

EMPIRICAL BASES SUPPORTING COLLABORATIVE PRACTICE

Daryl K. James

May, 2006

The practice of collaboration in a divorce entails a number of behavioral recommendations for spouses and their attorneys. These recommendations are for behaviors which are different than many which are commonly found in the context of a divorce. The emphasis in collaboration is on promoting behavior which increases the chances of negotiating a ‘win-win’ agreement¹ in a manner which preserves the integrity of the spouses and their “relational estate.”²

The recommendations are contained in a document which is signed by the spouses and their attorneys at the outset of a collaborative case. The recommendations are also discussed at the outset of the collaboration. When done effectively, the spouses and their attorneys each verbally affirm the recommendations, which then become behavioral standards for the collaborative divorce process. The standards are summarized below.

- Settling the divorce outside of court.
- Honest disclosure of all information related to the divorce.
- Informal discussions.
- An expectation that attorneys and other professionals in the divorce will work cooperatively to resolve issues without litigation.
- Acting quickly to resolve differences related to the children and insulating them from involvement in divorce disputes.
- Engaging in vigorous good faith negotiation.
- An expectation that each spouse will take reasoned positions in all disputes.
- Using best efforts to make proposals which meet the fundamental needs of both spouses.
- Never using threats of litigation as a way of forcing settlement.

All of these standards are likely to be recognized, in a common-sense way, as good problem solving skills. Nevertheless, there may be skepticism regarding whether all can be reasonably applied in the average divorce, and whether their application will actually increase the chances of a settlement which is truly a “win” for both spouses and their children. The purpose of this

¹ Fisher, R. and Ury, W. (1981) Getting to YES: Negotiating Agreement Without Giving In. Boston: Houghton Mifflin.

² Tesler, Pauline, Collaborative Law: Achieving Effective Resolution in Divorce without Litigation, American Bar Association, 2001, p. 80. The relational estate is identified as the relationships spouses have with each other, extended family, and themselves.

essay is to examine whether the common-sense notion is supported by research.³ It is this lawyer's experience that the idea of using collaboration to resolve a divorce is frequently considered by other lawyers as a form of wishful thinking. Years of experience representing clients in divorce usually provide ample opportunity to observe many people operating at their worst. The expectation that spouses can behave in accordance with collaborative standards may seem at odds with the anger and mistrust which characterizes so much divorce behavior. How can collaboration occur in the midst of this emotionally charged atmosphere? This in turn leads to the question of what happens if collaboration fails.

It has to be acknowledged at the outset that any negotiation can fail. The purpose of this inquiry, however, is to examine whether the collaborative standards, and the ideas and behaviors implicit in those standards, in fact increase the probability that a negotiation will succeed. If they do, then application of those standards provides an instrument for lawyers to use in helping their clients navigate the transition from married to divorced life. This paper will summarize negotiation research, and highlight the linkage between collaborative standards and proven negotiation techniques. It will then focus on the differences, short and long term, between divorce resolutions achieved through collaboration and mediation versus a two-attorney litigation-based approach.

SUCCESSFUL NEGOTIATION

What makes a negotiation successful? The answer can be complicated by the perspective from which it is asked. A short term point of view can lead to a different answer than a deeper, long term perspective. Also, if one's concern is only for oneself, success looks different than when one is also concerned about the other party's success.

Negotiation begins when the parties to a dispute decide to communicate with one another, rather than engaging in struggle, disengagement, or turning the matter over to a third-party decision maker. It can end in one of four ways:

- Victory for one of the parties.
- Compromise, defined as some middle ground on an obvious dimension connecting the parties' initial offers.
- Win-win agreement, defined as agreement on mutually beneficial options.

³ Admittedly, this is done from a lawyer's perspective, and that may carry limitations to the analysis.

- Failure to agree.⁴

What type of resolution is most desirable in a divorce? Simple victory? That may be attractive in the short term, but each victory also entails a loss. The divorce is not the end of the parties' relationship. Instead it is a redefining of that relationship, which many spouses continue well into the future. Thus, the wounding loss suffered by one may become the *casus belli* of the next dispute.⁵

Compromise can be a useful resolution. However, the defining difference between compromise and win-win is that the latter maximizes the benefits between the parties. If you are going to reach an agreement through compromise, why not try for a win-win?

Failure to agree means letting a third party judge or arbitrator decide the issues, or reconciling. Either route may be to the advantage or disadvantage of one party or the other in a given situation. People who have engaged in good faith negotiation will, however, be disappointed in a failure to agree.

It is proposed that a successfully negotiated divorce should meet certain criteria. First, it should produce an agreement. Next, the agreement should be one which induces compliance by the spouses and which succeeds over the long term. The agreement should also fairly address the legitimate needs of the parties, producing a win-win wherever possible. Further, if the spouses can maintain or even improve their relationships with those that are important to them, that is a measure of success. Finally, an agreement which protects the children from unnecessary exposure to the stresses of divorce should be considered successful.

RESEARCH INTO EFFECTIVE NEGOTIATION

Substantial research has been devoted to the study of what determines the success or failure of negotiation, and how to improve the chances of negotiation which results in a beneficial outcome for each negotiator.⁶ The research summarized below provides support for the above criteria, and indicate methods which will help achieve the criteria.

⁴ Pruitt, D. G. and Carnevale, P. J., Negotiation in Social Conflict (1993) Pacific Grove, California: Brooks/Cole Publishing Company, pp.16-17.

⁵ It may also injure on the children, who can carry divorce-inflicted psychological wounds into adulthood. Wallerstein, J. S. and Lewis, J. M. (2004). The unexpected legacy of divorce: Report of a 25-year study. *Psychoanalytic Psychology*, 21, 353-70.

⁶ Pruitt and Carnevale (1993). *Supra* note 4, contains an excellent overview of negotiation research.

