and-white, with-me-or-against-me thinking that promotes conflict, maladaptive strategies, and perceptual biases that are unforgiving, intolerant, and inflexible. In the realm of BPEPs, the mixture of written information, role-playing, and classroom interactions with professionals should enhance and cognitive implicate the cognitive and emotional capacity to *stop, search, and select*.

⁴⁹RICH VODDE, *Fighting Words and Challenging Stories in Couples Work: Using Constructionist Conflict Theory to Understand Marital Conflict*, 6 J. FAM. SOC. WORK 69, 74 (2002).

⁵⁰GILFUS ET AL., *supra* note 49, at 246-247.

⁵¹ See ELI J. FINKEL, *Vengefully Ever After?*, 21 THE PSYCHOL. 1, 4 (2008) (“Perhaps enrolling these individuals in interventions designed to promote relationship commitment or attachment security-or to decrease narcissistic entitlement- could help them overcome their vengeful tendencies to achieve the relationship fulfillment and life satisfaction that otherwise would be elusive.”)

The goal of reducing the potency and duration of child custody conflict means choices or preferences which avoid strategic punishment, impulsiveness, self-righteousness, spitefulness, or vengeance.⁵² The question then is whether there is a construct which may help researchers and educators differentiate parents more likely to acquire these cognitive and emotional heuristics within the layered objectives of a BPEP.

5.2 A Capacity for Forgiveness?

For future study, the dichotomous elements of a broad typology of iterative conflict (impulsive/intentional//thoughtless/premeditated//emotional/affectless) drawn from the literature of IPV, may be targeted by BPEPs. Child custody litigation, however, often embeds each of these forms—with all the attendant biases and privileges—within the functions and processes of judicial decision making. After all, strategies in child custody litigation are a response to conflict that is *socially constructed* and *legally filtered* through a system specifically designed to enter a judgment at a precise point in time, and always under conditions of uncertainty. Nevertheless, IPV theory by itself still leaves a knowledge gap.

The more intrinsic question is what precise *trait* a parent may have which may be operationally defined and measured by survey or interview instrument and targeted for positive change by psychoeducational interventions. Research from various disciplines suggests that certain human constructs, such as forgiveness, may enhance the prospects for positive change through therapy or psychoeducational strategies.⁵³ There may be other constructs of equal or more value but forgiveness has a range of research which suggests a fit with parental-conflict in litigation.

⁵² For an explanation of this point, see JANET WEINSTEIN & RICARDO WEINSTEIN, “I Know Better than That”: *The Role of Emotions and the Brain in Family Law Disputes*, 7 J. L. & FAM. STUD. 351 (2005).

⁵³ When discussing forgiveness, it is appropriate to consider other constructs such as empathy, hope, and spirituality which may enhance the capacity for forgiveness. *Empathy* is how a person affected by events feels and acts by being able to place him or herself in that position and consists of both cognitive and emotional components. See JENI L. BURNETT ET AL., *Insecure Attachment and Depressive Symptoms: The Mediating Role of Rumination, Empathy, and Forgiveness*, 46 PERSONALITY & INDIVIDUAL DIFFERENCES 276(2009). Another construct is *hope*, a cognitive-motivational construct that facilitates coping and emotional regulation which is characterized by embedded optimism or “rainbows in the mind.” See C. R. SNYDER, *Hope Theory: Rainbows in the Mind*, 13 PSYCHOL. INQ. 249 (2002). *Spirituality*, or a sense of the possession of spirituality, be described as the “capacity and tendency present in human beings to find

Historically, forgiveness had a religious component in that “God was an important antidote to the pathological guilt that was thought to underlie much psychopathology.”⁵⁴ Beginning in the 1980s, a more secular conceptualization emerged that extended forgiveness to conflict resolution research, including sanction and punishment of offenders, within institutions like the judicial system⁵⁵ In the context of conflict resolution between intimate or formerly intimate couples, various researchers have suggested forgiveness models from classical conditioning to decision-based to process-based to emotion-centered.

