

DIVORCE CONCILIATION:

WHO DECIDES ABOUT THE CHILDREN?

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ABSTRACT

Advocates of divorce conciliation argue that it is preferable to the legal resolution of disputes over children because it gives parents joint responsibility for decision-making which leads to more suitable settlements and ones more likely to be implemented. This thesis seeks to gain an understanding of the conciliation process and thereby test the assumptions implicit in such statements. It is based upon the examination of interview and observation material from clients and conciliators of one out-of-court Conciliation Service and includes a statistical description of the Service. It also discusses the question of responsibility for attendance at, and participation in, conciliation; concluding that many parents interviewed had not taken such responsibility.

The major part of the thesis, based on a detailed examination of transcripts of tape recordings of conciliation appointments, argues that the construction of the problem is vital to the conciliation process and analyses the way conciliator interventions narrow the area in which the problem can be located and focus on feelings and relationship difficulties. It further argues that the process includes and depends on the construction of a particular concept of parental responsibility. This prioritises communication, co-operation and joint decision-making and becomes the rationale for a range of sometimes conflicting solutions constructed as a result of conciliator initiatives.

The later part of the thesis examines the ways in which conciliators seek to motivate parents to agree, relating this to the current conciliation/therapy debate, and to the use of expert knowledge.

Finally this thesis investigates the influences on parents which are external to conciliation. This reveals complexities which may affect the outcome of the process of conciliation. It is concluded that much of the present debate is conducted on the basis of inadequate empirical knowledge and conceptual frameworks which produce a blindness to such complexities.

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CHAPTER ONE: INTRODUCTION

"One is reminded of the familiar story of the drunkard who lost his keys in a dark alley but looked for them under a lamp post because the light was better there".(Frank,1961,1980:7-8)

As with more research projects than are admitted to, interest in this one arose through a combination of personal circumstances and various coincidences (1) which had led to an early acquaintance with the growing family conciliation movement. Indeed, when this project began, most friends and colleagues had never heard of conciliation except in connection with ACAS (Advisory, Conciliation and Arbitration Service). Now most have heard of it: probably more as a result of Esther Rantzen than of the Robinson Report.(2) It has become a distinctly fashionable topic among family lawyers - both practitioners and academics - Probation Officers, marriage and divorce counsellors, contributors to national newspapers and magazines, organisers of charities concerned with children and politicians(3), to name but the most vociferous. Several national and many area conferences on the subject of family conciliation have now been held and even a cursory glance at lists of those attending is sufficient to indicate how wide is the range of organisations and interests currently involved with the conciliation movement.(4) As an endorsement of, and potential seal of approval to, the 'arrival' of conciliation the Government is now funding an extensive independent research project into the various types of divorce conciliation.(5)

However research so far has been located mainly under the lamp posts. It has concentrated on monitoring referral and agreement rates, on the

types of disputes presented, on attempts to cost various types of conciliation and more recently on client evaluation of conciliation services.(6) The result is not quite the "large amount of precise but trivial research" which Frank argues is the result of not venturing down the dark alley but it is a situation where colleagues who know of conciliation still say that they do not "really know" what it is. In essence therefore this project aimed to analyse what happens in conciliation itself: not how conciliation services are run but what passes between client and conciliator when the door of the interview room closes on them; not what problems are brought or how many are solved but how the outcome is accomplished. In other words in conciliation who is deciding about the children, what outcomes are being sought and why, and how are such outcomes being encouraged?

It is not however self evident that the conciliation process itself ought to be investigated. In part, conciliation has been viewed as a magic box in to which couples are popped and a certain percentage come out happier so that the concern has been to investigate the possible size, shape and location of the box so that it is used most effectively. It can also be argued that is what is done inside the box is a professional job. How the task is accomplished is therefore to be left to professional expertise which needs no more public questioning than how exactly a surgeon removes an appendix or how a professional musician achieves a top B flat. However conciliation, and the research which has mirrored the changing concerns of the conciliation movement(7) have both been sustained on a cluster of assumptions, many of which cannot be evaluated without analysing the process itself. Why these assumptions have arisen and why they need testing cannot be understood fully without setting conciliation in its

historical context.

A. The History of Conciliation

Though conciliation appears as an unknown quantity which has sprung from nowhere to rapidly colonise divorce settlements there are in fact four very clear trends over the past decade which, coming together, account for the recent proliferation of conciliation services.(8)

1. The increasing number of children involved in divorce

First and most obvious, is that change in the divorce laws and the subsequent increase in divorce rates means that there are far larger numbers of children of separated parents. Whereas in 1954 there were approximately twenty thousand children under sixteen whose parents obtained divorces (McGregor, 1957:5) by 1980 the comparable figure was 163,221. (O.P.C.S.) which does not include those children over sixteen still being maintained by their parents or those children whose parents separate but do not file for divorce.(9) The total annual figure is therefore around two hundred thousand and it is estimated that, if current trends continue one in five children in England and Wales will experience parental divorce before reaching the age of sixteen.(10)

A greater acceptance of divorce both led to and resulted from changes in the divorce laws - principally the Divorce Reform Act of 1969 and the Matrimonial Causes Act of 1973. The separation grounds allow for a 'no fault' divorce and the 'unreasonable behaviour' ground has a much wider application than the previous ground of cruelty. With the Special

Procedure which facilitates undefended Petitions there is clearly a trend whereby Courts are withdrawing from a detailed investigation of failed marriages. Together with the change in public attitudes to divorce⁽¹¹⁾ this means that there are now far fewer legal and moral pressures on couples to continue a difficult marital relationship and this is clearly reflected in the divorce statistics.⁽¹²⁾ Even in the period 1945 to 1955, when particular circumstances of the Second World War led to a large increase in the number of Divorce Petitions in the following 10 years, the annual figures averaged around 35,000 petitions (McGregor,1957:137-8), whereas in 1973 105,491 petitions were filed rising to 171,992 in 1980 and levelling out around that figure since then. The increase in the break down of second and subsequent marriages in the same period has been steeper - 157% though applying to a small minority of couples (8,404 in 1980).⁽¹³⁾ Almost 60% of the couples divorced in 1980 had children under sixteen leading to such a visible problem of large numbers of separated parents, and one which has placed an enormous administrative and financial burden on the Divorce Courts.

The growing numbers of children involved has also produced a moral dilemma for the Courts arising out of the duty imposed on them by section 41 of the Matrimonial Causes Act (MCA)1973.⁽¹⁴⁾ This embodies the principle that divorce and separation in and of itself is sufficient ground for Court intervention in the lives of the children involved and enjoins the Court not to make a Decree Nisi absolute until it has declared itself satisfied with the Statement of Arrangements for the children of the marriage. Only a Judge, not a Registrar, can do this so this underlines its importance. This is done at a Children's Appointment held in Chambers at which the arrangements for the vast majority of children of

divorcing parents are embodied in legal documents. (19) Similarly Magistrates Courts consider the need for Custody Orders, and make them if necessary, before granting final Maintenance Orders to separated parents(16). Proceedings under the Guardianship of Minors Act 1971 section 9 also enable the Court to make Custody and Access decisions.

The children covered by all this legislation are those who are "a child of the family", that is "a child of both parties" or "a child treated by both as a child of the family".(17) The justification for the Courts' involvement with these children has always been found in the principle which should govern all the decisions made regarding custody and access, viz the welfare principle. The idea that the welfare of the minor involved should be "the first and paramount consideration" was given statutory effect by the Guardianship of Minors Act 1925 (now section 1 1971 Act) and therefore the aim of the Courts is to seek what is in the "best interests of the child". With this yardstick the Judge must decide whether to approve agreed arrangements and adjudicate where there is no agreement. In order to help the Court in this the parents must complete a Statement of Arrangements (18) for the children. This form invites and usually receives brief answers. It has been criticized by Mrs Booth's Committee (19) and changes may eventually be made but as it stands it precipitates the obvious question: how far is the Judge able to make decisions in the child's interests? This can be broken down in to two parts:- has the Judge got sufficient and accurate information on which to make an informed decision and how far is the Judge able to decide what constitutes the welfare of the child in a particular case?

In addressing the first part Mervin Murch has pointed out that the Judge is

no longer always acting in his traditional role as umpire between the parties but has "much wider discretion to decide what to investigate, how to investigate and even what to do as a result of an investigation".(1980:213) Therefore some Courts use additional questionnaires and Judges may question parents closely or make use of Divorce Court Welfare Service for further investigation. However the Statement of Arrangements is about proposed arrangements and unless a Supervision Order is made there is no check whether these arrangements are instituted or changed shortly afterwards.(20) This latter case is not illegal and can only be remedied if the other party knows and objects and brings the matter back to Court.

To what extent these possibilities are explored during the private hearings is difficult to ascertain. An article by George Brown about Section 41 hearings suggests that the typical length a Judge spends on each hearing is indicative when it concludes that the Judge, "probably has to devote 10 to 15 minutes to each of the more difficult cases and then has three to four minutes for each of the remaining cases".(1981) More recently a full scale study of Section 41 hearings has similarly commented that the conveyor belt feel of the system encourages and indeed almost demands a routine mechanical approach.(Davis, Macleod and Murch,1983) Clearly in some cases the Judge has neither the time nor the resources to perform adequately his duty to be satisfied that the arrangements for custody and access are satisfactory or "the best that can be devised in the circumstances".

The second part of the question concerns the concept of the welfare of the child and how the Judge decides what this entails in practice now that

the major guideline is no longer one of protecting a child from the guilty parent. There is an obvious difficulty in deciding what needs the Court do put first, as reported cases may well not mirror the distribution of the problems in the total number of cases considered by Judges. (These reported cases are discussed in Chapter 9.) Suffice it to say that whatever guidelines are in operation many Judges are themselves concerned at the implications of the absolute discretion accorded to Judges in this matter.

"Something else is being demanded of Courts and Judges which is in fact that old fashioned and often forgotten quality which used to be called wisdom. This is quite a lot to ask, particularly in a society in which conventional moral values are no longer acceptable as 'guidelines' and the conclusions of the social sciences are at best unstable".(21)

The administrative burden imposed by Section 41 in a period of high divorce rates has meant that in practice, according to research done by Eekelaar and Clive (1977) in the vast majority of cases the Courts are merely approving the continuation of existing arrangements for children which have been created by the Petitioners. This burden, together with a feeling that the Courts ought not to abrogate their duty to be satisfied, has led to considerable unease among the judiciary and a desire in many sections to look for changes that will make life both administratively and morally easier for the Courts.(32)

In addition, contested custody and access problems, arising on divorce or later, present a different problem and the way they have been dealt with has varied from area to area and from Judge to Judge. It is perhaps the

existence of a minority of stubborn disputes which delay the granting of a Decree Absolute for months or even years and also the existence of those continuously erupting cases which Judge Grant has referred to as 'perennials' (Grant,1981) which, even more than the problems imposed by Section 41, have led to the readiness of the legal system to embrace conciliation as a answer.

2.A growing awareness of the limit of legal action

In a sense this is a result of the trend discussed above, in that the large number of children involved and the resulting larger numbers of recurring disputes has made Courts parents and interested bodies aware of the limitations and apparent ineffectiveness of the use of the legal system to ensure the implementation of particular custody and access arrangements. Large scale independent research findings are lacking but a survey of access to children after divorce based on replies to a questionnaire circulated by Gingerbread and Families Need Fathers (1982: 19-21) supports the belief that a Court is not the end of the matter especially in matters of access. The report found that access was irregular or non existent in 53% of cases with defined Access Orders and 55% of those with informal or reasonable Access Orders. Therefore whatever type of Order the Court makes it appears to have less than a 50% chance of succeeding in its aim and the Court is in practice powerless if Orders are not implemented. Magistrates and Judges do have the power to fine or imprison a guilty spouse (23) but if this is the child's custodian the interest of the children are seen as pointing against this sanction being employed. The Court is also powerless in that there is no follow up to the vast majority of cases and the Court cannot punish what it has no knowledge

of. The aggrieved party may have neither financial nor psychological resources to undertake an application to the Court and, in the case of a caretaker parent wanting the absent parent to visit the child, there is in any case no legal mechanism to employ.(24) Both parents and the Court therefore see a need for more effective sanctions.

3. The concerns of mental health professionals

Leading British child psychologists had by the 1970's promoted the idea of psychological damage caused to children by the separation of their parents.(25) This was and is a specific concern arising out of a growing awareness that a disproportionate number of their cases were of children referred before and after parental separation and particular correlations were publicised. For example, Fine has written, "The marital turmoil prior to separation seems to be the pathogenic factor which leads to an increased delinquency among children and adolescents of divorced and separated parents." (1980:373)

However by the end of the seventies mental health professionals were increasingly concluding that many post separation problems in children were stemming, not from pre-separation trauma but from trauma induced by post separation conflict stemming from custody and access problems. For example Wallerstein and Kelly's work in the U.S.A. (1981) had found problems in normal children five years after parental separation and Rosen's research in South Africa sampling 92 children of divorce six to ten years later came to similar conclusions.(Rosen,1977) An American child psychologist summed up the situation by saying that the profession had been "presumptuous to suggest that separation may clear the air"(in Fine,

1980). In Britain Dr. Black has recently echoed this view.

"For the children of divorce it is probable that the loss of one parent outweighs the gain derived from a peaceful home. Furthermore...the parents may continue the conflict using the children as pawns in their battle or indeed the battle field itself." (1982,250)

Mental health professionals have also become concerned from working with the problems of step families which ties in with a growing concern amongst marriage counsellors. The increasing incidence of remarriage has meant that they have been involved in subsequent marriage difficulties often seen to have been caused or exacerbated by emotional and practical problems regarding the first marriage. This outlook was buttressed by a research study of remarried couples in Sheffield.(1982) which showed that conflicts unresolved at separation had serious and long term consequences for the future of the parties and for the children when the parents remarried. The current weight of evidence stemming from these concerns is believed to be that trauma is best avoided by both parents agreeing and maintaining contact with the child.(see Chapter 9) From both angles therefore family difficulties were no longer seen to be resolved by separation and divorce per se and more effective mechanisms for removing or reducing conflict long term is increasingly seen as necessary.

4. Growing Ambivalence within the Divorce Court Welfare Service

Lastly there emerged by the end of the 1970's within the Probation Service increasing ambivalence concerning the methods and aims of their work generally(26) and more specifically about the nature and usefulness of traditional welfare reports.(27) In 1968 the Home Secretary and Lord

Chancellor had asked each of the fifty six Probation Committees to set up a Divorce Court Welfare Service in each divorce court town. Probation Officers had already been assisting Magistrates and Judges in civil as well as criminal matters and divorce work was simply another duty as social workers to the Court. However the accelerated divorce rate had led to greater demands within the service and a need for, and also a possibility of, specialisation. Therefore in the seventies and early eighties the increasing separation of domestic and criminal work and indeed the establishment in many areas of separate civil work units, together with the growing number of requests for welfare reports on divorcing families, led to increasing specialisation with a resulting accumulation of knowledge, self criticism and worker dissatisfaction. Demands emerged from workers for more task centred work and a family therapy approach giving both worker support (through conjoint working with couples), less need for Divorce Court Welfare Officer recommendations and decisions and a chance of seeing some results because of the utilisation of shorter term goals of specific tasks whose success was capable of some measurement.(28) By 1982 these approaches had been implemented in several probation areas in a new style of 'writing' welfare reports which depended on a form of conciliation so that there was "active participation of the parents" and minimisation of "the danger of taking on decisions and responsibilities which belong to the parents not the workers".(Howard and Shepherd:1982) Divorce Court Welfare Officers therefore arrange meetings with both parents together for the purpose of conciliating between them with the aim of securing an agreement which would remove the need to compile a traditional investigative welfare report.(29)

The Growth of Conciliation Services

Therefore while conciliation is only one of many solutions to the dilemmas contained in the four trends above it is at present the only one common and acceptable to all four. The idea of conciliation has therefore been supported because of perceived professional, social, administrative and financial benefits.(30) However the idea of conciliation itself is not indigenous: it had been implemented in other countries and was first publicized widely in this country by the Finer Committee's Report on One Parent Families.(1974) In which the conciliation services attached to the family courts in the U.S.A. Canada, Australia and New Zealand were examined and were found to have had "substantial success in civilising the consequences of breakdown". (Para 4.311) The Finer Report was also significant in producing the most widely quoted definition of conciliation, though the scope it envisages is wider than the present use of conciliation.(31) The definition still seems generally accepted.(32):

"By 'conciliation' we mean assisting the parties to deal with the consequences of the established breakdown of their marriage...by reaching agreements giving consents or reducing the area of conflict".(Para 4.288)

Certainly the Finer Committee's proposals had a direct influence on the setting up of a pioneer independent scheme(33) -the Bristol Courts Family Conciliation Service- an Out-of-Court scheme which has been well documented by Gwyn Davis (34) and Lisa Parkinson (35). Such schemes were originally intended as a pre-Court Service but in practice now accept couples already divorced or couples who have never been married. The Bristol Service was set up in 1979 by funding from the Nuffield Foundation and via a fixed fee of £20 payable by Legal Aid via the Solicitors involved under an extension of the Legal Aid Green Form

Scheme and run by a committee comprised of representatives from all branches of the legal profession together with academics, Marriage Guidance Counsellors, Social Workers and Probation Officers. From 1979 also a service was developed at Bromley by South East London Probation Service, housed by the civil work unit and co-ordinated by the Senior Divorce Court Welfare Officer.(Parkinson,1986:79-80) At the same time Bristol had also been pioneer in 1977 of an In-Court scheme of conciliation (Parmiter,1981) which was copied by other courts on the impetus of Judges, Registrar's Clerks and Divorce Court Welfare Officers. An In-Court Service generally refers to a form of preliminary appointment for contested access or custody issues at which conciliation, usually conducted by Divorce Court Welfare officers, takes place.

There were therefore by 1980 the four different forms of conciliation already in existence:

Two forms of out of Court services (those managed independently and those which are Probation Service based)

An in-Court service

Conciliation in the form of conciliated welfare reporting.

All four forms spread rapidly. However for two main reasons it is difficult to ascertain how widely available conciliation now is and how widely it is used. Firstly the four different types of conciliation, though united in lobbying the Lord Chancellor and Government, are disparate and at times in competition for both clients and funding. Overall statistics are therefore not possible. Secondly the different forms of conciliation are, to an extent, producing statistics for campaigning purposes. So for example the 1983 Robinson Report Figures have been widely criticised by

the conciliation lobby as being deliberately low and the result of methodological inadequacies and various independent services have produced their own statistics. Nevertheless the Robinson Report is as yet the only study covering all forms of conciliation schemes. Its Study Group reported that by the end of 1982 there were 50 conciliation schemes of all types in existence (Para 3.8) in England and Wales.(36) In fact the list of schemes provided at their Appendix 5 does not provide a total of 50 but lists 34 areas, covering 70 locations and encompassing 105 categorised services and indeed a pro-conciliation circuit Judge was estimating there were 50 Out-of-Court court schemes alone in existence at that time.(Gerard,1984) There is now a National Family Conciliation Council (N.F.C.C.), the idea for which began in Bristol in 1978 and led to the first meeting of representatives from eleven schemes in 1981 and the foundation of the Council itself in 1983. However not all out of Court Services are affiliated to the N.F.C.C. as many probation-based services do not fill the N.F.C.C.'s requirements, notably in the existence and composition of a management committee.(37) Therefore whilst there are now reliable lists of independent services, covering 26 affiliated services in 1985 with eighteen provisionally affiliated or associated, this is not comprehensive.(38) Until the Newcastle project reports it is not yet possible to gain an overall view of the number of out of court services operating nor the scale of their operations.

A similar confusion is to be found both with In-Court conciliation and conciliated welfare reporting. As Lisa Parkinson puts it, "Court related conciliation in Britain has developed so far without any national framework of principles and rules".(1986:101) It is therefore not surprising that there are also no national statistics. The most recent

pronouncements on the subject are contained in the publication of the Booth Committee (39) which endorsed and promotes in-Court conciliation though its proposal in a consultation paper for giving the the Registrar power at the initial hearing to decide whether to refer the parties to conciliation there and then was amended to a recommendation that the Court be given the power to refer parties to the Divorce Court Welfare Officer to discuss conciliation and that conciliation be made available at an initial hearing or before an adjourned hearing. However the Committee does not make any comments shedding light on how many Courts are already following the same or similar procedures and how many clients respond favourably. It is not therefore possible to up-date the Robinson Report's total of twenty County Courts offering in-Court conciliation and forty with Divorce Court Welfare Officers conciliating in the process of preparation of Divorce Court Welfare Reports.

B. The Assumptions within Conciliation

"The current enthusiasm for conciliation as a method of settling disputes can result in it being seen as a magic remedy for all kinds of inter-personal conflict without basic assumptions being examined".
(Parkinson,1986:1)

Lisa Parkinson, whose recent book on conciliation is based "on unrivalled personal knowledge and experience of conciliation"(40), like many committed conciliators, is concerned that too much is claimed for conciliation and that research must test these assumptions. However the above statement in the first paragraph of her recent book, must be

viewed as a defence of a critical approach which is not usually to be found in pro-conciliation literature. Indeed many conciliators feel that querying these assumptions is 'disloyal'.(41) This is because of the basis of the support for conciliation which sees it as a solution to the dilemmas and concerns of Courts, Divorce Court Welfare Officers, separated parents and those concerned with the psychological and social health of the family. It is believed to solve these dilemmas in the following ways:

1. It accepts that Judges are unable to determine the children's needs satisfactorily and gives the job to specially trained conciliators who allow parents to provide the information and solutions themselves.

2. It facilitates the setting up of agreed arrangements which will therefore be more likely to succeed, thereby by-passing the ineffectiveness of Court Orders.

3. It provides the expertise to help parents work out the practical details necessary to ensure the parental co-operation deemed essential for the child's healthy development.

4. It provides an arena in which to implement new social work approaches which will also reduced pressure within the Divorce Court Welfare Service.

However these solutions are only solutions in so far as they are sustained by a cluster of assumptions which includes the following:-

1. Parents know better what is best for their children than the Judge or

Divorce Court Welfare Officer and therefore conciliation is more likely to uphold the welfare of the child.

2. Conciliation gives responsibility for the decision to the parents. If successful the outcome is an agreement for which parents are responsible and so they will be more likely to implement it.

3. Conciliation produces less hostility than the legal system and is a better model for future conflict resolution.

4. Parenting can continue after separation though the marital relationship cannot.

5. The children benefit from their parents agreeing and this benefit is the most important constituent of the child's welfare in a post separation situation.

6. Conciliation is a separate process from legal arbitration but the latter will always be available. Conciliation in no way reduces legal remedies available to the parties.

Some of these assumptions are already the object of research projects.(42) and some are recognised as assumptions by conciliators who nevertheless believe that research will prove that they are valid.

Some have given rise to counter assumptions, for example from feminist academics that conciliation is detrimental to the mother's interest because it reinforces existing inequalities (43) and from lawyers that it

undermines legal rights. However whilst this thesis will provide insights on all these assumptions its main concern is with three of them:-

1. That parenting can continue after separation.
2. That in conciliation parents have the responsibility for attendance and decision making and that this affects implementation of an agreement.
3. That conciliation is a separate process from adjudication by the Courts and that the availability of legal remedies remains unaltered.

1. That Parenting Can Continue

The assumption that parents who cannot agree sufficiently to live together can nevertheless separate their marital and parental roles itself rests on two assumptions: that the content of post separation parenting is not problematic and that there was in existence a pre-separation parenting role which can be continued.

(a) Firstly therefore this assumption poses the question of what conciliators mean by parenting in this context. I can find no definition of such parenting in conciliation literature. An everyday definition of parenting in the intact family would probably include elements of child caretaking (discipline stimulation and encouragement, feeding, clothing, ensuring sleep, so on...) and of decision making (everyday decisions on aspects of caretaking as well as the making of one off decisions on education, health matters and expenditure on expensive items and so on...). However the context in which conciliators make this statement

seems to imply that parenting post separation is not viewed so comprehensively, as for example in the following excerpts from a Social Work Today article:

"Conciliation emphasises the fact that both parents continue to play a vital role in their childrens lives whether providing for their daily care or not. (my underlining) and concerns itself with a joint examination of how this sharing should best be arranged for all concerned".(Francis et al,1983:8)

In effect joint parenting ("this sharing") is envisaged and this phrase is sometimes actually used.(44) If daily caretaking is not an integral part of such parenting then the other possible components must be some form of parent child contact for relationships and some participation in joint decision making, both of which do not depend on daily care. The objectives of the N.F.C.C imply that the joint decision making aspect covers decisions resulting from the separation itself and also decisions about the children after separation:

"In the short term, the objective of conciliation is to help parties reach a workable settlement which takes account of the needs of the children and adults involved.

The longer term objective is to help both parents:

- (a) maintain their relationship with their children and;
- (b) achieve a co-operative plan for their children's welfare". (45)

However such statements do not produce a clear concept of post separation parenting and leave questions unanswered: What range of decisions are to be decided jointly? what is meant by co-operative in this context? What is the nature of the parent/child relationship envisaged?

What is the extent of the contact between parent and child and how far is daily care excluded from such joint parenting? What does jointness in decision making post separation entail. Conciliators presumably do not define such parenting in the literature because it is self evident to them. One concern of this research has therefore been to try and construct a concept of joint parenting held by conciliators and utilised within the conciliation process, to analyse when such a concept was purveyed and why; and to see why, and in what way, it differs from concepts held by the parents. This seemed important because concern has frequently been expressed about the unresearched nature of "the universe of meanings and values in which the process takes place".(Roberts,1983:549) Pursuing this concept of parenting appeared and proved to be a fruitful entry point into this normative framework of conciliation and a base from which to assess whether or not the same criticisms can be made of conciliator's interventions as Davis has made of Divorce Court Welfare Reports as "confections of unacknowledged value judgments ".(1985)"

(b) Secondly the continuance of joint parenting is recognised as a assumption: very rarely is the existence of joint parenting pre-separation recognised as such. For example, Joan Kelly, has argued that "most parents that seek a divorce were not in major conflict regarding child rearing issues during marriage", that "parents rarely divorced for reasons that have anything to do with their children" and therefore that such parents are "likely candidates for co-operation concerning child rearing after divorce"(198) However the lack of major conflict does not necessarily entail active co-operation over the children; nor does the fact that reasons given for divorce do not specifically relate to children ensure that children are not implicated in such reasons. There may not

have been a mutually negotiated or acceptable patterns of joint decision making let alone joint caretaking, in the intact family. It is therefore at least possible that joint decision making and active co-operation regarding the children's needs is an entirely novel experience for the clients of conciliators. The existence of this possibility is significant for two reasons. Firstly, if conciliation is establishing new patterns rather than continuing old parenting then the task of the conciliator will not be the same. The large body of literature on joint custody in the U.S.A. is relevant here because it also depends on the assumption that children need co-operating parents but it does not seem so ready to assume a continuation of parenting. For example, Susan Steinmann, in a seminal paper stressed the Courts need to assess parents' potential for co-operation and if this is present then "extended mediation counselling" (my underlining) may be required. "It can help parents develop tools and rehearse what they will need to do on their own in co-operating and making decisions concerning the children".(Steinman,1983:759) thus putting a particular emphasis on conciliation as more therapeutic and reformatory in character and upholding a particular model of parenting. It therefore emphasizes not only the possibility of different roles and aims for conciliation but also the problematic nature of both pre- and post-separation parenting.

