Child Informed Mediation Study (CIMS): Incorporating the children’s perspective into divorce mediation in an American pilot study*

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ABSTRACT
Children experiencing parental separation may benefit from forms of mediation that systematically help parents consider the needs and best interests of their children. Child Focused (CF) and Child Inclusive (CI) mediation approaches were designed to meet this need and thus may offer effective means to improve the impact of mediation on families. An initial study in Australia provided evidence of the positive effects of CF and CI and favored CI over CF (McIntosh et al., 2008). We designed the Child Informed Mediation Study (CIMS) to further test CF and CI mediation. The CIMS is being conducted in a different location (the United States), uses random assignment of cases to type of mediation, and compares both CF and CI to divorce mediation as usual (MAU). For methodological and practical reasons, CIMS differs from the McIntosh et al. study in other ways (e.g., using student mediators and child consultants; including a child consultant and mediator in both CF and CI). A pilot CIMS study is currently underway. No data are yet available, but we present some initial impressions regarding how the study is proceeding, problems encountered, and lessons learned.

Keywords: child inclusive mediation; child focused mediation; children’s interests; divorce mediation; child inclusive (CI); family law; student mediators and child consultants; interdisciplinary training; intervention efficacy study; empirically supported inventions; empirically validated interventions

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Divorce ends 40–50% of first marriages in the US, affecting 1 million children per year (US Census Bureau, 2002). In addition, an increasing number of children (1/3) are being born to unmarried parents, and such relationships are even less stable than marriage (Casper & Bianchi, 2002; Manning, Smock, & Majumdar, 2004). Thus, many children experience the break-up of their parents’ relationship. Divorce inflicts multiple disruptions (e.g., financial, residential, emotional) upon parents and children. As a result, divorce is a risk factor for the development of psychological problems among children. Relative to children from intact families, children from divorced homes have double the risk of psychological and behavioral problems (e.g., depression, delinquent behavior) and an increased risk of academic and social problems, including relationship problems in adulthood (see review in Amato, 2000). Even as adults, many children from divorced families report negative feelings, or ‘distress,’ about the divorce, such as concern about whether their nonresidential parent loves them (Laumann-Billings & Emery, 2000).

Certain factors lessen the potential negative effects of divorce on children. Specifically, after divorce, children do better when there is less parental conflict (particularly in front of the children or about the children), when the child can maintain a positive relationship with the nonresidential parent, and when both parents can continue to provide appropriate parenting (Kelly & Emery, 2003). Thus, ideally, parents could manage their divorce in ways that minimize inter-parental conflict, increase the positive involvement of the nonresidential parent, and increase the parents’ ability to parent effectively.

Experts have argued, however, that traditional, adversarial litigation approaches may work against such outcomes, instead exacerbating the potential negative effects of divorce by increasing parental conflict (Schepard, 2004). In response to such concerns, many have suggested that divorce mediation can decrease inter-parental conflict, ideally leading to better outcomes for children. Indeed, divorce mediation has become relatively widespread. Unfortunately, few methodologically strong studies have examined its effects, and the studies’ shortcomings limit the conclusions that can be drawn from available data. Nevertheless, preliminary data do suggest that divorce mediation has beneficial outcomes compared to the normal litigation process, including: increased likelihood of parents reaching an agreement, decreased litigation following divorce, more satisfaction among fathers with the agreement, and more father involvement with their children (Emery, Sbarra, & Grover, 2005).

Mediation, however, is not a panacea. In fact, recent research reviewers have noted that mediation has not been consistently demonstrated to produce positive effects and that although mediation may be helpful to some couples, others do not benefit from, or may even be hurt by the process (Beck, Sales, & Emery, 2004). Thus, given the widespread use of mediation in the US, it is crucial that the field develop and assess new methods to improve the impact of divorce mediation (Holtzworth-Munroe, Applegate, & D’Onofrio, 2009).

One possible improvement is to increase parents’ focus on their children’s best interests. Helping parents understand the potential negative effects of divorce on children may motivate them to decrease their conflict and to reach parenting agreements that are good for their children. Based on this notion, in Australia, McIntosh (2007) developed an innovative program- Child Inclusive Divorce Mediation (CI). As in standard divorce mediation, both parents meet with a mediator, whose role is to formally negotiate parental disputes. In addition, in the CI program, a second professional, called the child consultant (usually a specially trained mental health professional), meets with the children of the couple. This consultant assesses the children to gain an understanding of their needs and concerns and

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2 We use the term ‘divorce’ to refer to both divorce and parental separation among cases where the parents were never married.
how the parents’ separation and conflict is affecting each child. It is important to note that the child is not put into a decision-making role (e.g., the child is not asked to choose which parent they wish to live with). Using this information, the child consultant then meets with the mediator and parents, representing the child’s perspective, or serving as the child’s ‘voice’, in the mediation process. The child consultant gives individualized feedback to the parents about their child’s concerns and reactions to the separation, thus providing guidance regarding issues the parents should consider in mediation. While providing this feedback, the consultant also supports the parents’ ability to consider sensitively the needs of their children and to provide a secure emotional base for their children.