Within any of these models, forgiveness has a dual character, in that it is concomitantly interpersonal and intrapersonal. Thus, it is the *forgiver* whose thoughts, feelings, and motivations must first change if there is any serious possibility of reducing conflict when dealing with the reduction of conflict in family functioning.⁵⁶ In the context of intimate relationships that no longer exist, a research question may ask whether the presence or absence of such a trait increases the likelihood that some aspect of a BPEP influences positive change or enhances negative outcomes across various time horizons.⁵⁷

and construct meaning about life and existence.” KATHERINE W. VAN ASSELT ET AL., *Influence of Counselor Spirituality and Training on Focus and Self-perceived Competence*, 87 J. COUNSELING DEVELOPMENT 412, 412 (2009).

⁵⁴MICHAEL E. MCCULLOUGH ET AL., *The Psychology of Forgiveness: History, Conceptual Issues, and Overview*, in MICHAEL E. MCCULLOUGH ET AL. (eds.), *FORGIVENESS: THEORY, RESEARCH, AND PRACTICE* 4 (2001).

⁵⁵See SOLANGEL MALDONADO, *Cultivating Forgiveness: Reducing Hostility and Conflict after Divorce*, 43 WAKE FOREST L. REV. 441 (2008); PETER STRELAN ET AL., *Justice and Forgiveness: Experimental Evidence for Compatibility*, 44 J. EXPERIMENTAL SOC. PSYCHOL. 1538 (2008); EVERETT L. WORTHINGTON, *Is There a Place for Forgiveness in the Justice System?*, 27 FORDHAM URBAN L.J. 1721 (2000).

⁵⁶For a sampling of the literature, see KATHRYN BONACH, *Empirical Support for the Application of the Forgiveness Intervention Model to Post-Divorce Co-Parenting*, 50 J. DIV. & REMARRIAGE 38 (2009); DANIEL ECKSTEIN ET AL., *Forgiveness: Another relationship “F word”—A Couple’s Dialogue*, 17 FAM. J. 256 (2009).

⁵⁷See SCHAEFER, *supra* note 27, at 534 (suggesting “forgiveness interventions” for high conflict couples).

In a relevant study, Gordon et al.⁵⁸ conceptualized cognitive-behavioral formulations of forgiveness in three stages that have implications for assessing the programming of parent education. In stage 1, a person perceives cognitive, emotional, and behavioral responses that result in the disruption of a major relationship and the assumptions and standards that underlie those relationships. In stage 2, emotion deregulation results in atypical behavioral patterns that follow from a sense of confusion and need for self-protection. Thus, the person seeks attributions or explanations for why the traumatic events occurred. Acceptance of responsibility (even if not fully believed) means yielding the right to punish his or her partner by moving on. In stage 3, a partner moves forward by yielding the control that negative emotion has over the injured partner's thoughts and behaviors, as well as the right to punish the partner.

Connecting this conceptualization to the typical pre-and/or post-test surveys of a BPEP is not a simple task, however. First, there is no standardized instrument (or "gold standard") for conducting surveys from one brief parent education program to another, which thereby limits validity and reliability. Second, there are feasibility constraints on the importation of forgiveness instruments. For example, Rohde-Brown and Rudestam⁵⁹ investigated forgiveness and affect in relation to divorce adjustment by spouses (n=91) who were separated for up to 30 months. The researchers found that the relationship that emerged as the most powerful for purposes of reducing conflict was trait anger and lack of self-forgiveness. For their study, however, the authors employed common surveys in this field: the Enright Forgiveness Inventory (EFI) (60 items and sub-scales), the Self Forgiveness Scale (SFS) (18 items), the Center for Epidemiological Studies-Depression Inventory (CES-D) (57 items), the Spielberger State-Trait Anger Inventory (STAXI-2) (57 items), and the Fisher Divorce Adjustment Scale (FDAS) (10 items).

