

Mediated Divorce: Focus on the Needs of the Children

by Mary G. Marcus, Ph.D. and Walter Marcus

It's difficult enough being a child in the 21st century, with its natural disasters, hunger, wars and threats of wars. But 14 percent of children in the United States, under 18 are also faced with a "war" at home — their parents' divorce or separation, according to 2006 statistics provided by the U.S. Census Bureau.

Most couples want to minimize the impact of their divorce on their children. Parents agonize about how to tell their children that Mom and Dad are getting a divorce. Many divorcing couples say that soon after their children learn about the divorce, the children have trouble sleeping, become fearful, do poorly in school or begin acting out.

Child psychology experts say that the trauma to children can be greatly reduced if parents remember that children need two parents in their lives, that the children's needs must be met economically and emotionally, and that children must not be made into pawns in a battle between two adults.

An alternative to the traditional, adversarial divorce in which each spouse is represented by an attorney, is divorce mediation, in which the couple meets with a neutral mediator in order to reach an agreement on all the issues that need to be resolved in a divorce: division of family assets and liabilities, child support, spousal support, and parenting arrangements. Mediators will also try to help the couple anticipate and resolve issues that will likely come up after the divorce, such as paying for college education for the children and weddings, as well as unlikely but possible events such as the illness and disability of one of the parents.

A mediator can come from a variety of professions. He or she may be a psychologist, attorney or accountant who has received specialized training in mediation as well as knowledge about all aspects of a divorce, such as the legal and tax implications, and the psychological impact of divorce on adults and children. Each spouse is encouraged to consult an attorney during the mediation whenever legal advice is desired, much like spouses might consult accountants or other experts for their advice.

When the couple has reached an agreement in mediation, the mediator

drafts the decisions into a document that the parties then send to the court for approval. Mediation provides a non-threatening forum in which a trained professional facilitates discussions and provides information on all the issues, so that parents can work together to achieve their goals of creating a healthy, new life for their children and themselves.

By contrast, in the adversarial divorce the lawyers talk to each other about what each spouse wants to obtain in the divorce, including parenting roles and responsibilities. During a mediation, parents communicate directly with each other about the needs of their children, as they will need to do after the divorce. The mediator, who has specialized training that lawyers often do not, can assist the couple in learning to communicate more effectively and in solving problems.

Although the children do not participate in the mediation sessions, their needs are always kept on the agenda by the mediator. Some mediators ask parents to bring in photographs of their children to keep in full view of everyone at the mediation table, to insure that the children's needs are never forgotten.

A comprehensive parenting plan that takes into account the current and future needs of the children helps reduce stress for parents and makes children feel more secure. The parenting plan details who will parent the children during the week, weekend, holidays and vacations, what arrangements will be made if the scheduled parent is unexpectedly unavailable and who will cover the cost, what the children's religious instruction will be, and plans for the children's education, including college.

Parents sometimes disagree on what parenting arrangements are best for their children. If during the mediation, parents are unable to agree on parenting arrangements or are unsure what parenting arrangement is in their children's best interest, the mediator will encourage the parents to consult with a child psychology expert. When both parents hear the expert's advice at the same time, conflict is less likely to continue than when each parent hires an expert and the duel of the experts begins.

Research conducted by Jessica Pearson and Jean Anhalt, in 1992, on post-divorce adjustment, shows that dissatisfaction with parenting plans is a prime cause of divorced couples returning to court. Research conducted in 1999 by practitioners in the field of mediation, indicates that couples that have mediated their divorces are much less likely to return to the courts to have the terms of the divorce modified than couples that used the adversarial process.

Some parents worry that if they choose mediation, they will not get all to which they are entitled. However, facts are harder to find than anecdotal stories about the neighbor's wife who got "everything," or the wealthy husband who found such a smart lawyer that he was able to pay the wife only state guideline child support.

The only statistical study of the financial outcomes of divorce was done in Connecticut and was published in *Mediation Quarterly* in 1999. (The authors of this article were part of that research team along with Nancy Stilwell and Neville Doherty.) It shows that the financial and child-custody results in mediated and adversarial divorces are virtually identical, and that in mediated divorces, women actually received a higher percentage of the family's assets, more child support and more years of alimony. In both mediated and adversarial divorces, parents chose the same custody arrangements in identical percent-

ages, according to the study.

Criticism of divorce mediation exists and couples considering their options should do their homework. Divorce mediation is not for everyone. For couples with an ongoing pattern of domestic violence and those in whom the level of hurt and anger is so high that revenge is the major goal of the divorce process, mediation is not appropriate.