CI is an intensive intervention that requires meeting with the child to provide parents with individualized feedback about their child. Possibly, such personalized feedback is not necessary; instead, perhaps informing parents about the impact of divorce on children in general and helping them to consider how such information might apply to their own children, would be enough to motivate them to consider the best interests of their children during mediation. Given such issues, Child Focused Divorce Mediation (CF) has also been developed as part of a ‘Children in Focus’ program in Australia (Moloney & McIntosh 2004; McIntosh 2007). In CF, divorce mediation is modified to focus on the needs of children, with the aim of helping parents reach agreements that reflect those needs, but the children are not directly involved (i.e., a consultant does not meet with the children). Instead, during mediation parents are educated about common concerns of children in divorcing families and the impact of parental conflict on children. Whenever it is considered useful or relevant, the mediators encourage the parents to consider their children’s needs and developmental stages when making parenting agreements. In many instances, the mediators may also draw upon and reinforce information that has already been transmitted to parents as part of a pre-mediation group process (see McIntosh & Moloney 2006 for an account and demonstration of both these processes).

**Methodological and Practical Considerations**

In Australia, McIntosh and colleagues conducted a study comparing the effectiveness of CI and CF. Almost 150 families participated and published outcomes include assessments from up to one year following mediation (McIntosh, Wells, Smyth, & Long, 2008). Both interventions lowered interparental conflict and child distress about parental discord and both improved child mental health. In addition, relative to CF, the CI group had better outcomes on several measures (e.g., increased father satisfaction with parenting arrangements, additional father involvement in their children’s lives, and less litigation following divorce). This study represents a major step forward in scientifically evaluating the efficacy of CF and CI mediation.

Unfortunately, however, the McIntosh et al. (2008) study did not involve random assignment of families to the two conditions (CI vs. CF); yet random assignment is the only way to be sure that the interventions were responsible for differences in outcome across the two conditions. Without random assignment, other factors could account for the study findings (e.g., historical events and timing, changes in the mediator’s behavior over time, and differences in the couples referred to and/or offered CI or CF). These issues are particularly salient, as in the McIntosh study, one intervention (CF) was offered before the other (CI), creating the possibility that changes over time could have influenced the study findings. Also, this study did not compare CI or CF to divorce mediation as usual (MAU), making it impossible to know whether CI or CF improved outcome relative to usual mediation procedures. Thus, there is need for more research, including random assignment and comparing CI and CF to regular divorce mediation. There is also a need to conduct such a study in other countries, such as the United States. McIntosh has conducted multiple presen-
tations on her approaches at recent US meetings and conferences, but cultural and legal system differences make it difficult to know how well the Australian findings will generalize to the US.

The present pilot study, the Child Informed Mediation Study (CIMS), was designed to begin conducting such an investigation in the United States. It involves random assignment of mediation cases to CI, CF, or MAU. In designing CIMS, other methodological and practical issues were considered in relation to the McIntosh et al. (2008) study. First, CF mediation was offered by mediators, yet CI mediation involved both a child consultant and a mediator, creating a potential study confound. Specifically, perhaps CI was more effective than CF because two professionals, at least one of whom is a mental health professional, were involved in the CI mediation. Thus, it is important to compare CF and CI conditions that were more structurally comparable. For example, both CF and CI could be conducted only by a mediator or both CF and CI could be conducted by both a child consultant and a mediator. We chose the latter option, involving a child consultant in both CF and CI.

Second, in the McIntosh study, all interventions were conducted by trained and experienced professionals. Employing experts made sense, as the first empirical tests of a new intervention should maximize the chances of intervention success: if the researcher does not test the strongest possible implementation of the new intervention and that intervention is not effective, one cannot know if the lack of efficacy was due to the intervention being ineffective or to it not having been well implemented. However, once interventions are proven effective, it is also important to examine their effectiveness in other settings and real world environments. Given the authors’ involvement in student training centers (i.e., Applegate teaches and supervises a divorce mediation clinic for law students; Holtzworth-Munroe, D’Onofrio, and Bates are involved in clinical psychology graduate student training), we chose to use students as the mediators and child consultants in our study. This choice will allow us to begin to consider how effective CI and CF are when conducted by less experienced clinicians.3