Self concern versus dual concern

The traditional, dominant paradigm for negotiation presents two parties who are each unitary decision-makers. They come together to try to resolve a divergence of interest through negotiation. They each try to maximize self-interest through the negotiation.⁷ Pruitt and Carnevale argue that the origins of the paradigm can be traced to mathematical models of rational decision making developed by economists and game theorists, as well as theories about the impact of negotiator tactics.⁸ The paradigm, however, is simplistic. It does not take into account the fact that each party may in fact have a genuine concern for the other, or for their future relationship. It also ignores the social context of the negotiation, which includes social norms, the behavior of third parties and the relationship between the negotiators. Finally, it does not take into account the reason why people choose to negotiate, rather than participate in arbitration, open struggle with each other, or simple disengagement.

A more inclusive approach to negotiation is known as the dual concern model.⁹ This includes both concern for self and concern for the other negotiator. Each area of concern can be thought of on a scale from weak to strong, and the interplay between these affects a person's negotiating style. Genuine concern for the other is enhanced by positive feelings toward the other, a perception of common group identity, and informed self-interest. The prospect of an ongoing relationship entails a common group identity and the knowledge that one's own well-being is in some sense tied to the other. The coupling of high self-concern with high other-concern leads to the best chance of a win-win agreement¹⁰ through problem solving. The same studies identified the coupling of high self-concern and low other-concern with rigid, contentious behavior; the contrary constellation of low self-concern coupled with high other-concern led to early concessions, with no attempt at problem solving.

Negotiation behavior is affected by whether the negotiators are motivated by self or other concern. Contentiousness is a common method for asserting self-concern. It may take many forms, such as threats, harassment, irrevocable commitments and even persuasive arguments.¹¹ Contentious tactics can lead to agreement, if the other side concedes. However, if the

⁷ Pruitt, D. G. and Carnevale, P. J., *supra* note 4, pp. 7-9.

⁸ *Id.*

⁹ *Id.*, chapter 7.

¹⁰ Ben-Yoav, O. and Pruitt, D. G. (1984), *Accountability to constituents: A two-edged sword. Organizational Behavior and Human Performance*, 34, 283-95. Cited in Pruitt, D. G. and Carnevale, P. J., Negotiation in Social Conflict (1993) Pacific Grove, California: Brooks/Cole Publishing Company.

¹¹ Pruitt and Carnevale (1993), *supra* note 4, pp. 30-4

other party responds with its own contentious tactics, the stage is set for litigation. An alternative to contention and concession is problem solving.

Problem solving in negotiation

Problem solving is an effort to find a mutually acceptable agreement. This is different than simple compromise, which entails a readily identifiable middle ground, for instance the midpoint between two different dollar figures. Three broad categories of problem solving techniques have been identified which can be used to construct win-win agreements.

- Expanding the pie. This increases resources available to the parties, such as paying tax-deductible maintenance instead of child support, or agreeing to some mutual time with the children instead of dividing all time in a zero-sum system.
- Exchanging concessions. This involves trading off a win for one party on an issue for the other party's win on another issue. These can be linked together in a technique known as logrolling. Another technique is unbundling, which breaks an issue down into multiple issues. Yet another is nonspecific compensation, in which one party gets what it wants in exchange for concessions on some unrelated issue which was not originally part of the negotiation. For instance, in a child support negotiation, one parent could agree to pay more than the guideline amount in exchange for the other agreeing that the paying parent may have extra parenting time.
- Solving underlying concerns.¹² This involves identifying both parties' concerns and seeking ways to address them. One way to access the parties' concerns is to consider their underlying fundamental human needs.¹³ Thus, in a negotiation about maintenance, instead of simply addressing the amount of money one spouse wants to be paid, and the other's desire to pay less, the focus can be shifted to each spouse's underlying needs. As an example, the payee may have a need for security or recognition for contributing to the payer's earning capacity, while the payer may have a need for independence or recognition for having worked very hard. By focusing on underlying concerns or needs, the discussion may be broadened beyond positional statements regarding amount of money.

¹² See Pruitt and Carnevale (1993), *supra* note 4, pp. 36-46, for a treatment of the three general problem-solving techniques.

¹³ Rosenberg, Marshall B., Ph.D., Nonviolent Communication: A Language of Life, Encinitas, CA, Puddle Dancer Press, 2003

Because problem solving involves a mutual effort by the parties, it entails cooperation. Research has shown that expectations of cooperation or conflict have measurable effects on general problem solving abilities.¹⁴ Individuals expecting a conflictual negotiation tend to suffer a decrease in creative problem solving ability.

A number of factors have been shown to increase the likelihood of identifying each party's concerns and reaching win-win agreements. Consider those listed below.

- Empathy. Negotiators who display more empathy have been shown to achieve more win-wins.¹⁵
- Active listening. This has been shown to be an effective means of information-gathering, and to improve the other's attitude toward oneself and increase the other's willingness to concede.¹⁶
- Information exchange. This is a crucial element of joint problem solving, in which the negotiators view their separate interests as a common problem and brainstorm about solutions. This typically requires a high level of trust, but there are ways for parties without such trust to gather information for a win-win:
 - Ask many questions. Those who ask for information about underlying concerns often get it.
 - Give away some information. People tend to reciprocate behavior, so giving information away often leads to gaining information from the other party.
 - Ask for preferences among proposals. The answers may contain information which can be used to decode the other's priorities.¹⁷
- Promises. As opposed to threats, promises commit one to rewarding the other party's compliance, instead of punishing the other's noncompliance. When used effectively, they evoke less

¹⁴ Carnevale, P. J. and Probst, T. M. (1998). Social values and social conflict in creative problem solving and categorization. *Journal of Personality and Social Psychology*, 74, 1300-09.

¹⁵ Neale, M. A. and Bazerman, M. H. (1983). The role of perspective-taking ability in negotiating under different forms of arbitration. *Industrial and Labor Relations*, 36, 378-88. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, pp. 42-43.

¹⁶ Johnson, D. W. (1971). The effects of warmth of interaction, accuracy of understanding, and the proposal of compromises on the listener's behavior. *Journal of Counseling Psychology*, 18, 207-16. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, pp. 42.