Secondly if and when conciliation is merely encouraging the continuation of pre-separation parenting there are several questions to be raised. Can old patterns be continued if they are unacceptable to at least one partner? Is a presumption in favour of continuing co-operation a presumption in favour of continuing a situation of inequitable inputs in to child rearing and decision making? In other words, if previous parenting

contained a power situation disliked by one parent does conciliation perpetuate this imbalance? If previous decision making patterns (both regarding the children and life generally) caused one parent to develop more expertise and confidence in decision making does this imbalance of experience lead to inequality within the conciliation process?

Surprisingly conciliation literature does not concern itself with the problematic nature of pre-separation decision making. (except in so far as it defends the expertise of conciliators to detect and compensate for power inequalities in conciliation) yet decisions made by parents may have been reached in a variety of ways. The following five models illuminate the possibilities:

(a) Parents have a shared outlook and aims. No discussion takes place agreement is assumed and responsibilities are delegated. Decisions made are accepted as the best ones.

(b) A specific decision is discussed until the parents accept the same outcome as the best one.

(c) The parents disagree over the preferred outcomes and the agreement represents a compromise.

(d) The parents disagree and the decision is the implementation of one parent's views with the acquiescence of the other because of societal or religious pressures because of the acceptance of certain constraining factors like the influence of the other partner's career and work patterns as legitimate. (Bernard,1982:12; Gillespie,1972:131)

(e) Parents disagree and the decision is the implementation of one parent's views in the face of open disagreement from the other who is unable to affect the decision or its implementation.

In the first three of these five models an agreement producing mechanism could be said to be operating. In model 4 acquiescence may in practice amount to agreement in that there is an underlying consensus on which partner should decide in the event of a dispute, but there is clearly no real participation from the loser or consensus on the actual issue. Model 5 includes no effective agreement producing mechanism at all and the decision can only be altered by some form of coercion.

A pre-requisite of this research was therefore a review of the literature on parental decision-making to ascertain whether research findings are sufficiently clear to justify the assumption by conciliators that joint parenting had occurred before separation and this had included agreement producing mechanisms. An immediate difficulty becomes apparent. There is a large literature on child care, role segregation and power spousal relationship but there is no literature specifically on decision making about children by parents. Most of the literature on marital decision making does not focus on children: a decision concerning the children may be only one of a list. (Comprising of between six and twenty components in the literature reviewed of factors being investigated.(47)) Far more attention has been paid by researchers to the choice of residence, job, friends and large consumer purchases.

This literature also contains certain assumptions which are not always articulated and which create, at worst, total confusion in the mind of the

reader and, at best, difficulties of comparability. Firstly there is much elision of role segregation and power differentials in that much of the literature assumes that a particular role division implies or necessitates a particular allocation of decision making power. For example, as Edgell (1980:7) points out many researchers have regarded jointness (48) and equality as synonymous when interpreting their data.(49) In other words, joint or equal shares of household tasks and responsibilities has been taken to imply equality of power in the marriage. So Oakley, for example, has investigated the lack of domestic help by husbands and concluded that such role segregation with the wife doing most of the housework, is contrary to the idea of equality in modern marriage.(50) However this basic assumption of the direct relationship between role and power differential also entails various assumptions of what is meant by equality and jointness and Edgell's own research data was used to demonstrate the influence on conclusions of these initial problematic definitions. (51) Ultimately such conclusions also depend on sub definitions as to the meaning of 'often', 'sometimes' and 'usually'. In addition if a joint relationship, parenting or marital, is assumed to include joint decision making then a very high premium is placed on the selection by researchers of which tasks are included and the exact meaning of sharing. (52)

It has therefore been difficult to assess the relative merits of research data offering conflicting general conclusions. One idea is to reject the idea of a unidimensional concept such as jointness and indeed research has been done disproving the assumptions of general characteristics.(53) However there remains the problem of the selection and evaluation of decisions or tasks deemed to constitute a specific area: selections for

decisions for research may include a sexist bias and all decisions may not be of equal value to each partner and some sort of weighting of items produces very different results from those treated on a simply numerical basis. For example, E.E. le Masters sees fathers being outwitted and bypassed in the family and produces as evidence the fact that 80% of family purchases are made by the wife and mother.(54) There is no breakdown of the composition of this total or of the significance accorded to it by the spouses. Even more importantly it ignores the whole question of whether the wife wants to be responsible for 80% of the family purchases. In other words much of the literature assumes that the fact of decision making establishes the power of the decision maker and ignores the possibility one partner may have defined the agenda of who decides what. So the evidence of E.E. le Masters could indeed point to a controlling wife but it could also indicate a wife to whom the power of making endless trivial decisions about soap powders, socks and sausages had been delegated against her will and not as a result of negotiations.

Discussion about family decision making should make no assumptions regarding power, responsibility and the mechanisms employed to reach a decision but researching these links raises particular difficulties, the most basic of which Benson refers to as "the difficulty of separating rhetoric from reality" (1968:142) which manifests itself in the divergence of results stemming from investigation of norms or of actual behaviours. It would appear that asking needs to be qualified by observations but as observation in this field is so difficult then the only conclusion to be drawn may be that all research findings in this field need to be handled very carefully.

It is in fact difficult to find any consensus in the more recent literature relating to decision making in the family. Diametrically opposing views are still advocated, with a picture of the "cowering father"(55) on one hand and the "oppressed mother" (56) on the other, though there is some support for a middle position of more equal sharing decision making power, more "symmetry" as Young & Wilmott express it (57) or "more democratic" according to D. Gillespie.(1971:12) Other researchers would agree with Pahl that equality in marriage is more evident in 'closeness' than in the actual sharing of decision making.(1971:236)

In addition these general, though conflicting, findings leave little scope for predicting how families are making decisions specifically about their children. Edgell's study is unusual in that it did include two items specifically about children - their education and their clothes. Both parents viewed decisions on clothes as unimportant and frequent ones and made mostly by the wife alone. However the children's education was one of only two infrequent and very important decisions not made by the husband alone. In one group of middle class families therefore there appeared to be an element of joint decision making but even these findings say little about the decision making process itself and has shed little light on the part played by concern for the children's interest in other decisions.

It would therefore seem the only conclusion that literature allows is that no generalisations are possible regarding parenting and specifically its decision making element in 'normal' families. Certainly conciliators cannot assume all decisions were made jointly whatever that might mean in any particular family. Therefore another concern of this thesis has

been to look for possible influences of various pre- separation parenting patterns among parents observed -especially decision making - on the process and outcome of conciliation.

2. That in Conciliation the Parents have Responsibility

The assumption that parents are responsible for decision making and decisions made in conciliation and that this is itself a benefit of conciliation is particularly interesting because nearly all the literature on conciliation since and including the Finer Report has included a reference to "parental responsibility". For example the Finer Report itself said that parents should "take primary responsibility" (1974) for decisions; Lisa Parkinson, now training officer of the N.F.C.C. says of conciliation techniques that they can counteract "the tendency to abdicate responsibility for decision making" (1983:34) and Gwyn Davies has written that, "It may be said that the virtue of mediation lies....in allowing them (the parents) to retain the ultimate responsibility".(1983b:137) More recently Mary Lund of the Child Care and Development Group at Cambridge has concluded an article with the following,

"The approach reflects what maybe the new norm in society about divorce when children are involved: That two adults may be free to decide they want to end their marital relationship but they are not relieved of their joint responsibilities to their children."(1984:200)

It is clear from these few examples however that, not only is the question of what parents are responsible for not always clear, but that a variety of verbs is being used in connection with the concept of responsibility without acknowledgment of the implications. "Take" "abdicate" "retain"

and "relieved of" have different connotations which again entail assumptions about pre-separation parental responsibility. In addition at least two of these connotations include normative statements and therefore rest on a particular view of what decision making ought to be like in the divided family. This normative element is articulated by Susan Maidment when she asserts that;

"The child's right to be protected against damage caused by losing one parent should thus been seen as creating a correlative duty or responsibility on each parent to continue his (sic) role as parent to his child....This concept of parental responsibility means that parents should not be allowed to abandon this parenting role merely because the marriage which produced the children in question has ended".(1984a:167)

There appear to be two main attitudes underlining such statements: Firstly that responsibility should rest with the parents rather than the legal system - in other words not so much pro- parents as that the legal profession and Divorce Court Welfare Officers should not have the responsibility. This could be seen as part of the trend against the definition of certain problems as being legal ones. Secondly there is the attitude that responsibility should rest with parents rather than with the state. (Though the State and the Law must ensure that parents do not shirk this responsibility). This could be seen as part of a trend against Welfarism and in favour of private ordering and responsibility generally. In this context two quotes from Mrs Thatcher are perhaps relevant;

"You have got to teach children to exercise responsibility. Any mother will tell you that".(58)

"Let us remember that we are a nation and a nation as an extended

family".(59)

In similar vein a Probation Officer has said that even if an access dispute appears as one "of children quarrelling and requiring a parent to make rules about the rights and wrongs of the case" the Divorce Court Welfare Officer must use techniques enabling the parent to "see their childishness and behave as adults".(Millard,1979:64).

Responsibility in connection with conciliation therefore seems to be used in two main ways: That responsible parents find a way of agreeing which could be via conciliation and that in conciliation parents are responsible for the process and the outcome. Parental responsibility in this context appears confined to decision making and indeed there is a slippage of ideas which results in the notion of parenting itself being encompassed entirely within this concept of responsibility. For example three South London Probation Officers have written;

"The traditional investigative approach of the Welfare Officer....implies an assumption that parents themselves are incapable of making proper decisions about their children.....Separation and divorce are far too common an occurrence in Britain today for us to persist with the notion that an inability to parent is the natural consequence of a failed marriage".(Day,Jones and Owen,1984:203)

This parenting/decision-making responsibility correlation is even more significant when it is realised that the same assumption is being made about responsibility as as we have seen is being made about continuing parenting. Viz that what is meant is joint responsibility. But again,

what is the nature of this jointness - is it equal sharing of responsibility by both parents or is it more a case of "jointly and severally" with responsibility residing somewhere in the parental unit and with allocation of responsibility possibly depending on factors of power stemming from the marriage, separation or wider economic and social inequalities? (60) The benefits to all concerned are going to depend on the nature of this joint responsibility, not on the mere fact of the transfer of responsibility to or the retention of responsibility by the parental unit. Similarly the benefits are going to depend on how much responsibility is given to the parents, how much is accepted and by which parent and how much is retained or taken back by referral agents, solicitors, family and so forth.

These factors would seem to be of crucial importance for an effective evaluation of conciliation and therefore amajor concern of this research has been to find out what meanings are being given to the concept of parental responsibility in conciliation, to see how far parents do have responsibility for attendance at, and the outcome, of conciliation and whether there are any divergences between responsibility given to or held by the mother and father.

3. Legal Remedies are Unaffected

Conciliation is portrayed as a form of dispute settlement which parents or their agents can use in preference to other means, notably use of the legal system. Support for conciliation is however being withheld by those who believe that conciliation may be undermining rights either by giving "wrong" legal advice or by encouraging settlements which ignore legal issues or pre-empt legal remedies. A further concern is therefore to

analyse the possible existence and use or abuse in conciliation of the shadow of the law and its influence on the outcome.

C. Methodology (61)

The gaps identified in completed research on conciliation and the questions raised by examining the assumptions which support conciliation led to a belief that this research must have two major characteristics: that, because of the complexity of the issues the approach should be qualitative with research aimed primarily at understanding the process of conciliation,(62) and that it should place conciliation in a wider framework - both practically and theoretically - of family patterns of responsibility for children and decision making than existing preoccupations with legal and post divorce context. The latter aim therefore requires linking the research to existing bodies of knowledge in social sciences, especially work on family functioning which has not generally been seen as relevant to conciliation in the way that literature on disputes settlement generally, informalism and the psychological and legal aspects of the divorce process have been. Both aims therefore necessitated that, whilst the heart of the empirical study must be conciliation, data must also be acquired on the 'history' of families using conciliation.

The empirical study of conciliation was also seen to entail two aspects: the appointments themselves and the setting in which they take place. The various methods of the qualitative researcher - reactive techniques, notably participant observation and interviewing, both of which entail

some influence by the researcher on the research setting, and non reactive techniques such as the use of audio and visual recordings were considered.(63) The decision was made to use methods from both forms of techniques, not for the purpose of triangulation (64) to validate the data, but to further understanding. Therefore whilst the aim was not a descriptive ethnographic account of the conciliator's work it was felt that an ethnographic element - the experience of "standing in a river"(65) to 'get the feel of it' - was essential in order to shed light on the meanings of conciliators and to help overcome a particular problem of language occurring in this research. (66) This was achieved by participant observation of a Probation-based Out-of-Court conciliation service on occasions over approximately eighteen months. It was participant in the sense that the researcher had a marginal role (67) as tea maker, copier, legal adviser and listening ear when on the premises of the conciliation service and given a participant status at conferences attended with conciliators. In practice there was more observation of, than participation, in meetings, discussions and training sessions, partly because of a desire to find a balance between the use of unavoidable consciousness raising (68) and the desire to influence the development of the service as little as possible.

However the nub of the research - the conciliation appointments themselves -could not be participant. Indeed the preferred method of observation of all joint appointments of 24 cases was allowed only on condition that maximum invisibility of the researcher was achieved, even to the extent, on one occasion, of camouflage behind a potted palm! Personal observation was felt to be essential as the use of video taping, even if possible, was seen as potentially incapable of capturing all the

interactions between the two conciliators and the two parents. However it was felt that observation alone was not sufficient and that appointments should also be tape recorded to facilitate future analysis of the process in detail. However observation of conciliation service and conciliation process were not deemed likely to give sufficient specific information about conciliator's own interpretations of the conciliation process in those cases observed. Therefore interviews were conducted with conciliators immediately after each appointment using semi structured interviews with a recursive element stemming from concerns expressed by conciliators at their meeting. Furthermore setting conciliation in a wider framework required more data about the clients than the appointment or conciliation files were likely to provide. Therefore interviews with clients were planned to take place three months after their last appointment. The interviews aimed to gain information about parenting in the pre-separation family about the history of the dispute and influences on it before and after conciliation and the client's perceptions of the conciliation process. The scope of the questions were necessarily wide ranging and diffuse because of the need to 'trawl' for links and significances. In other words, apart from the testing of certain assumptions, this research did not set out with any definite hypothesis to be proved, the aim was to be what Glaser & Strauss have described as the "evolution of grounded theory" (1967) In effect it is the exploitation of the reflexivity between researcher and researched, between empirical and theoretical data, between different areas of research so that there is a continuous process of feed back and cross fertilisation.(69) So for example, meetings and appointments observed led to note taking to record possible significances and correlations which in turn prompted further reading and insights leading to the construction

of a conceptual framework for the analysis of tape and interview material. Inevitable delays in the acquisition of data in this field encouraged this evolutionary process because the various stages of the research in practice overlapped although final analysis of tapes was left until all the field work was complete.

Lastly, despite the general approach of this project to understand rather than quantify, for various reasons to be outlined in Chapter 2 it was decided that the project should include a statistical element based on the work of the conciliation service for one year. Therefore 154 cases accepted by the conciliation service during the first year of the research formed the basis for computerised analysis of characteristics of the referrals and their outcomes.

Nevertheless the aim of understanding the process of conciliation and its significance within a wider context could point to the use of a variety of approaches not just to the collection of data but also to the way the data is handled. The end product of qualitative research is generally seen as being some form of "reality reconstruction " and interpretation of the actors' meanings. However, once empirical data collection began, it became clear that conciliation research poses particular methodological problems. Firstly conciliation is a situation where there is "the interaction of multiperspectival experience"(Douglas,1976:189) In other words, there are multiple realities to be dealt with - that of the conciliator, the mother, the father, and possibly the children as well, which may not form any unitary reality capable of adequate analysis. Indeed Douglas argues that recent works attempting to research multiple realities generally show merely how multiple realities co-exist, "One is

here, and one is there."(1976:190)

Secondly particular problems arose because of the subject of the research itself. Typically the subject of ethnographic research would be for instance the reality of drug takers, housewives or hospital patients. This research increasingly seemed to be investigating the reality of 'reality construction' itself. Knowledge of the conciliator's world is therefore not sufficient to understand the process of reality construction by conciliators in conciliation and nor is an ethnomethodological account of how reality is maintained through "front work" adequate in a situation of deliberate reality manipulation(70), though there is a great debt owed to both these approaches.

Therefore the decision was made to analyse the tapes of conciliation appointments specifically from the point of view of conciliator interventions to influence the course and outcome of the process of conciliation. The aim of constructing the reality that conciliators are portraying would be aided by conciliator interview material whilst client interviews would be used to understand the different realities within which clients lived and worked. This is therefore not an attempt to establish what "really happened" in conciliation - each participant would produce different accounts. The interactionist perspective adopted theoretically precludes this. The aim is therefore to understand the process by which conciliators attempt to bring parents into agreement and to understand why parents may or may not go along with this process.

The data therefore requires two levels of analysis theoretically. The sociological models of power and decision making already referred to

provide a framework for one level of analysis, especially that of client interviews. However the data from taped conciliation sessions was seen to require a very different conceptual framework within which to analyse the process of agreement production. The catalyst for the production of a fruitful theoretical model was the research done by Kathryn Backett in the early 1970's, using 22 middle class couples, each with two young children living, in Scotland. Though her findings may not be generally applicable Backett's application of an interactionist approach to family behaviour provides useful examples of how family members see and construct their role and place significance stress on the continuous nature of the process by which family members "construct sustain and reformulate working definitions of behaviour perceived as appropriate to their mutually held family realities".(1982:7)

In other words Backett is maintaining that the agreement producing mechanisms are to be found at the level of reality construction in the family: that agreements result from mutually negotiated meanings and images, not by the application of external norms or given family roles because such societal constraints and choices are too broad, fluid and lacking in specificity. Indeed different forms of behaviour could be justified by reference to the same general beliefs. Therefore different methods of agreement can be viewed as the tip of an iceberg as all forms rest on a much larger base consisting of a vast agreement-producing mechanism of shared reality and images. The form of agreement production on a specific issue is therefore not as important as the production of a store of such agreed realities. Such a base is constructed because it can be assumed that in an intact family the members wish to stay as one unit until the decision to break up is made by one of the

parents. Therefore both parents will be engaged with this process which involves "explaining behaviour to oneself and others so that it could be seen to be compatible with the mutually held reality being created".(Backett,1982:44)

An example given of one such explanatory tactic, or legitimation, is what occurs when the need for fairness in marriage conflicts with the fact that in practice many wives are taking far more than their "fair share" of household responsibilities and are giving up careers to stay at home with young children for a number of years. Such discrepant behaviour is legitimated in two main ways - by referring to an abstract image of a child's need for security and stability and by stressing the temporary nature of the wife's sacrifice. Without such legitimation resentment would be bred or a total rethinking of positions would be necessary.

Backett also gives examples of how images of children must be brought in to line in order that particular child rearing decisions can be legitimated. One such example is where the children should be expected to fit in with their parents' lives or vice versa. (1982:47) Couples who organise their outings to be back by children's bedtime explain this to each other by reference either to the needs of their particular children for a stable routine and plenty of sleep or to the needs of children generally for the security of their own bed at a particular time. Conversely couples who took children out with them legitimated such behaviour by reference to the general principle that children should fit in with parents and also by reference to certain images of children. In this case these images are that it is bad for them to be the controlling influence on family plans and also that children are not only basically adaptable but actually benefit

from family togetherness. Without therefore a shared belief in what their particular children could cope with and without a shared image of what generally constitutes the most important of childrens needs then no agreement would be possible on specific issues like bedtime. These shared beliefs may conflict with other shared beliefs and therefore the choice at any particular time as to which belief should have supremacy itself needs legitimation though this clearly emphasises the problematic nature of the construction of a shared reality.

Backett's approach is interesting therefore in its stress on the importance of the use of images, grounded and abstract, of parents and children, constructed in continuous interpretative exchanges".(1982:132).

I have described Backett's work at length because the perspectives it offers open up the five models of agreement production to another level of analysis -that of the minutiae of the difficult rapprochement process which is both a pre-condition and also part of the process of agreeing. More importantly for this thesis, to generalise from her work it would appear that the following processes are involved in the production of an agreed parental decision:

1. The collection of an accepted set of facts regarded as relevant. These facts can be jointly collected (by observation of the children by both parents on the same occasion or by parents separately on similar occasions) or supplied by the main caretaker. This therefore entails:

- (a) Some convergence of outlook so that the same facts are worthy of attention viz joint agenda setting.

- (b) The existence of occasions when both spouses are able to observe

the children in the relevant context and /or the willingness of one parent to accept the observations of the other.

2. An agreed explanation of these facts. This depends on:

(a) Sufficient general personal or acceptable second hand knowledge of the child in question to enable the facts to be given suitable contexts.

(b) The availability to both parents of similar possible explanations stemming from a theoretical knowledge of children or the history of the child in question or other particular children.

(c) The attractiveness to both parents of one particular explanation because of their shared experience of particular children and their holding of compatible abstract images.

3. The availability to both parents of a similar response to this set of facts. This entails:

(a) Similar personal aims/principles and life styles to restrict the field of choice to the same area.

(b) Shared or similar personal or family experiences of such responses or the lack of them.

4. A belief by both parents that the preferred decision/response can be implemented adequately. This entails:

(a) a belief in one's own or the other parent's relevant abilities.

(b) a trust that the other parent will implement the decision as agreed.

(c) possession of the necessary practical resources.

Such a model is useful in two ways. Firstly it provides four main stages at which agreement can be made partial or impossible and suggests therefore ten reasons why full agreement may not be possible. This in turn suggests various roles for conciliation in influencing this process and in compensating for gaps or blocks within these four stages. For example stage 1, the collection of facts, could be rendered ineffective by parental separation in that at least one parent is no longer able to collect his or her own facts first hand and also in that the convergence of outlook necessary for some sort of agenda setting may have been broken. Conciliation could therefore compensate by a conciliator seeing children and providing an independent set of facts or by providing an arena for parents to exchange facts or by conciliators providing their own agenda.(72), The theoretically possible roles that these four stages suggest therefore provide a store of hypotheses to test in field work and help in the evolution of theory.

Secondly Backett's model stimulated a coding framework (reproduced at appendix 3) for analysis of the twenty taped cases which categorised the function of conciliator interventions and noted the images influenced and the expert knowledge conveyed within each unit of the process. For this purpose a unit was defined as a part of the conciliation process in which the function or knowledge content of the conciliator interventions could be delineated from adjacent units. All appointments were therefore analysed as a series of consecutive units though units proved not to be of a standard length. Indeed the material from analysing the three categories of function based on the collection and explanation of facts, the availability and perceived viability of solutions and the mechanisms to encourage the search for legitimation and shared reality, provides the core

of this thesis.

Format of Thesis

Whilst the largest part of this thesis is concerned with the process of conciliation the analysis of data begins in Chapter 2 with a survey of the work of the conciliation service in the year during which most of the appointments were observed. It is hoped that this will therefore give the reader a clear idea of the characteristics of the conciliation service research and set it within a nationwide context. Chapter 3 will consider the question of responsibility for attendance at conciliation and for participation in a process which such attendance entails, by looking at referral characteristics and the expectations and beliefs of the clients themselves about conciliation. Chapters 4 to 8 analyse the process of conciliation by focusing on the construction of problems (Chapters 4 & 5), of the solution (Chapter 6) and of motivation (Chapter 8) together with the role of children in those cases at which they were present (Chapter 7). Chapter 9 looks more closely at the images used within the process of conciliation whilst Chapter 10 examines the influences within the marital and family history of the clients which may account for the varying degrees of "success" experienced by conciliators in encouraging parents to accept images which lead to a shared reality and subsequent parental agreement. Finally in Chapter 11 an integration of the findings of this research is attempted together with a consideration of its wider implications for social and legal theory.

CHAPTER 1: NOTES

1. Fostering a child under a Matrimonial Care Order led to an interest in access difficulties and the workings of the Matrimonial Causes Act 1974; involvement of my husband in early in and out-of-court conciliation schemes led to an interest in the role of such schemes.
2. The Robinson Report is the Report of the Interdepartmental Committee on Conciliation (1983) and Esther Rantzen the following year featured conciliation in her programme on BBC1. More recently 'You and Yours' on Radio 4 did a daily session on conciliation during a week in June, 1986.
3. The Solicitors Family Law Association, founded by solicitor John Cornwell, produced its own Code of Practice in 1983 setting out 26 guidelines for 'a conciliatory rather than a litigious approach' and has since lent the weight of its rapidly growing membership to the conciliation 'movement'. Judges in the Family Division and in County Court have made numerous statements in and out of court (e.g. Grant, Graham-Hall) and many Judges chair management committees of Independent Conciliation services (see D Parker and L Parkinson 1985). 'Probation' the journal of the Probation Services which includes DCWOs, has carried many articles over the last 3 years giving passionate support to the conciliation idea. The National Marriage Guidance Council has jointly funded and run several independent conciliation services and many other charitable organisations (e.g. N.C.H., Dr. Barnardos, Diocesan Welfare Associations) have set them up. Keith Best M.P. has on 2 occasions led a deputation of members of the Houses of Commons and Lords (including Baroness Faithful and Baroness Ewart-Biggs) together with

the pro-conciliation lobby, to the Lord Chancellor on the question of funding for conciliation.

