

## REVIEW ESSAYS

### CAUGHT IN THE MIDDLE: PROTECTING THE CHILDREN OF HIGH-CONFLICT DIVORCE

By Carla B. Garrity & Mitchell A. Baris. New York, New York: Lexington Books, 1994. Pp. iii, 186. \$19.95.

JANE W. ELLIS\*

It is beyond dispute that ongoing interparental hostility is bad for children.<sup>1</sup> We know, moreover, that children who continue to be exposed to high levels of parental conflict following their parents' divorces have more problems than children of parents whose fighting diminishes after divorce.<sup>2</sup> Despite a consensus among psychologists about the dangers of ongoing parental conflict following divorce, there has been little explicit recognition by courts or legislatures of the emotional and behavioral effects of such conflict. Nor is there agreement among scholars or policy makers concerning the best remedy or remedies, whether psychological or legal, when divorced parents are unable or unwilling to change their damaging behavior.

*Caught in the Middle* presents the views of two child psychologists about what should be done on behalf of children in cases of ongoing post-divorce conflict. The authors discuss the effects of conflict on child development, how to assess types and degrees of conflict, the creation and implementation of a parenting plan for high-conflict divorces, and an elaborate remedy for one of the most extreme of these situations, parental alienation syndrome. The book's subject matter merits attention by parents and professionals alike, and the book has received good publicity to date.<sup>3</sup> Unfortunately, it does not deserve the broad and eager audience that it may attract. *Caught in the Middle* relies on poorly documented factual assertions and presents a proposal for dealing with cases of severe conflict that ignores certain crucial realities (including scarce economic resources and the limited availability of first-rate clinicians) that must be

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\* Professor of Law, University of Washington School of Law. B.A., 1968, U.C.L.A., Graduate, 1973, Boston Family Institute, J.D., 1983, Yale Law School.

1. ROBERT E. EMERY, MARRIAGE, DIVORCE AND CHILDREN'S ADJUSTMENT 94-98 (1988); see also E. MARK CUMMINGS & PATRICK DAVIES, CHILDREN AND MARITAL CONFLICT: THE IMPACT OF FAMILY DISPUTE AND RESOLUTION 9 (1994) (finding that a high level of family conflict is more strongly related to childhood difficulties than is family structure per se).

2. *Id.*

3. The book was an Alternate Selection of the Behavioral Science Book Service in August of 1994.

considered by policy makers and courts. The book also appears to rest on an insufficiently examined premise about children's needs, and it sometimes evidences a distressing insensitivity to the varied audience to which it purports to address.

*Caught in the Middle* begins with three chapters which present a series of minimally documented factual assertions about the effects of divorce and post-divorce conflict on children. For example, the authors have a section in Chapter 3 devoted to "how different ages cope with conflict."<sup>4</sup> Their chief citation (made without specific page references) for this developmental scheme is a book by psychologists Janet R. Johnston and Linda E.G. Campbell.<sup>5</sup> The discussion in that book is based, however, on a small sample: fifty-six preschoolers<sup>6</sup> and forty-four elementary school-age children.<sup>7</sup> Furthermore, in a recent (and very helpful) review of the research to date on children's adjustment to high-conflict divorce, the very same Janet Johnston states with regard to her own and other studies:

Caution needs to be used in interpreting and generalizing from these findings. Each study used a relatively small sample of unknown representativeness of the population of high-conflict divorce. . . . *The effects of age of child and ethnic differences were not explored.*<sup>8</sup>

A more fundamental problem is that the careful reader will search in vain in these initial chapters for a clear definition, or even a clear description, of the types and degrees of conflict that constitute the "high conflict" to which the subtitle of *Caught in the Middle* refers.<sup>9</sup> In Chapter 4, the authors finally discuss "how to assess conflict" with the help of a Conflict Assessment Scale.<sup>10</sup> The discussion in the chapter provides some useful examples of conflict, but the Conflict Assessment Scale itself sheds very little light on the nature of damaging post-divorce conflict. For example, under the category of "severe" conflict, the most serious of the five levels of conflict, the authors list as criteria: "endangerment by physical or sexual

4. CARLA B. GARRITY & MITCHELL A. BARIS, *CAUGHT IN THE MIDDLE: PROTECTING THE CHILDREN OF HIGH-CONFLICT DIVORCE* 30-34 (1994).