Third, in the McIntosh study, after providing feedback to the parents at the start of mediation, the child consultant (in CI) sometimes remained present during the mediation negotiations4. This allowed the mediator and child consultant to continue working together to remind the parents of the child’s perspective in mediation. However, our students’ course schedules prohibited us from directly replicating this part of the McIntosh study. Instead, our child consultants (in both CF and CI) meet the parents at the mediation intake and then, approximately 2 weeks later, conduct (with the mediators) a parent feedback session with the parents. Child consultants, while remaining available for further consultation, leave the mediation session after providing their feedback, leaving mediators to be primarily responsible for mediation negotiations. Perhaps it is ideal for the child consultant to remain available during the mediation, as in McIntosh’s CI, or to even be the mediator, as in McIntosh’s CF; such approaches help to ensure that the mediation session maintains a focus on the best interests of the child. However, in many settings, having two professionals (the mediator and the consultant) available for the full mediation may be prohibitively costly and logistically impractical. Thus, whether CF and CI remain effective when they involve having a par-

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3 In a practical sense, this aspect of CIMS (i.e., having student mediators and child consultants) is related to recent efforts, at Indiana University, to develop interdisciplinary law and psychology training. Indeed, as part of CIMS, we are conducting a study examining the impact of more integrated and inter-disciplinary training of law and psychology graduate students. This effort includes training in CI and CF mediation, so that psychology students (acting as child consultants) and law students (acting as mediators) work together.

4 In the original model, the child consultant made a single appearance, typically in the second or third mediation sessions and then withdrew - leaving the mediator to build on the information that had been shared between child consultant and parents. However, the value of the child consultant ‘staying on’ in order to assist the processes to remain oriented towards the child(ren)’s needs, was increasingly recognized (see Grimes & McIntosh, 2004).
ent feedback session (conducted by the child consultant and mediator) followed by a mediation negotiation session (conducted by the mediator) is an important question to be addressed.

Fourth, in the McIntosh study, children completed questionnaires (for both research and clinical purposes) and child interviews in both CF and CI mediations. If the family was in the CF condition, this information was not shared with parents or mediators, but rather was only used for research purposes. If the family was assigned to the CI condition, this information was used by the child consultant for clinical purposes. Similar to McIntosh’s study, in the CI condition of our CIMS study, the child consultant gathers and uses both the child’s questionnaires and the child interview. However, we were concerned about conducting a child interview with children in the CF and MAU conditions. Theoretically, we believe that the child interview is a crucial part of the CI intervention and may have a direct therapeutic impact on the child. Thus, it is unclear what impact a child interview might have on children in the CF and MAU conditions, but we did not wish to confound these conditions by including a potentially crucial aspect of the CI intervention in them. In addition, given the limited resources of many mediation agencies, it is unlikely that child interviews would be conducted but not used clinically, raising questions regarding the generalisability of conducting child interviews in the CF and MAU conditions to the real world. Finally, because interviewing the children in mediation is not typical in the United States, we were uncomfortable doing this intervention with children whose messages would then not be conveyed to their parents. For these reasons, in our study, child interviews are only conducted with children in the CI condition, not the CF and MAU groups.

In response to all of these concerns, we designed our Child Informed Mediation Study (CIMS). The study compares three interventions: 1) divorce mediation as usual (MAU; i.e., no feedback to the parents about their children); 2) Child Focused (CF) divorce mediation, in which a consultant provides parents with educational information about the effects of divorce on children in general and helps them to consider how that information may apply to their children, but does not provide personalized feedback regarding the parties’ own children; and 3) Child Inclusive (CI) divorce mediation, in which a consultant meets with the children and provides parents with individualized feedback on their children. We are currently part-way through conducting a pilot study of CIMS.

**RESEARCH DESIGN**

**Location**

CIMS is being conducted at the Viola J Taliaferro Family and Children Mediation Clinic at the Indiana University (IU) Maurer School of Law (‘law school mediation clinic’ or ‘clinic’). The law school mediation clinic serves primarily lower income families referred by family law judges from several counties, though families may self refer for mediation. Clinic mediators mediate all aspects of family law disputes, including parent custody (residence and decision-making), parenting time, child support, division of property, other financial issues, and any other matters relating directly or indirectly to these issues (e.g., third party visitation or custody, communications problems, guardianship matters, voluntary adoptions and post-adoption privileges, etc.).

**Preparing to implement the interventions and training the students**

The divorce mediation as usual (MAU) approach has been used at the clinic since Applegate established this training clinic in 2005. A manual and

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5 The domestic relations mediation program started originally in late 2002 as a small, independent project at the law school in response to a request for assistance by the then juvenile judge Viola J. Taliaferro. As the size of the program and demand for student mediator services expanded over time, Applegate evolved her prior law school clinical program into the mediation program, which consists today of a six credit hour combined domestic relations mediation course and clinic offered each semester to second and third year law students.
training program for this approach already exists and is used to train law student mediators. However, our team needed training in CF and CI. In November 2007, we received two days of training, from McIntosh, in how to implement Child Inclusive (CI) and Child Focused (CF) divorce mediation. In June 2009, McIntosh returned to IU to finish the training, so that the study investigators, along with several psychology and law students were prepared to begin implementing CI and CF.