4. For example Family Forum has organised national conferences on conciliation (attended by me on 23.10.81 and 21.11.85) which have been attended not only by all the bodies mentioned in note 3 above but also by representatives of CAB, Family Welfare Centres, One Parent Families, Psychiatric Units, Women's Refuges, Local Social Services Committees, the Salvation Army, Campaign for Justice in Divorce, Save the Children Fund, the Law Commission, Gingerbread, University departments of Law, Sociology and Social Administration, Housing Associations and the DHSS, to name but a few.
5. The Newcastle Conciliation Project Unit (see Ogus and Walker: 1985).
6. See Yates: 1983, 1985 and Davis and Bader: 1985a, b.
7. For a discussion of this conciliation:research link see the writer's unpublished paper 'Conciliation - the Theory and Practice' (Brunel 1984).
8. This section draws heavily on Parts 1A, 1B, 2A, 2B of the writer's unpublished M.A. Dissertation: 'Conciliation in Divorce - Is it the answer to access problems?' (Brunel University 1983).
9. There are no annual statistics for this but in 1979 there were estimated to be 200,000 separated women with dependent children (National Council for One Parent Families Annual Report 1980) and a Report by the Study Commission on the Family (the Family Policy Studies Centre) states that 1,500,000 children now live in one parent families (Families in the Future: A Policy Agenda for the 80s - reviewed in Family Law (Vol. 13, No. 4).
10. Central Statistical Office: Social Trends 15 (HMSO: London, 1985) quoted in Parkinson, (1986:5) who points out that some of these will

experience multiple separations.

11. This greater acceptance does not yet seem to have reached the American level where it is reflected in the widespread sale of divorce cards with greetings like 'May your divorce be a new beginning', quoted in Forter (1982).
12. Taken from O.P.C.S., summarised in Children and Divorce, the Children's Society 1983, p31 and from the Central Statistical Office: Social Trends 15, HMSO London 1985.
13. For a discussion of figures for remarriage and divorce see Haskey: 1984.
14. Formerly s2 Matrimonial Proceedings Act 1958.
15. Laid down by M.C. Rules 1977 r48. 98% of Petitions are undefended.
16. D.P.M.C.A. 1978 ss 1, 2, 8.
17. As defined at s52(1), M.C. Act 1973 and s88(1), D.P. and M.C. Act 1978.
18. This form is set out at Rule 8(2) of the M.C.R. 1977 and the Statement gives the following information to the Court:

(i) Residence (ii) Education/employment (iii) Financial provision
(iv) Access (v) Illness and disability if any (vi) Care/supervision orders, if any.
19. Report of the Matrimonial Causes Procedure Committee; 1985, paragraphs 4.33 - 4.37.
20. In research based on the Avon Divorce Court Welfare team, in 10% of cases the D.C.W.O. found circumstances 'very different' and in 21% 'different' from the Statement of Arrangements: in Social Work Today 1980, 12-15.
21. Sir Roger Ormond: 6th Hilda Lewis Memorial Lecture 1973, quoted in Murch: 1980, 213.

22. Some comments of the Booth Report (1985) are particularly relevant here: "Although we appreciate the argument that the duty imposed upon the Court by this section is not an adjudicative function and that it smacks of paternalism, we think that the matter is of such general importance that we should not consider recommending the repeal of s41 without proposing the substitution of some practicable alternative. We have not received any suggestion as to what that could be. Basically we have considered it to be our task to think how best to improve the procedures relating to the way in which the Court can consider the arrangements for the children "(para. 2.24).
23. See Chapter 9 note 109.
24. Indeed M. Southwell (1982) found that not all judges wish to push the child's right of access when the absent parent is not anxious for access. (I am grateful for permission to use this thesis).
25. See writer's M A Dissertation pp3-8 and discussion in Chapter 9.
26. See for example, D Mathieson in Probation Journal vol. 23, no. 3, 67 who wrote of "a state of confusion". See also articles to mark the centenary of the Probation Journal for 1976.
27. See for example: Fraser (1980), Millard (1979), Chapman (1979).
28. For a further discussion of the origins and development of these 2 approaches see the writer's M.A. Dissertation pp50-57.
29. Some DCWOs would argue that conciliation has been enjoined on them by the Practice Direction of Jan. 27 1971 (see Parkinson: 1986, 63-4) which has been little used.
30. See Parkinson: 1986 pp1-9 for a slightly different summary of the reasons for the 'recent focus on conciliation'.
31. In fact the financial consequences are not dealt with in all conciliation schemes whereas conciliation is now wider in its scope

because it does not confine itself to married partners.

32. For example by the Report of the Interdepartmental Committee on Conciliation (1983) pp 1-2 and the Booth Committee (1985) paragraph 3.10. Parkinson (1986) pp 64-5 talks of this definition as "widely accepted" and "widely quoted as the most most authoritative and comprehensive definition" though she goes on to say why it is unsatisfactory.
33. See Parkinson and Westcott (1980). Indeed B.C.F.C.S. was set up by a sub-group of the Bristol Finer Joint Action Committee which met from April 1975 onwards.
34. In a project funded largely by the Nuffield Foundation at the Department of Social Administration, Bristol University.
35. Formerly coordinator of the B.C.F.C.S., now organiser of the National Family Conciliation Council and whose latest publication (1986), pp 74-78 is a good starting point for a history of the B.C.F.C.S.
36. For a summary of the scene in Scotland and the Irish Republic see Parkinson: 1986, pp 197-99.
37. For criteria drawn up in 1982 see Parkinson: 1986, pp 107-8.
38. The service at which this research was conducted is not affiliated, for example.
39. Consultation Paper 1983 and Report 1985.
40. S Cretney in the Foreward vii to Parkinson: 1986.
41. This is a statement derived from overall impressions gained at conferences and meetings of conciliators and the reading of articles and counter-articles in journals. For example Davis and Bader (1985a and b) received a very hostile reception at the service researched whereas in fact its criticisms were very specific and did not attack

conciliation generally.

42. For example Davis G at Bristol and Lund M at Cambridge.
43. For example Donovan, Brophy, Bottomley.
44. E.g. M J Drake 1985: "It was emphasised that it is not a case of winning or losing, and joint parenting and responsibilities are not ended by separation". (p66).
45. Leaflet issued by NFCC "Conciliation in Divorce and Separation" p1.
46. See J. Bernard 1982 especially p12 and Gillespie 1972 especially p131.
47. For example, one of the more useful surveys is that done by Edgell and even here children decisions (in this case education and clothes) made 2 out of a range of 12 decision-making areas (1980:57-63). Similarly Platt's (1969) interviews included 15 questions on conjugal roles and decision-making and only 3 related to children, (outings, bed-time and education).
48. The classification used by Butt (1957) to refer to conjugal role relationships which included a predominance of joint organisation rather than a segregated organisation with differentiation of tasks and activities.
49. Edgell quotes the following works to support this contention:
McKinley D (1964) *Social Class and Family Life*, Collier Macmillan
Holter H (1970) *Sex roles and Social Structure* (Oslo University)
Oppong C (1975) *Human Relations* Vol. 28, 80-89.
50. Oakley 1974 especially pp138-160 which discussed Edgell 1980, pp 7-8.
51. For further discussion of Edgell's work and the assumptions regarding concepts of jointness and equality etc. in the literature and difficulties of research in this area see writer's unpublished Paper 'Conciliation in Divorce. How is this related to decision-making in

intact families?' (Brunel 1984).

52. E.g. Anne Oakley (1974) tries to be more precise (e.g. the husband's level of participation is classified as high, medium or low) but she still does not exactly indicate how she assessed her data except that it is 'relative' to the rest of the sample. She also assumes equality entails sharing of the same tasks, not the equal sharing of different tasks.
53. E.g. Blood and Wolfe (1960) used 8 areas of decisioning with different conclusions.
E.g. J Platt (1969) pp 288-291 found the percentage of couples giving 'joint' answers varied from 8% - 85% depending on particular questions.
E.g. D H Toomey 1971, pp 417-431 found 'no strongly marked pattern'.
54. In Dreitzel 1972, p110 at p114.55. E.g. E E Le Masters (1972) p110.
E.g. Benson 1968 Ch. IV 'The Passing of the Patriarch'.
E.g. Green (1976) refers to the 'matrist' age.
56. J Bernard 1982, p127.
A Oakley 1974, p149.
57. 1973, pp 31-2 replacing 'partnership' used in 1967, p61.
58. Interview in 'Woman' 11 Sept. 1982 quoted by T Fitzgerald in M Loney et al (Ed) 1983.
59. Address to Conservative Party Conference 1979 in M Loney et al.
60. For a discussion of literature re explanations for power inequalities between men and women, especially in marriage see writer's Paper 1984, pp 22-25.
61. This section will not attempt a comprehensive explanation of the methodology employed - this is to be found at Appendix 9.

62. For a good description of the 2 main approaches of sociology - qualitative and quantitative - see Schwartz and Jacobs (1979). Also for a discussion of 'sociological understanding' see Outhwaite (1975).
63. For a discussion of both techniques see again Schwartz and Jacobs (1979).
64. See Burgess: 1984, 147-63.
65. cf. Lufland's (1971) comment re categorisation of material that there is no substitute "for a close sense of the empirical circumstances" (p23).
66. See Spradley: 1979 for a discussion of language distinctions and the various 'translation' and writing methods, especially pp 29-33 and 205-215.
67. This role included elements that were imposed as well as sought; for example, being asked legal advice during conciliation appointments.
68. This balance was particularly important because the conciliation service was in its early days and therefore felt itself to be vulnerable.
69. For a discussion of reflexivity and feedback inherent in ethnography see Spradley: 1979, pp 93-4.
70. See Garfinkel (1967), Rogers (1983) and Turner (1974). For a discussion of criticisms of ethnomethodology see Douglas (1976 52:4).
71. See Hammersley and Atkinson (1983) for a discussion of the interactionist perspective research methods at pp 1-37.
72. For a fuller discussion of this, see writer's unpublished Paper (note 51 supra) pp 26-29.

CHAPTER 2: THE CONCILIATION SERVICE AND THE METHOD FOR ITS STUDY

The conciliation service used for this research is located in the Home Counties based on the County Divorce Court Welfare Service which had been operating as a separate Civil Work Unit since October the 1st 1982. At that time officers were beginning to use conciliation in the preparation of welfare reports and by March 1983 were supplying officers to staff In-Court conciliation at two county courts. Meanwhile, in the spring of 1983 senior Divorce Court Welfare Officers set up an out of Court service to run alongside the Civil Work Unit and operating from its premises, together with rooms in nine Probation Offices throughout the county, using Probation Officers and volunteer conciliators recruited mainly from other conciliation services, marriage guidance and social services but administered by the Unit. During the period of the research 28 conciliators were involved in at least one case each, nine of these were Divorce Court Welfare Officers doing approximately 30% of the referrals leading to joint appointments.(1) During the first year of the conciliation service, before the acquisition of the research samples began, the service dealt with 85 referrals - a higher number than most services recorded by the Robinson Report.(2) The figure rose to 154 referrals in the second year which is comparable to figures provided by a more recent study of independent out-of-Court services.(3)

Such are the bare facts about the Conciliation Service on which this research is based. Whilst Chapter 1 discussed the overall concerns of this

research and its general methodological approach, this chapter will address itself to particular descriptions of the Conciliation Service and its work as well as to an explanation of the methods used in its study, both of which will further an understanding of the analysis in subsequent chapters.

The object of this chapter is therefore threefold:

Firstly, to give a statistical picture of the work of this Conciliation Service.

Secondly, to provide an introductory overview of what takes place within the activity described as conciliation, in terms of its setting, personnel, time-scale and observed conventions.

Thirdly, to explain the conceptual tools which this research will use to study the conciliation process. (A fuller methodological account is contained in Appendix 9.)

A. The Conciliation Service

The aims of this research study do not depend on either the typicality of this conciliation service or of the cases and clients observed. The conciliators involved believed they were conciliating and the organiser with wide contacts in the conciliation movement, believed his service was not untypical. Conciliation is an activity which depends more upon the beliefs and understandings of those undertaking it than upon adherence to some generally accepted rules or procedures. The greater understanding of the 'meaning' of conciliation gained from this study is therefore significant in itself and has relevance for policy and academic discussions on

conciliation generally.(4) Nevertheless there are good reasons why this research has included a statistical survey of the work of this service over a year.

Firstly, there has been some statistical research (5) and much more is under way.(6) There is, quite rightly, interest in various institutional forms of conciliation and concern to identify the type and size on service of which any research is based. It was appropriate therefore, to locate this study within the general range of conciliation services available. Therefore all files of cases accepted by the conciliation service 1984/5 were examined, coded and computer analysis completed using S.P.S.S. so that the general characteristics of the service are available for comparison with those of other services. As yet, such a comparison is inevitably inadequate. The research done for the Robinson Report (1983) was small-scale and methodologically flawed, Yates' (1983,1985) research was based only on N.F.C.C. affiliated services. There is otherwise only a number of independent monitoring projects of individual services and the statistics arising from the valuable, but largely qualitative, research done by Davis and his associates. However, it is hoped that this study can be related to the findings of the Newcastle research project which is presently under way. The survey also helped to add a context for the observed sample which aided the process of understanding.

Secondly, for reasons outlined in appendix 9, the 24 observed cases were not acquired entirely at random. Statistics have therefore been compiled for all cases leading to at least one joint appointment for comparison with the observed sample of 24 in order to isolate, if present, any factors which

make the latter untypical and which would therefore be required for a better understanding of them.

Thirdly the aim of understanding the process and shedding light on responsibility for and within conciliation could also be furthered by looking for trends and correlations within a large sample, especially as regards characteristics such as family size, the legal status of the parents and the number of appointments. Lastly this project was built partly on personal dissatisfaction with statistical surveys being produced about conciliation. They can be useful as the above reasons indicate but they can hide as much as they reveal. Therefore a subsidiary aim of this statistical survey was that it would, by being produced in tandem with the observed sample which it includes, illuminate what is hidden or distorted by such statistical surveys. (7)

This Chapter will therefore describe various characteristics of the referrals and, where the state of current research makes this possible, will compare the sample with other conciliation services. Also, where applicable, it will compare the large sample with the samples of joint appointment cases and the 24 observed cases.

(1) Referrers

(i) Data on the origin of referrals was coded under two variables: the Agent and the Source. Therefore it was possible to indicate whether the mother, father or both parents initiated the appointment, either as the provider of the request or as the person in whose interests the agent would act. Detailed categories were provided for coding referral agents in order to show the great variety of agencies involved in referral to conciliation, as Table 1 shows:-

TABLE ONE

Whole sample: Referral Agents (8)

<u>Referrer</u>	<u>No. of Cases</u>	<u>%</u>
Mother	27	17.5
Father	20	13.0
Both Parents	2	1.3
Solicitor	36	23.4
C.A.B.	6	3.9
M.G. 1	1	0.6
H.V.	6	3.9
P.O.	7	4.5
S.W	12	7.8
C.G.	1	0.6
Relative/ Friend	6	3.9
Conciliator	1	0.6
Women's Refuge	1	0.6
Step Family Assoc.	1	0.6
Court unspecified	5	3.2
S. 41	3	1.9
Judge not S41 In Court Concil Magistrates	1	0.6
Court	2	1.3
DCWO 15	15	9.7
Total	<u>154</u>	<u>100.0</u>

Therefore:

31.8% of referrals (49 cases) are parental self-referrals.

23.4% of referrals (36 cases) are solicitor referrals.

17.5% of referrals (27 cases) are from the Court or Divorce Court Welfare Officer.

16.2% of referrals (25 cases) are from non Civil Unit 'caring professions' (S.W.s, P.Os. H.Vs)

11% of referrals (17 cases) originate from a variety of other agents.

Within the self-referrals the mother is the agent in slightly more cases than the father. This difference is more marked in the data for the source of referral and does not correspond to Yates' finding that fathers were slightly more likely than mothers to seek conciliation. (9)

TABLE TWO

Whole Sample: Source of referrals

<u>Parent</u>	<u>No. of Cases</u>	<u>%</u>	<u>Adjusted %</u>
Both	23	14.9	15.6
Mother	76	49.4	51.7
Father	48	31.2	32.7
Not known	7	4.5	Missing
	<hr/> 154	<hr/> 100.0	<hr/> 100.0

(ii) This Conciliation service has therefore a very wide range of referral agents: All sources listed in Appendix 3 of the Robinson Report are represented. Publicity for this service therefore appears to be wide ranging -both professionally and territorially. However this 'spread' may

not be typical of out of court services in that research so far suggests they depend more on solicitor referrals than does this service. The Robinson report (10) noted that half of Bristol's referrals came via solicitors as did Yates' study of eleven services, though her figures show a similar percentage of self referrals and a similar minority of cases from Citizen's Advice Bureaux.(11) Research into Cleveland Family Conciliation Service (12) also found that the majority of referrals came from solicitors (no statistics being provided because of difficulties in access to files) and therefore concentrated on the "key position" of solicitors. The researchers do suggest two temporary reasons for this which may be a relevant factor in interpreting other statistics. These reasons are that CFCS had originally deliberately restricted referrals to solicitors and that approval for referrals from Courts had taken a long time to arrange. It is also very likely that probation-based services do generally have a larger percentage of referrals from Courts, so affecting the overall referral statistics. Certainly Bromley F.C.S. which is also probation-based, has only 11% of self-referrals and 24% from solicitors with about a quarter of all referrals made by a Court (13) which compares with this research Services' 17.5% and contrasts with Yates' figure of 21% to cover all referrals other than self, solicitor and C.A.B.

This research also pointed out the extreme caution necessary in interpreting referral statistics. It was unclear from the files whether solicitors were merely agents of parents or acting independently. Similarly C.A.B. entries could often be reclassified as self-referrals in that

the Citizen's Advice Bureaux had been used simply to obtain a phone number. Even more interesting were the cases where neither the client, conciliator nor secretary were clear about the origins of a referral. This need not be the result of chaotic administration. There were indeed cases of simultaneous referrals and of clients or agents too upset to be coherent.

(iii) The totals for solicitor, Court, and social worker referrals are very similar for the whole sample, the sample of those cases leading to at least one appointment attended by both parents jointly (joint sample) and the sample of 24 observed cases (observed sample).

There is a slight difference in the self and others referrals in the whole and joint samples, though the joint and observed samples are similar. However the percentage of referrals from social workers and others is lower than in the observed sample than the joint sample though the difference is spread equally over the other three categories. There are also some differences in the source of the referrals.

TABLE THREE

Comparison of referral agents for 3 samples.

<u>Referrer</u>	<u>Observed</u>	<u>Joint</u>	<u>Whole</u>
Parents	29.2	23.3	31.8
Solicitors	25.0	22.1	23.4
Court	25.0	20.9	17.5
Social Worker	8.3	16.3	16.2
Others	12.5	17.4	11.0
	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>

TABLE FOUR

Comparison of source of referrals for 3 samples.

<u>Source</u>	<u>Observed</u> %	<u>Joint</u>	<u>Whole</u>	<u>Adj</u>
Both parents	25.0	22.1 (23.2)	14.9	(15.6)
Mother	37.5	45.3 (47.6)	49.4	(51.7)
Father	37.5	27.9 (29.3)	31.2	(32.7)
Missing Cases	0.0	4.7 -	4.5	-
	<hr/> 100.0	<hr/> 100.0	<hr/> 100.0	<hr/> 100.0

The observed sample is therefore slightly untypical in that the mother and father are the source of nine referrals each whereas the other samples have more mother source. This may be related to the smaller percentage of social worker and other referrals as these tend to be from a mother's agent as the following Table shows.

TABLE FIVE

Source:-

<u>Referrer</u>	Count Row PCT Col PCT Tot PCT	Both	Mother	Father	Row Total
Parents	1.	1	11	8	20
		5.0	55.0	40.0	24.4
		5.3	28.2	33.3	33.3
		1.2	13.4	9.8	
Solicitors	2.	2	9	8	19
		10.5	47.4	42.1	23.2
		10.5	23.1	33.3	
		2.4	11.0	9.8	
Court & D.C.W.O.'s	3.	10	3	5	18
		55.6	16.7	27.8	22.0
		52.6	7.7	20.8	
		12.2	3.7	6.1	
Social Workers & Health Visitors	4.	2	8	1	11
		18.2	72.7	9.1	13.4
		10.5	20.5	4.2	
		2.4	9.8	1.2	
Others	5.	4	8	2	14
		28.6	57.1	14.3	17.1
		21.6	20.5	8.3	
		4.9	9.8	2.4	
Column Total		<hr/>	<hr/>	<hr/>	<hr/>
		19	39	24	82
<u>2. Families</u>		23.2	47.6	29.3	100.0

(i) Location

In those cases where the parents have already separated, one parent may

have to travel a longer distance to the appointment. Certainly in the observed sample one father had travelled nearly 300 miles and the mother in Case 11 and the father in Case 7 expressed a deep sense of resentment at the appointment because the location was more convenient for the other parent. Therefore, as such resentment might influence the progress of conciliation, the location of mother and father were coded under 26 areas. In six of these areas, each a location for conciliation appointments, there lived almost two thirds of both mothers (100) and fathers (95). Likewise, if the data is recategorised then it is seen that 90.8% of mothers and 83% of fathers lived within the county. This is not a statistically significant difference though it may well mask transport difficulties compounding a difference of only a few miles travelling within the county. However, it is worth noting that only 4.6% of mothers travel from over 50 miles outside the county compared with 10.2% of fathers and, altogether almost twice as many fathers have to travel from outside the county as do mothers (17% to 9.2%). Within the observed sample also, a majority of parents (17 fathers and 22 mothers) live in the county and even more fathers have to travel from outside (19.1% compared with 8.3% of mothers) though five out of these seven fathers travelled from less than 50 miles outside. Nevertheless conciliators may well need to be aware of the potential power factors involved here.

(ii) Marital Status

Researchers have been concerned to ascertain whether clients are already divorced and for how long they have been separated because of existing conflicts of opinion about the optimum timing for conciliation in the process of separation and divorce.(14) These facts formed part of the data requested from conciliators but the response was disappointing. The results must therefore be treated with caution.

TABLE SIX

Whole Sample : Marital Status

<u>Status</u>	<u>No.of Cases</u>	<u>%</u>	<u>Adj %</u>
Living together: Married	29	18.8	21.8
Divorced: Decree Nisi	8	5.2	6.0
Divorced: Decree Absolute	55	35.7	41.4
Separated but no divorce	37	24.0	27.8
Separated but never married	2	1.3	1.5
Never married/Cohabited	2	1.3	1.5
Not known	21	13.6	-
	<hr/> 154	<hr/> 100.0	<hr/> 100.0

Therefore 49.6% (29+37 cases) were referred before a Divorce Petition had been filed which compares with the figure of 47.5% for the Bristol study with a smaller percentage of couples un-married (3% and 4.1%) However such statistics mask considerable complexities and the stage in the divorce - if relevant - may be less significant than the time separated. The data for the joint sample suggests that nearly half the couples who attend have been separated less than six months, if at all, but does stress that problems can be referred to conciliation much longer after separation.

TABLE SEVEN

<u>TIME</u>	<u>No of Cases</u>	<u>%</u>	<u>Adjusted %</u>	<u>Cumulative %</u>	<u>Cumulative % for observed sample</u>
Nil not Separated	17	19.8	25.4	25.4	17.4
1 month or less	3	3.5	4.5	29.9	17.4
5 weeks - 2 months	5	5.8	7.5	37.3	26.1
3-6 months	8	9.3	11.9	49.3	34.8
6-11 months	3	3.5	4.5	53.7	43.5
1 year	4	4.7	6.0	59.7	47.8
2 years	11	12.8	16.4	76.1	65.2
3-5 years	15	17.4	22.4	98.5	95.7
6-10 years	1	1.2	1.5	100.0	100.0
Not known	19	22.1	-	100.0	100.0
	<hr/> 86	<hr/> 100.0	<hr/> 100.0	<hr/>	<hr/>

As the right hand column illustrates, the observed sample had slightly fewer parents recently separated, but more separated for 3 to 5 years, though the missing values may have biased the joint sample.

(iii) The Children

295 children were involved in 148 referrals from which there is such data, 185 of this total being involved in the joint sample. Of the couples within this sample, twenty five percent had one child, forty four percent had two children and 29.8% three or four children with one couple being childless. The spread of ages within the families is indicated by Table 8.

TABLE EIGHT

Joint sample: ages of oldest and youngest children in the family.

<u>AGE</u>	<u>Youngest child</u>		<u>Eldest Child</u>	
	No of cases	Adjusted %	No of cases	Adjusted %
4 yrs or under	24	29.3	13	16.0
5-10 yrs	39	47.6	29	16.0
11-17 yrs	16	19.5	29	35.8
18 yrs or over	2	2.4	9	11.1
No children	1	1.2	1	1.2
Not known	4	-	5	-
Total	86	100	86	100

Therefore almost a third of the couples had a very young child with a further half having their youngest child at Primary School. Over two thirds of couples had families with the oldest child at Primary or Secondary school. The joint and small samples both have an average of just over two children per family (2.2 and 2.3) The spread of ages is also similar except that all families in the observed sample have children under eighteen but a slightly higher percentage have an oldest child over eighteen. (17.4% as opposed to 11.1%). Though these figures do not give total numbers of children of each age group they are not inconsistent with national figures of two thirds of children whose parents divorce as being eleven years old and under and a quarter as being under five.(15)

(iv) Care and Custody

As the following Table shows there is little difference in the distribution of caretaking (with or without a Court Order) in the three samples. Over two thirds of the cases have the mother as the main caretaker with the father in only 16% of cases and with a small minority where siblings are split between the parents as Table Nine illustrates:

TABLE NINE

Caretaker	Whole Sample		Joint Sample		Observed	
	No of Cases	Adj %	No of Cases	Adj %	No of Cases	Adj %
Mother has care & control	89	58.9	49	57.6	15	62.5
Father has care & control	25	16.6	13	15.3	4	16.7
Mother & Father have care of at least 1 child	7	4.6	6	7.1	2	8.3
Relative has care of at least 1 child	3	2.0	1	1.2	0	0.0
N/A parents not separated	26	17.2	15	17.6	3	12.5
All children over 18 and not living at home	1	0.7	1	1.2	0	0.0
Not known	3	-	1	-	0	-
	<u>154</u>	<u>100</u>	<u>86</u>	<u>100</u>	<u>24</u>	<u>100</u>

Except where the terms of the Custody Order were part of the dispute conciliators rarely asked about legal custody. Therefore a fifth of cases are missing from the analysis and in both the joint and whole samples another quarter are cases with separated parents who are known not to have any Custody Order. These factors may therefore account for the larger percentage of couples with Joint Custody Orders in the observed sample (13% as opposed to 7.1% in the Joint Sample), the smaller percentage with no Order (17.4% to 28.6%) and the slightly larger

percentage with mother custody (43.5% to 34.3%). In all samples father-only custody is unusual, ranging from 4.3% to 7.4% of the total.