5. *Id.* at 174 n.1. The full citation is JANET R. JOHNSTON & LINDA E.G. CAMPBELL, *IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT* (1988).

6. *Id.* at 127.

7. *Id.* at 151.

8. Janet R. Johnston, *High Conflict Divorce*, 4 *THE FUTURE OF CHILDREN: CHILDREN AND DIVORCE* 165, 175-176 (1994)(emphasis added).

9. At most, the authors provide a brief description of "the most contentious issues," GARRITY & BARIS, *supra* note 4, at 23, but they do not provide a clear picture of the manifestation of the conflict. Compare the recent overview on high-conflict divorce by Janet R. Johnston, *supra* note 8, in which the author provides a general description of interparental conflict (as "verbal and physical aggression, overt hostility, and distrust,") and sets out a series of definitional problems concerning parental conflict and its effect on children. *Id.* at 165-166. For an excellent exploration of the nature and effects of marital conflict on children, see CUMMINGS & DAVIES, *supra* note 1.

10. GARRITY & BARIS, *supra* note 4, at 41-51.

abuse; drug or alcohol abuse to point of impairment; and severe psychological pathology.”<sup>11</sup> Common sense suggests that these criteria would present a problem for a child whether or not there was conflict between parents, and the relationship of these indicia to interparental conflict is not explained. Additionally, the authors list “slamming doors, throwing things” under their fourth most serious category of conflict, “moderately severe.” Yet the precise circumstances of door slamming or throwing things could vary enormously, and, presumably, the circumstances would make a difference to the child’s well-being.

What, precisely, is the authority for this less-than-elucidating scale? According to the book, it is based on “the authors’ extensive clinical experience with divorcing families . . . and the research literature on fighting and violence in divorced and intact families.”<sup>12</sup> The authors fail, however, to cite a single reference to that research literature. The reader is left to guess which, if any, of the few references cited earlier in the book might apply, and there is no way to begin to evaluate the validity of this supposed authority.

The authors do not pretend that their conflict assessment criteria have any scientific validity. They state that the scale “is not a statistically valid or statistically reliable instrument,” though “it may be useful as a guideline.”<sup>13</sup> Yet they proceed to set out a detailed and seemingly authoritative guide for visitation scheduling based, in significant part, on this very scale.<sup>14</sup> Parents and professionals may rely on these guidelines precisely because, as the authors tell us, we presently “have no tool for measuring conflict and designing visitation to minimize its impact on children.”<sup>15</sup> Yet, the authors provide no basis for believing that their approach is any better than the common sense response of a judge or of any citizen who is aware of the psychological literature documenting the fact that ongoing post-divorce parental conflict, especially a child’s frequent transition between fighting parents, is hazardous.<sup>16</sup>

Fortunately, the authors do not make the mistake of specifying the precise amount and type of visitation for cases of “moderately severe” conflict, a category that presumably covers many, if not most, of the high-conflict divorces with which they are concerned. Here they wisely suggest that visitation must be determined on a case-by-case basis. Ironically, however, this appropriately non-mechanistic approach means that the book’s guideline for a large portion of high-conflict divorces is no different from what is now available in virtually all jurisdictions: a decision relying on the judge’s

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11. *Id.* at 42.

12. *Id.*

13. *Id.*

14. *Id.* at 52.

15. *Id.*

16. Johnston, *supra* note 8, at 179.

discretion and based on testimony by one or more experts about possible dangers to the child.

The book's conceptual and practical problems are most apparent in the next two chapters which are devoted to "parental alienation syndrome."<sup>17</sup> Parental alienation, the authors tell us, is a situation in which "one parent encourages a child to reject the other parent."<sup>18</sup> They explain that recognition of the syndrome is difficult even for trained professionals, and to assist in recognition, they provide several key features.<sup>19</sup> These features, however, are so general and so simplistic that there is a real danger that a large number of parents may be misidentified as alienating by anyone other than a highly-qualified and highly-skilled mental health professional. One alleged feature of the syndrome, for example, is "children's resistance to visiting one parent."<sup>20</sup> But there are other reasons why a child might resist visitation. The authors concede the possibility of an unhappy or possibly harmful relationship with the noncustodial parent.<sup>21</sup> They say nothing, however, about the fact that such resistance might well be attributable to the normal anxieties experienced by children who are learning to make regular transitions between two different homes.