Mediators: Each semester, approximately 8 second and third year law students take Applegate’s intensive, 3.5 week mediation course, which ends with their becoming state-registered mediators in Indiana. They then proceed to see mediation cases in the clinic for the rest of the 13 week semester, handling approximately one case per week and usually working in pairs. Each semester, some of the law student mediators are invited to remain in the clinic the following semester, working as mentors to supervise the new law student mediators. With the additional complexities of conducting CF and CI mediation, the clinic has been recruiting more mentors and beginning in the spring 2010 semester, new cases frequently are mediated by a co-mediation team consisting of a new student mediator and a returning student mentor mediator.

Child consultants: Students in the Indiana University Department of Psychological and Brain Sciences clinical science psychology doctorate program register for various practica experiences of their choice. D’Onofrio and Holtzworth-Munroe co-teach a year-long practicum course on child consultation (CF and CI) in mediation. Approximately eight students, with varying levels of therapy experience, are currently taking the course, learning to serve as CF and CI child consultants.

Interdisciplinary training: To conduct this study, we have worked to increase the level of interdisciplinary training for the law and psychology students. For example, D’Onofrio and Holtzworth-Munroe give guest lectures in the law school mediation training course, on topics such as mental health, family violence, research findings regarding the impact of divorce on children, the effectiveness of various intervention programs for divorcing families, and program evaluation research methodology. Similarly, Applegate gives guest lectures in the psychology practicum, on topics such as family law, mediation ethics, and theory and practice in alternative dispute resolution. The three instructors have spent much time and energy devoted to role-modeling, and explicitly discussing, good interdisciplinary working relationships with one another.

In addition, the law and psychology students get to know one another and build working relationships. For example, on the first day of each semester, they meet together in a focus group, to discuss their different approaches to, and understanding of, divorce and mediation. Each semester, part of their training involves watching demonstrations of the interventions and conducting joint role-plays of the interventions. They also observe each other’s work. Perhaps most importantly, the students jointly conduct CF and CI mediation, and hold joint case conferences throughout the semester.

OVERVIEW OF CIMS PILOT STUDY

The study consists of two conditions, based on the ages of the children. After consultation with McIntosh, we decided to limit CI mediation to children ages 5–17. These ages are comparable to those examined in the original McIntosh studies. In addition, we determined that it would be difficult to conduct high quality or useful child interviews with children younger than 5 years of age, particularly with graduate student child consultants. Similarly, it would be difficult to gather reliable and valid research assessment data from children so young. Thus, families whose children are all younger than age 5 are invited to participate in a study in which they agree to be randomly assigned to either MAU or CF. To maximize training for our students and to increase available data on the child informed conditions, there is a
1/3 chance of being assigned to MAU and a 2/3 chance of being assigned to CF. In contrast, families with at least one child aged 5–17 are asked to participate in a study in which they agree to be randomly assigned to MAU, CF, or CI; there is a 1/3 chance of being assigned to each of the interventions. In these families, all children ages 5–17 participate in a research assessment and, if assigned to the CI condition, a child interview with the child consultant.

We are conducting this pilot study for approximately 1.5 years, both as a small, initial study in its own right and to gather pilot data to seek additional funding for a larger project. The law school mediation clinic sees up to 100 cases per year, but (as discussed more below), it is unclear how many of these cases we will be able to include in our study.

Subject inclusion/exclusion criteria and approach/recruitment procedures: All parties scheduled for mediation at the law school mediation clinic are mailed a flyer describing the study and a copy of the study informed consent form, to provide them with information about the study before they come to mediation. All parents entering mediation that involves child-related issues are invited to participate in the study, unless during the mediation intake, the mediators deem the case to be inappropriate for mediation. There are three major reasons cases are deemed inappropriate: 1) a perceived or real conflict of interest (e.g., a party was represented by, or was an adverse party in a case in another law school clinical program, or objects to the clinic mediating the particular case); 2) safety concerns (e.g., intimate partner violence at such high levels that the parties cannot safely be mediated); and 3) process concerns (e.g., a party who identifies as having been abused or victimized by the other party and does not want to participate in mediation [party reluctance], or a concern that a party will not be able to make knowing and voluntary decisions [competence to mediate issues]).