4. Appointments

(i) Attendance

As the very existence of whole and joint samples has indicated, not all referrals lead to appointments taking place, either with individual parents or jointly. For the conciliation service researched there is a 'wastage rate' of 32.5% of referrals which lead to no appointments of any kind. This compares with the Robinson Committee's average of 20% (1983:Appendix 3). Out of 150 referrals there were therefore 86 leading to joint appointments (two preceded by separate interviews) and a further 18 resulting in at least one parent attending an appointment. This a a higher percentage of joint interviews than at Bristol F.C.C.S. (28.6% to 17.3%) (16). However Parkinson refers to separate interviews for both couples as 'shuttle mediation' and discusses research showing that initial enthusiasm for this method has now waned.(17)

Therefore 67.5% or 104 of referrals led to an appointment of some sort taking place and just over a half of the referrals (55.8%) led to a 'typical' conciliation session attended by two parents and two conciliators. However such statistics do not reveal the often long and complex process between referrals and appointments. Various dates were often offered before parents found dates suitable to them: this did not necessarily lead to either confirmation or attendance. For example 4.9% of mothers and

7.9% of fathers turned up alone for the first appointment despite confirmation of attendance by the other parent. Conversely of the 84 cases leading to a joint first appointment only 81 had been jointly confirmed. In the whole sample, in 10.6% of referrals neither parent confirmed and in 27.8% only one parent confirmed with equal numbers in the mother- only and father-only categories.(18)

(ii) Number of Appointments

Of those referrals leading to some sort of appointment 85.6% led to one or two appointments taking place with a small minority (5.7%) having five to eight appointments each. To my knowledge there is no research data on the average number of appointments (19) though conciliation is always referred to as a short term method, as opposed to long term counselling, and Parkinson says it is 'often' one to three appointments (20) The observed and joint samples have comparable percentages as Table Nine shows except for slight variations in the three to eight appointment categories, largely explained by the effect of one case differences on statistics based on so small a sample.

TABLE TEN

Three samples: Number of Appointments attended

Number of Appts.	Whole Sample		Joint Sample		Observed Sample	
	No of cases	%	No of cases	%	No of cases	%
1	63	60.6	48	55.8	13	54.2
2	26	25.0	24	27.9	6	25.0
3	6	5.8	6	7.0	1	4.2
4	6	2.9	2	2.3	2	8.3
5	1	0.9	1	1.2	0	0.0
6	3	2.9	3	3.5	1	4.2
7	0	0.0	0	0.0	0	0.0
8	2	1.9	2	2.3	1	4.2
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	104	100	86	100	24	100

Therefore the majority of cases do have only one appointment though the 8.6% of cases with four or more referrals is not insignificant in terms of both the resources of the conciliation service and the different approaches it may entail.

(iii) Length of Involvement

Statistics concerning the period of time from first to last appointment lead to similar conclusions.

TABLE ELEVEN

Joint observed samples: Length of involvement.

	Joint Samples No of cases	Adj %	Observed Samples No of cases	Adj %
N/A 1 appointment	46	56.1	13	54.2
2 weeks or less	5	6.1	3	12.5
3 - 4 weeks	5	6.1	0	0.0
6 - 10 weeks	17	20.7	4	16.6
3 - 5 months	3	3.7	1	4.2
6 - 12 months	6	7.3	3	12.5
not known	4	-	0	-
	<hr/>	<hr/>	<hr/>	<hr/>
	86	100	24	100

In both the joint and observed sample approximately 12% have appointments within a month, a further 20-24% within six months and 10 to 15% within a year. Excluding therefore those cases with only one appointment, approximately two thirds of clients complete their appointments in five months or less.(21)

(iv) Use of Conciliators

During the course of the research year twenty eight conciliators were listed by the service with twenty two acting as conciliators in the joint

appointments. Some of these were students, some left the conciliation service in the course of the year and two refused to participate in the observed appointments. These factors account for most of the minor differences in the use of conciliators within the joint and observed samples. There were wide variations in the use of conciliators by the service resulting from availability and experience of conciliators. In both observed and joint samples around three quarters of the cases were dealt with by conciliators coded numbers 1 to 10. (74.8% and 78.6% respectively) and in both samples conciliators 1 and 2 took part in a higher proportion of the cases than their colleagues. (22)

TABLE 12 Joint and observed samples : use of conciliators.

<u>Conciliator</u>	<u>Joint</u>		<u>Observed</u>		<u>Conciliator</u>	<u>Joint</u>		<u>Observed</u>	
	No	%	No	%		No	%	No	%
1	27	15.6	7	14.5	13	4	2.3	1	2.1
2	25	14.5	9	18.7	14	3	1.7	1	2.1
3	12	7.0	2	4.2	15	3	1.7	2	4.2
4	15	9.7	0	0.0	16	2	1.2	0	0.0
5	12	7.0	4	8.3	17	2	1.2	2	4.2
6	14	8.1	4	8.3	18	3	1.7	1	2.1
7	7	4.1	2	4.2	19	2	1.2	0	0.0
8	8	4.7	4	8.3	20	3	1.7	1	2.1
9	7	4.1	0	0.0	21	1	0.6	0	0.0
10	8	4.7	4	8.3	22	1	0.6	0	0.0
11	5	2.9	2	4.2	23-28	1	0.6	0	0.0
12	6	3.5	2	4.2	1 conciliator	1	0.6	0	0.0
					<u>TOTAL</u>				
						172	100.0	48	100

71

(v) Presence of Children (24)

Children were present at only a small minority of appointments as the following Table shows:-

TABLE THIRTEEN

	<u>Joint</u>	<u>Adjusted</u>	<u>Observed</u>	
	No of cases	%	No of cases	%
No of children at part or all of an appt.	74	87.1	16	79.2
At least 1 child				
.....1 appt.	9	10.6	4	16.7
" " " 2 appts.	1	1.2	1	4.2
" " " 3 appts.	1	1.2	0	0.0
Not known	1	-	0	-
	<hr/>	<hr/>	<hr/>	<hr/>
	86	100.0	24	100

This does not include the child who attended because of anticipated baby minding difficulties.

The observed sample therefore has a slightly higher percentage of cases which included child attendance. These statistics do not reveal the great variation in lengths of time children attended or whether they attended on their own, with siblings or with parents.

5. Problems Referred

(i) Coding this data presented particular difficulties, some of which are discussed more fully in later chapters.(24) Firstly referral forms contained conflicting information as to the problem referred and secondly the problem, contrary to the researcher's assumption, was not always a dispute but rather a concern' or a need for advice. Coding was able to take account of the latter but entailed arbitrary decisions about the former. Table Fourteen therefore gives details of the original categories for the whole sample in order to show both the complexity of the problems referred and the prominence of problems over the details of access.

TABLE FOURTEEN Whole Sample: problems referred

<u>Code</u>	<u>Number of cases</u>	<u>Adjusted %</u>
1 Principle of access	24	15.8
2 Details of access	59	38.8
3 Unspecified access difficulty	6	3.9
4 Access & separation	2	1.3
5 Custody & Care	8	5.3
6 Custody and separation	3	2.0
7 Custody and access	6	3.9
9 Custody and access & separation	2	1.3
10 Disputed separation/ reconciliation	21	13.8
11 Separation queries	7	4.6
12 Separation counselling	1	0.7
13 Physical separation - disputed accommodation	2	1.3
14 " " no dispute	2	1.3
15 Financial issues	1	0.7
16 Dispute over child rearing	1	0.7
17 Concern over child's behaviour/health	5	3.3
18 Dispute re: education	1	0.7
19 Advice and counselling re: access	1	0.7
00 Not known	2	-

Therefore:

Access was the referred problem of 59.2% of referrals (Codes 1 to 3 + 19)

Separation was the referred problem of 19.1% of referrals (Codes 10 to 12)

Custody was the referred problem of 5.3% of referrals (Code 5)

Child rearing was the referred problem 4.6% of referrals (Codes 16 to 18)

A mixture of problems was referred in 8.6% of referrals (Codes 4, 6 to 9)

Accommodation on separation was the referred problem in 3.3% of referrals (Codes 13 to 15)

Caroline Yates does the above analysis in terms of issues referred, not cases referred.(26) Therefore for comparability the above figures represent 167 issues in 152 cases. 59.9% of these issues concerned access (Yates: 48%), 12.6% of these issues concerned custody (Yates:25%), 24.6% of these issues concerned separation (Yates:11%) and 3.% of these issues concerned property and finance (Yates: 14%).

If Yates sample proves to be typical of out-of-Court schemes then the research service would appear to specialise more in access than separation decisions. This perhaps partly reflects closer links of the Probation-based schemes with the Courts and the Civil Unit where the definition of access is a major preoccupation.

It is also interesting to note that 16 cases (10.4%) of referrals were not referred as disputes (Coded 11, 12, 14,17 & 19), again problematising the 'parental dispute settlement' image of conciliation.

(ii) Though the figures for joint appointments are very similar to those for the whole sample there are some significant differences in those for the joint and observed samples.

TABLE FIFTEEN

	<u>Joint Sample</u>		<u>Observed Sample</u>	
	No of cases	Adj %	No of cases	%
Access	51	60.0	14	58.3
Custody	4	4.7	0	0.0
Separation	17	20.0	1	4.2
Child Rearing	2	2.4	2	8.3
Mixed Issues	9	10.6	6	25.0
Accommodation	2	2.4	1	4.2
Not known	1	-	0	-
	<hr/>	<hr/>	<hr/>	<hr/>
	86	100.0	24	100.00

However there are various possible explanations for these differences

which also stress particular difficulties in using conciliation statistics. Firstly, in the observed sample the high percentage of mixed 'issues' hides four cases (3, 14, 16, 17,) which, within conciliation, concentrated wholly, or to a significant extent, on custody issues and which led to a disputed custody application resulting in a change of custody. The low separation figures can be similarly explained. These figures therefore depend on the interpretation of which problem is most 'severe' by referral agents, conciliation service administrative staff as well as the parents themselves. Secondly, subsequent chapters describe the process by which problem definitions are constructed in conciliation. Therefore the referral forms, not always completed fully before the appointment, may well embody the conciliator's perceptions of the problem stemming from the appointment rather than referral information. Thirdly these very categories of problems are themselves artificial and therefore, as with all coding, material is lost. Which category, for instance, conveys the nature of a difficulty arising from a child's violent behaviour at access times while final custody decisions are unmade?

(iii) Cross tabulation of the source of referrals by the problem referred shows that a larger percentage of referrals originating from the mother are concerned with separation (27) and a slightly larger percentage of father referrals are concerned with access.(28)

TABLE SIXTEEN

(Row %)	<u>Whole Sample</u>	<u>Source by Problem</u>				
	<u>Problem</u>					
Source	Access	Custody	Mixed	Separation	Children	Other
Both	43.4	8.7	4.3	39.1	0.0	4.3
Mother	58.6	5.3	9.3	18.6	5.3	2.7
Father	66.0	4.3	10.7	8.5	6.4	4.2

As Table Six suggests, both parents jointly are more likely to initiate conciliation for separation difficulties though the number involved (9 cases) is small.

6. Outcome

(i) Agreement Rates

The Inter-departmental Committee Study Group has been criticized for using a very narrow definition of 'agreement' which linked success to the avoidance of applications to Court and therefore found a success rate of 25 to 38% for voluntary schemes which compared with 50 to 70% rates provided by conciliators.(27) Nevertheless Yates having dismissed the Robinson definition as unsatisfactory (28), uses conciliator definitions to conclude that 63% of cases reached full agreement and a further 21% on some of the issues. She argues that the discrepancy between the two sets of statistics must be partly accounted for by inadequate statistical methods used by the Robinson Report. However, she does not hint at the real difficulty - that of using statistics that are a product of the interpretations of conciliators and researcher. Follow-up interviews showed that even parents found difficulties in deciding whether, if agreement had occurred at conciliation, it should be viewed as full or partial. Conciliators also felt agreement was an inadequate indicator of even the immediate outcome and wished to include some element of "better parental relationships". Clearly in the 10% of cases where the issue was not in dispute the recording of outcome is even more problematic. There is also a particular difficulty of coding those files where the content of the 'full

agreement' recorded by conciliators did not tally with the referred problem. Lastly in compiling the very popular (31) agreement rates there is the difficulty of choosing the sample on which to calculate statistics. Many publicized success rates do not specify whether the figure is a percentage of the total referrals of the conciliation service or the total of cases leading to appointments. Therefore for this conciliation service 47 cases with full agreement and 11 cases with some agreement recorded can lead to very different figures. As only one of these 58 cases did not entail a joint appointment then 57 out of 86 'typical' conciliation cases, i.e. 67.1%, led to agreement.

BUT this is also 58 out of 104 where some sort of appointment took place i.e. 55.8%

AND it is also 58 out of 154 referrals i.e. 37.7%

The observed sample is typical of the joint sample as Table Seven shows.

TABLE SEVENTEEN - Joint and observed sample outcome

	<u>Joint</u>		<u>Observed</u>	
Full or partial agreement	57	66.3	15	62.5
No agreement	25	29.1	7	29.2
N.A. (no dispute or incorrect referral)	3	3.3	2	8.3
Not known	1	1.2	0	-
	<hr/>	<hr/>	<hr/>	<hr/>
	86	100.0	24	100.0

(ii) Success Factors

To investigate factors associated with success, a number of relationships were analysed statistically, but none produced statistically significant results. There are, however, suggestions as to possible influences on the agreement rate which need further research. Firstly there does not appear to be any difference in the likelihood in reaching agreement of father or mother originated cases. If the mother is the source, the agreement rate (out of 144 cases) is 35.6%, compared with 37.5% for those cases where the father is the source. However if both parents initiate the appointment, success appears more likely - 47.8% of such cases reaching agreement with the difference more than accounted for by a higher agreement rate. Secondly if the outcome is correlated with the referral agent for the whole sample, whilst all agreement rates range within 60 - 76%, Divorce Court Welfare Officer and other helping profession referrals appear to have slightly more success, and success is least likely when parents are most responsible for the appointment.

TABLE EIGHTEEN

<u>Row %</u>	<u>Joint Sample</u>	<u>Referral by result</u>		
		<u>RESULT</u>		
<u>REFERRER</u>		<u>AGREEMENT</u>	<u>NO AGREEMENT</u>	<u>N.A.</u>
Parents	60.0		40.0	0.0
Solicitors	68.4		26.3	5.3
Court/DCWO	72.2		23.2	5.6
S.W./H.V	76.9		23.1	0.0
Others	60.0		33.3	6.7

Thirdly all samples were analysed using three main categories for marital status: Not separated, Divorced (with decree Nisi or Absolute) and Separated but not divorced (including never married or co-habiting) There were no significant differences between figures for the different samples. However there is a suggestion that un-separated, married parents reach fewer agreements than do other parents as Table Nineteen indicates.

TABLE NINETEEN Joint Sample: Marital status by Result

<u>ROW %</u>	<u>Agreement</u>	<u>No Agreement</u>	<u>N/A</u>	<u>TOTAL</u>
1. Not sep.	47.1	47.1	5.9	22.1
2. Divorced	75.7	21.6	2.7	48.1
3. Others	73.9	21.7	4.3	29.9

Valid cases 77 Missing cases: 9

Therefore this would suggest also that there is little difference in the success rate between those already divorced and those who are separated but not yet divorced. Much of the debate has centred on whether conciliation is more successful pre- or post Decree. The Robinson study group found a slightly higher success rate for conciliation post Decree Nisi whereas Yates in her preliminary sample found that 49% agreed post Decree Nisi whereas 70% agreed if they came pre Decree Nisi. (30) My

figures are not totally comparable but would suggest, at least, that no definite conclusions can yet be drawn and that the post- and pre Decree division is one that interests the Courts but is not necessarily a significant division for conflicted parents.

Lastly there may be more likelihood of agreement if the problem is confined to a single issue - access or custody - than if the problem is a mixture of issues or the question of separation itself. Within the joint sample the agreement rate for access issues is 70.6% and for custody 75%, compared with 55.6% for mixed issues and 58.8% for separation. This is an unsurprising conclusion but may need to be borne in mind when comparing success rates or services with varying 'specialisations' in terms of problems referred.

7. Involvement of others

The involvement of Courts, Divorce Court Welfare Officers and other professionals in the referred problems has not yet been surveyed statistically but the involvement of others appears as relevant to the question of parental responsibility in and for conciliation. Such data was coded within three variables - one dealing with the Court, another with the Divorce Court Welfare Service and the third with all other professionals involved. However the conciliation service did not wish to ask for this information and it was therefore only recorded if clients or referrers happened to mention it. However it is interesting that in the joint sample, in 31.4% of cases a Court case was known to be pending. Also in 9.3% of cases there was known involvement of the Divorce Court Welfare

Service in the case prior to conciliation and in 33.7% of cases there was known involvement of other agencies, especially the Social Services (8.1%) and Child Guidance (5.8%) As these can only be underestimates they may suggest that conciliation is being seen as an alternative to a variety of other 'arenas', not simply that of the legal system. It also suggests a network of professional referrals to conciliation which may leave little room for parental responsibility.

Comparison of this study with others available reveals both overall trends and divergencies. For example this service has similarities with other probation-based services in its spread of referral agents but there are also differences, as there are within the independent services researched. The light shed by this study on the development of conciliation services and the construction of statistics concerning their work points to extreme caution in interpreting statistics to find 'trends' in services which are developing rapidly, in an ad hoc fashion and with considerable administrative problems in record keeping. In the present state of knowledge it is not therefore possible to state whether this service is 'typical' but it is clear that it has many similarities with other services and that, within this service, the observed sample is not untypical of its workload. Furthermore, of particular interest, are those statistics regarding the source and agency of referrals and the involvement of other professionals in the cases referred which indicate a sharing of responsibility for attendance at conciliation and this issue will be dealt with in Chapter 3.

B. The Conciliation Process

Whilst the major part of this thesis is an analysis of the process of conciliation itself, it would seem useful to describe briefly the physical setting within which this process takes place and the time-scale and general progression of appointments. This section seeks to outline the range of conciliator experience and approach but also to explain the research decision to ignore such differences in the analysis of the conciliation process.

i) Setting

It is important to include material on the 'setting' for two main reasons: firstly some sociologists have looked at the role of the spatial arrangements in terms of their symbolisation of the power factors operating. A good example of such an approach is to be found in Pat Carlen's 'Magistrates' Justice'(see note 41). Whilst this thesis is not concerned with such an analysis this section will reveal various aspects of the setting which may be indicative of the power relations to be explored within this thesis. Secondly, it is hoped that a 'visualisation' of the setting will aid in an understanding of what is meant by conciliation.

As the service researched is probation-based, all appointments took place within premises owned and staffed by the Probation Service. If possible appointments were arranged to take place in the Civil Unit building which during the first half of the research period was part of a Probation Service area office and for the remainder of the research was a newly acquired building in a nearby town used solely by the Civil Unit and not near any

Court or Probation Office. In the event appointments were distributed almost equally between these two locations and two other offices - one in the south of the county and one in the north. A small number of appointments were also observed in two other small Probation Offices.

Therefore the entrance to the building was often via a main Probation Office entrance and in two locations this was adjacent to the Court, though increasingly more appointments were arranged at the new Civil Unit.

Clients normally first reported to a Civil Unit or Probation Office receptionist. Not all premises had adequate waiting areas but arrangements were usually made to keep clients apart if both arrived before conciliators were ready for them. Conciliators made a point of saying no more than brief introductions to a client before the arrival of the other parent, and similarly did not usually allow one parent to stay behind and talk at the end when the other had left. Not all locations had refreshment facilities accessible to conciliators and none had facilities independently accessible to clients. Only on one occasion was tea or coffee offered to clients.

The type of room in which the appointment took place varied considerably, especially in the first part of the research. When interviews took place in Civil Unit premises a spacious lounge area was used. However, if more than one appointment was taking place on the same premises at the same time or for appointments at other locations, then the room used was usually an office. Indeed, about half the observed appointments took place in the private office/room of a Probation Officer (including Divorce Court

Welfare Officers). Such rooms varied greatly in size, some being used normally by only one officer, others being used by two or three officers or a Senior Officer with more spacious accommodation. The standard of furnishing also varied, some rooms being extremely pleasant and well decorated and furnished, whereas one particular setting was rather 'tatty' and cluttered in appearance.

However, parents and conciliators always sat in comfortable armchairs - if necessary imported from elsewhere. Sometimes four such chairs produced a tight fit but there was usually room for four people to sit comfortably apart. Some conciliators discussed the arrangement of seating beforehand - a few preferring the two parents to sit opposite the two conciliators and others preferring an alternation of conciliator and parent. However, there was no set pattern. Where there was a desk in the room I sat behind it with the tape recorder. If not I sat outside the circle of four chairs. Whilst appointments observed took place in only six locations the rooms used in each location were not always the same ones nor always decided upon more than a few minutes in advance. It was therefore difficult for me to anticipate problems of unobtrusive seating and easily accessible power points, especially as I could not be 'visible' until parents had granted permission for my presence.

Lastly, appointments varied in the degree of formality in both language and dress but within quite small limits. Most conciliators and clients wore semi-formal dress and introduced themselves and clients as Mr Smith, Mrs Brown etc. However, in ten cases (31) the conciliators went on to ask clients how they wished to be addressed, stating a preference for Christian

names. In all these cases parents agreed to this though all tapes reveal a sparse use of names with a preference for personal pronouns.

ii) The organising of appointments.

The secretaries of the Civil Unit took calls and opened letters requesting conciliation appointments and such requests were then passed on to the Honorary Secretary of the Conciliation Service who arranged first appointments in that she fixed dates and locations and found two conciliators for each appointment. The Unit Secretary sent out letters to parents outlining this information whilst the Honorary Secretary liaised with conciliators. Several phone calls and letters were often needed before an appointment was made suitable to all four participants. Conciliators usually arranged subsequent appointments directly with conciliators.

Conciliators did not always work in the same pairs. The Honorary Secretary took note of any particular preferences or dislikes but this involved a very small minority. Therefore the two factors which influenced the pairing of conciliators were the availability of individual conciliators at the time/place required and the need to put inexperienced conciliators with the more experienced conciliators.

iii) The Conciliators and their approach.

There was no formal training for conciliators and most of the conciliators observed were already part of the service when the research began. New conciliators, who were expected to have a social work, family therapy, counselling or Probation Service background, were usually introduced by personal recommendation. They were also expected to attend group meetings and to act as the second conciliator during an informal

'probationary' period. They were also encouraged to attend training days organised by the Service and elsewhere but these were ad hoc sessions so that training was largely of the "sitting with Nellie" variety.

Conciliators came therefore from different backgrounds. An initial concern was to detail these and attempt to determine whether they influenced different styles and techniques of working. Certainly there were variations in the approach of conciliators. For example, sometimes one conciliator 'led' throughout the appointment - either after prior discussion or because of personal 'strength' (as a result of forcefulness, belief in directive intervention or through greater experience. In such cases the second conciliator's role was largely one of agreeing with the other conciliator. Whether or not co-joint working was equal working or not, some conciliators had a forceful style of intervention, others conducted sessions in a very quiet voice and spent more time listening. Some conciliators used distinctive techniques or employed a particular type of intervention. (See Chapter 3, pp328-331)

However, analysis of the tapes confirmed the hypothesis formed through observation of appointments and conciliators' discussions that different approaches, techniques and experience did not affect what was being conveyed by conciliators nor what agendas were being followed or outcomes prioritised. On only two occasions was this not so, - after the first appointment of case 18 the interview with the conciliators revealed a divergence of approach and one of the conciliators later rang me to express concern at the other's understanding of the problem and desired solution and secondly, towards the end of the first appointment of case 21 the

conciliators asked if they could retire for a few moments. At the end of this appointment it was clear that the conciliators felt they had been 'pulling in opposite directions' and anger was expressed. These exceptions therefore rather stressed a unanimity of conciliator approaches and aims which transcends divergences of style and technique. Therefore in view of the questions this research wished to address, as outlined in chapter 1, a decision was made not to concentrate on such divergencies.

iv) The course and number of appointments.

Of the 24 observed couples, 13 attended only 1 joint appointment, with a further five having two joint appointments and the rest with 3 - 8 appointments. (See appendix 2.) Only in case 14 (a social worker referral) did conciliators, to my knowledge, discuss the probability of more than one appointment being needed. First appointments therefore usually proceeded for at least an hour in similar fashion for all couples. That is, as subsequent analysis will show, appointments began with questions to establish an agreed problem area and an agreed explanation for it. In many cases this could take at least an hour though it could have moved on to, or been interspersed with, other types of intervention, notably concerning solution and motivation.

Though conciliators did not usually discuss time limits with clients (see chapter 3, p113) they saw 1½ - 2 hours as usually being 'appropriate.'. Therefore, whilst conciliators stressed that they had to 'play each case by ear', after about an hour conciliators usually had to make decisions on whether to steer the session towards a solution to be agreed on, whether to concentrate on part of the problem and leave further problems for another meeting, whether to concentrate on constructing an agreed problem which

clients could try to solve themselves or whether to concentrate on problem construction and leave solutions to subsequent appointments. Such decisions were not usually made explicit but where they were they could take the form of moving the process onto specific solution work, as for example in :

"Do you think that for tonight we could perhaps just discuss what to do with Robert for say the next couple of months?" (32)

In this case the parents had an In-Court conciliation appointment and therefore the conciliators in effect gave up the attempt, about an hour into the two hour appointment, to seek an agreement which would avoid the need for the Court appointment and instead concentrated on a short term solution. A similar comment was made to Mr & Mrs Kay with a view to setting up another conciliation appointment to deal with longer term problems. (33)

However by the end of appointments conciliators did usually sum up their 'thinking' about the course of an appointment and whether another appointment was necessary. For example the following comment prepared the way for the end of an only appointment.

"I think these people are going to work on themselves." (34)

On the other hand in Mr & Mrs Cann's appointment solution work had dominated interventions after about the first 20 minutes when conciliators began to suggest particular compromise solutions which were clearly not acceptable. The conciliators therefore brought the meeting to quite an abrupt end after hour and a half with ;

"What I think we've got to move onto now, because I think we've probably

moved as far as we can, is, do you feel we ought to have another meeting?..... If you can both give some thought to where you are, what's possible....." (35)

Therefore conciliators propose subsequent appointments for several reasons; because the appointment had been mainly problem definition, because the appointment was deemed to have concerned itself with only part of the problem, or because the solution accepted was felt to be short-term so that a further stage needed to be negotiated or because conciliators felt that a solution could not be implemented without the pressure arising from the need to report back. Time-permitting, conciliators discussed their approach to subsequent appointments beforehand. Usually the same conciliators did all the appointments of one case . (36) So for example, in Case 3, the conciliators decided that they needed to concentrate on problem work as the first appointment had concentrated on solutions, and it was felt that the extent of the problem had not been fully revealed. In Cases 11, 14 and 19 conciliators aimed to concentrate on the next phase of access and in Cases 6, 7 and 12 to interview children. (see Chapter 7)

This is not to suggest that all planned subsequent appointments took place (37): in two cases one parent decided to use the Court instead and in two cases the parent dropped his or her access demands. Even more importantly, this is not to suggest that subsequent appointments always followed a planned progression from the previous appointment or that they always concentrated more on solution work. For example, there are 7

appointments where a second joint appointment took place which was taped and fully analysed and in 6 of these the balance of problem/solution work was altered but this included 2 cases where the second appointment had relatively more problem work. (38)

v) Outcome

The above section discussed the type of outcome of a first appointment to be found in those cases where a second appointment was planned. The outcome as recorded in conciliator files was concerned with whether or not full or partial agreements had been made by the end of the last (or only) appointment attended. As Table 17 (p78) showed, such agreement was recorded for 15 out of the 24 observed cases with 7 recorded as no agreement. (However, see Chapter 10, pp 437 for a discussion of the difficulties in defining outcome.) Of the parents interviewed (covering 21 cases) those in 12 cases felt agreement had been achieved, in 6 cases that there had been no agreement and in 3 that there had been no dispute. The perceptions of conciliators and parents did not exactly tally as 6 parents gave answers different to those recorded by conciliators. (39) In 2 cases observed (Cases 4 and 15) conciliators had written out the terms of the agreed access and parents had taken away signed copies but usually no formal records of outcome were made for parents or solicitors and conciliators completed their reports later.