Similarly, the major distinction that they draw between the legitimately concerned parent and the alienating parent is dangerously superficial. They state that the legitimately concerned parent "is generally willing to accept therapeutic help so that visits can continue."<sup>22</sup> While I agree that many cooperative custodial parents would welcome good professional advice where visitation problems arise and would, under ordinary circumstances, want their children to have an ongoing relationship with the other parent, I find this criterion ignores a number of other explanations for a parent's refusal of "therapeutic help so that visits can continue." For example, a parent might refuse therapeutic help if the help that is offered is beyond their economic means or within those means, but of questionable quality; or a parent might refuse therapeutic help out of a genuine and non-malevolent belief that the child is in danger and that the gathering of evidence to ensure the child's safety is more important than therapy; or a parent might not agree that a particular visitation schedule is good for her

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17. *Id.* at 65-100. These chapters precede the chapters discussing remedies for the less severe and more common forms of post-divorce conflict. I am unsure why the authors chose this particular organization. (It may have been dictated by their assertion that it is necessary to recognize these unusually troubling cases as early in the divorce and post-divorce process as possible. *Id.* at 69.) The result of this ordering, however, is to obscure their suggestions for what are presumably the more common forms of post-divorce conflict and to emphasize the exceptional at the expense of the more ordinary case.

18. *Id.* at 65.

19. *Id.* at 66.

20. *Id.* at 67.

21. *Id.* at 67-68.

22. *Id.* at 68.

particular child and might believe that making an adjustment in that schedule would be of more benefit to the child than therapeutic help. Such a parent, knowing the child better than anyone else, might be correct.<sup>23</sup> In short, the fact that a parent disagrees with a professional does not necessarily mean that the parent is wrong and the professional is right. Some parents are motivated, consciously or unconsciously, by the desire to alienate the other parent and some are not; some professionals are perceptive and helpful and some are not. Thus, a judge or psychologist who relies on the authors' "won't cooperate with therapy to continue visits" as a rule of thumb may be mistaken to the detriment of the child and parents alike.

The book's descriptions of four common situational triggers for parental alienation — infidelity, remarriage, post-divorce sadness, and sudden marital breakdown — are also troublesome.<sup>24</sup> Each of the listed triggers might be related to this extreme parental behavior, but each one could equally well be related to a temporary upset that will pass with time. A legal professional, a parent, or an insufficiently trained psychological professional could easily latch onto these indicia and misinterpret their significance.<sup>25</sup>

*Caught in the Middle* purports to present viable solutions to the problem of post-divorce conflict. While their suggestions might be effective in an individual case, the authors ignore a number of basic realities that will necessarily impinge on their proposed remedies were they to be adopted as a matter of policy. Nowhere is this more true than in their "comprehensive intervention model for parental alienation."<sup>26</sup> The authors recommend a model with the following components: a "parenting coordinator," a therapist for the child, and strategies for dealing with each parent that include individual psychotherapy or a support group led by a professional.<sup>27</sup> The impracticalities of the scheme are apparent from the outset, beginning with the role of the so-called parenting coordinator. This person must be "familiar with family law, conflict resolution, and mediation as well as family therapy and child development."<sup>28</sup> Not only must the person have expertise in all the listed areas, but she is "ultimately responsible for all decisions regarding . . . the visitation schedule,"<sup>29</sup> must "form his or her own judgment about the children's safety and, if in doubt, call in an expert to assess

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23. For a sensible approach to what a custodial parent should do if she or he believes a particular schedule is no longer in the child's best interests, see SONJA GOLDSTEIN & ALBERT J. SOLNIT, *DIVORCE AND YOUR CHILD* 91-96 (1984).

24. GARRITY & BARIS, *supra* note 4, at 74-77.

25. The danger of misinterpretation is partially a function of the authors' attempt to write for very different audiences at the same time. A mental health professional might understand the brief and superficial information on "triggers" very differently from a parent or legal professional. See discussion *infra* notes 50-54 and accompanying text.

26. GARRITY & BARIS, *supra* note 4, at 83.

27. *Id.* at 84.