⁵⁸KRISTINA C. GORDON ET AL., *The Use of Forgiveness in Marital Therapy*, in MICHAEL E. MCCULLOUGH ET AL. (Eds.), *FORGIVENESS: THEORY, RESEARCH, AND PRACTICE* (2001).

⁵⁹See JULIET ROHDE-BROWN & KJELL ERIK RUDESTAM, *The Role Forgiveness in Divorce Adjustment and the Impact of Affect*, 52 J. DIV. & REMARRIAGE 109 (2011).

Unfortunately, these measures are quite lengthy, require substantial time to complete, may require supervision, and are more often applied in a research environment. Given the mandate to attend and the practical reality of parental annoyance in a child custody case, any survey instrument must be sufficiently brief and non-intrusive so as to encourage participation. There are evolving instruments which may be feasible for BPEP research design. For example, the 10 item Marital Offense-Specific Forgiveness Scale(MOFS) by Paleari, Regolia, and Fincham⁶⁰ was developed from other forgiveness measures in the published literature. Because the MOFS was tested with couples in Europe and not as part of a survey pertaining to parent education, systematic errors or biases may distort casual validity and generalizability. Applying various statistical tests, the authors concluded that the general tendency to forgive one's own partner across different offenses (dyadic forgiveness) could be reasonably expected to predict global assessments of relational and personal well-being over a 6 month period.

One of the purposes of this study was whether a brief survey can capture traits for forgiveness or unforgiveness. In particular, items loaded on two distinct but correlated dimensions: Benevolence and Resentment-Avoidance, indicated that the presence of benevolent and conciliatory motivation toward the offender cannot be inferred from the absence of resentful and avoidance motivation. Consistent with recent literature, the authors argued that the absence of negative reactions toward the offender and the presence of positive reactions are both needed in order to fully assess marital forgiveness. The two-factor structure also suggests that resentful and avoidance motivations tend to coexist in marital relationships.

The authors concluded that the MOFS scales held across offences having different temporal boundaries but conceded that future research must determine whether the MOFS performs adequately in different cultures, especially within English-speaking ones, as well as with more distressed marital samples.

⁶⁰F. GIORGIA PALEARI ET AL., *Measuring Offense-Specific Forgiveness in Marriage: The Marital Offense Specific Forgiveness Scale (MOFS)*, 21 PSYCHOL. ASSESSMENT 194, 194(2009) (“Notwithstanding progress in the study of marital forgiveness, there is a need for the development of a psychometrically robust measure of forgiveness in couple relationships that might provide the platform for a more cumulative, integrated body of research in this domain.”).

For purposes of BPEP research, of course, the preliminary question is whether this research is relevant to couples after separation (and married or non-married), whether the host environment for custody litigation influences the capacity for forgiveness, or whether BPEPs can effectively integrate this research into programming.

Even with these limitations, however, research concerning forgiveness suggests that the efficacy of BPEPs may be enhanced by adopting and reinforcing those dimensions which encourage inter- and intra-personal cognitive and emotional insight over different time horizons. To be *very* clear, however, the implementation of any construct like forgiveness does *not* mean pardoning, condoning, or excusing the batterer, the abuser, or the transgressor.⁶¹ Moreover, forgiveness research must better account for cultural, ethnic, gender, economic, racial, and other significant demographic differences such as married or non-married.⁶² The key lesson, and the one which implicates IPV theory as well, is that iterations of conflict between parents requires constructs consistent with that specific form of thoughts and behaviors without enhancing the risk of iterations of conflict.

6.0 Discussion and Conclusion

As the social problem of parental conflict evolved from a demographic trend of interest to a serious crisis in our communities, mental health, and court systems, professional disciplines became more deeply embedded in the design of alternative dispute and psychoeducational interventions intended to reduce the duration and intensity of conflict. At this moment, the goal should be the development of interventions like BPEPs which are ethically and scientifically justifiable.

⁶¹See VICTORIA L. LUTZ & CARA E. GADY, *Necessary Measures and Logistics to Maximize the Safety of Victims of Domestic Violence Attending Parent Education Programs*, 42 FAM. CT. REV. 363 (2004); JULIE STUBBS, *Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice*, 7 CRIMINOLOGY & CRIM. JUSTICE 169 (2007).

