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Spousal Violence and Outcome in Custody and Visitation Mediation

*Richard D. Mathis
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ABSTRACT

To examine whether custody and visitation mediation is appropriate in cases with a history of spousal violence, the outcomes of 49 self-reported violent couples were compared to those of 29 never-violent couples in court-ordered mediation. Outcomes were not adversely affected significantly except in chronic cases where incidents had occurred both during the marriage and after separation ($p = .011$). This report calls for standardized screening to identify chronically violent spouses as well as for modified approaches to treatment of such cases.

Mediation, an ancient approach to conflict resolution, is now increasingly being applied to the problem of reaching divorce settlements between spouses who disagree strongly, usually in regard to child custody and visitation. In divorce mediation, instead of litigating in court or negotiating out of court through lawyers, the spouses meet with an impartial third party who assists them in reaching a *cooperative* agreement which is based on their own decisions and is, theoretically, fairer and better suited to their family's needs. Often, the divorce courts themselves provide mediators, who usually have a mental health background (McIsaac 1982) such as counseling or social work. Although mediation is growing rapidly as an

alternative to other divorce interventions (Emery & Wyer 1987), a number of questions have arisen concerning its use in certain circumstances. For example, the appropriateness of custody and visitation mediation with spouses who are violent has been questioned emphatically by some non-mediators. Critics have gone so far as to state that either such cases should never be mediated (Battered Women's Advocates Caucus, 1983; Shaw, 1983), or that mediation is the least desirable of the alternatives to litigation (Lerman 1984).

Others have defended mediation with violent couples as an acceptable (or even preferred) intervention, provided it includes a combination of special screening and treatment which takes the spousal violence into account (Bethel & Singer 1982; Davis & Salem 1984; Erickson & McKnight 1988; Milne & Folberg 1988; Lemmon 1985; Marthaler 1989). This disagreement appears to be based largely on the question of whether the imbalance of spousal power which presumably results from violence renders fair negotiations between perpetrator and victim impossible.

Conditional Support for Mediation

However, empirical and clinical evidence from the field suggests fair negotiation is possible under at least *some* conditions, even though spousal violence may have occurred. Several programs which included mediation of such cases have produced generally acceptable results (Bethel & Singer 1982; Marthaler 1989; Pearson, Thoennes, Mayer, & Golten 1986). Thus, there is qualified support for custody and visitation mediation with some types of violent spouses.

Which Cases?

Unfortunately, the literature is not clear about what distinguishes appropriate cases from inappropriate ones. For example, does it make any difference in mediation whether the violence is current or limited to the distant past? Screening is needed, but before enlightened policies for screening can be set, additional empirical information is needed. This information should pertain to the frequency with which violent spouses are able to resolve their disputes in mediation, as well as to which dimensions distinguish the violent spouses who are successful from those who are not.

Moreover, better information is needed regarding the true *frequency* of cases involving spousal violence in mandated court mediation. For example, although extreme cases of violence often are identified prior to mediation, how many cases are there where less extreme spousal violence escapes casual screening?

Multidimensionality of Spousal Violence

Mediation researchers generally have not distinguished formally between different levels of spousal violence. However, spousal violence has numerous dimensions which might be important in mediation, including severity, frequency, setting, mode, cause, recency, history, whether and in what context violence has previously been reported, and whether or not it has been the subject of prior interventions or is under treatment. Thus, it is important to avoid oversimplification and to recognize the multidimensionality of spousal violence in mediation. In addition, spousal violence is often accompanied by other symptoms, such as alcohol or drug addiction and individual psychopathologies (Straus & Gelles 1990).

For this exploratory study, spousal violence was conceptualized within two dimensions: *whether*, and *when* it had occurred in the stages of marriage, separation, and divorce. To the subjects, spousal violence was defined as any physical contact in anger between them. This yielded four ad hoc classifications of spousal violence based on their timing in the stages of marriage and divorce: (a) during the marriage only, (b) after separation or divorce only, (c) during marriage and after separation, and (e) never. These types were labeled "formerly violent," "newly violent," "chronically violent," and "never-violent" respectively.