At the intake,6 parties accepted for mediation are then approached about the study by a child consultant (graduate student in clinical psychology). The child consultant introduces her/himself and explains the study and the CF and CI forms of mediation. If the parents are interested in the study, they are given a consent form and more information about the study. If an individual is represented by an attorney, they have the opportunity to consult with counsel about their participation in the study.7 Additional screening criteria are assessed by the child consultant as s/he completes the study consenting process with parents. Specifically, both parents must agree to: 1) participate in the study; 2) allow their children, ages 5–17, to participate in the study; and 3) allow us to contact them in the future, for possible follow-up assessments.

Should both parents agree to enter the study, then at least one parent brings their children (ages 5–17) to the psychology clinic for the children’s research assessment. The psychology clinic was chosen as it is a more child-friendly environment, with children’s furniture, decorations, and toys. At this appointment, children ages 8 and over are given an assent form and document their assent by signing that form.

Random assignment and pre-mediation research assessments: If a case is accepted into the study,
then during their mediation intake session, the parties are informed of the study condition to which they have been randomly assigned. Again, for cases with no child age 5 or older, they have a $\frac{1}{3}$ chance of being assigned to MAU and a $\frac{2}{3}$ chance of being assigned to CF. For cases with at least one child age 5–17, they have equal chances of being randomly assigned to MAU, CF, or CI.

Parents who agree to participate in the study remain, in separate rooms, at their mediation intake for an additional 1–1.5 hours, completing the pre-mediation parent research assessment and, if assigned to CI, completing a developmental history interview with the child consultant. Parents in all three groups complete the same pre-mediation measures, which include standardized questionnaire measures developed and validated by other researchers. The measures were chosen to assess constructs and domains which, based on previous research and theory, may prove predictive of adjustment to divorce for both the parents and their children. The measures gather information about: 1) basic demographic factors (e.g., age, education) and information about the family and divorce/separation (e.g., how long the couple was married); 2) each child’s strengths and problems (e.g., child’s temperament; child’s problems at school or with peers or with depression or anxiety); 3) each child’s relationship with each parent, both in terms of living arrangements and amount of contact (e.g., number of hours spent with each parent) and in terms of the emotional quality of those relationships (e.g., whether the child is comfortable talking to each parent); 4) each child’s adjustment to the separation and conflict, including whether they are caught in the middle; 5) the parents’ relationship with one another (e.g., parenting alliance, acrimony and conflict levels, intimate partner violence, and communication about the children and other issues); 6) the parents’ own personality and psychological problems (e.g., alcoholism, depression, criminal behavior); and 7) the parents’ own adjustment to the separation and resulting stressors and major life changes.

In families with any child age 5–17 living at home, a parent brings their children ages 5–17 to a research assessment in the week or two following their mediation intake. For families assigned to the CI condition, the research assessment session are conducted at the same appointment as the CI child interview. The child research assessment lasts approximately 30–45 minutes, but length is tailored to the age and ability of the individual child. Measures were selected to provide possible predictors of child outcome and baseline measures of a child’s functioning before mediation. The measures are mostly standardized and validated measures assessing the following constructs: 1) child demographics (e.g., age, grade in school); 2) the child’s strengths and problems; and 3) the child’s feelings about the parents’ conflict and separation (e.g., whether they feel caught in the middle, emotional reactions to interparental conflict, feelings of insecurity).

Mediation (DMAU, CF, or CI session at mediation clinic). Following the pre-mediation assessments, in the CF and CI conditions, the child consultant develops plans for the parent feedback session, listing the major themes and information that s/he hopes to convey to parents during the feedback session, any further information that should be gathered, etc. The child consultant and mediators discuss this plan. Mediators provide any input they have on the plan, which is further refined through this interdisciplinary discussion.

Approximately two weeks following their intake session at the clinic, and following child completion of the research assessment (and child interview in CI), parents return to the law school mediation clinic for mediation. In the DMAU condition, law student mediators meet with the parents and conduct mediation as usual. In the CF condition, law student mediators and a psychology graduate student child consultant meets with the parents for a parent feedback session. During this time, the child consultant provides the parents with information on the effects of parental separation on children in general and on children the ages of the couple’s children; they help the parents...
to consider the possible effects on their own children. In the CI condition, law student mediators and a psychology graduate student child consultant also meet with the parents for a parent feedback session. During this time, the child consultant uses information obtained in the CI child interview and parent developmental history interview about the children to address how the separation is impacting the couple’s own children.

In both CF and CI parent feedback sessions, if it is safe and prudent to do so, our preferred structure involves meeting with both parents together, to provide them with common feedback and discussion of common themes, and then, as necessary, meeting with each parent individually, to address issues that may be more personal or more difficult to discuss in the presence of the other parent. To date, the parent feedback sessions average one to 1.5 hours in length. In both CF and CI, the child consultant takes the lead in the feedback, and is supported by the mediators, as needed or as is helpful; for example, the mediators may summarize an important point or bring other relevant information into the discussion. At the end of the feedback session, the child consultant leaves, and the mediators transition the mediation into the negotiation phase of the process. The mediators remind the parents of the child consultant’s feedback during negotiations (e.g., review themes raised by the child consultant or again show parents pictures on the flipchart used by child consultants) and can consult with the child consultant as needed.