The Conciliation Service has no follow-up for its cases and therefore no knowledge of a longer term outcome unless a parent later makes contact or the Civil Unit becomes involved in a subsequent Welfare Report. However, of those parents interviewed who had reported some agreement made at

the last or only appointment, in 5 cases parents said that it had "not lasted" and in 6 cases that it had lasted, with 2 cases (6 and 19) where the mothers said it had not lasted and the fathers said it had.

C. Studying Conciliation

Chapter 1 outlined the reasons why a decision was made to concentrate on gaining an understanding of the process of conciliation and to place it in a context of family patterns of responsibility and decision-making for children. The latter part of the chapter (pp 31-41) also explained the methodological approach deemed most appropriate to fulfil such aims. This approach clearly has links with two existing ways of studying dispute resolution - both of which have proved helpful in the provision of particular frameworks and insights but which have not been seen as sufficiently fruitful approaches to use in this study. The best way to lead on from the bare description of conciliation so far given to the detailed analysis made in the rest of this thesis may therefore be to discuss these two approaches in order to explicate more fully the approach of this research.

i) The Processual Approach

With its origins in the anthropology of law (see Snyder:1981, 142-4) this approach concentrates on the characteristics of disputes as processes and has sought to distinguish the phases which are universally valid in the life history of disputes. This approach, which is particularly developed in the work of Gulliver (see 1973 for a discussion of such a 'general model' and 1979 for a fuller analysis of this approach), is not only intrinsically interesting but was helpful in stimulating theory within this study for several specific reasons. Firstly the processual model stresses the

distinction between the work of defining issues, that of searching for solutions and that of bargaining on disputed solutions, which are reflected in the separate analysis of problem and solution stages in this study. More significantly this approach does attach more importance than many others to the stage of information collection and definition of issues in dispute: "for to define a situation is to imply what can be done about it." (Gulliver, 1973:678; 1977:17-21). Thirdly, whilst constructing the roles of adjudicator and mediator as "analytically distinct" Gulliver does point out that, in practice, these roles may merge because of the various degrees of control which may be used within each role. He discusses these various roles of the mediator (1977, 25-34), concluding that, "the truly disinterested mediator is in fact rather rare." This literature therefore opened up various useful theoretical possibilities as to the ways in which conciliators might be controlling the process. Lastly this approach is valuable in its concentration on the role of norms and power within the process and the relationship of the invocation of norms to "efforts to assert control over the paradigm of argument." (Camaroff and Roberts, 1977:106). In terms of conciliation this focussed attention on the possible importance of legal norms, but also on the possibility of other norms being influential, particularly those deriving from social work theories.

However, the processual approach focuses on the over-riding importance of process - the delineation of stages and the movement from one stage to another - whereas, in the conciliation appointments observed, the delineation of processual stages proved difficult because of the complex intermingling of stages. Admittedly processual analysis does stress that the model is ideal: "The process of negotiations is seldom straightforward, going on clearly from phase to phase." (Gulliver, 1973 :690) Gulliver

nevertheless goes on to say that, "The overlapping and interconnection of each phase requires careful consideration." For a study of conciliation aiming to focus on "the universe of meanings" (Roberts,1983:549) within conciliation as well as the types of interventions by which such meanings are conveyed, the emphases provided by a processual framework are not seen as sufficiently fruitful for this purpose, given the complexity of the analysis it would entail.

Furthermore, processual analysis generally includes an emphasis on the control of the flow of information by the parties which did not appear so valid for conciliation. For example Gulliver has written:

There will be a need to accept ignorance and to hold opinions open until more useful information is available Each party attempts to control the information he gives out so as not to reveal what is thought best hidden(1977:17-8)

In most appointments observed clients did not appear anxious to withhold information, such a desire being largely stemmed by conciliator initiatives. The processual approach to mediation may therefore imply more considered strategies and control on the part of the disputants than rings true for conciliation. More generally, imposing such a framework may well 'hide' characteristics individual to conciliation in the search for the universal. Indeed the more 'open-ended' conceptual framework employed did reveal a category of interventions directed at parental motivation itself which operated across processual stages.

However, this is not to imply that the processual approach cannot or should not be applied to conciliation. What it is meant to accentuate is that the major concerns of this study are not those of the processual approach and

that concentration, for example, on the process by which "each party comes to understand the situation more clearly" (Gulliver: 1977,20) diverts from questions of who is usually clarifying what, and whether 'understand' has any general characteristics and meanings across the conciliation process. Therefore, whilst all interventions by conciliators were initially analysed in terms of whether they were concerned with definition of the problem, selection of solution or construction of motivation, subsequent analysis concentrated on the relationship between these interventions and the expressed views of parents. It also focused on the content of these interventions in terms of images and knowledges conveyed. For this purpose therefore the models derived from family sociology which were discussed in chapter 1 helped in the construction of a more useful conceptual framework.

ii) Linguistic analysis

In that this study focuses on the verbal interaction of participants it clearly has links with those studies which analyse the use and significance of language in various contexts. There are of course many different approaches to such analysis and many empirical studies of them have been done in legal and non-legal contexts. (40) One influential approach to conversational analysis derives from ethnomethodology, with its aim of examining not underlying 'realities' but how the "appearances" of social order are produced. Therefore such an approach focuses on the study, in great detail, of tapes and transcripts of conversation, or "naturally occurring talk" (Atkinson and Drew,1977:33) to explicate how social order is accomplished through talk itself. So for example, Maxwell Atkinson has used this approach to study court room interaction, partly out of a dissatisfaction with existing ethnographic approaches to the study of such

settings (41) which he sees as focusing on the 'exotic' and ignoring "many features of 'ordinary' conversational practice." (Atkinson and Drew,1977: 31) He has therefore focused on "features of court-room talk which appear to be noticeably different.... from those exhibited in conversations."(p194) This led to particular analyses of 'turn-taking' and 'shared attentiveness' in the examination of witnesses and defendants, the 'management' of challenge and accusation and the 'production' of justifications by cross-examined witnesses. The emphasis is therefore on how particular actions are achieved in terms of the minutiae of language, for example, the structure of sequences, the placement of questions within an utterance, the frequency and length of pauses and the use of devices to continue or terminate a sequence.

Such an approach is basically providing a different way of looking at a process or setting which has already received attention from other methods of sociological research. It is not so much concerned with what is being done by the talking, but rather with how the talking is being done. Conciliation could be analysed in this way to focus on the linguistic techniques by which conciliators control the 'conversation' and therefore structure the conciliation process. Indeed, the treatment in this study of, for example, conciliator rephrasing and initial questions, owes a debt to this approach. However the aims of this study reveal that a more general understanding of conciliation is the first requirement of present research.

More recently research done by O'Barr has tried to meet some of the criticisms of this particular approach. by aiming to analyse "middle-level linguistic phenomena" as opposed to such "micro-level interactive

encounters" (1985:661), therefore, using "significantly larger units of data". His research, based on the Duke University Project of the 1970s, was primarily concerned with variations in the style of passages of evidence given by witnesses, and concluded generally that such variations evoke significantly different responses in legal decision-makers. The actual research revolved around four sets of linguistic variables: powerful/powerless speech, hypercorrect/formal speech, narrative/fragmented testimony and simultaneous speech by witnesses and lawyer. These were derived from theoretical writings in sociolinguistics and social psychology and anthropology and also from their ethnographic study of the court-room. The emphasis was on form, rather than content of testimony and obviously involved a very high degree of selection from the 150 hours of tape available to them.

O'Barr and Conley have recently extended this 'middle level' analysis to litigant narratives in small claims courts to assess the effect of the informality of procedures, again using tapes and group discussions to isolate "frequently recurring themes". (1985:674) Such an approach could usefully be applied to conciliation and would for instance provide interesting examples of the use of the juxtaposition of 'everyday' expressions to convey normality, and 'scientific' language to prioritise and legitimate. Conciliators as well as researchers would be interested in the styles and forms which are seen as more 'powerful' and convincing. However the texts of conciliation appointments are very long and, unlike O'Barr and Conley, I had no suitable basis of knowledge for the selection of narratives to analyse, nor the time and resources to provide the initial ethnography and extensive taped records which this approach clearly

requires.

The approach of this study therefore had to be one which allowed the researcher to be more 'open' to the data and unconstrained by conceptual frameworks which might not be fruitful. For this reason some of the tape were given a preliminary analysis in terms of problem and solution stages only but keeping as a checklist the model gained from Backett's work (see Chapter 1, pp36-41) and looking at the material solely in terms of conciliator response and initiative. This analysis revealed other categories, notably that of motivation constuction, and these were incorporated into the final framework(42), which allowed a concentration on meanings as well as strategies, and perceptions as well as process.

CHAPTER 2: NOTES

1. Table 12 gives further details on the use of conciliators.
2. (1983) Appendix 3 and para. 4.4: these give an average rate of referrals (excluding Bristol CFCS) of 38p.a.
3. Yates has conducted a study of 6 services affiliated to the NFCC, operating in their 1st and 2nd years and found only one had a figure below 30 and 3 had around 100 p.a. in their second year (1984:3-4). Her later study of 12 services was based on only 303 cases but this reflects difficulties of obtaining completed questionnaires rather than referral statistics (1985:1-3). See also Parkinson, 1986:173-4.
4. This compares with the 'defence' of their approach given by Coffield et al when they state, "The value of the detailed case study such as this is that it presents a testing ground for policy: the central questions are not only about the typicality of the families; but also about the way in which a national policy can influence particular cases which this study describes". (1980:15)
5. For example several polytechnics and university departments are involved in 'monitoring' the local conciliation service, e.g. Nottingham Polytechnic.
6. The Newcastle project team includes an economist and a statistician.
7. For example discrepancies regarding the 'meaning' of referral agents/source are discussed in Chapter 3 and the problem of deciding on the issue referred in Chapter 4.
8. See Appendix 6 for a coding frame and an explanation of the abbreviations used.
9. Yates (1984); Parkinson (1986:175).

10. (1983) Appendix 3,p5 and Table preceding Appendix 4 as well as B.C.F.C.S. Report 1982 which gave a figure of 51% of total referrals as coming from solicitors with only 3% from Courts.
11. 1985:12-14. She found that 42.6% of men and 47.5% of women were referred by solicitors, with only 3.9% from CAB and 3.8% of self referrals (compared with 7% and 32% respectively).
12. See Bowen et al (1984).
13. See Robinson Report (1983) Appendix 4 and Davis and Bader's Report on Bromley Conciliation Bureau (1983, Department of Administration, Bristol). The Robinson Report also estimated Court referrals at 25% though Davis gives a figure of 18% from local Courts with the addition of 27% from D.C.W.O.s and social workers. If the percentage of social workers in Davis' sample is comparable to that in the service researched (16%) then his total Court figure would be 28%.
14. See for example, Yates, 1984:6-7 and 1985:6, who found there was a higher success rate pre-decree nisi.
15. See Parkinson, 1986:5.
16. Using figures from Parkinson, 1986:77 (i.e. giving a a third of couples not meeting at any stage) and comparing them with the 18 (out of 104) 'abortive' cases for the service researched.
17. See Parkinson : 86-92.
18. See Chapter 3 for a discussion of possible reasons for these figures.
19. The Robinson Committee Study Group in its costings used an average of 3 hours per case in out-of-court schemes but add that "subsequent findings at B.C.F.C.S. suggest (this) is a conservative estimate". As sessions at the service researched are rarely less than 1½ hours, then

this would be working on an average of 2 appointments per case at Bristol which compares with the average of 1.8 appointments per case for the researched service.

20. 1986:154.
21. By collating categories for 2 weeks to 3-5 months inclusive and expressing this total as a percentage of 40 and 11 cases respectively the figures are 67.5% for the joint sample and 63.6% for the small sample.
22. This means that analysis of the conciliation process is heavily influenced by the work of these 2 conciliators. Nevertheless there may well be comparable situations in other out-of-court schemes and certainly in-court conciliation is usually staffed by a small team.
23. The attendance of children is discussed in Chapter 7.
24. Particularly Chapter 4.
25. This is only partly accounted for by 4 cases referred by the mother and none by the father for advice or counselling re separation.
26. This is accounted for largely by the difference in source of cases concerning the principle of access. viz. 13.3% of mother referrals as opposed to 21.3% of father referrals.
27. Report, 1983.
28. 1984:5.
29. 'Popular' in the sense of much researched, much debated and much publicised.
30. See note 14.
31. Cases 4, 14, 15, 16, 17, 20, 21 23, 24.
32. Conciliator 7: Case 24(15)
33. Case 11(14)

34. Conciliator 2: Case 23(13)
35. Conciliator 11: Case 3(18)
36. The exceptions are Cases 7 and 8 where one of the conciliators in each case moved away from the area after the first appointment.
37. Second appointments had been planned at the end of Cases 1, 4 5 and 16.
38. The 7 appointments are of Cases 3, 6, 7, 10 12, 19, 21. In case 7 both appointments had more solution work. In Cases 3 and 12 the second appointment had more solution work. (See Appendix 4)
39. Fathers: Cases 7 and 9, Mothers: Cases 10, 17 and 23.
40. For example see the following three collections of papers which give an idea of the breadth of the concerns of this approach:
- J. A. Fishman (Ed. 1968): Readings in the Sociology of Language, Mouton: The Hague.
- P. P. Giglioli (Ed. 1972): Language in Social Context, Penguin: London
- W. H. Whiteley (Ed.): Language Use and Social Change, O.U.P.:London
41. For example Pat Carlen's 'Magistrates Justice' (1976), Martin Robertson: London
42. See Appendix 3.

CHAPTER 3: WHOSE APPOINTMENT IS IT?

The scope given to parental responsibility in conciliation is seen as an important advantage of conciliation over other methods of resolving the disputes that occur on or after separation. Where, however, is this responsibility deemed to begin? Who is responsible for the making and attending of appointments? Such questions need to be asked for 4 main reasons:

1. There may be a 'feeding-in' to the appointment which may entail no parental responsibility.
2. There may be parental responsibility for initiating and attending conciliation but a responsibility based on inadequate or false ideas of what conciliation is so that responsibility for the conciliation process which occurs becomes problematic.
3. There may be parental responsibility for initiating and attending appointments but it may not be joint. Differential amounts of responsibility may have consequences for the course and outcome of conciliation.
4. Conciliators hold certain assumptions about clients' attendances and may base their interventions in the conciliation process on these assumptions. It is therefore important to test these assumptions which may affect the course of conciliation.

A "They don't have to come"

The assumptions made by conciliators hinge upon two questions: whether clients attend voluntarily and why they attend. Basically conciliators

believe that attendance is voluntary and certain views about client motivation depend on this. The publicity leaflets for the Conciliation Service point out it is a 'voluntary, out of court service' and the organiser has stressed that, in comparison with in-court conciliation, the out-of court service is "entirely voluntary" and there is "no pressure to come or stay".

(1) When confronted with the views of clients who felt they had been pressurized in some way conciliators have argued that this viewpoint is due to client difficulty in admitting responsibility for a "genuine agreement". In other words it is a client ploy to deny responsibility by blaming other people. Though this raises the question of why some clients feel the need to deny responsibility it is not seen to invalidate the voluntary nature of the attendance or resulting agreement. Similarly conciliators impute control to clients referred from other agencies when they make such comments as "They are hawking themselves around", (2) or "We're just another agency to try". (3) Yet there is ambivalence because the view was voiced that such clients are "heartily sick of being pushed around".(4) 'Voluntary' can also encompass a certain amount of pressure as is revealed in a decision of whether Magistrates should be encouraged to refer clients. "Magistrates can refer, clients don't have to come but it's put to them in such a way they do come" (5)

However conciliators are fully aware that pressure does reduce the voluntary nature of attendance and have discussed when and where the line should be drawn. For example cases involving a 35 minute phone call with an angry father to persuade him to attend (6) and a 25 minute talk with the solicitor involved (7) were cited. The conciliators tended to feel that, even though, such 'conversations' had proved crucial in effecting

attendances, they could be justified as the final decisions still rested with the client. Furthermore in those cases where pressure could be acknowledged - this especially applied to Section 41 referrals where no Satisfaction Certificate had been granted - conciliators stressed that 'participation' in conciliation was still voluntary as clients might feel constrained to attend but did not have to take part when they got there.

For most conciliators these assumptions concerning voluntary attendance are genuinely held but others appear to use these assumptions as conscious strategies without feeling the need to 'believe' them. For example one case was discussed by conciliators where the client had threatened a particular course of action which he claimed to be based on remarks made during conciliation by a conciliator. A conciliator expressed the fear that, "Immature people, though treated as responsible adults, will use information negatively" (8) The concern of this meeting centred however round conciliator responsibility, rather than whether conciliators should constitute parents as responsible in all cases. Some of the ways in which attendance is used in the construction of responsible parents are discussed in the next section.

B. "You're both here"

Conciliators use the 'fact' of client attendance to make various statements, in the course of conciliation, about parental motivation in 'coming to conciliation'. One such is praising clients for attendance.

"Well it's very nice to see you both here and very good of you both to come." (9)

"I think I felt it was good the fact that you could both come here and talk".(10)

Attendance is therefore constituted as a positive and good action. It is also employed to constitute a parental desire to reach agreement: "You're both here which actually says something about both of you wanting to sort out something about the access". (11) Or to constitute parental love and concern for the children.

For example these three statements were made to Mr. and Mrs. James:

"Thank you for coming 'cos I know when we talked last time it seemed to be quite difficult for you to get here together so I think that really says something about putting your son's interests first".

"I think you've both come because you care about your son".

"I took the view that the very fact that both of you were prepared to come meant that you actually had some concern for your son". (12)

Such comments were also made to the children who attended.

"The two of them care enough about parenting well and about the 3 of you to come and see us to see how they can make things better, if they can, for the three of you" (13)

"The thing is they're both here because they care about you because they both think it's important that they should carry on being mum and dad even when they're not living together anymore" (14)

Potentially more significant is the conciliators' use of the fact of attendance to rebut the attempt by one parent to shatter the conciliators' assumption of joint concern for the children. For example when Mrs. Adams queried the father's love for the children the response was; "We can only listen to what he has to say and take the fact that he's here as being a good intention on his part" (15)

Similarly, Mrs. Lloyd was told: "He is a loving, caring father or he would n't be here" (16) and Mrs. Spencer's attitude was queried with:

"You see what so often happens in these situations is that actually a lot of fathers find the whole situation much too painful and instead of actually being prepared to come and sit and talk about it like this they actually back off totally, then the kids feel absolutely lost and rejected" (17)

The same assumption of a motivation to communicate and co-operate with the other parent is sometimes found in letters to clients as for example in, "Firstly we thank you for keeping the appointment - this in itself demonstrates a willingness to attempt to co-operate with each other for your son's sake" (18)

Statements imputing significance to attendance all therefore assume very positive feelings on the clients' part towards conciliation. It is assumed attendance 'means' parents are good parents willing to talk and co-operate over the children. Other motivations are not assumed though the difficulties of attending together are acknowledged. As many of the statements quoted above are made at or near the beginning of the appointments these assumptions are often being made before any personal knowledge of the parents is acquired and without any 'evidence' that it is so.

Not only is attendance accorded significance but also the manner of attending. If one parent arrived late this was usually discussed by conciliators afterwards and accorded 'strategic' importance, for example that it was a "powerful weapon" and never "really" due to unforeseen

circumstances or transport difficulties. Similarly, clients finding that appointment dates were inconvenient was also seen as part of the "fight" continuing between the clients, as were client attempts to fix the venue nearer to their homes than the other parents'. Even, as happened in 3 of the observed cases, one parent "having" to leave an appointment to collect children from school was seen as a deliberate way of preventing agreement being concluded. This was not seen as a lack of information to clients about the duration of appointments, because of the assumption that clients have control within the appointment as well as over their attendance.

The verbalisations of these conciliator assumptions are important because they both mirror a concept of responsible parenting held by conciliators and also help in the constitution of clients as responsible parents. Any ambivalence about the "truth" of these assumptions, expressed privately is, in practice, ignored. It would therefore seem to be useful to compare these 'constituted' motives with what clients believed were their reasons for attending (19), because the effect of interventions based on these assumptions may well be influenced by any discrepancy between assumptions and clients' views of the situation.

C. "I was told to come"

Firstly, it is easy to find parents who clearly were "fed-in" to the system with no responsibility for initiating the appointment and who did not therefore feel their attendance was entirely voluntary.

In two of such cases referrals were from Section 41 hearings: in one of which a certificate had been granted and one not. Mr. Berry was so

confused on being asked why he had agreed to attend conciliation that he fetched a pile of correspondence to see whether I could sort the answer out for him. He had thought he was attending a meeting at the Divorce Court Welfare Office to discuss the Joint Custody he had asked for and he believed he had been "summoned" because the meeting would be followed up by Court. In fact the Satisfaction Certificate had already been granted, with sole custody to Mrs. Berry who believed that a Divorce Court Welfare Officer, not the Judge, had suggested a meeting ("I think he arranged it actually") to sort out access details and "I went along with it."

The mother in the second Section 41 case, Mrs. Vaughan, said she attended because, "The Judge said, 'Well fathers should have access to a child'. And that was it really. He said, 'We'll have to bring in the Welfare', or something and I thought they were going to make a Report." When asked whether she knew the Conciliation Service was a voluntary one she replied, "Well I gather we didn't - er - there wasn't much choice you know. We both had a letter to say would you attend thisIt wasn't really a choice I had. It wasn't really them saying 'oh well, would you like to come and discuss this?' It was more or less a case of I was told to come".

Parents from other types of referrals were also confused as to exactly how and why the appointment had been made. For example a father apparently referred from his own solicitor explained

"I wrote to my solicitor about the weekend access difficulties - he must have passed it on. I didn't know about the Conciliation Service at all" (Mr. Field) and another father, Mr. East, thought he had turned up for a Marriage Guidance appointment.

Other parents seem to have been content to accept the referral without questioning what conciliation was. For example Mrs. James, referred by the father's solicitor accepted the appointment as "just another meeting we keep having to have," Mr. Parker stated only that "The solicitor advised me" and many more parents said that they had not heard of conciliation till their Social Worker, Solicitor or Divorce Court Welfare Officer had suggested it. Indeed, except in the case of joint parental referrals, the probability is that at least one parent will not have been involved in the initial decision to refer the problem to conciliation. It is also not safe to assume that if the referral is from one parent's agent that that parent will have been involved as Mr. Field, quoted above, reveals.

D. "I agreed to go"

However parental replies show that clients' attitudes to conciliation and their views of concerning pressure to attend were not automatically coloured by the amount of active involvement in the initial decision or indeed by the type of referral. What appeared more important were the perceptions of whether the referral had been imposed or not - whether clients saw their consent as active or passive.

(i) Passive Consent

Certainly there was a group of seven parents who felt they had been expected to attend and who had no idea of what was going to happen next. The parents in cases 2, 6 and 22 quoted above clearly fall into this category. Another father, Mr. Gale, said that the Divorce Court Welfare Officer who had made the appointment had not told him what to expect

and that his (the father's) main concern at the time had been where "the meeting" would be held. The mother quoted above as referring to "just another meeting" went on to explain that she "had been to many meetings about my son and access. I didn't really take much notice". Mr. North, referred by a family Social Worker found his solicitor had not heard of conciliation either. He decided in retrospect that he had agreed to go because, "I suppose in a way I was hoping it might bring us back together again" even though he knew the referral was about access.

There was another group of parents whose replies indicated a more 'thought-out' acceptance but who nevertheless did not appear to give active consent to the process of conciliation. Their acceptance of appointments was therefore either for negative reasons or for reasons unconnected with the possible content of conciliation. Two fathers in this small group expressed very similar views.

"Basically I agreed to go because I felt it wouldn't do any harm. If didn't go it would be a negative way of handling the situation, so I went but with reservations." (Mr. Cann)

"Um, well, I didn't think it could do any harm..... and I thought - well, ok, this must be some means of showing that perhaps I'm not always in the wrong" (Mr. Quin)

The other two fathers attended for reasons which are basically an elaboration of this motivation - that is to vindicate themselves but specifically in the eyes of the Court.

"The thing is, you see, to put it quite clearly, if there's conciliation offered I can't refuse because if we went to Court and the guy said, "Well you

havn't even tried so I've got to agreeI mean all the Judge would turn round and say is "Well, you could have gone along and tried this. Ok I'm going to order a conciliation". (Mr. Upton)

"I first, heard of conciliation from my solicitor. He said I needed to do all the right things first. I had to show willing to talk and save the marriage ... He didn't tell me what to expect. There was so many formal things going on at the time - um - I didn't really sort of think about it. It was just another formality". (Mr. Parker)

There are also two anomalous cases which ought to be mentioned here. Mr. East attended only because he thought his appointment was at Marriage Guidance and had to be persuaded from leaving immediately. When interviewed he said he was grateful the conciliators had agreed to "sit as Marriage Guidance Counsellors", (the conciliators did not believe they had), and so he had stayed. Another parent, Mrs. Spencer, had at first agreed to attend because under the impression it was compulsory though she had been told otherwise by the day of attendance.

Including these two parents, 13 of the 30 parents interviewed therefore either had no positive reason for attending other than believing it was expected of them or that it could help to establish their personal good faith. It could be argued that this attendance was therefore in varying degrees involuntary and their motivations mixed or unknown.

(ii) Active Consent

The rest of the parents interviewed had a clearer idea of what they thought conciliation was and why they initiated the appointment or agreed to go.

All these parents were either self-referrals or had become convinced, by the date of the appointment that, in some measure, conciliation might be good in itself. The motivations of these clients depended on their expectations which fell into two main categories:-

(a) Conciliation is basically an advice agency with varying degrees of directiveness in the advice given

and

(b) Conciliation is basically an arena to talk which might also resolve disputes.