Purpose

Thus, the review of the literature raised the question of whether success in mandated court mediation between violent spouses was associated with its recency or its timing relative to the cycle of marriage, separation, and divorce. To test this, a comparison was made of four groups of spouses who differed by type from chronically violent to never-violent, according to whether or not they achieved full, partial, or no resolution. In so doing, the extent to which spousal violence was present in cases mandated for either custody and/or visitation mediation was also assessed.

Method

Subjects

The data for this study were drawn from 84 ($N = 168$ spouses) cases in mandatory custody/visitation mediation in a metropolitan family court service. The subjects were recruited serially as they registered for a premediation group orientation. All but two of the couples who participated in mediation during the recruitment period consented to be subjects in the study.

Instrumentation and Procedure

Both spouses were given a 27-question, non-standardized self-report to complete separately prior to beginning the premediation orientation. The questionnaire was primarily intended to provide a better profile of the clients for the purpose of court-services planning. In addition to its questions about demographics and spousal violence, it asked for reactions to the premediation orientation and for parental perceptions regarding their children during their divorce. Spousal violence was of special interest due to informal mediator reports within the agency of what appeared to be a dramatic increase in the frequency with which allegations of the partner's violence arose during mediation sessions. The question was whether this was a new development in tactics by clients, or whether it was simply a case of mediation facilitating the disclosure of sensitive new information.

In the design of the questionnaire items on violence, Marthaler's (1989) warning about the use of overly crude definitions of abuse in working with clients was heeded. Marthaler found that clients may give misleading information because they are confused by general and seemingly simple questions, such as "Have you ever been abused by your spouse?." This and the fact that even well-designed self-report paper-and-pencil survey questions regarding volatile subjects such as family violence may not be very reliable are two of the limitations of this study.

The surveys were administered by the supervisor, one of the authors of this study, and collected by the mediators following orientation. The forms were placed in the case files. Thus, the mediators had access to their clients' responses to the survey and were free to use the information as they saw fit. No formal attempt was made to assess how, or if, this information was used during mediation, nor were the mediators asked to confirm whether they thought the data were correct. As cases closed, the mediators assessed their outcomes in terms of full, partial, or no resolution. These terms were defined, respectively, as either: (a) a written agreement

covering the major issues, and intended to be entered in court, (b) some agreement, or movement, on major issues relating to custody and/or visitation, or (c) no meaningful progress at all.

Case assignments were made non-selectively except where the supervisor was aware of or suspected problems that might call for a mediator with expertise in a particular area, such as bilingualism. Of the nine mediators who participated in the study, seven were women, two were black, one was Hispanic, and another was bilingual.

Results

Characteristics of the Sample

As Table 1 shows, two-thirds of the cases were for divorces and the remainder was for modification of existing agreements between already divorced spouses. Demographically, members of the sample were largely in their late twenties to late thirties (86.9%), Anglo white (70.3%), educated (58.0% with at least some college), and middle-income (61.5%).

Table 2 contains a breakdown of the types of spousal violence reported by the subjects. Nearly two-thirds of the couples in the sample reported spousal violence had occurred sometime during the marriage, separation, and/or divorce. Of these, the majority reported that violence had occurred during marriage but not after separation (the type designated here as "formerly violent"). Nevertheless, nearly one-in-five of the total sample (17.9%) reported they had been violent both during marriage and after separation (the 'chronically violent' type). Chi square tests showed spousal violence was not significantly associated with any of the demographic variables that were measured.

Wives' versus Husbands' Self-Reports The wives' reports were used to assess the level of violence because they were more likely to report it than were husbands, presumably because they were most often the victims. Husbands were more likely to report lower levels of violence or none at all. However, most husbands and wives agreed (68.0%) in their reports of violence. Where there was disagreement between spouses, it was usually the husband who minimized the extent of the violence. Although the subjects were not asked to identify the perpetrator or the victim, one husband reported being the object of spousal violence, but he added that he also was a perpetrator himself.