28. *Id.*

29. *Id.*

the situation,"<sup>30</sup> must "be a strong professional able to withstand relentless efforts at persuasion from both sides,"<sup>31</sup> and must "be skilled at defusing conflict and offering parents ways to continue communicating,"<sup>32</sup> among other tasks and skills. As the authors themselves state, "[s]uch delicate undertakings assume a high level of knowledge and skill."<sup>33</sup>

Let us assume that the idea of a parenting coordinator is a good one as a matter of policy. Who, precisely, will these super-people be? The authors tell us that the person can be "a mental health professional, a court-appointed guardian, or a well-trained paraprofessional."<sup>34</sup> But how many mental health professionals, let alone guardians or paraprofessionals, are equipped, by education or by character, to play this crucial and delicate role on which the child's well-being is so heavily dependent? Furthermore, were this model to be widely accepted, what would prevent a legion of well-meaning, but inexperienced parenting coordinators from setting up shop? Is a parenting coordinator who is less-accomplished and less sensitive and less educated necessarily better than the existing system that leaves these unhappy families to their own devices unless one or both parents seek assistance through the legal system? The question is a deadly serious one because the parenting coordinator is given immense power to make decisions and take actions that will have both an immediate and a lasting effect on the children the proposal is designed to protect.

Even if one accepts the dubious assumption that there is or would be a sufficient number of available, highly-trained, highly-skilled people to perform the role of parenting coordinator, who will pay for them? Only a small minority of families are likely to be able to afford the professional fees of such a highly-trained individual. Furthermore, under the authors' proposal the parenting coordinator would be only one of a number of paid professionals. (A therapist for the child and possible therapists for each parent are also recommended.) The authors do refer to the cost of their scheme, but insist, nevertheless, that the parenting coordinator and child's therapist are essential.<sup>35</sup> The likelihood of state funding for these services is virtually nil in today's political and economic climate. As a result, even if everyone agreed that parenting coordinators and child therapists were the optimal solution for high-conflict divorce or parental alienation syndrome, that recommendation would be unavailable to all but the smallest number of families.

The problems of professional competence and cost are confounded by the authors' suggestion that the courts "must place full responsibility in the hands of the coordinator or arbitrator, limiting the possibility of litigation

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30. *Id.* at 86.

31. *Id.* at 98.

32. *Id.*

33. *Id.*

34. *Id.* at 84.

35. *Id.* at 100.

or further discussion.”<sup>36</sup> The authors do not seem aware that in our legal system, courts retain responsibility for decisions concerning the well-being of children in visitation disputes.<sup>37</sup> Nor do they seem aware that there are good reasons for court retention of such power, even if litigation is often not an appropriate solution to these emotionally-wrought situations. For example, Garrity and Baris’ reliance on the parenting coordinator, a kind of therapist-judge-child-protector hybrid, ignores the importance of separating those roles for the sake of clarity.<sup>38</sup> Nor do the authors of *Caught in the Middle* appear to have clearly thought through the realities of enforcement at all. For example, they state that the parents must agree not to fire the coordinator for a pre-specified period of time (such as two years),<sup>39</sup> without regard to the questions of who will enforce that agreement and what the court’s role should be in the event the child’s best interests are being jeopardized by a poorly functioning parenting coordinator. The question of the respective roles of court and mental health professional in difficult divorce situations is a complicated and important one. This proposal, however, does not even acknowledge the existence of that question.

The most distressing aspect of the book, however, is not the authors’ failure to consider the many real-world implications of their model for dealing with parental alienation. Rather, it is their failure to address explicitly two essential questions for anyone concerned with protecting the children of high-conflict divorce: Is the harm of discontinuing contact with one parent as great or greater than the well-documented harm of ongoing conflict? If so, how does one determine the point at which the conflict presents a graver danger than the loss of parent-child contact? The authors state explicitly that “high conflict is the single best predictor of a poor outcome” for children of divorce,<sup>40</sup> and they give lip service to the possible need, in extreme cases, to terminate visitation rights.<sup>41</sup> Yet they repeatedly emphasize the importance of maintaining contact with both parents<sup>42</sup> and include a number of passing comments that suggest that they consider the absence of contact with one parent after divorce a harm that is equal to, if not greater than, the harm of ongoing conflict.<sup>43</sup> The closest the authors

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36. *Id.* at 98.