An Advice Agency

Nine parents saw the Conciliation Service as an Advice Agency. One client reported that her solicitor had led her to believe "that a conciliatory board (sic) was an advisory board".(Mrs. East) Another, who had already talked to a Divorce Court Welfare Officer on her own said, "I told my husband how helpful she'd been to me -even in money matters - for instance how he got his tax back so that the maintenance didn't seem so expensive". (Mrs. Quinn) She was obviously thinking of conciliation in terms of further help and advice to them both as was Mr. Todd who explained, "We needed a certain amount of professional legal-type adviceWe needed to know that what we were proposing to do was the right way of going about things from the point of view of the system".

Mrs. Todd independently explained that, having already been to Marriage Guidance,"It seemed the next logical step. We were asking around for -you

know -how do you do this? What's the best for the children?" She also added "We thought they would tell us what to do I suppose. Yes I think we - er - particularly, my husband was sort of expecting them to say 'Well, in order to do this you do - 1,2,3.'"

These parents and others were therefore looking for directions rather than a list of possible options. For example one mother said her solicitor had told her the Conciliation Service "might give directions as to how to go about the custody problem or make some arrangement".(Mrs. East)

There is a variation on this expectation for the three parents who thought of conciliation primarily in terms of giving advice to the other parent.

"I suppose I really wanted someone to tell her off and tell her all the things I'd found out from the books I'd read" (i.e. re: children and divorce). (Mr. Kay)

"I attended because I thought my wife had made an appointment for Marriage Guidance.....I had wanted a Marriage Guidance Appointment because all I wanted was someone to sit down and tell us who was right and who was wrong". (This parent later made it clear he believed his wife was totally in the wrong).(Mr. East)

Mrs. Smith agreed to attend because "maybe they could perhaps make him see something that I couldn't".

Three more parents - all mothers - saw conciliation as an advisory agency having a specifically child-welfare orientated approach. In two cases this was seen as a directive agency but one that would be on their 'side' and

upholding their views of the children's interests. As Mrs. Field said, "I only called in conciliation for the children not me", (my underlining), implying the summoning of an agency to put things right. The other parent said of her expectations,

"I wasn't told very much - all I was told was that I'd sit in a room, we'd both sit in a room and discuss my son's welfare and what was best for him was what I wanted 'cos his dad couldn't see that - that was what I wanted. At that particular time he was saying I was neglecting him and being cruel to him. The room was better than I expected - I don't know - dealing with the D.H.S.S. you see blank walls and all that and you expect it to be a similiar sort of thing - blank walls and 2 chairs and a table and whatever and nothing else but there was nice pictures on the walls and kiddies' toys in a cupboard and chairs and tables and ashtrays". (Mrs. North)

Whilst this clearly acknowledges an element of discussion, conciliation had nevertheless been defined beforehand as another Welfare Agency. The third mother had made the same assumptions but her comments revealed an alarming ignorance, even 3 months after attending conciliation, of who "runs" the service and a continuing feeling of shame at being asked to go to conciliation.

"He came to conciliation Service - Welfare that's how I see it. I think, personally you do take it very hard when your husband takes you to Welfare. Its like an insult, a personal insult. Well I felt I thought the Conciliation Service was the Welfare because he came round to tell me. He made no bones about it. He said, 'You'll be getting a letter from the

Welfare - I'm going to take you to the Welfare.' I took it as a personal insult, I did honestly, I think anybody would really. All I knew was that the solicitors said 'Go, it will be in your best interests to go.' What would you assume by that? You'd assume it was something to do with the children later on - should your husband be awkward when you go to Court - well".
(Mrs. Spencer)

Though this mother had found out more about conciliation by the time of the appointment she later reiterated, "If it's not put across properly to the person that has to go - especially somebody in my situation - the mother - then it can be taken personally."["] This continuing view is reflected in her answer to the questions of whether she would attend conciliation again if necessary when she said that she would like to because the agreement was failing but wouldn't because if she asked "That would antagonise him. Definitely. He'd take it harder than I did".

A Place To Talk

Slightly more parents interviewed saw conciliation in terms of a place to talk. For example, Mrs. Adams had wanted "an arena to talk" with the father and her solicitor had suggested that conciliation would be better than a 4 way solicitor/client discussion. Similarly three fathers said,

"I think I was just expecting an opportunity to be able to discuss things because we had great difficulties in communicating". (Mr. Hall)

"I expected just that we'd talk and see if we could sort it out between ourselves". (Mr. Owen)

"My solicitor also suggested we ought to talk using Marriage Guidance or Conciliation, about the children. The wife wouldn't consider Marriage Guidance". (Mr. Parker)

Mrs. Ward, who heard of conciliation from an Esther Rantzen programme, explained that "a TV programme showed teenagers saying they would feel better if their parents could talk to each other. I didn't want to make any particular agreement but felt that the children might be happier if their father and I talked".

Some parents however saw it as a more purposive arena than these quotations suggested and several saw it specifically in terms of an alternative dispute resolution agency. For example:

"I had no time to go to Court and get what I wanted. The Conciliation Service was the only possible mechanism suggested. Also I did not want access to be imposed on the girl by a Court anyway". (Mr. Lloyd)

The mother in this case also said she attended "to try to avoid Court" as did a father who saw conciliation as "just to help to avoid going to Court". (Mr. Hall) Similarly a father referred by a Judge who was not satisfied with the proposed arrangements for the children saw conciliation as an alternative to expensive solicitor negotiations.

"Essentially all the way through what we didn't want to do was have a big slanging match with solicitors which was going to cost £20 for a half hour session and £10 for a letter and that sort of thing". (Mr. Innes)

E. "Anything's worth a try" (20)

It would however be wrong to give the impression that parents had one clear idea of what conciliation was before they attended. Some replies showed two or more, sometimes contradictory views, of what it would be like and one aspect of their expectations cuts across all these views: the existence or extent of optimism regarding the outcome of conciliation. Many clients clearly did not go with great hopes as these replies suggest. "My solicitor didn't exactly encourage me - well she did encourage me to go for the above reasons. She didn't actually have much confidence in the ability of conciliation to come up with it". (Mr. Cann)

"Other than that she said 'Don't bank on anything!'" (Mr. Owen)

"There was the possibility of getting things resolved". (Mr. Upton)

On the other hand some parents said they now thought their hopes had been unrealistic.

"I expected more than what happened there". (Mr. Gale)

"We thought they would tell us what to do". (Mrs. Todd)

"I suppose I expected a miracle". (Mrs. Ward)

Others had not considered the possibility that agreement was the purpose. for example those parents who foresaw the preparation of a report, or of advice being given to change the other parent's views.

Conclusions concerning parental responsibility for taking part in the process of conciliation are therefore as complex as the parental situations and motivations themselves. About a third of the parents interviewed could

be said to have given largely passive consent. Of the remainder who gave more active consent slightly more viewed it as an arena to talk, and possibly agree, (15 parents) overlapping with the 10 parents who saw it mainly as an advice or Welfareagency. The only firm conclusion may be that conciliators cannot assume that all parents feel they attend voluntarily or have come to co-operate over parenting or negotiate an agreement.

Referral Characteristics

Nevertheless is it possible to identify any factors which may held to account for these varying degrees of perceived responsibility and expectations? One possibility is to look for characteristics in the referrals. In the observed sample the cases were referred as follows: 6 each from parents (Self), solicitors and Courts/Divorce Court Welfare Officers Service, 2 from Social Workers and 3 from others (mainly Citizen's Advice Bureaux and friends or relatives).

Research has shown that parents at in-Court conciliation do feel under pressure (21) and therefore parents referred from Courts and Divorce Court Welfare Officers may feel likewise. Certainly of the 7 cases covered by those clients who felt that they had been 'sent' to conciliation 2 are referrals from Section 41 hearings. However the father in the other Section 41 referral did not feel under pressure - except that of eventually satisfying the Judge - but as his ex-wife refused to be interviewed it is difficult to assess the significance of this. There are no other referrals

directly from Court in the observed sample though there are 3 referrals from the Divorce Court Welfare Officers known previously or contacted separately from the Court proceedings.(22) Certainly the three parents interviewed had ambivalent views about attendance but nevertheless felt some responsibility for attending. Also those clients who perceived conciliations imposed also included parents referred by solicitors and Social Workers, though it may be significant that none are parent referrals.

Similarly there are no clear conclusions to be drawn from the distribution of referrals amongst the groups with different expectations of conciliation but there were indications of possible factors. All those parents interviewed who attended conciliation primarily to discuss and communicate were self or solicitor referrals except 2 cases which fell into the discuss-to-avoid-Court category. (23) Also those who thought it primarily an advice or Welfare agency were not referred from Court or Divorce Court Welfare Officers except for those who saw it specifically in terms of an investigatory Divorce Court Welfare Service. Taken overall there is a suggestion, no more, that even in a voluntary out-of-Court Service referrals from Court and Court-related officers do produce more parents ambivalent or hostile to attendance than other referrals and that solicitor and parental referrals lead to more positive expectations.

It is possible that the 'source of a referral' is more significant than the 'agent' referring. In other words, who is the referrer seen to be acting for? In the observed sample 9 referrals each are from the mother and father, (Self or agent), and 6 from both parents (this includes joint self-referrals and those referred from Court). It may be significant that the 4 parents

who attended because "It would do no harm" or because it might give them 'points' in future court proceedings were all fathers referred by the other parent's agent, whereas parents feeling they had been fed into the system, with one exception, came from their "own" solicitor, Social Worker, Divorce Court Welfare Officer or Judge. Possibly the significance is in the suggestion that fathers or mothers find different significances in the source and type of referral. For example the 4 parents with 'negative' motivations were all fathers whereas those parents attending under the assumption that they were attending some Child Welfare Agency were all mothers. Similarly of those parents referred from Section 41 hearings, the two mothers assumed that it was "to bring in the Welfare" (Mrs. Vaughan) and to "get me to accept" (Mrs. Berry) whereas the 2 fathers did not assume their parenting would be under investigation.

These few parents suggest that fathers may be able to contemplate conciliation with less emotional involvement and anxiety. This may be due to the fact that these mothers had care and control of their children (24) and therefore were potentially more vulnerable yet these fathers also included two with care and control, one not yet separated and applying for care and control and another hoping for care of one of the children. In this sample therefore the mothers appear more defensive in similar situations. But these sex-differentiated groupings are minorities and the sample also has a smaller percentage of Social Worker referrals than the one year sample, (though the percentages are almost the same for the other categories of referrers) so that one type of referral is under-represented in this analysis.

It is also worth noting that these hypotheses are based on statistics which are a product of the interpretations of their compilers. Material from interviews and appointments has illuminated how the facts on referral forms were constructed and how these facts do not always represent parents' views of what 'really' happened. For example case 6, recorded as a referral from Mrs. Field's solicitor, seems to have been the result of both solicitors, independently of each other, requesting an appointment. The replies of Mrs. East and Mrs. James did not tally with the recorded self-referral, and the Citizens' Advice Bureau referral simply entailed the mother asking the Citizens' Advice Bureau for the Conciliation Service's address. Mr. Kay's self referral also masks the fact that the referral resulted from the mother sending him a press cutting about the Conciliation Service. These and other 'complications' in the individual stories behind the referral statistics may well alter considerably the perceptions of responsibility held by parents regarding their appointments.

There are therefore pointers as to what influences these perceptions in terms of who refers and on whose behalf and whether it is the mother or the father who is doing the perceiving. The amount and type of education about conciliation clearly cuts across these factors though this education in turn cannot be a determining factor as the different perceptions of jointly referred clients show (25)

However these can only be pointers; pointers to the fact that 'client responsibility' for attendance at, and participation in, conciliation depends on a complex web of factors and influences and leads to varying degrees of commitment to conciliation and participation in it.

Why Does it Matter?

Different expectations about conciliation and commitment to it could affect the process itself in several ways:

1. Those parents who saw the appointment as having some investigatory or welfare reporting function must have perceived themselves as being in some senses "on trial" for their parenting. Their questions and answers may well have been geared to defending this parenting at the expense of possible forms of participation.
2. Those parents attending with no clear idea of conciliation or no expectation of making agreement (i.e. those expecting advice or with negative motivations) may be less inclined to participate in making an agreement because of a lack of prepared options or because of the status they accord conciliated agreements. Conversely they could make inadequate agreements because of lack of pre-considered options.
3. Those parents expecting conciliation to uphold a particular view or to give advice and direction cannot be said to be attending with any intention of being "responsible" for the outcome. They may however be more willing to accept conciliator suggestions concerning the problem and its solution and less willing and able to work through the problem themselves.
4. Parental perceptions of which parent initiated an appointment may well affect power differentials in conciliation. Whilst the data from

interviews shows that there can be no automatic assumption that originating an appointment = power advantage there is evidence that this factor does concern clients. So two fathers felt respectively "passed on to Conciliation" and "put upon" by their agents who originated the appointment.(26)

There are three cases where parents took particular care in the conciliation session to establish who invited whom. It must therefore have been important for them to do so, as for example when Mr. and Mrs. Field both claimed to have originated the appointment, when Mrs. Kay pointed out that she had supplied the idea if not the actual referral and where Mr. East insisted that he had asked, the mother had simply rung the Conciliation Service. Conversely Mr. Upton appeared very resentful when he said, "I can tell you why we are sitting here; there's a very good reason why - I mean she's asked for this hasn't she? This meeting? Am I right?". (1st Appointment) Also case 8, though recorded as a referral from Mr. Hall's solicitor, had in fact resulted from a later referral from Mrs. Hall's solicitor because the mother had refused to attend the appointment initiated by her ex-husband. Similarly Mrs Adams when interviewed was at pains to point out that "I started the ball rolling". It would seem therefore that some of these parents did not wish to attend if conciliation was seen as "what the other parent wants". Though parents not attending could not be interviewed statistics for the whole sample could suggest that this is a factor in attitudes to attendance, though there are no correlations of statistical significance. As the table below suggests, two types of referrals have a slightly better chance of persuading both parents to attend conciliation. The high percentage of referrals from Court/Divorce Court Welfare Officers resulting in an appointment would tie in with

parental comments that they had been expected to attend and with the fact that the majority of such referrals are not originated by one partner. The "others" category is interesting. It covers referrals from Marriage Guidance, Child Guidance, Step-Parents Association, relatives, friends and Citizens' Advice Bureaux but in fact is largely CAB and relatives/friends. Interview material suggests that most of these two sub groups could be re-classified as self-referrals from one parent, but it could be that the other parent does not perceive it as such and/or the referring parent feels under more pressure to go through with the referral. On the other hand parent referrals appear marginally less "productive" of appointments than the remaining solicitor and social worker categories. When these figures are controlled for source (mother, father, both) there are no variations except for the "joint" Court referrals and possibly the "others" category.

Percentage of Referrals resulting in a Conciliation Appointment

<u>Referrer</u>	<u>Mother</u>	<u>Father</u>	<u>Both</u>
Parents	40.7%	40.0%	50%
Solicitors	52.9%	50.0%	66.7%
Social Workers	50.0%	50.0%	66.7%
Others	88.9%	66.7%	100%
Court/DCWO	42.9%	71.4%	90.9%

(The 'both' referrals apply to only 23 referrals in total)

Who confirmed?

Looking at statistics for confirmation of appointments does shed some light here. The overall "both confirmed" is 60.9% whereas overall

"Mother only" and "Father only" confirm is only 13.6% each, which is a surprising congruence of 21 cases each out of a sample of 151. Also 10.6% of all referrals led to neither parent confirming (covering referrals from parents, solicitors, Social Workers and Courts).

Percentage of Referrals Resulting in Confirmation of Appointment

<u>Referrer</u>	<u>Mother</u>	<u>Father</u>	<u>Both</u>	<u>Neither</u>
47 Parents	<u>only</u>	<u>only</u>		
Mother	11(40.7%)	1	11(40.7%)	4(14.8%)
Father	0	8(40%)	10(50.7%)	4(10%)
CAB	0	0	6	0
MG/CG	0	0	2	0
Relative/ friend	1	0	5	0
Conciliator/ Refuge,Step Family/Assoc	1	0	2	0

These figures support the findings covering one parent non confirmation rates in parental referrals but again stress the similarity of Mother/Father response in that 40% of mothers "decline" father initiated appointments and vice versa. If power factors are operating at this point they are operating equally on both parents. The "other" figures would suggest the same though it needs to be borne in mind that this group has far more

referrals originated by the mother(nine) than the father(three) and because there is a slight discrepancy between the figures for confirmation and attendance for the whole one year sample of the 7 mothers and 12 fathers whose first (or only) appointment was not joint. Two mothers and six fathers attended expecting a joint appointment. Taking figures for attendance rather than confirmation in the "others" category, 1 out of 3 mothers did not come to the father's referral and one out of 9 fathers did not attend the mother's referral. These two points suggest at this stage slightly more fathers feel "let down".

This cannot be explained on the basis of distances travelled to appointments as the vast majority of clients live within the County and within the same four urban areas and twice as many fathers as mothers travelled from over 50 miles beyond the county boundary (10.2% of whole sample compared with 4.6%).

The differences arising from referrers and source are not therefore as much as might be anticipated. More research is needed to test firstly whether the likelihood of conciliation taking place does vary according to the amount of responsibility for initiating an appointment that one parent is perceived to have and secondly whether mothers are generally more reluctant to attend conciliation unless they view conciliation as an attack on their parenting which needs to be defended. Whether or not this differentiation can be substantiated, the fact that attitudes to attendance do vary considerably and may affect the process of conciliation prompts two further questions:

1. How do these clients' views correspond to what conciliators say

conciliation is?

2. Do conciliators educate clients with "non-aligned" views?

A good starting point to answer the first question is the promotional literature of the Conciliation Service. The format and amount of this changed in the course of the project with information originally included in the letter offering an appointment, A three part folded leaflet is now sent (with a standard short letter) which explains:

"This is an out of Court service for parents facing divorce or marital separation or the breakdown of previous access or custody arrangements. Conciliation aims to help parents to make voluntary agreements that are acceptable to all parties. This helps to prevent expense and distress to the children and the family Conciliation can help to resolve conflicts quickly and help you to keep control of the situation usually both parents are seen together".

Many of the parents interviewed had received only an explanatory letter. Many did not read or understand the explanation. Nevertheless though parents may still wonder how agreements are to be made the literature does describe them as 'voluntary' and does talk about parents keeping control. Also within the conciliation sessions themselves conciliators sometimes make specific statements about the process:

"Our function is to help the two of you to come to an agreement about whatever the problems are that are worrying you". (27)

"Our job really is to allow you two to talk and tell each other what you think -how you see the problem". (28)

"So what I'm asking is 'why are we here today' ?"

"What is the actual issue that we're around to talk about?" (29)

"What we would like to do is get you both to say what the situation is as you see it and have a discussion about it, how things have been working and what the problems are". (30)

My concern here is not with what conciliation 'really' is or what supporters say it is, but with the point that these comments are neither self-explanatory nor easily aligned with parental expectations except at the most general level. These comments are also significant in that they are the only statements to be found in the 20 taped appointments which try to explain what conciliation is. There are comments in other cases which deal with the confidential and voluntary nature of conciliation, but this is solely in the context of the legal system: what is said cannot be used in Court and the service is not part of or attached to the Court in any way. Otherwise conciliators usually start the sessions with questions asking one or both parents to outline the problem.

Two parents did ask for more information about conciliation: Mr. East because he thought he was at Marriage Guidance and Mr. Lloyd because the Court had at first told him that there was only In-court conciliation. In the former case the conciliator's rhetorical question: "What can I explain about the conciliation service and its sort of links with Marriage Guidance?" (31) was answered by the other conciliator's, "It can be a bit of a half-way house in a sense" (32)

This was followed by a long speech by the father and no more explanation was given. In the case of Mr. Lloyd the staffing and the premises used by

the conciliation service were explained.

Conciliators do not therefore generally check whether clients have the 'right' expectations, whether they feel any responsibility in attending and whether they are sufficiently 'educated' to take part in the conciliation process. If Professor J. McCrory of Vermont Dispute Resolution Centre is right, this is a crucial omission because he states that all parties must understand the process in order to use mediation and that mediators ought therefore to have an educational function which includes explaining to first-time users how they can 'use' the mediator. (33)

When McCrory raised this point at a meeting of the conciliation service much of what he said was attacked by the conciliators, but these comments were not. Yet he had asked conciliators to remember that clients needed to be taught how to have control in a situation in which they were inexperienced, and as an instance of this control gave the example of deciding what should or should not be said in front of the other parent. This conciliation service does not usually give such control over 'structure' to parents. (34) Indeed there is little client control over either the length or number of appointments. In only 2 cases (35) do conciliators discuss with clients at or near the beginning of an appointment how long it will last and the possible duration is not mentioned in the Conciliation Service literature. Therefore clients could not usually plan the most effective use of the time available though in 4 appointments one parent did control the length because they "had to go", suggesting expectation of a shorter appointment (36), Therefore in the remaining appointments the decision to stop was a conciliator initiative with comments like "I would actually

like to draw this to a close" (37). In only 4 cases was there a break in the middle of an appointment and in all cases this was a conciliator initiative.

However conciliator control is more varied regarding the number of appointments, which in practice means whether another appointment should be fixed. In 8 cases (38) the conciliator initiative is to ask clients if they want another meeting though where this is asked more than once there is an implied endorsing of an affirmative answer. In a further 5 cases conciliators do suggest clients come again (39) and in 5 cases conciliators state that they will not fix another appointment though clients are told that they may later take the initiative and request one. (40) Some cases have more than one intervention about a subsequent appointment. For example the conciliators ask Mr. and Mrs. Parker on 3 occasions whether they want another meeting and then later suggest they do. The suggestion to Mr. and Mrs. James comes before 3 separate requests for an answer. There are also 3 cases in which there is no mention by any participant of the continuance of conciliation (41) and 4 where the question of another appointment is subsumed in the question of the possible attendance of the children (42).

In view of this evidence of the lack of parental knowledge of the conciliation process and lack of control over its structure it is worth noting that Professor McCrory's conclusions are embodied in the American Bar Association's Standards of Practice for Lawyer Mediators in Family disputes: (43)

Viz "1. The Mediator has a duty to define and describe the process of

mediation and its costs before the parties reach an agreement to mediate"

Admittedly, such a duty may be closely related to the need to recover costs but the significance is that attendance at mediation is not assumed to include responsibility for and knowledge of the process.

Similarly the American Association for Family and Conciliation Courts' Model Standard of Practice for Family and Divorce Mediation has as its first point:

"1. Initiating the Process

A definition and description of Mediation. The mediator shall define and describe the difficulties and similarities between mediation and other procedures for disputes resolutions, on defining the process to mediator shall delineate it from therapy, counselling, custody education, arbitration and advocacy"

This makes it clear that the onus is on the conciliator to educate parents or to check whether previous education had been adequately absorbed. Conciliators observed assumed client responsibility not only for attending conciliation but also for informed participation in a known process. This chapter has shown how both these assumptions are misplaced.

CHAPTER 3: NOTES

1. Said at a County Court liaison committee meeting attended by solicitors, D.C.W.O.s, Registrars and Clerks and chaired by a Circuit Judge.
2. Conciliator 2: 12.6.84 (private conversation).
3. Conciliator 1: 17.7.84 (private conversation).
4. Conciliators' meeting: 4.5.85.
5. Conciliator 6: meeting, 14.5.85.
6. File number 160.
7. File number 118.
8. Conciliator 2: meeting, 28.2.84.
9. Conciliator 1 Case 12.
10. Conciliator 2 Case 3.
11. Conciliator 6 Case 1
12. Conciliator 10 Case 10.
13. Conciliator 3 Case 6.
14. Conciliator 6 Case 7.
15. Conciliator 6 Case 1.
16. Conciliator 1 Case 12.
17. Conciliator 1 Case 19.
18. File number 221. A similar construction of motives is to be found in the literature; for example: "Our experience is that the parent who telephones or calls to turn down the invitation prior to the appointment is usually seeking reassurances about why attendance is necessary and about our competence in handling aggression" (Frances et al: 1983:8).
19. This analysis is based on the answers to 2 questions in client

interviews. viz. Why did you ask for/agree to attend an appointment?

What did you expect at conciliation?

20. Mrs. Smith: Case 4.
21. See for example G Davis: (1985a; 42-49 and 1985b; 82-86).
22. Cases 4, 7 and 21.
23. Case 4 referred from the father's D.C.W.O. and Case 9 referred from a Judge at a s41 hearing.
24. Cases 2, 6, 14, 19, 22.
25. For example Cases 2 and 14.
26. Cases 6 and 7.
27. Conciliator 10 Case 7 (1st appointment).
28. Conciliator 12 Case 16.
29. Conciliator 15 Case 21 (1st appointment).
30. Conciliator 7 Case 22.
31. Conciliator 11.
32. Conciliator 2.
33. Report of Conference on Conciliation held at Bromley April, 1985. See also Vermont Law School (1984).
34. In only 3 of the 24 cases was a period of separate appointments (or part appointments) deliberate. i.e. Case 7(24) for father only, Cases 8 and 18 (both untaped). It was planned for in Case 16(26) but it did not take place. It was more normally carefully avoided, e.g. if one parent arrived early and wanted to talk this was discouraged.
35. Case 1(14) and Case 14(1).
36. Cases 1, 8, 17 and 24.
37. Case 2(37). For further examples at 2(15), 3(18), 4(23), 6(23), 7(11), 14(15), 16(15), 20(20), 22(5,8).
38. Case 3(18), 4(25), 5(16), 10(21,25,26), 14(16), 16(12,17,18), 17(13),

21(33).

39. Cases 1(18), 10(16), 11(14,20), 16(26), 19(16).
40. Cases 2(15), 6(23), 19(31), 20(20), 21(22).
41. Cases 15, 22 and 23.
42. Cases 6, 7, 8 and 12.
43. Dispute Resolution Forum 1984:5.

CHAPTER 4: DEFINING THE PROBLEM

Introduction

Increasingly my research experience has led to the belief that the definition of the problem brought to conciliation was of crucial importance not for, but in, the conciliation process itself. The work of Backett clearly suggests this possibility in that it gives at least as much attention to the construction of images involved in "fact" collection and explanation as to those involved in response and implementation construction.(1) Hypotheses on how separation could affect these decision-making stages and how conciliation could compensate also led to the possibility of the importance of definition work.(2) However support for this growing belief also came from two other sources: much theoretical literature within sociology which stresses the power of the "definers" and also the stimulus of practical problems encountered in coding the one year sample of referrals.