¹⁷ Neale and Bazerman, *supra* note 12. Also cited: Thompson, L. L. (1991). Information exchange in negotiation. *Journal of Experimental Social Psychology*, 27, 161-79; Kimmel, M., Pruitt, D. G., Magenau, J., Konar-Goldbland, E. and Carnevale, P. J. (1980). The effects of trust, aspiration, and gender on negotiation tactics. *Journal of Personality and Social Psychology*, 38, 9-23.

resistance than threats,¹⁸ and tend to make the party using them more influential in the future.¹⁹

- Proper setting. It is best to meet in a private setting because a public forum likely encourages positional behavior.²⁰
- Approaching the issues. While it may be important to promote a sense of procedural justice by allowing some ventilation of past issues,²¹ it is necessary to move toward discussion of the future. It is helpful to develop an agenda²² which allows for some early success in negotiation, which in turn improves the parties' moods and provides some faith in the negotiation process.²³
- Positive attitude. Positive affect has been found to facilitate the bargaining process and to improve outcomes in face-to-face negotiations.²⁴
 - People with positive affect tend, more than others, to take a problem solving approach to interpersonal problems and disputes and come up with a solution that involves creatively thinking about how to obtain the most for both sides. They also appear less defensive and less likely to engage in defensive interpersonal processes such as downward comparison, competitive comparisons or making oneself feel better by focusing on the relatively worse outcome of the other.²⁵

¹⁸ Freedman, S. C. (1981). Threats, promises, and coalitions: A study of compliance and retaliation in a simulated organizational setting. *Journal of Applied Psychology*, 11, 114-36. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 44.

¹⁹ Gaski, J. F. (1986). Interrelations among a channel entity's power sources: Impact of the exercise of reward and coercion on expert, referent, and legitimate power sources. *Journal of Marketing Research*, 23, 62-77. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 44.

²⁰ Pruitt, D. G., Carnevale, P. J., Forcey, B. and Van Slyck, M. (1986). Gender effects in negotiation: Constituent surveillance and contentious behavior. *Journal of Experimental Social Psychology*, 22, 264-75. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 45.

²¹ Lind, E. A. and Tyler, T. R. (1988). *The social psychology of procedural justice*. New York: Plenum. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 45.

²² Zubek, J. M., Pruitt, D. G., Peirce, R. S., McGillicuddy, N. B. and Syna, H. (1992). Short-term success in mediation: Its relationship to disputant and mediator behaviors and prior conditions. *Journal of Conflict Resolution*, 36, 546-72. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 45.

²³ Huber, E. L., Pruitt, D. G. and Welton, G. L. (1986). The effect of prior negotiation experience on the process and outcome of later negotiation. Poster presented at the annual meeting of the Eastern Psychological Association, New York. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 45.

²⁴ Carnevale, P. J. and Isen, A. M. (1986). The influence of positive affect and visual access on the discovery of integrative solutions in bilateral negotiations. *Organizational Behavior and Human Decision Processes*, 337, 1-13.

²⁵ Isen, A. M. (2001). An influence of positive affect on decision making in complex situations: Theoretical issues with practical implications. *Journal of Consumer Psychology*, 11, 75-85. One of the studies reviewed in this paper measured doctors' ability to accurately and efficiently diagnose a medical condition. The induction of positive affect resulted in a significant increase in diagnostic efficiency. The doctors in the positive affect group

- Those with positive affect have been shown to put forth more effort, persevere longer, and have a higher level of motivation in completing tasks than others.²⁶
- Positive mood produces more concession making²⁷ and enhances helpfulness.²⁸

The relationship between the negotiators

Significant research has been done concerning another important factor in negotiation outcome, the pre-existing relationship between the negotiating parties. Pruitt and Carnevale reviewed three aspects of those relationships: power, trust and the overall positive or negative characteristics of the relationships.

Power refers to each party's ability to reward or punish the other. In general, the more power an individual has, the less likely he is to make concessions. In a study of bargaining between romantically involved couples, the person who was more in love achieved lower outcomes than the other.²⁹ Also, more powerful negotiators usually make more threats.³⁰

Trust is the expectation that the other will cooperate in the future. Its presence encourages the exchange of information.³¹ The existence of trust has been shown to predict cooperation in groups of three, but not seven, people.³² The same study showed that trust had progressively less impact on cooperation in the absence of feedback about how others were responding. It was theorized that an individual's decision to trust is affected by the likelihood

identified the correct diagnosis more rapidly than the control group. They also scored higher on a standard creative problem solving task. What is striking is the ease with which positive affect can be induced: the physicians were each presented with a small bag of candy, containing six hard candies and four Hershey's Miniatures chocolates. This is standard practice in such research, and has been found time and again to induce positive affect, which in turn induces heightened performance on creative problem solving, decision making and negotiation tasks.

²⁶ Isen, A. M. and Erez, A. (2005). The influence of positive affect on the components of expectancy motivation. *Journal of Applied Psychology*, 87, 1055-67.

²⁷ Baron, R. A. (1984). Reducing organizational conflict: An incompatible response approach. *Journal of Applied Psychology*, 70, 434-41.

²⁸ Isen, A. M. (1970). Success, failure, attention, and reaction to others. The warm glow of success. *Journal of Personality and Social Psychology*, 21, 294-301.

²⁹ Mullick, B. and Lewis, S. A. (1977). Sex roles, loving and liking: A look at dating couples' bargaining. Paper presented at the 85th annual convention of the American Psychological Association. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 131.

³⁰ Hornstein, H. A. (1965). Effects of different magnitudes of threat upon interpersonal bargaining. *Journal of Experimental Social Psychology*, 1, 282-93. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 131.

³¹ Kimmel, *supra* note 14. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 133.

³² Sato, K. (1988). Trust and group size in a social dilemma. *Japanese Journal of Experimental Social Psychology*, 29, 123-8. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 134.

of reciprocity, which appears diminished in larger groups of people or when information about others' response to cooperation is lacking.

If the parties desire to cooperate, yet trust is low, it may be possible to reduce reliance on trust. One way is to make decisions reversible. High levels of cooperation were induced when both parties were free to reverse their decisions again and again.³³ In this way, progress can be made toward resolution. Another is fractionation of cooperation into smaller moves. This reduces the risk involved in making a move.³⁴ If the other party reciprocates, then further moves can be made.