⁶²See MATHIAS ALLEMAND, *Age Differences in Forgiveness: The Role of Future Time Perspective*, 42 J. RESEARCH IN PERSONALITY 1137 (2008); ANDREA J. MILLER ET AL., *Gender and Forgiveness: A Meta-Analytic Review and Research Agenda*, 27 J. SOC. & CLINICAL PSYCHOL. 843 (2009); JOSE ORATHINKAL ET AL., *Are Demographics Important for Forgiveness?*, 16 FAM. J. 20 (2008).

Whether or not the courthouse portal door closes behind a parent, some modicum of ethical evidence consistent with the rule of law should be heard beyond privileged voices.

A century of watching the history of science and the consequences of its use and misuse should encourage the cohesive development of evidence-informed knowledge and assessment measures for any intervention imposed by courts. While each generation may think these traps are new, this conundrum was present at the birth of the intersection of social science and the judiciary as an institutional authority:

In 1908, the director of the Harvard psychology laboratory, Hugo Münsterberg, complained that the “lawyer and the judge and the juryman are sure that they do not need the experimental psychologist. They go on thinking that their legal instinct and their common sense supplies them with all that is needed and somewhat more.” For much of history, laws were passed and cases decided with little more than intuitive knowledge about how the mind works. A judicial attitude of suspicion verging on hostility toward psychology—just as toward statistics—can still be found. Yet a territorial instinct to maintain disciplinary seclusion conflicts with the natural attraction of ideas.⁶³

BPEPs implicate a multi-dimensional and contemporaneous transfer of cognitive and emotional knowledge *between* parents and instructors. Disciplinary and organizational instincts which are silo or territorial may quash any ideas which are empirical or ethical. For these reasons alone, research involving parents actively engaged in child custody conflict is a complex enough task even before trying to transpose constructs outside the conditions of the laboratory or clinic. In the family court system, identifying *why* an intervention works is made even more complex because *perception* of fault (and the judicial sandbox to exploit that perception) may be as powerful a motivator for conflict as if the actual event occurred.⁶⁴

⁶³ GERD GIGERENZER & CHRISTOPH ENGEL (EDS). *HEURISTICS AND THE LAW 1* (2006) (citations omitted); *see also* ALEXANDER TANFORD, *The Limits of a Scientific Jurisprudence: The Supreme Court and Psychology*, 66 *IND. L.J.* 137, 142 (1990) (“Since 1970, there has been an explosion of applied psychological research concerning the trial process and jury behavior.”).

⁶⁴ *See* LYN. R. GREENBERG ET AL., *Playing in their Sandbox: Professional Obligations of Mental Health Professionals in Custody Cases*, 5 *J. OF CHILD CUST.* 192, 193 (2008) (“The judicial system, mental health,

Although BPEPs can occasionally result in sanctions for non-participation,⁶⁵ BPEPs do not typically influence the outcome of cases by providing an expert opinion from which a judge may make predictive judgments about the future capacity to parent. Conversely, court-ordered interventions like a guardian ad litem, parenting coordinator, or child custody evaluator are imposed for the express purpose of influencing the outcome of the case (*e.g.* an investigatory report with recommendations, a report to the court about compliance, an evaluation of the human mind with socially-constructed labels). Such opinions, under the guise of scientific expertise and privileged licensure, are then pressed through the filter of judicial decision making within the rules and traditions of the host environment. When parents are passed through a mechanistic intervention that eliminates personal identity or experiences, the potential is to “bleach out”⁶⁶ characteristics like gender, race, or socio-economic class.