Social Science Material

The amount of research and literature which deals with the importance of definers is enormous. Whole fields of work on deviance and criminology, power and ideology, political theory and social policy explicitly detail the crucial importance of an individual, group, government or state succeeding in defining a situation or action as criminal or lawful, good or bad, acceptable or unacceptable, moral or immoral.(3) One of many possible examples is the statement of Conrad and Schneider in the preface to their book on "Deviance & Medicalisation":

The greatest social control power comes from having the authority

to define certain behaviours persons and things.

When an institution (for example the Church, State or Medical profession) gains the power and authority to define deviance, that is to say what kind of a problem something is, the responsibility for dealing with the problem often comes to that institution.(1980:8)

Similarly MDA Freeman has written in relation to the links between law and psychology:

Social problems are more than just an objective statement of affairs....putative solutions to social problems are integrally related to the definitions of these problems which have been constructed and the questions which have been posed about them.(1981b:165)

At a different level sociologists have charted the definitions which individuals make about themselves and their surroundings. For example Becker, from an interactionist perspective on deviance, has described the definitions and the re-definitions involved in the labelling inherent in the career process of a marihuana user.(1963)

However in contrast to this weight of material there has been comparatively little work on the role of definition in decision making and dispute settlement. The work of Fisher and Ury,(1983; de Smith,1984) by advocating "principled" (as opposed to positional) negotiation, is by implication concentrating on problem construction but this is not made explicit in such terms. D.J. White in a complex work on Decision Theory clearly sees the importance of "re-ordering" the problem, though the problem itself is taken as given:

Thus if we make a person aware of certain probabilities and values

of specific elements of a complex problem then he may very well select a different action to the one he would otherwise have chosen.(1969,Preface)

However as McEwan and Maiman point out models of mediation have not always been satisfactory because " the vision of mediation which has guided many of its proponents and critics draws most of its imagery from studies of dispute processing in small scale societies" (1984:12) and they themselves discuss several factors so far omitted but nowhere deal adequately with definition per se. Most of the literature therefore deals with a range of outcomes and not the nature of inputs in negotiation, but Roberts in the most comprehensive theoretical article on mediation in family disputes yet published does foresee the importance of definition in the conciliation process.

Once the mediator goes on to provide a normative frame work for discussion, however sparse, the universe within which bilateral negotiation would have taken place is profoundly changed. This transformation is taken further if he helps to clarify issues and demands or offers advice on matters outside the knowledge of the disputants (such as points of law or the probable action of judicial agencies under different circumstances). Many mediators will see it as necessary to a settlement that the disputants view of their predicament be transformed: and so deliberately set out to do this.(1983:549)

Indeed G. Davis having severely criticized In-Court conciliation says a function of the effective mediator is that "he must have the wit and the imagination to re-define apparently hopeless disputes in such a way that they might possibly be resolved"(1985b:84) and says that this will need "certain skills" if the conciliator is to be concerned with the "parties' own

definitions". However Davis makes no specific links. Roberts, however, does make one important link - that between definition and the question of responsibility in conciliation when he states, "In so far as the mediator succeeds in transforming the disputant's view of the quarrel he comes to share with them control of the outcome".(1983,549)

Mather and Yngvesson, talking more generally about dispute settlement also focus on "transformations" after the conflict has been brought to a third party.

Disputants, supporters, third parties and relevant publics seek to rephrase and thus transform a dispute by imposing established categories for classifying events and relationships (narrowing) or by developing a framework which challenges established categories (expansion). (1980:775)

They make it clear that this definitional work is an integral part of the negotiating process itself by pointing out, "We suggested that disputing be viewed as a bargaining process in which the object of the dispute and the normative frame work to be applied are negotiated as the dispute proceeds".(p818)

There is therefore some support for the hypothesis that the problem be seen as itself negotiable, and this is further supported by the distinction made in social work literature between the clients "real" problem and the "presenting" problem. As R & R Dobash point out concerning this distinction: "Numerous research reports have revealed a considerable discrepancy between the client's view of his or her problem and the helper's conception of the same problem".(1980:201) They further draw on the work of Giordano (1977) to explain how the real problem is negotiated in the

client/social work exchanges and how the social worker always "wins" in that his definition is the one on which the case proceeds.

Conciliation Service Research Material

This real/presenting dispute distinction is also an important factor in the difficulties which occurred in coding the one year sample of 154 conciliation cases. These difficulties occurred in coding both the subject matter of the referral, the problem, and the outcome of conciliation as recorded on the conciliation service's appointment sheets because various discrepancies arose: between office copies giving the secretary's account of what the client or his agent had believed to be the problem and between conciliators' copies giving their account of the problem and also discrepancies between the problem as recorded and the content of the agreement as recorded. For example the subject matter of the problem stated might be a custody dispute whereas the agreement might be about access arrangements or referral to divorce counselling.

This confusion was reinforced by summaries made to me about appointments I had not attended (4) which defined the couples' problems in terms very different from the "facts" of the referral sheets or which speculated on the problem of couples who refused to attend or did not turn up. These divergencies were not unexpected because, in conciliators support meetings attended early on in the project, discussion on several occasions had centred on the nature of the dispute presented by the parent and whether it was the real "dispute". This preoccupation led me to ask conciliators after each appointment whether the presenting problem was the real one. Over a third of conciliator pairs(5) did feel the dispute stated on the referral form, or what clients had told them at the very beginning of

the appointment, was the real dispute.(6) But the remaining answers reveal partial or complete non-acceptance of the parental definitions. In two cases the two conciliators disagreed as to whether the referred dispute was a real one and in four cases conciliators replied that they did not know because "the real dispute was not clear", (8) or because they had "learnt so little about the marriage and separation especially matters of control and sex" in the appointment that they could not say.(8) In a further four cases conciliators accepted the parental problem but said it was also the continuing relationship, the pain of separation or the lack of trust. In four cases however conciliators replaced the client's problem by their own - it was "really" control, the pain of separation, denial of parental responsibility or emotional attitudes.(9) However analysis of these answers is complicated by conciliators' different perceptions of the questions. Some appear to have taken "presenting dispute" to include presenting explanation, others not. Therefore in two cases, that referral of access difficulties was taken as the real dispute did not preclude conciliators from substituting in conciliation their own explanations of these difficulties.(10)

Clearly analysis in terms of real and presenting is far too simplistic but is sufficient to support a belief in the need to concentrate on definitional work in the agreement production process. Literature and research experience therefore suggests the need to see if, how and when the problem is transformed in the conciliation process, whether generalisations can be made on the nature of the problem defined and whether it is possible to assess the significance of this definition for the subsequent course and outcomes of conciliation. Basically therefore the need is to find out what one conciliator "meant" when she explained to her client that she would not talk to parents separately because, "We do find if actually

what you want is to get something worked out for the children it's very difficult to do because if I see you and my colleague sees your ex-wife then there are two completely polarized and different stories obviously. Whereas if we take a little bit of patience and a little bit of time and do it together there is some chance that we may be able to improve things". (my underlining) (11) Therefore using the model based on Backett (12) interventions related to the construction of the problem have been analysed. Numerically the largest category is non-aligned questioning and this, together with re-phrasing, can be shown to be providing foundations for the construction of the problem definition. Therefore these will be discussed first in this chapter. In the next chapter parentally aligned interventions (querying and endorsing) and conciliator suggestions will be analysed because these groups of interventions transform the dispute in more specific ways -not only directly influencing the construction of the problem but also, via the construction of a particular definition, of the concept of parental responsibility.

B. Non-aligned questioning

"I think we are there to encourage, support and draw out other issues and give a wider perspective with some element of questioning".(13)

Questioning plays a very important role in the definition of a problem. Ironically the definition of questioning also creates a problem. Statements which, in everyday experience, amount to a suggestion or to an expression of agreement may at a grammatical level require a question mark. Such rhetorical questions have therefore been classified with other forms of endorsement and suggestion depending on the work they are doing. Similarly the work of some questions is to query statements made by the parents. Clearly there is a fine line between querying one parent and by

implication endorsing the other (and vice versa), but what appeared as cross-questioning of one parent was so classified. Analysis of tapes was also done in conjunction with noted perceptions of observations of appointments.

With these exceptions the rest of the questions - the majority - are the ones which appeared numerically significant in the definition stage of conciliation. In other words the conciliators seem to spend most of the time asking questions and most of these appear neutral as regards the two clients and their problems. However these questions do not show homogeneity: there are very different types of questions with varying functions in the process of definition and their neutrality is more apparent than real.

(1) Initial Questions

"The way we like to start is to give you both an opportunity to explain how you see the situation".(14)

Almost without exception(15) conciliators begin an appointment with a general question to parents inviting them to explain what their problem is. This question takes various forms, as in the following examples:

"Well I think if you both tell us as you see the situation. We find that's probably the easiest way to start".(16)

"I think it is best if we ask each of you in turn what you think the problem is".(17)

"Would you sort of like to tell us how you feel".(18)

"Would one of you like to begin by telling us where you're at, at the moment".(19).

"We start basically with very little information so that you can actually tell us how you see it". (20)

"Right. Well I don't know anything about you at all. Can you tell me what you feel is the problem at the moment? Why you have come to us."(21)

The phrasing of these questions is very important. Firstly, they emphasize to parents that they are to be the source of information and therefore deemed responsible for the construction of the problem. The underlining in these quotations reflect the exaggerated emphasis placed on "you" and "both" by conciliators when asking these questions. The assumption is therefore being conveyed from the very beginning that the parents will define the problem, that the lack of information on referral sheets is not a secretarial shortcoming but "so that" the parents can provide it.

Secondly most of these quotations ask for feelings and views: The problem-inducing situation is not conveyed as a factual one - it is because the situation is viewed differently that there is a problem. The question is indicating that the "situation" is not a problem except in so far as the parents "see" it, or "feel" it.

In other words a particular attitude to facts is being conveyed and a priority being given to feelings over facts such that a problem is implicitly defined as a clash of view points, which in turn arrive out of, and are sustained on, different parental feelings. Therefore some of these questions actually ask for feelings rather than facts, as in, "how you feel" and, "where you're at". Others make a point of not using the word 'problem' but instead use 'difficulty' or 'situation' or even 'it', which implies a fluidity in the differences between them. When 'problem' is used it is qualified by, "What you think the problem is", "What you see as the problem", "What you

feel the problem is". Only one conciliator question gave a different message, "What is the actual issue that we are around to talk about?"(22) Significantly this case led to a serious disagreement between the two conciliators about strategies after the first appointment and this terminology was not used by any other conciliator observed. Indeed if clients appeared to be reifying a problem then comments are made to try to rectify this. For example when Mr. Gale interrupted conciliators to stress what his Divorce Court Welfare Officer referrer had said the meeting would be about, the conciliators replied, "So you see it mainly about Clare?"(23) Similarly when one parent has answered the initial general question, his or her answer is constituted as a viewpoint in which facts are not important and the other parent is invited to reply in similar vein, as in the following examples:

"O.K. is that your understanding why we are here?" (24)

"O.K. well you have explained where you are and what your views are".(25)

"Thank you very much. O.K. That's how you see it".(26)

"So don't worry if you remember what he remembers as it were in conflict because that may or may not be a serious issue. What is important I think for you to do is say how you feel things have happened up to now and how you see your problem".(27)

"Can we ask Mrs. Spencer now how she feels the situation is".(28)

Parents are being encouraged to set out their differences - there is no attempt to deny the existence of parental conflict or to suggest that parents ought to deny these differences. What is being conveyed is a sense of the existence of only one situation on which there are two perspectives. If parents imply that the two situations described are incompatible because of conflicting facts then the status of facts is sometimes challenged. For

example the following conciliator responses were made after various parental disagreements concerning the facts of access or separation.

"Well one often gets very different viewpoints on situations like this.....Yes the feelings on both sides are a bit different and therefore the way you view it is different".(29)

"I think it would be unusual if we ever met a couple like yourselves who saw everything in the same colour in the same way because our memories are different and our interpretations are different".(30)

"I think you both can feel - I mean - I think perhaps you see things differently at this stage".(31)

In another case where the father explicitly accused the mother of telling lies the conciliator intervened with;

"I sometimes think that the word 'lies' is an extremely emotive word because the way we see things actually colours what we believe and if we believe, then it's a lie to you but it's not quite the same thing as a lie".(32)

The impression is therefore being given that the conciliators are not interested in facts per se - even conflicting facts. Facts are but different views of the same thing and even a firm belief in their truthfulness does not prove that that view-point mirrors what "actually happened". Therefore what actually happened not only is irrelevant to conciliators but is made to appear irrelevant to parents if there is any divergence of opinion on it. Logically from the above premise the 'correct' version cannot be proved and it is not therefore useable. There is also no attempt to analyse one parent's version and follow up internal inconsistencies because there is again no need to construct a "plausible" version nor any benefit in so doing. This diversion from establishing facts was underlined in

one case where the mother was not allowed to show the conciliators some solicitor's letters which gave "the facts" about the dispute's history. She was asked "to hang onto those" and instead explain herself "how you see it", implying that not only would the solicitor simply have revealed another viewpoint but that the problem must only be constructed from what the parents can say at the meeting.

Some conciliators explain that their lack of interest in facts is because their job is not to judge. However this reasoning becomes circular when conciliators say they cannot judge because, "I am feeling there isn't a lot here that I can sort out because I wasn't there. I didn't see how anything happened".(33) This contrasts with judges and juries who do believe that evidence for particular facts can be weighed but it once more reinforces the idea of parental decision making rather than conciliator adjudication. Facts are also not important because conciliators see viewpoints as illuminating feelings rather than facts. The real object of the enquiry at this point in the conciliation process is, "Where you are at". Even at this early stage therefore there is evidence that conciliators themselves are envisaging a problem - the conflict of perspectives itself and the feelings causing this conflict. This is clearly akin to the established social worker method of looking for the "real" as opposed to the "presenting" dispute and one conciliator's comment that "We don't know anything at all actually that is why I'm fumbling a little just to see how the problem has presented itself"(34) fits in very neatly. Certainly conciliators are trying build up their own picture of the problem as the following quotations reveal.

"Can you tell us what...."

"I would find it an enormous help if you could tell us about...."

"I am trying to understand about your job".

"it will probably put us in the picture".

"Can you tell me what the situation is as of now? Have I got it right?".

"I wonder if you could just clear my mind".(35)

This phrasing is significant on two levels. Firstly it implies that the conciliators are building up "a picture" of the parental situation and secondly, these phrases include the use of personal pronouns which suggest that the exchange of information by parents is not simply nor solely so that parents are given "the chance to listen to each other".(36)

Nevertheless it is the parents only who are asked to supply the basic information on which the picture of the problem is to be built. In the majority of cases this picture is built up and the problem defined without any consideration of possible required solutions. In less than a third of the observed cases are the parents' aims asked for - that is their short term hopes, the outcome of the meeting and/or long term hopes for family arrangements. The following two examples are typical of how this request is made.

"How do you want things to end up?"(37)

"What is is you would actually like to have in the future? I mean what are you hoping to go away with after this meeting?"(38)

Where no such questions are asked most parents do not include information about their aims and confine themselves to describing "the difficulty" or "the situation" so that in most cases situations are clarified and problems are negotiated without the constraints of solutions.

The initial questions are usually open ended, as those already quoted reveal. On only two occasions did the conciliators give the parents an idea

of what they were expected to talk about - "a bit about the set up of the family, how long you two have been apart"(39) - which is consistent with the focus on children and separation in publicity about conciliation. This focus is also legitimated by the reaction of conciliators to the speeches given by parents in response to the initial invitation to talk. For example this legitimation can take the form of asking a parent whether he or she wishes to enlarge on a particular topic as when Mrs. Berry began with, "Their dad started seeing them again and I have had quite a lot of problems with the children", and the conciliator responded with, "Would you like to talk about it at all?"(40)

More usually legitimation takes the form of subsidiary questions, neutral in appearance, which are constituted as requesting extra pieces of information to 'fill in' the account given by the parents.

2. Filling in the Gaps

These subsidiary questions, by their existence, confirm what conciliation is to be about - that is the possible range of items which could be on the agenda.

i) Most importantly questions are focused on the children. In nearly all cases the names and ages of the children are requested or asked to be repeated. Conciliators also ask where the children are living or how each parent proposes to make arrangements for this, as in the following examples:

"So did you - are you looking after the children?"(41)

"How would you actually manage if you were on your own with the

children?"(42)

"How old is the boy.....Is your daughter living there as well?"(43)

"So you are living in the matrimonial home still?"(44)

ii) Questions are also asked to "clarify" how and when access happens or why it does not if the parents have not volunteered all the details.

"Can you tell us what the access arrangements are at present and how does it stand".(45)

Conciliator: "If I was one of your children and said to you, 'Daddy which weekend in the month am I coming with you?'"

Father: "Well it's normally the end of the month, isn't it?"

Mother: " Dunno it's this weekend isn't it"

Conciliator: "But you would be able to tell me which weekend it will be this month....It's important to find out what is actually agreed".(46)

"Is there a particular reason why you felt you should try to gain access again at this point?"(47)

iii) Thirdly subsidiary questions are used to fill in the details about the separation and, if applicable, re-marriage. Conciliators often ask when and why the physical separation occurred, as in their question to Mrs. Parker: "How long is it since you left.....What was happening immediately before?"(48)

They also ask about future plans with other partners already mentioned by the parents, as when a conciliator interrupted Mrs. Cann with, "Yes wait a minute, now about your relationship with this man. Do you see yourself

being together somewhere? Has he got children?"(49) Relationships established since the separation are also elicited, as for example in, "You're remarried?"(50) or "Have you got another family?"(51)

More often such questions are encompassed by requests for information on the legal position whether such requests are specifically about the marriage, children or more generally. For example, Mr. and Mrs. Vaughan were asked, "I wonder whether you can just clear my mind by telling me what the actual legal position is at the moment. I mean have you been to Court?"(52) A similar request that, "I would find it an enormous help if you could tell us what the arrangements about custody and access are that the Court made", (53) was made to the Fields.

These questions tend to reinforce the idea that conciliators are building up their own picture based on what the parents have said and these additional questions are for clarification. But in this process of collection, certain topics concerning children, access arrangements and the relationships experienced by the parents are consolidated and legitimated for inclusion in an agenda.

3. Leading Questions

Conciliators also use questions which lead in two ways: they lead on from topics parents have introduced and they lead to a modification of the topic. They may replace gap filling questions or lead on from them but in both cases they intimate that the information requested forms an aspect of the topic which should be discussed. In other words the topic is being modified by the implicit prioritisation of certain aspects of it. Again the topics of children, access and separation encompass most of these questions but the

balance of the content is very different.

i) As regards the children the questions are now very much slanted towards ascertaining feelings and needs. For example an argument between Mr. and Mrs. Gale about access arrangements led the conciliator to ask "What do you think your kids would like?", repeated later as, "I was going to say I think it would be helpful just to ask each of you what arrangements you think your children might like". (54) Similarly Mrs. Berry was asked, "And how to they react to that. Do they look forward to that day?"(55)

Access is also to be viewed in terms of what the children need as well as would like. "Can we try and stop a minute and have a think as to what the children or particularly Kara needs".(56) What the children know is similarly constituted as a necessary aspect of knowledge of the children's situation. For example a son's knowledge of his father is prioritised by asking Mrs. Adams, "Can you tell us what Simon knows about his Dad?"(57) and the children's knowledge of the state of their parents' relationship is elicited by asking Mr. and Mrs. Berry, "Do they understand the situation now? Have they any understanding at their level why you are not together? Do they understand you won't be getting back together?"(58)

ii) Access is modified by leading questions in two ways. Firstly, as above, when attention is directed from the parents' wishes and needs to the children's and secondly by assuming a concentration on the details of access even when parents' initial answers have given a strong indication that they wish the principle of access to be on the agenda for conciliation. One form of such questions is to ask for clarification of views it is assumed the parents hold. For example the question to Mrs. Adams, "Am I correct in picking up that actually you would like him to have access?" was repeated five units later, after her reply that she had got "open feelings"

with, "But am I picking up correctly from both of you at the moment that you would actually like him to see his Daddy and you would actually like to see him".(59)

Other similar examples are:-

"So that's what it is all about is it, how much you see the baby?"(60)

"So are you saying that with the correct approach whatever that means that in fact the principle is OK for Daddy to take them away for the weekend?"(61)

Another form is to ask for parental views on access details thereby bypassing questions on the principle of access. For example after Mrs. Gale had revealed her feelings of injustice at Mr. Gale's access requests the conciliators went straight on to ask, "So what sort of arrangement would you like?"(62)

Similarly in two cases, after the first appointments had been used to discuss whether or not there should be access the conciliators began the second appointment with, "Is it that you would really like - to get this week's holiday sorted out that you have proposed?"(63) and, "Perhaps we can actually talk about Christmas now, because obviously it's going to be the next thing on the agenda isn't it?"(64)

Also in two cases the conciliators asked questions about children other than the child who was the focus of the access dispute as presented by the parents. For example Mr. Owen was asked "Did you also hope to see Mary?"(65)

iii) The Topic of Separation is modified by questions which move the centre of interest from the "mechanics" of separation - the when and the how - to the reasons for the separation: the why, and in some cases, the if.

However conciliators vary in whether and to what extent they treat the separation as problematic. They assumed Mr. and Mrs. North would not want the separation on the agenda by the question, "Am I right in guessing that you are both in agreement now to separate?"(66) but this is unusual for two reasons. Firstly it was a Social Services referral which gave the conciliators a lot of pre-appointment information including the request to use the conciliation for setting up access. At this stage the parents had not provided any information on their plans to separate. Secondly it is unusual because conciliators' questions do more often take the form of conciliators "checking out" whether separation should be on the agenda as for example in "Can I ask for myself, you are both saying absolutely that the marriage is over? Are you both saying that?"(67) Likewise in another case:-

"You have obviously gone a long way into thinking I hope; into thinking and working about whether or not the marriage has really broken down?(Father Yes) You have really explored with Marriage Guidance? (Mother: We had two courses) So you really have explored with Marriage Guidance?"(Mother: Yes) (68)

Another conciliator in two cases (69) asked only gap-filling questions about the separation and then proceeded to other topics but suggested later in the appointment that the marriage was not necessarily over. It is not therefore possible from these and other examples to see any clear function of leading questions about separation. What is interesting is that many questions leading on from parents' speeches again take the form of asking about feelings. For example the Ward's appointment, precipitated by Stephen's going back to live with his father, very quickly moves on from gap-filling questions about the son's job to the following questions:

"Were you upset by his move back?"

"And is that working out quite well do you feel?"

"Can I ask you how it feels to have him back again".

"What do you think they (relatives) felt?"

"Well take your time - just sort of think what it felt like really".

"In some ways does it feel like that's why he went".(70)

Leading questions to Mr. and Mrs. Parker centred on separation and took the following form, "What were you still left feeling?" and "Have these feelings....have they been leading up to any particular climax?".(71)

Not all appointments include such emphasis at this point in the conciliation process. Nevertheless they are reinforcing the lack of distinction already being made by conciliators between the facts and feelings and they are also modifying topics raised by deeming them to include a 'feelings' element. Therefore leading questions are modifying parentally raised topics in two possible directions. In some cases the topic is being broadened - the context is set wider to include feelings about events and relationships; in other cases the topic is being narrowed -to focus on how to achieve access rather than whether the attempt should be made and to focus on feelings not facts in disputes. There is also another possible direction - that the topics raised might eventually be replaced by the topic of feelings themselves, as one conciliator envisaged when she said:

"So the issues are not the children are they? I mean is the issue actually the children? Lets put the cards on the table. Is the issue actually the children and what is best for these three children or has the issue got a lot to do with the residual feelings that both of you brought out of the marriage and the ending of the relationship?"(72)

This particular intervention occurred somewhat later in the process than the leading questions outlined above and resulted from other types of questions. The most important of these as regards setting topics to be included on the agenda are what I have called non-sequitur questions.

4. Non-sequitur Questions

So far conciliation questions have concerned subjects raised by clients. Questions in this category envisage a topic not yet raised by the parents as possibly relevant to the agenda.

(i) Parental Contact

The most important group of these questions concerns the relationship between parents and the amount and type of contact between them. At a very general level therefore, the questions ask for just that, as for instance in the following:

"What's the relationship been like between you since you split up?"(73)

"How have you kept contact since the failed access?"(74)

"How do you make your arrangements? I see you are both on the phone.

So do you make arrangements over the phone?"(75)

More specifically parents are asked about the verbal communication between them since separation.

"Is this the first time since you broke up that you actually sat down to talk together?"(76)

"....And have you been able to talk before? (Mother: No this is the first time)".(77)

Sometimes parents are specifically asked if they have discussed the children since separation. For example when Mr. Young said that he had rung up a social worker the conciliator asked "Did you talk together about referring to Social Services?" (78) and when Mrs. Berry had talked about her son's behaviour the conciliators asked both parents whether they discussed "how the children behaved when they are with the other one".(79) With Mr. Upton and Mrs. Baker the form of the question was, "Have you two talked about what you actually want for your kids?"(80)

In some cases these questions covered talk to the children and the effect on children of non-communication, as for example in two questions to Mr. and Mrs. Berry:

"But do you think they think it taboo to talk about their dad when they are with you?"

"You know holidays are in view and what's going on there? I just wonder how much you are communicating with them as well".(81)

These interventions are not numerically important in the appointments analysed: they are in the nature of ground preparation to make reference to a topic not yet "seen" as a problem per se. However some go further: they have normative implications regarding parental communication which are later made more explicit.

(ii) Feelings

The other non-sequitur questions again focus on feelings - of the parents and the children. For example the first appointment of Mr. and Mrs. Cann had concentrated very much on practical problems but very near the

beginning of the second appointment the conciliator asked the following question after Mrs. Cann had explained why she was accepting leaving her son in his father's care.

"Yea but how do you actually feel about sitting down and saying he should say with his father.....I mean do you feel that somewhere along the line you have failed as his mother?" The father was also asked for his feelings with how do you feel about the end of your marriage now.....So you feel that it is actually her choice"(82)

These questions do not lead on from previous discussion as parents had returned to conciliation specifically to discuss the practical alternatives agreed on at the end of the previous meeting. Examples have already been quoted of leading questions asked of Stephen Ward, which focused on to his feelings but the conciliators also asked for his parents feelings about the separation which had occurred four years previously with, "How was it for you Mr. Ward when you and Mrs. Ward split up?"(83)

Later having asked them about previous communications between them the following intervention occurred:

Conciliator: "How does it feel for you two to be sitting in this room having shared the car I guess, how do you feel?"

Mr. Ward: "She feels sick"

Conciliator: "How do you feel?" (to Mrs. Ward)

Mrs. Ward: "I don't know. Its a bit of a relief after years of resentment".