The overall positive or negative nature of the relationship has a significant effect on negotiation. Positive relationships are associated with more concession making,³⁵ less hostile and contentious behavior,³⁶ and a tendency to retaliate less readily.³⁷ Pruitt describes a kind of positive relationship called a working relationship. Such a relationship comprises norms:

- Problem solving. If both parties feel strongly about an issue, they should try to find a way for both of them to succeed.
- Mutual responsiveness. If only one party feels strongly about an issue, the party who feels less strongly should concede.
- Truth in signaling. The parties should be honest about the strength of their feelings.³⁸

Evidence for the second and third norms has been found in a study of four-party negotiation. Some participants received "joint concern" instructions, that is, to "be concerned about how well the other parties are

³³ Deutsh, M. (1973). The Resolution of Conflict. New Haven, CT: Yale University Press. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 135.

³⁴ Fisher, R. (1964). Fractionating conflict. In Roger Fisher (ed.), International Conflict and Behavioral Science: The Craigville Papers. New York: Basic Books. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 135.

³⁵ Fry, W. R., Firestone, I. J. and Williams, D. L. (1983). Negotiation process and outcome of stranger dyads and dating couples: Do lovers lose?, *Basic and Applied Social Psychology*, 4, 1-16; Schoeninger, D. W. and Wood, W. D. (1969). Comparison of married and ad hoc mixed-sex dyads negotiating the division of a reward. *Journal of Experimental Social Psychology*, 5, 483-99; Syna, H. (1984). Couples in conflict: Conflict resolution strategies, perceptions about sources of conflict and relationship adjustment. Doctoral dissertation, State University of New York at Buffalo; Zubek *et al* (1992), *supra* note 19. All cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 136.

³⁶ Syna (1984) and Zubek *et al* (1992), *id*.

³⁷ Rusbult, C. E., Verette, J., Whitney, G. A., Slovick, L. F. and Lipkus, I. (1991). Accommodation processes in close relationships: Theory and preliminary empirical evidence. *Journal of Personality and Social Psychology*, 60, 53-78. *Id*.

³⁸ Pruitt, D. G. (1991). Strategy in negotiation. In V. Kremenyuk (ed.), International Negotiation: Analysis, Approaches, Issues. San Francisco: Jossey-Bass. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 137.

doing as well as how well you are doing.” Others received instructions to focus on their self concerns. The groups that received the joint concern instructions were able to negotiate a higher joint outcome than the others.³⁹ Joint concern groups reported greater provision of honest information about priorities and letting others win on issues important to them. The readiness with which joint concern was adopted suggested that mutual responsiveness and truth in signaling are behaviors which are readily accessible.

What makes a relationship predominantly positive or negative?
Several factors have been identified.

- Bonds of perceived similarity or kinship encourage positive relationships, and more ready cooperation in prisoner’s dilemma problems.⁴⁰
- Prior cooperation and competition. Many studies show that cooperation leads to improved interpersonal relationships.⁴¹ Also, the anticipation of cooperation leads to improved

³⁹ Weingart, L. R., Bennett, R. and Brett, J. (1993). The impact of consideration of issues and motivational orientation on group negotiation processes and outcome. *Journal of Applied Psychology*, 78,504-17. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 138.

⁴⁰ Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 139-40. The prisoner’s dilemma involves decisions by two or more parties, which produce exploitation of the other party, mutual cooperation with the other, or mutual noncooperation with the other. A classic form involves a scenario in which two accomplices in a crime are questioned in separate rooms, and must decide whether to cooperate with authorities by “ratting out” the accomplice, or to maintain silence. Neither knows what the other is doing. If one implicates the other, and the other remains silent, the prisoner who implicates the other wins and the silent one loses. If both implicate each other, however, both lose. If both remain silent, both win. Thus, the behavior which appears to serve self interest (implicating the other) in fact is detrimental to joint interest (which is served by both remaining silent). The dilemma mirrors many negotiations. One instance of the prisoner’s dilemma occurs frequently for lawyers. When one lawyer (call him Lawyer One) in a case requests some act of forbearance from the other (call him Lawyer Two), say a postponement of a trial, the choices for Lawyer Two to concede by saying yes, or to contend by refusing. It may be that a present advantage will be lost by cooperating (sometimes the request to postpone is because Lawyer One is not ready to try the case, so allowing a postponement will mean Lawyer Two foregoes the advantage of greater preparedness). In the context of winning or losing a trial, therefore, the best outcome for Lawyer Two is obtained by not conceding a postponement. However, when observed over a longer period of time, and assuming further interactions between Lawyers One and Two or between those lawyers and others who may become familiar with their reputations, a different picture emerges. For when Lawyer Two requests an act of forbearance from Lawyer One, perhaps his own request for a postponement or additional time to provide required disclosures, Lawyer One will be far more likely to refuse, based on the previous lack of cooperation from Lawyer Two. This time, Lawyer One wins, and Lawyer Two loses. Over this longer time frame, the best outcome for both lawyers is arguably cooperation.

⁴¹ Johnson, D. W., Johnson, R. and Maruyama, G. (1984). Goal interdependence and interpersonal attraction in heterogenous classrooms: A metaanalysis. In N. Miller and M. B. Brewer (eds.), Groups in Contact: The Psychology of Desegregation. New York: Academic Press, pp. 187-212. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 140.

interpersonal relations.⁴² Cooperation by one party tends to be matched by the other, particularly if future dependence is anticipated.⁴³

- Interdependence. High interdependence encourages cooperation, as long as each party knows they are interdependent.⁴⁴

The positive or negative nature of a relationship has a tendency to persist regardless of change in a person's behavior. Mechanisms supporting this perpetuation in spite of changed behavior are selective perception, selective memory and attributional distortion. People tend to notice negative behavior when they have a hostile attitude and positive behavior when they have a friendly attitude.⁴⁵ This is selective perception. When selective memory is at work, an observer seeing another person act in a complex manner tends to recall only those actions that confirm his initial views of the actor.⁴⁶ Attributional distortion occurs when regardless of how a person behaves, the behavior is seen as evidence which confirms preexisting perceptions. If a party behaves in accordance with the perceptions, then the behavior is seen as intentional and therefore reflecting the party's stable characteristics. If seen as acting contrary to those perceptions, the behavior is seen as aberrant or situational, therefore not requiring any modification of the preexisting perceptions.⁴⁷

What do current theory and empirical research suggest can be done to overcome a negative relationship? A few techniques are provided by Pruitt and Carnevale.