**Documenting what occurs in the parent feedback and mediation sessions:** Most of the clinical interventions conducted at the law school mediation clinic (i.e., the mediation intake process; the child consultant’s interview with parents about their children’s developmental history, in the CI condition; and the mediation sessions, whether DMAU, CF, or CI) can be observed live by supervisors and coded live by law and psychology student coders. Observation and coding are conducted for two reasons. First, these procedures allow faculty to provide the student mediators and child consultants with improved supervision in these two training clinics. Mediators and child consultants are student trainees and can benefit from feedback from their instructors. Second, these sessions are coded for research purposes. Specifically, we are using coding to examine whether MAU, CF, and CI mediation conditions differ in the expected ways (e.g., in CI, more individualized feedback about the couple’s children is provided to parents) and thus to check adherence or fidelity to each type of intervention.

In addition, student mediators and child consultants independently complete an outcome form at the end of their participation in the case (i.e., after the parent feedback session for child consultants and at the end of mediation for mediators). This measure assesses the students’ impressions of themselves, the other students, the parents, the appropriateness of the assigned condition for this case, what happened in the sessions, etc. This information may be useful in examining how the types of mediation differed and in identifying possible predictors of outcome.

**Post-mediation research assessment:** Once mediation has ended, but before the parents leave the law school mediation clinic, each parent is asked to complete a post-mediation outcome form. Parents in all three groups complete the same form, which assesses satisfaction with mediation, the mediators and child consultant, and any agreement reached. This measure is gathered when the mediation ends, whether or not it ends in an agreement and on whatever day it ends.

In addition, the researchers will gather de-identified data from the clinic files of the parents. For example, as an outcome measure, we will gather information on whether the case ended with full agreement, partial agreement, or no agreement. If any level of agreement was made, we will also examine the agreement for content coding, to examine whether or not the agreements reached in MAU, CF, and CI systematically different. To date, the mediators’ impression is that they do differ; for example, that CF and CI agreements involve more focus and detail on considerations and arrangements that serve the interests of the children.
We also have parent permission to collect data from the court records for their divorce or paternity case; this information will be kept in the confidential law school mediation clinic files. With additional data from court records, in the future we will be able to determine if mediation parties return to court, how frequently they use family court services, why they come back to court and how family law issues are resolved by the judges. In particular, we are interested in whether the parties return to court to litigate changes in agreements reached in mediation and, if so, what changes are being sought and how often changes are being sought. We are also interested in whether the parties make changes to mediation agreements without litigation (e.g., privately or by returning to mediation).

Follow-up assessment: If funding can be obtained, we hope to contact parents, to invite them and their children to participate in follow-up assessments, over the course of several years. We hope to further assess parent and child functioning, the quality of parenting and interparental relationships and conflict, and the impact of the parental separation and divorce on the children. Only in this manner can we determine potential long term differences in the impact of MAU versus CF versus CI.

Compensation: It is important to note that we are asking parents to make a considerable effort (e.g., completing research forms and bringing their children for a research assessment session). Of course, we explain that the process may be of benefit to them, by giving them the opportunity to participate in new forms of mediation that might help them to best consider the needs of their children and perhaps make agreements that will be more beneficial for their children. In addition, we offer financial compensation for their time, effort, and transportation. Specifically, parents are paid $35 each for the pre-mediation research assessment, $20 for bringing their children to the children’s research assessment (if they have children ages 5–17), and $30 for completing the study and the post-mediation outcome form. In addition, each child is given a gift certificate, to a local store, worth $10, for their participation in the research assessment. This compensation is explained to mediating parties as they are deciding whether or not to participate in the study.

STUDY PROGRESS TO DATE

As noted above, McIntosh visited Indiana University to provide the authors (and many of the law and psychology students) with training in CF and CI. The CIMS pilot study and official student training, through law and graduate courses, began during the fall 2009 academic semester. We began recruiting cases for the study in fall 2009. Progress was slow in the fall for a variety of reasons, including a late study start (due to unanticipated issues outside the scope of the study), a temporary decrease in referrals to the law school mediation clinic (part of the natural ebb and flow of referrals from the court system), and our desire to have the newly trained child consultants take their time and receive intensive supervision before taking responsibility for cases. The CIMS is ongoing this semester and will continue next year also.