What matters is not just BPEPs, as actually the most benign of the interventions imposed on parents in child custody cases, but that any intervention should not be a human experiment. Many decades of medical and social science ethics requires that pre-implementation and post-intervention design is empirically and ethically appropriate *before* imposition and measurement. What Münsterberg noted more than a century ago was the tendency of courts to act as a “black box” that substitute’s power, instinct, and convenience for methodology and measurement. Yet methodologies for studying the influence and efficacy of interventions in the courts have been quite scarce even a century later. The problem is historical and structural. The judicial system is a co-equal branch of government conferred the adjudicatory authority to punish or reward.

legal, and interdisciplinary organizations may present different ethical standards/recommendations, leading to tension and controversy among about the various professionals’ obligations and concerns.”).

⁶⁵See SCHAEFER, *supra* note 27, at 495-96 (“Courts around the country take compliance very seriously and failure to attend can cost parents their visitation rights, influence custody decisions, or even-in rare cases-land a parent in jail.”) (footnotes omitted).; *see also* Roberts v. Roberts, 19 A.3d 277 (Del. 2011) (reviewing the procedural and substantive requirements of a mandated parenting education program); Thorne v. Leask, 861 A.2d 690 (Me. 2004) (vacating order that parents attend a high-conflict education course without parents’ consent or hearing); In re Raymond C., 864 A.2d 629, 632 (R.I. 2005) (Parental termination affirmed with finding that “Raymond Jr. was also noncompliant; he failed to complete a parent education course and refused to comply with case development plans.”).

⁶⁶LYNN MATHER ET AL., DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE 8 (2001).

Even if court management were willing to engage in research, however broadly defined, any sustained policy change must account for resistance, tradition, and forces opposing accountability and transparency. This is not a value-judgment; merely a statement of institutional and historical reality.

Even the most optimistic professionals working with parents-in-conflict must concede that the capacity for positive change may well have evaporated over years of recrimination.⁶⁷ Although IPV or Forgiveness Theories may provide a means to organize and give meaning to observations peculiar to child custody conflict, caution is always important when designing any conflict intervention between couples because those “fields of power” are not benign. To be efficacious, therefore, BPEPs must carefully attempt to adjust iterations of conflict or risk creating another means of victimizing the victims or educating some parents as to a “better” means of abuse. After all, human beings only recall a minute fraction of our past experience within a complex network of current beliefs which may well dictate the capacity and willingness to alter emotions and cognition.

To the extent IPV or forgiveness theories may mediate the baser qualities of human behavior—unforgiveness, aggression, spitefulness, amorality, or self-absorption—the design and implementation of BPEPs implicates the need to develop explicit and current evidence.⁶⁸ What is imperative, therefore, is the development across professional disciplines of a precise understanding of the conceptual frameworks, constructs, and methodologies which may influence these programs.

⁶⁷ For a helpful guide through this continuum for families, with a fitting reminder that conflict invokes personal choices between adults with autonomy, see ANDREW HORTON & JOHN DAVID KENNEDY, *DO YOUR OWN DIVORCE RIGHT: STRAIGHT TALK FROM FAMILY COURT JUDGES* 306 (2011) (“Acts of kindness are more likely to be repaid with other acts of kindness. Mean spirited acts are almost certain to generate means spirited responses. This is true everywhere, but it is especially true with current or former intimate partners.”).

⁶⁸ I am more convinced that a sophisticated study which accounted for trauma histories may better may be a better predictor of outcomes than any theory I have proffered here. This is, however, a deeply complex area of social and biological science beyond the basics of this paper. See JUDITH HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE-FROM DOMESTIC ABUSE TO POLITICAL TERROR* 96 (1997) (“Repeated trauma in adult life erodes the structure of the personality already formed, but repeated trauma in childhood forms and deforms the personality.”); BEVERLY JAMES, *HANDBOOK FOR THE TREATMENT OF ATTACHMENT-TRAUMA PROBLEMS IN CHILDREN* 1 (1994) (“Serious attachment disturbances and trauma coexist in the lives of many children and families; each may be the originating event giving rise to the other.”).

In the absence of such precision, family courts will continue to confuse folk-wisdom and good intentions with outcomes that may randomly help some parents and children but enhance the risk to others. And that is neither virtuous policy nor proper science.