- Stylistic guidelines. These are suggestions for the style of negotiating, and are based on several sources.⁴⁸

⁴² Ben-Yoav, O. and Pruitt, D. G. (1984). Resistance to yielding and the expectation of cooperative future interaction in negotiation. *Journal of Experimental Social Psychology*, 34, 323-35. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 140.

⁴³ Pruitt, D. G. and Kimmel, M. J. (1977). Twenty years of experimental gaming: Critique, synthesis, and suggestions for the future. *Annual Review of Psychology*, 28, 363-92. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 142.

⁴⁴ Lawler, E. J., Ford, R. S. and Blegen, M. A. (1988). Coercive capability in conflict: A test of bilateral deterrence versus conflict spiral theory. *Social Psychology Quarterly*, 51, 93-107. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 132.

⁴⁵ Hastorf, A. H. and Cantril, C. (1954). They saw a game: A case study. *Journal of Abnormal and Social Psychology*, 49, 129-34. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 143.

⁴⁶ Zadney and Gerard (1974). Attributed intentions and informational selectivity. *Journal of Experimental Social Psychology*, 10, 34-52. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 143.

⁴⁷ Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 144.

⁴⁸ Fisher, R. and Brown, S. (1988). Getting Together: Building a Relationship that Gets to YES. Boston: Houghton Mifflin.; Fisher and Ury (1981). *Supra* note 1; Pruitt, D. G. and Rubin, J. Z.

- Be rational, even if they are irrational.
 - Try to understand them, even if they misunderstand you.
 - Consult them before deciding matters that affect them, even if they are not listening.
 - Be honest and trustworthy even if they are trying to deceive you.
 - Avoid coercive tactics even if they are using them.
 - Be open to persuasion and try to persuade them.
 - Care about them and be open to learning from them even if they reject your concerns as unworthy of consideration.
 - Attack the problem, not the people.
 - Maintain open communication channels.
 - Engage in active listening.
 - Openly express concern for the other's welfare.
 - Demonstrate a real interest in problem solving.
 - Reexamine any elements of your supposed interests that are unacceptable to the other party to be sure they are essential to your own welfare.
 - Reward the other for making conciliatory gestures.
 - Do little favors.
 - Try to locate bonds between the parties, however remote they may be.
- Unilateral conciliatory initiatives. A dramatic gesture of conciliation can improve the relationship. They are rendered more effective if announced ahead of time;⁴⁹ carried out as announced;⁵⁰ and if undertaken by a party with equal or greater power than the party toward whom they are taken.⁵¹ It may also be necessary for the gesture to be irrevocable and noncontingent to have substantial effect.⁵² Of course, such moves carry substantial risk of rejection, but one could argue that is what gives them their power to change a relationship.
 - Contact and communication. Communication allows parties to explain actions and proposals that might otherwise provoke

(1986). Social Conflict: Escalation, Stalemate, and Settlement. New York: McGraw-Hill. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 145-6.

⁴⁹ Lindsfold, S. and Aronoff, J. (1980). Conciliatory strategies and relative power. *Journal of Experimental Social Psychology*, 16, 187-96. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 147.

⁵⁰ Gahagan, J. P. and Tedeschi, J. T. (1968). Strategy and the credibility of promises in the prisoner's dilemma game. *Journal of Conflict Resolution*, 12, 224-34. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 147.

⁵¹ Lindsfold and Aronoff (1980). *Supra* note 46.

⁵² Miller, C. R. (1991). A willingness to talk: Conciliatory gestures and de-escalation. *Negotiation Journal*, 7, 405-30. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 147.

defensive reactions. It also allows problem solving discussions to occur. There is evidence that contact and communication fosters the development of positive bonds between parties,⁵³ and on the whole improves intergroup relations.⁵⁴ Contact that involves cooperation between the parties is more effective in resolving differences than contact alone.⁵⁵ On the other hand, if the parties are severely hostile toward one another, contact and communication may be counterproductive.

- Negotiating new relationships. Simply negotiating an agreement regarding current issues does not appear to repair a negative relationship. When negotiating parties are trained in joint problem solving, however, parties' relations tend to improve.⁵⁶

CONGRUENCE OF COLLABORATIVE PRACTICE WITH DUAL CONCERN, PROBLEM SOLVING NEGOTIATION

A number of collaborative practice standards were listed at the beginning of this paper. Below, they are recounted, with an explanation of how they are consistent with the successful negotiation techniques reviewed above.

- Settling the divorce outside of court. This helps focus energy on negotiation, not as a prelude to decision by a third party, but as an end in itself. It increases the importance and viability of all the other collaborative standards.
- Honest disclosure of all information related to the divorce. This standard fosters an exchange of information through contact and communication. Honest disclosure has the potential to build trust, which in turn builds cooperation.

⁵³ Ancona, D. G., Friedman, R. A. Ad Kolb, D. M. (1991). The group and what happens on the way to YES. *Negotiation Journal*, 2, 155-73. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 148.

⁵⁴ Amir, Y. (1976). The role of intergroup contact in change of prejudice and ethnic relations. In P. A. Kaatz (ed.), *Toward the Elimination of Racism*. Elmsford, New York: Pergamon Press. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 148.

⁵⁵ Brown, R. (1988). Intergroup relations. In M. Hewstone, W. Stroebe, J. P. Codel and G. M. Stephenson (eds.), *Introduction to Social Psychology*. Oxford: Basil Blackwell. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 149.