Table 1.
Sample Characteristics

Variable	n	valid %	Cumulative %
Case type			
Divorce	56	66.7	
Modification*	28	33.3	100.0
Spouse			
Husband	82	49.4	
Wife	84	50.6	100.0
Age			
Less than 32	66	41.3	
33-40	73	45.6	86.9
More than 41	21	13.1	100.0
No report	6		
Income (in thousands of dollars)			
Less than 10	39	25.0	
> 10 < 25	61	39.1	64.1
> 25 < 40	33	22.4	86.5
> 40	21	13.5	100.0
No report	6		
Race			
Black	22	13.9	
White (Anglo)	111	70.3	
Other	25	15.8	100.0
No report	8		
Education			
Up to H.S. graduate	67	42.2	
Some college	52	32.7	74.7
College degree +	40	25.3	100.0
No report	7		

* Modification: The already-divorced spouses return to court in a dispute over the custody and/or visitation terms of the existing divorce agreement.

Table 2.
Types of Spousal Violence Based on Wives' Reports for 84 Couples
Entering Mandated Custody/Visitation Mediation

Group	n	% ^a
Formerly violent (during marriage only)	27	34.6
Newly violent (after separation only)	8	10.3
Chronically violent (both during marriage and after separation)	14	17.9
Never violent (no violence or physical contact from anger)	29	37.2
Total	84	100.0
No report	6	7.1 ^b

^a percentage of cases reporting.

^b percentage of all cases.

Mediator Differences

The mediators varied in their case contribution from as few as four up to fifteen cases apiece. Chi square analysis in the three cases where the n was sufficiently large to make testing feasible, revealed no significant differences between mediators based on the outcomes they produced.

Outcomes

Overall, the sample achieved full resolution in exactly half of all the cases. This is in line with rates reported for other similar court-mediation services. Chi square analysis was used to compare each of the violent subgroups against the never-violent group, 55% of which achieved full resolution. As Table 3 shows, these chi square values indicated that no significant differences existed between the formerly violent and the newly violent versus the never-violent couples, but a significant difference did exist between the *chronically violent* versus never-violent couples ($X^2(2) = 8.54, p = .014$). Even though the sample was sizable, when three levels of outcome were used, some of the expected cell frequencies in the chi square analysis were less than five, meaning the statistic was questionable.

Thus, the partial and no-resolution groups were collapsed together to achieve cell frequencies of adequate size. This had no effect on the results of the tests. The chi square statistic for both levels of outcome is reported in Table 3.

Examination of the observed outcome frequencies (Table 3) revealed that a majority of the formerly violent couples achieved full resolution. The newly violent couples as a group were very successful, with an even better rate of success than the never-violent group. Conversely, only one-in-five of the chronically violent group reached full agreement. Thus, all four types of violence groups were generally in balance with each other, except the chronically violent, which was extremely over represented in the partial and especially in the no-resolution classifications.

Conclusions

The evidence indicates that, contrary to the idea that mediation is never appropriate in such cases, spousal violence does not necessarily preclude

Table 3.
Observed Frequencies and Chi Square Values for Outcome by Violence
for 49 Violent Couples versus 29 Never-violent Couples
in Child Custody/Visitation Mediation

Subject group (n)	Resolution group			X^2 (df)	p
	Full	Part	None		
Formerly violent (27)	14	3	10	.12(1)	.729 ^a
Percentages	52%	11%	37%	.76(2)	.686 ^b
Newly violent (8)	5	0	3	.17(1)	.677 ^a
Percentages	63%	0%	37%	no test c	
Chronically violent (14)	3	3	8	6.45(1)	.011 ^a
Percentages	21%	21%	57%	8.54(2)	.014 ^b
Never violent (29)	16	2	11	—	—
Percentages	55%	7%	38%		
Total (84)	42	8	34		
Total percentages	50%	10%	40%		

^aComputed for two levels of outcome with partial and no-resolution groups combined.