To date, as would be expected, some mediation cases have not been appropriate for the study (e.g., no children, children age 18 or older, and violence severe enough that mediators determined that the case was inappropriate for mediation). In addition, some parents have been unwilling to agree to study participation. For example, some parents appear so distraught about the divorce and so worried about mediation that they are unwilling to do anything ‘extra’, such as completing research forms. Paraphrasing one father’s reaction, ‘I know I have to go through with this, and I hate it, and I don’t want to think about any of it for even one minute longer than I have to!’ In addition, some parents with children old enough to participate in CI (i.e., with at least one child age 5–17) have been reluctant to participate. The parents seem concerned about involving their children in the study. For example, in one case, the children were already in therapy and the parent did not want to ‘confuse’ the children by having them see a child consultant also. Through a variety of circumstances, including the
young age of parties seeking mediation, to date, most of our cases have involved families with younger children (all under age 5), cases which can be assigned to MAU or CF. These cases have generally involved younger parents with one very young child (average of 15 months old). The parent feedback sessions have focused on age relevant information, such as the need for the child to have stability in their routines, the possible benefits of shorter but regular parenting time with both parents, and concerns about inter-parental conflict.

Parent reaction: In both CF and CI cases, parents have been receptive to the information provided by the child consultants in the parent feedback sessions, as have their attorneys (in cases in which attorneys have attended mediation). In fact, attorney interest is so high that we have been invited to present the CI and CF approaches at an upcoming meeting of local lawyers and judges. Though to date our CI and CF cases are limited in number, mediators are reporting that the child consultant’s feedback has shaped the mediation negotiations following the feedback session, and affected the wording used, and the issues addressed, in the resulting mediation agreements. For example, in one CI agreement, the parents included language in their agreement, among other things, that expressed commitment to working together in their child’s best interest in a ‘business partnership’ style of co-parenting, in which the parents would clarify and seek to agree on shared goals for their child, but also recognize that each parent’s household is different, and each parent should be respectful and supportive of the other parent’s differing implementation plans for achieving their shared goals. These parents also undertook to try to minimize any conflict between them and to attempt to ensure that their child would be protected from any conflict between them, presenting a ‘united front’ for their child, to avoid having their child be caught in the middle of any conflict between them as parents. Although some mediation agreements between parents in conflict at the clinic include language about reducing parental conflict in front of the children, and not disparaging the other parent to the children, the specific language used in this CI condition agreement would indeed be unusual in mediation as usual. In the future, we will be coding the content of mediation agreements, to see if those made in CF and CI systematically differ from those reached in MAU.

Student reaction: In the first semester of the study, student mediators initially appeared uncomfortable about adding CF and CI to their repertoire of beginning mediator skills. They already had a lot to learn to conduct MAU and were concerned about the overlap and differences in mediator versus child consultant roles. At first, the sheer amount of knowledge of different procedures appeared overwhelming to the students. They were also concerned about the effect the child consultant (who would be advocating for the children’s interests) would have on party perceptions about impartiality and neutrality, both of which are standard ethical requirements for mediators.8 By the end of that first semester, however, most of the mediators expressed enthusiasm for the interdisciplinary experience and CF and CI mediation,9

8 In Indiana, mediators are referred to as ‘neutrals’ and are required to be ‘impartial’. See Rule 7.4(C) of the Indiana Rules of Alternative Dispute Resolution.
9 At the end of the semester, one mediation student observed as part of a final journal: … I know people ask all the time how can people stand working in family law when all you do is split families up, but I definitely do not agree with that assessment anymore. I look at the type of family law that we do not as splitting up families, but trying to unite people to focus on their one common interest: their children. Ironical as this now seems, I think a large part of the reason I think this is because of the Psych<ology> interdisciplinary training. I hate to admit it, but I was extremely against this whole study and having to work with Psych<ology> students and teachers when the semester started. However, much to my surprise, I found that the few classes Amy [Holtzworth-Munroe] and Brian [D’Onofrio] taught us really made me focus a lot more on the children. Initially I felt like the children were almost the least important part of a divorce, because unlike the property and financial aspect, this could be revisited very often until you could find a system that works. However, now having a semester’s worth of experience I’ve learned that A) in the mind of the parents the children are usually the most important part of a divorce, because unlike the property and financial aspect, this could be revisited very often until you could find a system that works. However, now having a semester’s worth of experience I’ve learned that A) in the mind of the parents the children are usually the most important part of a divorce, and B) in order for there to be unity between the parents it is so important that they not feel like the other parent is screwing them over. That is why I feel like mediation is the best way to solve family disputes.
some even expressing disappointment when a case was randomly assigned to MAU. The student mediators appear comfortable working with the child consultants, who they now recognize as the ‘voice for the children’.