⁵⁶ Pruitt *et al* (1992). *Supra* note 5; Jacobson, N. S. (1984). The modification of cognitive processes in behavioral marital therapy: Integrating cognitive and behavioral intervention strategies. In K. Hahlweg and N. S. Jacobson (eds.), *Marital Interaction: Analysis and Modification*, New York: Guilford Press, pp. 285-308; Johnson, S. M. and Greenberg, L. C. (1985). Differential effects of experiential and problem-solving interventions in resolving marital conflict. *Journal of Experimental Social Psychology*, 53, 175-84. Cited in Pruitt, D. G. and Carnevale, P. J., *supra* note 4, p. 150.

- **Informal discussions.** A private setting for dispute resolution makes contentious behavior less likely and opens the door to empathy and active listening. Discussions in a collaborative negotiation are open between the spouses and attorneys, allowing six-way communication (attorney to attorney, spouse to spouse, and either attorney to either spouse). This allows a free exchange between everyone at the negotiation. Handled correctly, this should help build a more positive attitude among the participants than that generated in a positional, formal negotiation, settlement conference or litigation which restricts communications.
- **An expectation that attorneys and other professionals in the divorce will work cooperatively to resolve issues without litigation.** This encourages problem solving instead of contention. Mutual responsiveness and truth in signaling is encouraged by this standard. The incidence of power struggles should be reduced.
- **Acting quickly to resolve differences related to the children and insulating them from involvement in divorce disputes.** This would first of all satisfy a societal norm that divorcing adults should place their children's welfare first. Next, rapid action to protect the children has real potential to bolster the positive aspects of the parties' relationship by establishing cooperation and highlighting the interdependence and familial bonds of the parties.
- **Engaging in vigorous good faith negotiation.** In a collaborative case, all negotiations are conducted in person. Obviously, this encourages contact and communication, which in turn can be used to build and strengthen positive bonds between the parties.
- **An expectation that each spouse will take reasoned positions in all disputes.** This standard encourages cooperation and thoughtful consideration of such integrative approaches as expanding the pie, exchanging concessions, logrolling, and meeting underlying needs. As matters are addressed in a reasonable way, trust is built that the remaining issues will be resolved.
- **Using best efforts to make proposals which meet the fundamental needs of both spouses.** Application of this standard sets the stage for creating a working relationship between the parties.

As they try to focus on the legitimate needs and interests of both, they can be encouraged to apply the three norms of a working relationship: problem solving, mutual responsiveness and truth in signaling.

- Never using threats of litigation as a way of forcing settlement. This removes a significant element of contention from the negotiation. It makes a premature termination of discussion less likely, thereby giving the parties more time to use problem solving to negotiate new aspects of a post-divorce relationship.

BEST INTERESTS

Substantial research has yet to be done regarding the effect of collaborated settlement on the long-term health of divorcing spouses and their children. Some data regarding satisfaction with the process has been compiled in a recent Canadian study.⁵⁷ There has been research into the long-term effects of mediated versus litigated divorce resolutions. Because collaboration shares with mediation the goal of achieving resolution without litigation, the mediation research should provide some insight into the effect the collaborative process would be expected to have on the long-term well-being of spouses and their children. Additionally, a recently published study examined the effect of an intervention known as the Collaborative Divorce Project.⁵⁸ Because the intent of the project was to establish a “culture of collaboration” during divorce resolution, it is discussed below as well.

The Canadian Study

Sixteen collaborative cases were studied over a three year period. The researchers interviewed the lawyers and clients involved in the cases at four locations, two in Canada and two in the United States. Interviews were conducted at the beginning of each case, between the first and third collaborative meetings, approximately midway through the case, and after the case was resolved or collaboration terminated.

Eleven of the sixteen cases were resolved by the end of the study. One case was suspended when the couple reconciled. In another case, the

⁵⁷ Macfarlane, J. (2005). The emerging phenomenon of Collaborative Law (CFL): A qualitative study of CFL cases. Presented to Family, Children and Youth Section, Department of Justice Canada; study reprinted from

<http://www.collaborativepractice.com/articles/pro/MacfarlaneArticle.pdf>

⁵⁸ Pruett, M. K., Insabella, G. M and Gustafson, K (2005). The collaborative divorce project: A court-based intervention for separating parents with young children. *Family Court Review*, 43, 38-49.

collaboration was terminated and the couple apparently pursued resolution in court. Three cases were still in negotiation when the study was completed.

The study sought to answer a number of questions. Does collaboration (which is referred to in the study as CFL, for Collaborative Family Law) allow clients and lawyers to escape the so-called “prisoners’ dilemma,” in which each side negotiates reactively on the basis of their worst fears and assumptions about the other? Can CFL enable open disclosure and the development of sufficient knowledge-based trust to produce less hostile negotiations? Do CFL clients enjoy qualitatively better outcomes than those generated by litigation or traditional negotiation? Do CFL clients experience a more complete and authentic sense of closure at the end of the divorce?

The study concluded that client satisfaction with CFL is generally high. Many spouses emerged with the clear sense that the collaborative process enabled them to behave honorably toward their spouses and family. Many also felt positive about their relationship with their lawyer.⁵⁹ Whether this qualifies as a more complete and authentic sense of closure is not entirely clear. However, the act of completing the divorce with an intact sense of honor must be viewed as a substantial move in that direction.

The study also found support for the assertion that collaborative four-ways are able to largely avoid reactive-defensive bargaining, and to engender and sustain a climate of cooperative negotiation.⁶⁰ Negotiations in a CFL case were found to be significantly different than what might be called traditional negotiations in a litigation context. Elements of the latter approach include arms-length communication (that is, by correspondence or telephone, not face-to-face), exclusion of clients from direct participation, a triggering legal event, and positional negotiation tactics.⁶¹ The four-way meeting process involved in collaboration clearly eliminated the first three elements. Alteration of the fourth element, position-based bargaining, was harder to determine. The study found, however, that there was widespread agreement among participants that posturing and gamesmanship in negotiation was reduced, and that CFL engendered and sustained a climate of cooperative negotiation.⁶²

Another important finding of the study relates to the protection of weaker parties in collaborative negotiation. A concern is that the weaker spouse will not achieve a fair result through collaboration. However, the lawyers involved in the cases reported that the outcomes were not

⁵⁹ *Id* at p. 78.

⁶⁰ *Id* at p. 77.

⁶¹ *Id* at p. 29.