^bComputed for three levels of outcome with some expected cell frequencies less than five.

^cOnly two outcome levels observed.

successful mediation. Specifically, mediation appears to work normally in most custody/visitation cases with a history of spousal violence except those where the violence has occurred throughout the marriage, separation, and divorce cycle—the type which has been labeled “chronic” in this study.

This general lack of success in chronic cases suggests either modified mediation or an alternative intervention is necessary. For example, alternatives might be prosecution or counseling, or, as Bethel and Singer (1982) recommended, an integrated multiple treatment program of which mediation is a component. Along the same lines, Pearson, Thoennes, Mayer, and Golten (1986) have also stressed that mediation in custody/visitation cases with spousal violence occurs within a divorce *system*, and that mediation does not stand alone as an intervention. This means mediators working with violent spouses should be aware of the resources available to them in other agencies and be prepared to employ them.

Because the extent (if any) to which the mediators in the study changed their treatment on the basis of information they noted in the survey was not assessed, it is not known how the results were affected, if at all. Future studies should better assess and control for this treatment variable.

A primary question raised by these results is why formerly and newly violent spouses fared so well compared to the chronically violent. Even though violence between newly violent spouses might have been recent, or even current, it did not seem to inhibit mediation. Perhaps this is because it was perceived by the participants as being merely situational (unique to the separation process). Thus, the couple would not behave in mediation as if spousal violence were built-into the dynamics of power, conflict management, and negotiation of the spousal/family system. On the other hand, as Isaacs, Montalvo, and Abelsohn (1986) have observed, chronic violence may become so integral to the spousal/family system that mediation would almost certainly fail because it would require a fundamental (second order) change in family functioning. Similarly, the formerly violent (those where there had been no post-separation violence) might have developed methods of controlling violence during marriage prior to separation, so that it had not become so built-in as to affect mediation. This means *the effects of present spousal violence in mediation likely depend on whether it was integrated into the spousal/family system in the past.*

From the finding that two-thirds of the cases involved histories of spousal violence, it is apparent that screening should be considered as a prerequisite to sound practice. To accomplish this, mediators should adopt a multidimensional perspective on spousal violence similar to the approach advocated by Nelson (1989) for understanding the relationship between parental hostility, conflict, and communication in joint- and sole-custody

families. Such an approach would be sensitive to the distinctions between past patterns of violence (from the marriage), present patterns (in the separation/divorce adjustment phase), and future patterns (post-divorce) which might be fostered by the very *design*—custody, visitation, logistics—of the mediated agreement. First, however, an acceptable, multidimensional definition of spousal violence that is more suitable for mediation is also needed.

Although it is clear that chronic (or extreme) cases of spousal violence require modified treatment, what about cases which are not extreme—or where violence may only be considered by the clients to be peripheral to more important issues? Additional research is needed to determine whether, or how, the less extreme cases actually differ from non-violent cases, as well as whether special mediation and/or follow-up might be called for. For example, is full resolution between violent spouses as valid as full resolution between the non-violent? In this regard, Pearson, Thoennes, Mayer, and Golten (1986) found compliance rates for violent spouses were lower, indicating agreements between violent spouses may be less valid. Research is also needed on whether agreements reached between chronically violent spouses, though few in number, are as fair as non-chronically violent agreements.

Finally, the seeming candor with which the subjects reported spousal violence in their marriages was impressive. The fact that most husbands backed up their wives in reporting violence (although sometimes they reported lesser degrees) indicates that allegations or even hints of spousal violence should never be dismissed lightly as mere negotiating ploys. A standardized self-report questionnaire covering spousal violence is needed, and these findings suggest that paper-and-pencil self-reports for premediation assessment would work well. Combined with more systematic mediator assessment of violence in the initial interviews, such an instrument should dramatically improve the present effectiveness of premediation screening. The high incidence of spousal violence uncovered in this study is a red flag that all cases should be screened as a matter of routine practice. In addition to a more standardized method of screening, guidelines for modified treatment strategies are needed in cases where spousal violence has occurred.

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