Indeed, their enthusiasm may eventually create internal validity problems for our study, as some mediators are reporting using some of the interventions they have learned in CF and CI in their MAU (e.g., discussing age specific needs of children in response to parental separation). The more the mediation students work with the psychology faculty and students and learn about the needs of children, and the effect of divorce and conflict on the children, the more the mediation students focus on these issues, which are already part of their legal training, and the more they incorporate them into their mediations. For example, in Indiana, where the clinic is located, mediators are ethically required to, ‘in child related matters, ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children’. Further, Indiana mediators are instructed to ‘terminate mediation whenever the mediator believes that continuation of the process would harm or prejudice one or more of the parties or the children’.

Additionally, Indiana’s parenting time guidelines refer to the developmental needs of children at different ages; these were considered in setting recommended parenting time schedules.

The Indiana guidelines also identify and instruct parents about ‘A Child’s Basic Needs’ as follows:

1. To know that the parents’ decision to live apart is not the child’s fault.
2. To develop and maintain an independent relationship with each parent and to have the continuing care and guidance from each parent.
3. To be free from having to side with either parent and to be free from conflict between the parents.
4. To have a relaxed, secure relationship with each parent without being placed in a position to manipulate one parent against the other.
5. To enjoy regular and consistent time with each parent.
6. To be financially supported by each parent, regardless of how much time each parent spends with the child.
7. To be physically safe and adequately supervised when in the care of each parent and to have a stable, consistent and responsible child care arrangement when not supervised by a parent.
8. To develop and maintain meaningful relationships with other significant adults (grandparents, stepparents and other relatives) as long as these relationships do not interfere with or replace the child’s primary relationship with the parents.

It has been difficult to prevent seepage from CI and CF into MAU. Accordingly, we are concerned that we may find it more difficult to demonstrate differences between CF and MAU. At the same time, we cannot, in good conscience, instruct student mediators not to use their best efforts with the families they mediate, regardless of the condition in which they are mediating.

The psychology students have had their own struggles. As beginning therapists, any new approach is difficult to master, particularly when it involves collaboration with other professionals (i.e., mediators). Some of the psychology students have also had a difficult time learning the role of consultation; their instincts and prior training have led them to want to conduct more thorough

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10 Rule 2.7(A)(2) of the Indiana Rules of Alternative Dispute Resolution.
11 Rule 2.7(D) of the Indiana Rules of Alternative Dispute Resolution.
12 These Guidelines refer to general expectations of conduct for parents in dealing with issues involving the children, and provide the minimum parenting time that courts typically provide to the nonresidential parent, in cases in which one parent has primary custody of the children.
assessments, provide more extensive clinical inter-
terventions and ongoing therapy for the multiple 
psychological problems often present in these 
cases. Learning to value the limited scope of con-
sultation is an effort for some of the students. In 
addition, not all of the students are well versed in 
child developmental issues. Thus, for each case, 
they have to devote time to learning basic develop-
mental information about children of various 
ages. Similarly, students have been anxious about 
interviewing children of differing ages. Most of 
the child interviews proceed smoothly, and the 
students have been pleasantly surprised to discov-
er that children are often very willing to discuss 
difficult topics and that even older children may 
be willing to engage in the various assessment 
methods, including dollhouse play. Yet not all 
child interviews are successful; for example, in 
one, an adolescent male was unwilling to talk 
with the child consultant. The child consultants 
are also concerned that they ‘do no harm’ in con-
ducting the interviews. Although we are in the 
very early stages of this study, the parents of one 
child in a CI mediation reported that the child 
‘felt a lot better’ after the child’s interview. Obvi-
ously, having a background in developmental 
psychology and child assessment and therapy 
would be valuable and our training of student 
child consultants must attempt to help students 
conquer such information as quickly as possible.

SUMMARY

Children experiencing parental separation may 
benefit from forms of mediation that systemati-
cally help parents to consider the needs and inter-
ests of their children. CF and CI may offer 
effective means to improve the impact of media-
tion on families. An initial study in Australia pro-
vides good evidence of the potentially possible 
effects of CF and CI, and favors CI over CF.

The CIMS study was designed to further test 
CF and CI mediation, in a new location (the Unitede States), using random assignment of 
cases to type of mediation, and comparing both 
CF and CI to divorce mediation as usual (MAU).

For both methodological and practical reasons, 
CIMS differs from the McIntosh et al. (2008) 
study in other ways (e.g., using student mediators 
and child consultants; including a child consult-
ant and mediator in both CF and CI).

The CIMS study is underway and is currently 
best viewed as a pilot study, designed to gather ini-
tial information and thus lay the foundation to 
complete a larger, more methodologically sophisti-
cated study. No data are yet available, but we have 
discussed some of our initial impressions of how 
the study is proceeding, problems encountered, 
and lessons learned. We look forward to present-
ning more rigorous study data in future reports.

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