⁶² *Id* at p. 77

significantly different than what would have been expected in a litigated case.⁶³

The study therefore provides support for the notion that collaboration engenders cooperation, trust and satisfaction. It also indicates that the outcomes in collaboratively resolved divorces are not significantly different than those obtained in a traditional divorce.

Long-Term Mediation Studies

A well-known divorce researcher said that “[W]hile researchers have made significant gains over the past twenty-five years in understanding the reactions of and outcomes for children of divorce...., we have barely scratched the surface in our exploration of the role that the legal process of separation and divorce plays in affecting family outcomes.”⁶⁴ However, there have been a notable few studies which compare mediated with litigated outcomes in divorce. On the presumption that collaboration has important similarities to mediation,⁶⁵ two of those studies are presented here for consideration.

A study which followed 125 divorcing men and women through two years after the divorce reported that comprehensive mediation intervention has a more positive effect on the continuing parental relationship for parents of minor age children than does the two-attorney adversarial process.⁶⁶ Two groups of parents were studied, those that came to a mediation center to mediate their divorces, and a sample of divorcing couples who filed for divorce and were represented by attorneys. The groups were compared with respect to levels of conflict, contact, cooperation, and perceptions of the other parent at several points in time ending two years after divorce.

The mediation group reported significantly less conflict, significantly more contact and communication with the other parent, and was significantly

⁶³ *Id* at p. 57-59, 78. Methodology may be an issue here, as the lawyers expressing these opinions were those who had actually participated in the collaborations. The lawyers involved had at least four or five previous experiences with CFL. No indication was given of the lawyers' litigation experience.

⁶⁴ Pruet, M. K., Insabella, G. M and Gustafson, K (2005). *Supra* note 58.

⁶⁵ Tesler has stated that mediation and collaboration both offer: “...dispute-resolution professionals committed to helping the parties reach personally-tailored solutions to divorce-related disputes... more control, more privacy, customized results, the greater likelihood of compliance, and (at best) a more civilized process than can be found in the divorce courts.” Tesler, P. (2001). *Supra* note 2 at pp. 7-8. One might also expect that in both mediation and collaboration, the dispute-resolution professionals would be striving to apply an interest-based, rather than positional, negotiation process.

⁶⁶ Kelly, J. B. (1991). Parent interaction after divorce: Comparison of mediated and adversarial divorce processes. *Behavioral Sciences and the Law*, 9, 387-98. The original sample size of parents was 284, but through various processes decreased in size.

more likely to describe the other parent as more involved with their child at all times until two years post-divorce, when the differences disappeared, except that the mediation group still had significantly more contact with the other parent. Mediation was found to have contained post-separation conflict. It also enhanced cooperation and communication regarding the children during and after divorce. A majority of mediation group parents reported satisfaction with their agreements regarding custody and parenting time. Further, parents in mediation overwhelmingly reached more agreements regarding their children's college costs, while the parents in the traditional adversarial model were routinely advised by their attorneys not to enter into such agreements.⁶⁷

At the time of divorce and one year later, the adversarial group scored significantly higher on a scale of coparental anger than the mediation group. This scale combined the parents' reported anger at their ex-spouses with their perception of the ex-spouses' anger at them. Interestingly, the higher level of perceived reciprocal anger was not present at the beginning of the divorce. Parents in the adversarial group were also more likely to report at the time of final divorce that the proceedings had actually intensified or increased their anger. Significantly, this was true even while a measure of positive feelings toward the ex-spouse indicated that there was no significant difference between the adversarial and mediation groups in their respective levels of compassion, warm feelings and love toward the ex-spouse.

Another study reviewed the effects of mediated versus litigated dispute resolution on a randomly selected group of 71 families (35 mediated, 36 litigation) over a period ending twelve years after divorce.⁶⁸ All families had filed a petition for divorce in a Virginia court, and were then asked to participate in a study. Some were offered mediation services; the others were offered the chance to participate in a study of the court. The mediation was limited to child related disputes.

The study found far higher rates of settlement without the need for court appearances among the mediation group.⁶⁹ Settlement occurred in about half the time it took for the litigation group. Parties expressed greater satisfaction with mediation six weeks after settlement, a year and a half later, and twelve

⁶⁷ The failure of divorced parents to help their children through college was noted rather pointedly by Wallerstein and Lewis (2004). *Supra* note 5 at p. 362. In their twenty-five year study, it was found that only 57% of children of divorced parents achieved their bachelor's degree, compared with 90% of children of intact families. This rather stark difference may be ameliorated through the cooperative problem-solving atmosphere of either mediation or collaboration.

⁶⁸ Emery, R. E., Sbarra, D. and Grover, T. (2005). Divorce mediation: research and reflections. *Family Court Review*, 43, 22-35.

⁶⁹ 72% for the mediation group; 11% for the litigation group.

years later. This is consistent with other studies that also reported greater satisfaction with mediation than litigation.

Mediation produced several long-term benefits for the parties and their children. After twelve years, nonresidential parents in the mediation group saw their children significantly more than those in the litigation group.⁷⁰ Differences in telephone contact were even more pronounced,⁷¹ with the mediation group having significantly more contact with their children. The increase in contact did not produce a corresponding increase in conflict. Instead, the residential parents in the mediation group reported that the nonresidential parent was significantly more likely to discuss problems with the residential parent. The nonresidential parent also had a greater influence on childrearing decisions and was more involved in discipline, grooming, moral training, errands, holidays, significant events, school and church functions, recreational activities and vacations.

A trend towards greater compliance with child support orders was noted in the mediation group, although noncompliance was considered by the researchers to be quite high in both groups. The researchers also noted that other studies have demonstrated higher rates of compliance with various aspects of separation agreements when they are mediated.

No significant difference was found in the mental health of the parents in the two groups.