37. For an example of what may happen when a court attempts to delegate these crucial decisions to a mental health professional, see *Shapiro v. Shapiro*, 458 A.2d 1257 (Md. Ct. Spec. App. 1983).

38. For a discussion of the problems of confounding professional roles, see JOSEPH GOLDSTEIN, ANNA FREUD, ALBERT J. SOLNIT & SONJA GOLDSTEIN, *IN THE BEST INTERESTS OF THE CHILD* (1986).

39. GARRITY & BARIS, *supra* note 4, at 84.

40. *Id.* at 19.

41. *Id.* at 63.

42. *See id.* at 18, 65.

43. *E.g., id.* at 22 (“The difficulty is that visitation planning must balance two important but opposing factors: the more visitation, the greater the risk of conflict; the less visitation, the greater the risk of losing the relationship with one parent.”).

ever come to raising the question of the lesser (or greater) evil is in a passing comment to the effect that it is difficult to know whether and when to end a parent-child relationship. Even in cases of severe conflict, the authors assert “[a]t the very least, the decision to terminate visitation should be reached only after one to two years of intervention by skilled professionals.”<sup>44</sup> They provide neither an explanation nor any supporting evidence for this recommendation. Nor do they seem aware that two years can be an eternity to a child. Instead, they simply assert and assume that two years of ongoing exposure to actively warring parents is preferable to a calm environment with one parent alone.

It is impossible to know whether the authors’ assumption — that two years or more of ongoing conflict is preferable to the loss of contact with one parent — is a function of bias or of ignorance. They make no mention, for example, of the 1991 book by esteemed researchers Frank F. Furstenberg and Andrew Cherlin that reviewed the research to date on divorce, including their own extensive study, and concluded:

A possible third factor in children’s successful adjustment [after good functioning of custodial parent and low level of parental conflict] is the maintenance of a continuing relationship with the noncustodial parent, who is usually the father. But direct evidence that lack of contact with the father inhibits the adjustment to children of divorce is less than satisfactory. A number of experts have stressed the importance of a continuing relationship, yet research findings are inconsistent. The main evidence comes from both the Heatherington and Wallerstein studies, each of which found that children were better adjusted when they saw their fathers regularly. More recently, however, other observational studies have not found this relationship.

And in the [National Survey of Children], the amount of contact that children had with their fathers seemed to make little difference for their well-being. . . . Moreover, when the children in the NSC were reinterviewed in 1987 at ages 18 to 23, those who had retained stable, close ties to their fathers were neither more nor less successful than those who had low or inconsistent levels of contact and intimacy with their fathers.<sup>45</sup>

In short, the authors proposals may be based on an incorrect and possibly harmful assumption that continued parent-child contact is as or more significant to a child’s well-being than ongoing exposure to two warring

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44. *Id.* at 63-64.

45. FRANK F. FURSTENBERG, JR. & ANDREW J. CHERLIN, *DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART* 72-73 (1991). See also EMERY, *supra* note 1, at 88-90 (discussing the lack of evidence to support the theory that maintaining a continuing relationship with a non-custodial parent improves a child’s adjustment).



parents. The failure to examine this fundamental assumption necessarily calls much of the book into question.

In spite of these serious flaws, *Caught in the Middle* is not entirely without merit. The book provides some practical suggestions for minimizing a child's exposure to conflict. For example, the authors recommend neutral drop-off spots for pick-up and delivery of the child as well as minimizing, where possible, the amount of clothes and personal items that a child must carry on each transition between households.<sup>46</sup> They do a good job of emphasizing the dangers of frequent transitions between highly antagonistic parents.<sup>47</sup> The authors' reliance on parenting plans that spell out the details of visitation scheduling may, however, be overly optimistic. In Washington State where I teach, the law requires all parents to create detailed plans for visitation schedules at the time of divorce. As yet, there are no empirical studies on whether a parenting plan helps contain or diminish post-divorce conflict between parents. All anecdotal evidence to date, however, suggests that the plan requirement has not lessened the number or intensity of post-divorce visitation disputes that come to court. Furthermore, some experienced attorneys and mental health professionals have reported to this author that the plan device sometimes exacerbates the conflict between parents rather than lessening it.<sup>48</sup>

Finally, the book's virtues may well be undermined by the authors' desire to reach very different audiences at the same time. In the authors' words, the book is intended to provide:

those parents and the professionals who work with them with the means to work out the dynamics of their conflicts. The discussion is directed both to parents seeking to educate themselves and find solutions to stressful situations and to the professionals who work with them.<sup>49</sup>

The result of writing for such a broad group, however, is a sometimes disturbing insensitivity to possible reactions by parents and professionals alike.