Arizona does not credential or license mediators, so to make sure you are getting a mediator with the experience and training you need, ask about his or her background, training and experience in divorce mediation. You can also check his or her membership status with the Association for Conflict Resolution, a national organization that grants membership based on a mediator's skill level. Ideally, an individual mediating divorces should hold "advanced practitioner" membership with that organization.

Divorce is now a fact of life. More than 27,000 divorces are granted in Arizona each year. It is likely that you or someone you know will be faced with a divorce. If a couple cannot save their marriage, mediation may be an option.

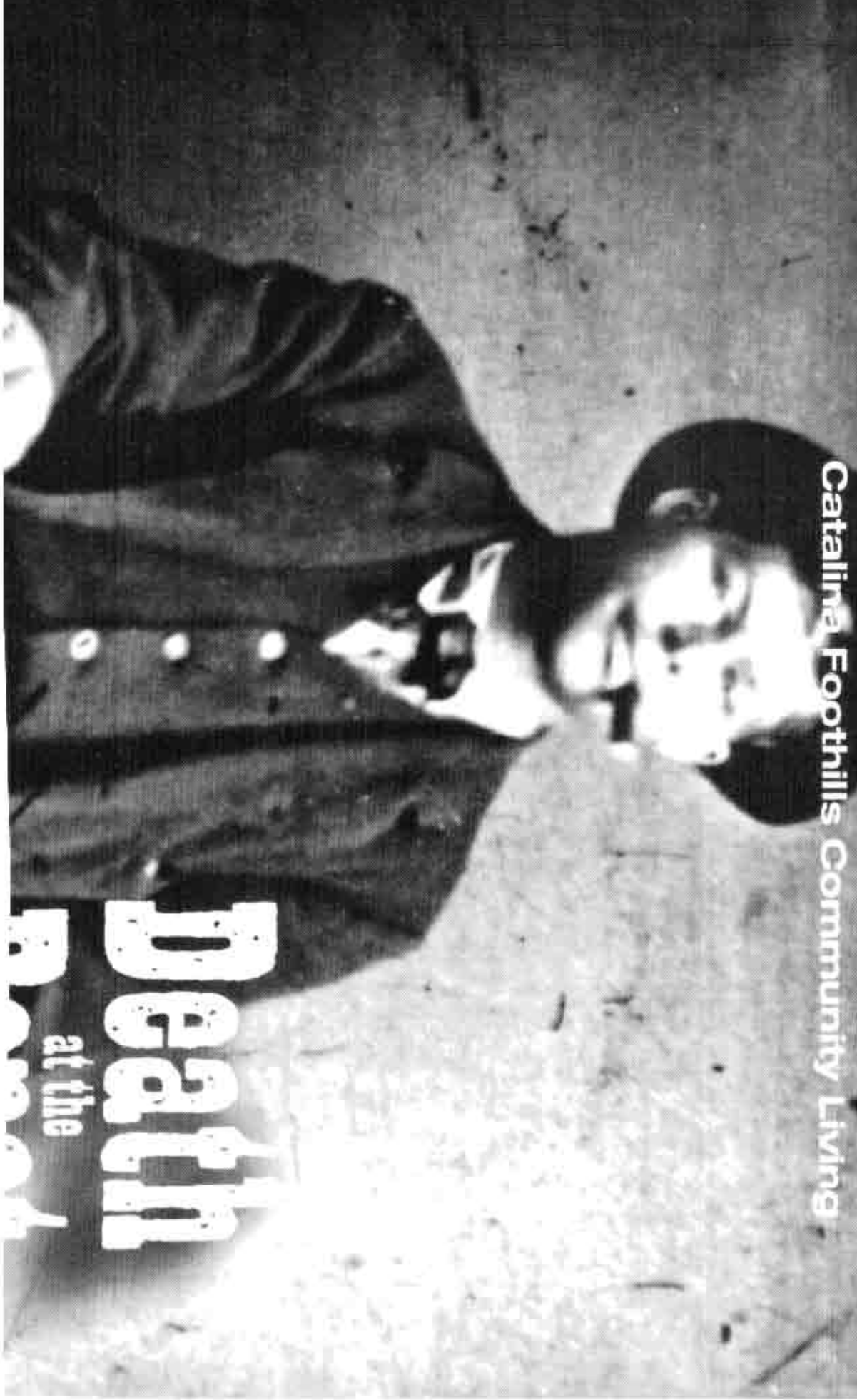


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