The Collaborative Divorce Project⁷²

A group of 161 families with children age six or under was studied in a Connecticut jurisdiction over a period of eighteen months. Each family was invited to participate in an assessment of an innovative court project, and those who accepted were randomly assigned to the intervention or control group. Approximately 60% of those asked agreed to participate. They were assessed at the beginning of the study, six months later, and fifteen to eighteen months later. Those in the intervention group received a number of services, including the assistance of a doctoral-level private clinician, a Family Services counselor (a court-based counselor whose job is to provide mediation, evaluation and related services to families in conflict), a divorce

⁷⁰ 30% of the mediation group saw their children at least once per week, compared to 9% of the litigation group. At the other extreme, 39% of the nonresidential parents in the litigation group had seen their children only once or not at all during the previous year, compared to only 15% of the mediation group.

⁷¹ 54% of the mediation group spoke with their children by telephone at least once per week, compared to 13% of the litigation group. 54% of the litigation group had spoken with their children by telephone once or not at all during the past year, compared to 12% of the mediation group.

⁷² Pruett, Insabella and Gustafson (2005). *Supra* note 56.

orientation consisting of a group meeting with a judge, attorney, mediator and the co-parenting team (the clinician and Family Services counselor) and parenting classes consisting of a two-session “Families After Divorce” educational program with an option for higher conflict couples to attend four additional classes.

Mediations were conducted by the co-parenting team. The team focused on clarifying the disputed issues, helping parents focus on their children’s well-being, and facilitating a detailed parenting plan. Additional family members and attorneys were sometimes included.

The project was evaluated through questionnaires completed by participants, attorneys, teachers and daycare providers, as well as a review of court filings. Parental conflict and distress were reduced, and cooperation and nonresidential parental involvement increased. Attorneys reported positive changes in client attitudes and behavior, and court records showed higher use of alternative dispute resolution and lower use of court services by intervention families. Teachers reported that intervention children had fewer cognitive problems, such as attention difficulties, than control group children.

The intervention did not appear to make the legal process shorter,⁷³ nor did it result in lower monetary cost to achieve resolution. However, attorneys reported that the intervention changed their clients’ attitudes toward compromise, with 92% behaving more cooperatively. It also reduced the number of telephone calls to the attorneys. Intervention parents were more likely to pay child support, and far less likely to undergo a custody evaluation.

Participants in the intervention group reported high levels of satisfaction with the program, up through the final assessment fifteen to eighteen months after the intervention. Ninety-four percent reported significant benefits from the classes. Ninety percent said they would participate again and 97% would recommend it to others.

DOES COLLABORATION PRODUCE A SUCCESSFUL DIVORCE RESOLUTION?

Several criteria of a successfully negotiated divorce were proposed above. How well does collaboration meet the criteria? As already stated, the research on collaboration itself is meager, but telling. When buttressed by the significant research on mediation, answers emerge.

⁷³ Both intervention and control group families averaged under a year to complete the divorce.

How well does collaboration do in producing an agreement? Eleven of the sixteen couples in the Canadian study fully resolved their divorces through collaboration. That is a success rate of just over 68%. Further, another couple had reconciled, and three cases were still in negotiation when the study terminated. Put another way, only one of the sixteen collaborations had collapsed, yielding a failure rate of just over 6%. Admittedly, the sample is small and not random. However, in the randomly sampled mediation study by Emery *et al*, 72% of the mediation subjects reached agreement without need for a court appearance, while only 11% of the litigation group was able to do so.

Do agreements reached through collaboration induce greater compliance with its terms? Research into the outcome for collaborative cases does not appear to exist yet. The long term mediation study cited above, as well as the other research referenced in that study, does support the notion that voluntary agreements induce greater compliance than litigated outcomes. The more pertinent question still remaining is whether an agreement negotiated completely outside of the traditional representative model of attorney involvement results in greater compliance. It might be expected that the benefit of collaboration here might not be so great. If the parties obtain a negotiated solution, even under the threat of litigation, they will still have resolved matters on terms that are ostensibly agreeable to both. On the other hand, true collaboration might result in greater compliance, if the agreement is achieved without the undue time pressures and heightened conflict and anxiety inherent in a litigation driven system.

Do collaborative agreements fairly address the legitimate needs of the parties, producing a win-win wherever possible? The answer here would appear to be yes. The Canadian study found satisfaction with the process to be high, with many participants emerging with the sense that they had behaved honorably toward their spouses and family. It also found widespread agreement that gamesmanship and posturing (two prime examples of positional bargaining behavior) were reduced by the collaborative process. To the extent that an ongoing relationship with one's children is a legitimate need, mediation obviously did a far better job of preserving it than did the traditional two-lawyer litigation based model.

Does collaboration help ex-spouses improve their relationships with those that are important to them? Based on the reports of the Canadian and long-term mediation studies, the answer clearly is yes.

Kelly's findings that positive feelings toward the other spouse were not significantly different between mediation and adversarial groups, while the adversarial group harbored significantly greater feelings of anger which had actually increased during the divorce, are especially telling. They show that

affection and disdain for the other exist side by side, and function independently of each other. The method of dispute resolution appears to significantly affect the intensity of only the anger, while the positive feelings remain constant. This suggests that even in cases marked by significant spousal anger, collaboration and mediation can access the parties' positive feelings for one another, and build on their positive relationship during the negotiation. It also suggests that the adversarial system itself is responsible, at least in part, for the manifestation of anger so frequently observed in divorce.

Does collaboration protect children from unnecessary exposure to the stresses of divorce? This also clearly seems to be the case. The high rate of collaborative success reported in the Canadian study, coupled with the lower rates of conflict and increased parent/child communication and contact observed in the twelve year mediation study, leads to the conclusion that collaborative problem solving creates solid benefits for the children of divorce.

CONCLUSION

Collaboration offers parties in divorce the opportunity to use problem solving, interest based negotiation, free from the specter of litigation. The technique enhances the likelihood of dual concern negotiation, which in turn enhances the likelihood of solving the parties' underlying concerns in the divorce. It is reasonable to believe that the expectation of cooperation in collaboration increases the parties' ability to creatively problem solve. This in turn should lead to a higher probability of success in the negotiation. Successfully negotiating a divorce resolution increases party satisfaction and compliance with the result. It also predicts, long term, greater parent/child interaction and more productive parent/parent communication. This suggests that it is a powerful tool for meeting the best interests of spouses and their children.