Specifically with regard to parents, I am concerned that the book's occasional accusatory tone and its use of over-simplistic personality categorizations will make the lives of children even worse by providing an arsenal

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46. GARRITY & BARIS, *supra* note 4, at 146-50.

47. *See id.* at 52.

48. I have discussed the effects of the plan requirement with numerous attorneys and judges as well as mental health professionals. One child psychiatrist in Washington who was instrumental in drafting and passing the parenting plan requirement has now concluded, based on his clinical practice and on a small survey of cases, that the plan does not help and may, indeed, increase the tensions between parents. Telephone Interview and Personal Conversations with Dr. John Dunne (May and June, 1994). At a minimum, the jury is still out on the efficacy of the parenting plan device for helping to decrease the conflict to which the children of divorced parents are exposed.

49. GARRITY & BARIS, *supra* note 4, at 8.

of accusations for already-angry or already-guilt-ridden parents. For example, the authors describe the traits of parents who have minimal conflict — including the ability to cooperate in connection with the children, to exercise self-control, and to resolve conflict. They then ask, “Why would two people who can cooperate so well consider divorce? . . . In reality,” these authors tell us, “such seemingly good communication can mask an extreme degree of personal and interpersonal difficulty.”<sup>50</sup> Their observation is unabashedly pejorative, and, whether or not it is true, it is unlikely to be well-received by any parent who has felt good about his or her ability to keep conflict about the child to a minimum. How will it help parents to “work out the dynamics of their conflict” to read that some conflicted parents “lack empathy and the capacity of self-observation?”<sup>51</sup> At other places in the text, the authors describe various strategies that mental health professionals or parenting coordinators can use in dealing with different personality types. The “I’m always right” individual who is passive-aggressive and overdominant can be handled, for example, by “taking away from him or her the power to make certain judgment calls.”<sup>52</sup> How, exactly, will the “always right” individual who is reading this book respond to such labelling and tactical suggestions? I doubt the response will be anything other than anger and defensiveness. Neither reaction is likely to help diminish already-existing conflict. Parents would be helped much more by reading a realistic, practical, and non-judgmental book like *Divorce and Your Child*<sup>53</sup> than by reading a book that may create more anger than insight.

The psychological categorizations may also provide material for amateur psychologizing by legal professionals who are not qualified to make psychological evaluations. Repeating this information to clients or parties is unlikely to improve anyone’s parenting, and a negative response by a parent to such labelling may only exacerbate the tensions to which the child is already subject.

Finally, I doubt that much of the information in the book would be useful to mental health professionals. An experienced mental health professional would either already know much of this material or would need much more detailed information than is supplied by these authors. At the same time, the book may encourage the inexperienced or less-skilled mental health professional to adopt generalizations and to ignore important individual and situational differences from case to case. The authors do state the need for individualized evaluations in some instances, but their generalizations, categorizations, and guidelines are more dramatic and more prominent and may, therefore, have a much greater impact than the disclaimers they sprinkle here and there in the text.

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50. *Id.* at 45.

51. *Id.* at 106-07.

52. *Id.* at 139-40.

53. GOLDSTEIN & SOLNIT, *supra* note 23.

In sum, *Caught in the Middle*, however timely and well-intentioned, does not provide satisfactory descriptions of or solutions to the problems created for children caused by ongoing exposure to their parents' bitter feuds. Professionals and policy makers alike would do much better to read a clear and comprehensive review of current research on the nature and effects of parental conflict.<sup>54</sup> That research, in turn, can serve as the basis for an informed debate about the most appropriate remedies for protecting children from the documented harms of post-divorce parental conflict.

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54. In addition to the work by Johnston, *supra* note 8, and CUMMINGS & DAVIES, *supra* note 1, I would recommend EMERY, *supra* note 1, at 94-98.