Conciliator: "So you now feel you're not resentful?"(84)

These interventions, and all the questions so far discussed, have the function of consolidating, introducing or modifying certain legitimate topics for inclusion on the problems agenda. This stage corresponds to

Backett's first stage in the production of an agreed parental decision - the collection of an agreed set of facts about the children, which set being dependent on what topics are to be included in the agenda and which facts depending on the status to be given to different pieces of information. However non-aligned questions also include questions which prioritise certain explanations for both individual and sets of facts: such questions would be part of Backett's second stage - that of the acceptance of a particular explanation for these facts.

5. Explanation-seeking Questions

These questions may be about parent or conciliator initiated topics but unlike questions so far discussed they do not always appear as a natural progression of the conversation. This is particularly so with questions about parenting as examples from two cases with different conciliators show.

The Todds. Mrs. Todd explained that she was the full time caretaker when the children were small but now the father works much shorter hours and does more caretaking. The conciliator responded with "So you are saying things about his fathering and his relationship with the children?" Later when both parents talked about their respective career needs the same conciliator followed with "What are you saying about each other's parenting abilities?"(85)

The Lloyds. Mrs. Lloyd had explained that she could not be reconciled with her ex husband's new partner and this had led to a parental argument about a particular incident. Mr. Lloyd then asserted that he was being told he could have access to only one daughter and the conciliator then intervened with "Can I ask how you feel about her mothering of your girls?"(86)

However it is questions about children's behaviour and physiological well being that are the more frequently deployed in this category and the following examples show not only how such questions are inserted but also how the questions themselves provide explanations, whilst ostensibly seeking them.

The Berrys.

Mrs. Berry: "He can be quite spiteful, he doesn't mean it.....He can get very angry. He will go and kick the doors and things like that you know but then he will come and say he is sorry".

Conciliator 17: ".....Do you discuss how the children behave when they are with the other one?"

Mrs. Berry: "No."

Conciliator 17: "Um..You don't really know whether his behaviour is the same when he is with his father as with you".

Mrs. Berry: "I did ask them questions but found that it was not doing them any good. Now I don't say a word when they come home".

Conciliator 1: "But do you think they think it's taboo to talk about their dad when they are with you? Do you think they pick up that it's still a painful thing for you?"

Later the mother and father argue whether the father had asked the children if they wanted to stay over night and the conciliator asked "Do you think it is wishful thinking on their part".(87)

The Fields.

The father had outlined that his relationship with one son was very bad due to the son's previous behaviour and therefore he does not want to see him. The mother argues that the child wishes to see his father. This is followed

by :-

Conciliator 3: "Is he acting out at home?"

Mrs. Field: "Yes"

Conciliator 3: "I mean is he acting out because he wants attention. Is it a cry for help?"

Mr. Field: "No he is just self opinionated".

Mrs. Field: "Yes he is insecure".(88)

In both these examples (Cases 2 & 6) the explanation-seeking question follows on from a previous conciliator question. In the next example however the conciliator questions are more akin to those posed by teachers to test understanding when the pupils realise the teachers do actually know the answer. Certainly Mrs. James was apparently confused at what the question meant and the conciliator's use of the word 'clues' suggests the setting up of a puzzle to which the answer is already envisaged. That conciliators have already envisaged the problem and its explanation is not always so clear at this stage but becomes so when such questions act as springboards for other types of intervention.

The James' 1st appointment.

Mrs. James had explained that access had been restarted on many occasions but had always petered out. Conciliator 10 asked her, "So what will have to happen for it to be different this time?" and she explained that Mr. James should have constant access "no matter what Richard does to you". The following explanation -seeking questions are then inserted into the conversation by conciliator 10 as follows:

"Do you know what makes him do it?" (to Mr. James)

(And later to both parents) "So what do you think is the right way?"

(Pause)

Mrs. James: "I don't know".

Conciliator: "You gave some clues at the beginning didn't you". (Pause)

Mrs. James: "I just don't know how to handle it".

Conciliator: "Could you describe what the situation is and then perhaps you two could get some more clues about it".

Mrs. James: "You mean when he is violent".

Conciliator: "Umm!"

The mother described one such situation and suggested that her son's dislike of the father's girlfriend could be what brought it on. This led to another parental argument followed by:-

Conciliator: "Is he still hoping that you two will go back together again".

Mrs. James: "No" (Pause)

Mr. James: "He just thinks it's women, women, women, it doesn't matter who it is".

Conciliator: "Is it something to do with his feelings then that nobody else should take your place?"(89)

The prioritisation of explanations centering on the effects of separation on a child's behaviour is more obvious in the questions asked of Mr. Young:

Conciliator: "What are the schools saying, I mean what are the teachers saying at school?".

Father: "His work's good.....difficult to concentrate but generally OK."

Conciliator: "Is that like the son you two have know over the years. It's changes we are looking for isn't it?"(90)

In some cases this type of question is introduced by transferring a parental

comment to a different context. For example, the following response to Mrs. Lloyd's statement prioritises explanations regarding self confidence.

Mother: "I would like to think that they are grown up enough and confident enough so that they can say what they feel."

Conciliator: "And confident enough to go and stay with their father for a little while?"(91)

In other cases the "transfer" is done by juxtaposition of two seemingly different topics so that the possibility is opened up of linking up the explanation of one to the other. For instance one discussion of access difficulties was immediately followed by the conciliator question "It's four years now since the separation. I mean it is quite a long time. Why has there been a time lapse in going for a divorce?" (92)

Such links are again only explicable in terms of an as yet unexpressed hypotheses held by conciliators postulating a relationship between access difficulties and the differing feelings surrounding the separation.

C. Rephrasing

Conciliator responses to parents' statements of problems also affect the construction of the problem as being one very much concerned with feelings not disputed facts. This rephrasing also occurs at other stages in the conciliation process - sometimes it is an integral part of an endorsement of a parental position or part of a conciliator suggestion of what the problem explanation should be. However rephrasing as an independent form of intervention (found in half the cases) is typical of the rephrasing found in mixed interventions and it is these interventions which have been used in the following analysis.

All examples of rephrasing are concerned to alter the status and legitimacy of grievances and allegations by one parent against the other. In most cases this is done by constructing a relationship between grievance and feelings which takes three forms, or by "normalising" the substance of the grievance.

1 Grievances Show Feelings

This rephrasing is used to constitute the airing of grievances as a showing of concern. For example Mrs. Adams gave a list of reasons why she believed the father could not start and sustain access visiting in a manner acceptable to her view of what the child needed. The conciliator did not follow up any of these specific grounds of complaint but stated "I get the picture you are concerned about this whole matter".(93) Similarly in Case 24 after both parents had alleged the other was dealing with the son in such a way that a behaviour problem had arisen, this exchange took place:-

Conciliator: "What I'm really wanting to get to is the concern you are both feeling about Robert ...and in a way it is taking the form of saying you did unsuitable things with him and you are saying - "

Mrs. West: "Only what Robert said".

Conciliator: "Yes but you're instancing to each other unsuitable ways of dealing with him or unsuitable companions. You're both at it in that sense whereas you are both very worried about Robert."

This is reiterated later in the appointment with "You need trust and you are both very worried about Robert - You know that after tonight - hang on to that bit because it is positive".(94)

If this type of rephrasing is accepted it takes the discussion of facts and

incidents - and allocation of responsibility - off the agenda. As the second excerpt reveals it has another function of providing individual parental morale boosting and constituting parenting as joint because of the existence of joint worry.

2. Grievances Cause Feelings

This rephrasing constitutes the situations about which there are complaints as the cause of upsetting feelings. For example mutual allegations by Mr. and Mrs. Field that the other is acting in such a way that Saturday access is impossible is followed by, "It's just that access is obviously making you very uptight and unhappy."(95) Here the implication is that there is no problem in the access situation itself but that the focus of interest should be the problem of parental feelings which it engenders.

3. Grievances Are Caused By Feelings

This is by far the most commonly postulated relationship between complaints and feelings. This often takes the form of simply talking about feelings immediately after parents have been accusing each other of specific actions regarded as wrong or unhelpful. For example soon after the above excerpt, Mr. and Mrs. Field outlined why they believed staying access was not working. The Conciliator response is then:

"There are very strong feelings from everybody here with the children and the two of you and the lady that you are living with. Everybody has been very hurt indeed and in a sense the children are in the centre of it, aren't they? Because, as you described it, it felt as if the battle was going on, the battle between the two of you."(96) Towards the end of this appointment the hurt is more specifically referred to as anger (after a parental

argument about whether the mother does feed the children adequately) in the question, " You're still both very angry aren't you?"(97) Similarly Mr. Gale's allegation of his wife's inadequate caretaking of the children is followed by, "Well it's obvious there is a great deal of anger between the two of you"(98)

In some cases this rephrasing takes at least in part the form of a query. For instance Mr. Spencer's allegations about his wife's organising of access is followed by "How much of this is actually the pain of the break up? It's still very real isn't it?"(99) and later in this case another parental argument (over the facts of the father's behaviour in the local public house) is followed by the more positive, "It certainly sounds to me as if there is still a lot of anger pain and resentment".(100)

Thus the pain and anger is not specifically constituted as the problem at this stage but it is prioritised on the agenda and it is again constituted as a jointly-held feeling. This type of rephrasing also uses the same response to parental allegations of lying as was seen in conciliator responses to parents' initial speeches. Such allegations do not therefore lead to investigations of conflicting facts and internally inconsistent 'stories', but to a reinforcement of the idea of different view points and memories based on negative feelings. Examples from two cases show how this is done.

Conciliator: "So there is differences of memory about facts as well".(101)

Mr. Lloyd: "This is ludicrous" (i.e. Mrs. Lloyd's allegations)

Conciliator: " This may be the way she sees it".(102)

Conciliator: "But you know that the truth is always subjective and truth differs according to which angle you look at it and particularly these kind of circumstances where so many emotions are involved. So I don't think

either of you are lying - you just see the same thing from different angles".(103)

Such interventions do more than divert from establishing facts - they imply facts are irrelevant but they also legitimate the expression of viewpoints. For example in the excerpt above where the conciliator refers to "the way she sees it" this intervention also legitimates the mother continuing with her allegations -presumably to provide evidence for the topic of feelings, not past access practices, to be included on the agenda. Similarly in both the Spencers' appointments there are examples of rephrasing which legitimates "How she feels" as a problem area.

Mrs. Spencer: "He antagonises me. He gets out of the car with a big smirk on his face".

Conciliator: "And that's how she feels"(104)

Mrs. Spencer: "....I've just had it up to here...."

Conciliator: "And that's how she feels. It may not be how you see it but it's how she feels."(105)

4. Grievances are Normal

Here again the conciliators are rephrasing to reduce conflict by undermining the status of grievances - in this case by constituting the alleged misbehaviour as normal in the circumstances and therefore not legitimately a focus of complaint. For example parental allegations concerning money lead to, "It still sounds as if your separations very very raw" (106) implying that such allegations are normal at this stage. Similarly a son's "misbehaviour" and family response are constituted in the following intervention as "natural":

"They had actually taken a lot of trouble and cared for you by the sound of it even though in a more restricted way than you would like. That's the parental thing isn't it. People fighting against their parents is quite natural and your aunt and uncle took that role".(107)

In the next example the complaints are constituted as the "usual" result of early attempts to live separately.

(After Mr. and Mrs. Gale have quarrelled regarding the children's shoes)

Conciliator: "It's always the little things".

(Mother and Father quarrel about the video)

Conciliator: "How long have you two been separated? (1 year) So it's not all that long is it? It's quite hard to get used to leading separate lives I think and this is the house you were both living in before? (Yes)'Cos that's quite hard too".(108)

Here the rephrasing almost amounts to a suggestion that the problem is the difficulty of leading separate lives. Later in analysing endorsing and suggesting it will be clear that in many cases the conciliators merge these different types of intervention rather than put them sequentially. One example at this stage shows how the conciliators' summary of Mrs. Baker's complaints is itself a rephrase before this is also rephrased in the form of a suggestion.

"If I can sum up, you are saying your son has problems with access. I think I would like to put it as he has problems with coping with your conflict rather than he has problems with coping with the access. Would you accept that?"(115)

This quotation makes clear an intended result of many of these rephrasings: an alteration in parents' perception of their responsibility for the problem. Grievances transformed into worry or concern deny any individual

responsibility as do grievances seen only as indicators of feelings. Similarly rephrasing which looks to feelings as the cause of grievances, or normalizes the actual grievance, makes both grievance and responsibility for it irrelevant. The last, mixed intervention, goes further and "inverts" responsibility for the problem. This reallocation of responsibility is much more important in a different sort of intervention - aligned questions to affect problem definition - and will be dealt with in the next chapter. Rephrasings are more closely linked to non-aligned questions in their function of altering the status of facts and in laying the foundation of the definition of a problem as being concerned with access to, and custody of, children but arising directly from the "shortcomings" of the parental relationship itself.

D. Conclusion

All these interventions clearly affect parental responsibility for the definition of the problem. Parents can "rephrase" conciliator questions and "answer" what they like. But this often results in conciliators repeating the question or rephrasing the client's answer. If parents answer questions "correctly" the material they are responsible for contributes to the construction of the problem envisaged by conciliators when they ask their questions, and because these questions and rephasings envisage a mutual parental problem then the images which emerge will support this interpretation. However the material supplied by clients initially or later in answer to conciliator questions may be responded to more "positively" by conciliators in the form of queries or suggestions to alter clients' images of themselves, the other parent and the child and therefore the construction of the problem itself. This will be dealt with in Chapter 5.

CHAPTER 4: NOTES

1. See Chapter 1 pp 38-39.
2. See Chapter 1 p40.
3. For example: Becker, (1963) The Sociology of Deviance. Cohen, S, (1980), Folk Devils and Moral Panics:
4. These were not attended because the client or conciliator had refused, because of practical difficulties or because the sample of 24 had already been acquired. I was able to make notes on 20 appointments not attended as well as on an equivalent number of cases which did not lead to appointments.
5. Responses to this question were obtained from conciliators in 22 out of the 24 cases. (Cases 14 and 15 are missing).
6. Cases 3, 7, 12, 13, 17, 20, 22, 23.
7. The conciliators disagreed in Cases 18 and 21 and this quotation was from the interview after Case 5.
8. Case 26. Similar comments were made in Cases 2 and 4.
9. Cases 6, 8, 11, 19.
10. Cases 7 and 12.
11. Cases 6(1): Conciliator 3.
12. See Chapter 1, pp 38-39 and Appendix 3.
13. Case 21 (Appointment 2): Conciliator 15.
14. Case 1: Conciliator 6.
15. The 2 exceptions are a joint appointment (following separate interviews) when the father began a long speech as soon as seated, and a referral by a D.C.W.O. which gave conciliators information which they 'checked out'. Also if conciliators do explain about conciliation and confidentiality this precedes initial questions.

16. Case 6: Conciliator 3.
17. Case 7: Conciliator 10.
18. Case 12: Conciliator 2.
19. Case 17: Conciliator 6.
20. Case 19: Conciliator 2.
21. Case 23: Conciliator 20.
22. Case 21: Conciliator 5.
23. Case 7: Conciliator 22.
24. Case 4: Conciliator 15.
25. Case 5: Conciliator 11.
26. Case 6: Conciliator 8.
27. Case 16: Conciliator 12.
28. Case 19: Conciliator 1.
29. Case 12: Conciliator 1.
30. Case 16: Conciliator 12.
31. Case 19: Conciliator 2.
32. Case 21: Conciliator 2.
33. Case 12(11): Conciliator 1.
34. Case 11: Conciliator 7 (after about 5 minutes into the 1st appointment when the mother only had outlined the 'situation').
35. Taken from cases 1, 3, 6, 7, 16 and 24. There are also similar ones in cases 2, 19, 21 and 23.
36. Case 1: Conciliator 11.
37. Case 5: Conciliator 7.
38. Case 12: Conciliator 1. Very similar questions are to be found in Cases 16, 17 and 21 from Conciliators 12, 14 and 15.
39. Case 24(1): Conciliator 7 and also similar at Case 4(2) by Conciliator 15.

40. Case 2(1): Conciliator 1.
41. Case 16(4): Conciliator 12.
42. Case 3(2): Conciliator 11.
43. Case 5(1): Conciliator 11.
44. Case 22(5): Conciliator 3.
45. Case 2(2): Conciliator 11.
46. Case 4(7): Conciliator 10.
47. Case 22(1): Conciliator 3.
48. Case 16(1): Conciliator 12.
49. Case 3(1): Conciliator 11.
50. Case 1(3): Conciliator 1.
51. Case 23(2): Conciliator 20.
52. Case 22(4): Conciliator 3.
53. Case 6(1): Conciliator 8.
54. Case 7(3): Conciliator 10.
55. Case 2(2): Conciliator 17.
56. Case 12(9): Conciliator 1.
57. Case 1(3): Conciliator 6.
58. Case 2(8): Conciliator 1.
59. Case 1(2): Conciliator 1.
60. Case 15(1): Conciliator 13.
61. Case 21(6): Conciliator 15.
62. Case 7.
63. Case 12(19): Conciliator 1.
64. Case 19(20): Conciliator 1.
65. Case 15(2): Conciliator 13.
66. Case 14(1): Conciliator 8.
67. Case 19(6): Conciliator 2.

68. Case 20(2): Conciliator 12. Similarly Conciliator 12 in Case 16(4).
69. Cases 3 and 5: Conciliator 11.
70. Case 23(2,3,4): Conciliators 2 and 20.
71. Case 16(5,6): Conciliator 12.
72. Case 21(12): Conciliator 15.
73. Case 1(4): Conciliator 6.
74. Case 1(7): Conciliator 6.
75. Case 2(6): Conciliator 17.
76. Case 16(4): Conciliator 12.
77. Case 23(7): Conciliator 2.
78. Case 24(17): Conciliator 7.
79. Case 2(4): Conciliator 17 and enlarged on at 2(9).
80. Case 21(6): Conciliator 15.
81. Case 2(5,11): Conciliator 17.
82. Case 3(22): Conciliator 17.
83. Case 23(5): Conciliator 2.
84. Case 23(7): Conciliator 2.
85. Case 20(4): Conciliator 12.
86. Case 12(2): Conciliator 1.
87. Case 2(4,5,7).
88. Case 6.
89. Case 10(2,8,9).
90. Case 24(5): Conciliator 7.
91. Case 12(18).
92. Case 22(5): Conciliator 3.
93. Case 1(2): Conciliator 1.
94. Case 24(9,20): Conciliator 7.
95. Case 6(2): Conciliator 3.

96. Case 6(3): Conciliator 8.
97. Case 6(20): Conciliator 3.
98. Case 7(5): Conciliator 10.
99. Case 19(11): Conciliator 1.
100. Case 19(26): Conciliator 1.
101. Case 6(16): Conciliator 8.
102. Case 12(6): Conciliator 2.
103. Case 12(22): Conciliator 1.
104. Case 19(12): Conciliator 2.
105. Case 19(26): Conciliator 2.
106. Case 19(26): Conciliator 1.
107. Case 23(10): Conciliator 2.
108. Case 7(5): Conciliator 10.
109. Case 21(34): Conciliator 2.

CHAPTER 5 : REALLOCATING RESPONSIBILITY

"While the notion of agreement is obviously crucial, conciliation is more of a process of encouraging the parties to take up their responsibilities as parents." (Shepherd,Howard and Tonkinson,1984:21)

Chapter 4 has dealt with the way conciliators influence, by questions and rephrasing, the subject area of the problem and the status of facts and feelings within the problem. However, interventions directly to challenge, endorse or replace a client's view of the problem are the means by which particular problems are transformed in particular ways. In this process, as the above quotation from a group of Divorce Court Welfare Officers implies, the transformation also of the client's concept of parental responsibility is crucial. To achieve these transformations, querying a parental definition of the problem (or its explanation) is used more frequently than conciliator suggestions or endorsing a parental definition(1). Querying, or cross-questioning of parents, will therefore be discussed first, followed by conciliator endorsing and suggesting of problem definitions.

A. Querying.

These interventions are often more sustained than non-aligned questioning and may lead onto, or be mixed in with, conciliator suggestions. They are all attempting to modify, in some, way parental perceptions of the

explanation of the problem though this often transforms the problem itself because explanation and problem are inseparable. This altering of perceptions is done in three main ways:

1. By constituting the problem as one for which parents are jointly responsible.
2. By constituting as irrelevant past responsibility - both generally, and specifically regarding children - and thereby constituting parental responsibility as joint from the day of separation.
3. By modifying individually-held views of what parental responsibility entails.

1. Joint responsibility for a problem.

The reallocation of responsibility so that it is held jointly is attempted in two main problem areas: the breakdown of the marriage (including the actual separation) and access difficulties.

(i) The Separation

In three cases the separation had not occurred and was not desired by the father and in two further cases the separation is comparatively recent and desired by only one parent, (one mother and one father). In all these cases the conciliators try and reallocate responsibility for the end of the marital relationship. This is shown most clearly in the second appointment of Mr. and Mrs. Cann which was preceded by a conciliator discussion and resulting decision to do more "work" on the feelings surrounding the divorce in order to allay the mother's 'burden' of guilt. Therefore this topic was introduced

very near the beginning of the second appointment.

"What I was left with last time were two things - one was the end of your marriage and the feelings associated with that which obviously (inaudible) and I think this has to be seen as a joint failure. I don't think you can put it on one or the other".(2)

However, Mr. Cann said he held his wife 95% responsible for the separation as the mistakes he had made in the marriage had not been enough to justify her leaving him. The other conciliator then stressed to the father that, "It does take two. I mean there's responsibility on both sides and um I think in your own circumstances it is very easy to say it's her fault because you can see she's the one that's going"(3). The conciliators went on to ask questions about the good years of the marriage, leading to suggestions as to why the relationship had mutually failed.

In Mr. and Mrs. East's appointment there is a similar sustained attempt, part of which is extracted below, to refute the husband's denial of responsibility for their marriage difficulties and his referring to his wife's decision to leave as a 'whim'.

Conciliator: "It's not a whim, she's saying it's gone on for years. Do you think she's been happy in your marriage over the last ten years?"

(Long speech by Mr. East)

Conciliator: "Yes, but you haven't actually answered what I asked. Do you think she's been happy over the last ten years?"

Mr. East: "Well I think she's not happy'cos she's not a housewife".

Conciliator: "Then you can't say that it's been a whim because if it's ten

years of not being happy it's not a whim". (4)

Later in the appointment the wife explains that she feels she must leave because, "The main thing I think is that I do not want to be subservient any more. I do not want to be dominated." (5) The husband therefore proceeded to refute that he dominated her, leading to further conciliator interventions:

Mr. East: "... You shouldn't do something because I asked you to do it. You should do it because you want to do it."

Conciliator 2: "As long as it's what you wanted her to do".

Mrs. East: "I have been doing that for 24 years to keep the peace".

Conciliator 2: "Perhaps that is one of the problems ... but that's a load of water under the bridge isn't it?"

Mr. East: "What?"

Conciliator 2: "Your wife feels that she didn't stick up for herself in the first place".

Mr. East: "Didn't stick up for herself. I am the most domesticated man that you ever wished to meet ... My wife has never done any shopping in her married life".

Conciliator 11: "I don't think that's what we're talking about ... Which of you goes out with the other when they ask?"

This leads to further parental argument and querying of Mr. East's attitudes, culminating in the following conciliator intervention: Conciliator 11: "So what is this about you saying you are not, you aren't, dominant? She can like it and that's OK ... but actually if you are saying you want her

to stay you've either got to say "You stay, carry on with doing what you like and stay 'cos that's what I want" or you say to her "You can't go" well maybe saving the marriage is you saying to your wife "You have a right to live your own life"."(6)

This is therefore another attempt to allocate responsibility by 'pushing back' the point at which marital difficulties appeared so that particular recent events are to be seen as less important in the breakdown. Again the reasons why the wife has been unhappy are at first played down - the 'fact' of unhappiness is sufficient proof of non-satisfaction of needs which should have been supplied by the other partner. This attempt to encourage the husband to accept some responsibility for the relationship difficulties then becomes an attempt to encourage acceptance of responsibility for saving the marriage. In other words the father must change so that the wife will stay. In this case the father remains convinced that the fault is not his and said he had wanted Marriage Guidance to decide who was right or wrong whereupon conciliator 2 pointed out that "there is no right and wrong" and went on to ask him for ways "to facilitate her leaving" if he could not change.

This is a long extract from Case 5 but conciliators make it clear that such 'work' is considered very important and is a necessary foundation-laying stage. Similar sustained interventions are found in other cases. For example Mr. Parker, whose wife also wanted the marriage to end (and had actually just left) for almost identical reasons, was similarly queried on the effect of his actions and attitudes in contributing to marriage difficulties.

The following short extract indicates the tone of such queries.

Conciliator 12: "She was saying she'd got a lack of intimate attention, perhaps you hadn't sat next to her".

(Mr. Parker explains at length that his wife never said what she wanted)

Conciliator 5: "Because that's how it's got".

Mr. Parker: "That's how it's always been".

Conciliator 5: "OK ... but she is perhaps saying you didn't hear what she said".

Mr. Parker: "She doesn't know how hard I've tried with her to open up".

Conciliator 5: "Has she said?" (Pause)

Conciliator 12: "Perhaps what you are unable to feel is how hard it is for her to get something out".

(Mr. Parker says he did understand but often ended up asking direct questions).

Conciliator 12: "But you see very often the more direct things get, the more difficult it is for people to feel they are worth making any comment, they are able to make any comment"(7).

Again the husband in this case had difficulty in accepting this reallocated responsibility for the breakdown of the marriage. The same was true of The Norths who attended 8 appointments, in many of which there was a return to the question of this allocation of responsibility, though initially the groundwork was the conciliator comment that "the reality is that it takes two to make a marriage."(8)

In the case of Mr. and Mrs. Quinn where the wife wanted the separation to be temporary there is the same attempt to give her responsibility for the

split and not allow her to blame her husband and specifically her husband's health.

"Because I think it's very easy at a time like this to fall into a trap of finding some reason, something else to blame, and which may or may not be valid, and I think if you were taken off on that trail I think you wouldn't be doing yourself any sort of justice. It would be difficult for you to actually come to terms with the break-up"(9).

Later, after specific questions regarding their arguments, the other conciliator again stresses how long-standing the difficulties are:

"So it's not - it hasn't been something that's come out of the blue out of a perfectly rosy situation. It was cumulative ... his health does seem to be a bit of a red herring in a sense, saying it's down to his health lays everything very squarely down on his shoulders and it becomes an easy scapegoat ... Only when you can accept it's a mutual thing can you go into arrangements regarding the children".

Mrs. Quinn: "You mean I'm not being mutual enough?"

Conciliator: "Well my feeling is you're thinking it's all down to him ... and yet I know it must be mutual responsibility for communication difficulty"(10).

Here an earlier conciliator rephrasing of parental arguments as a communication difficulty had facilitated the construction of the marital problems as longstanding and mutually caused. This led Mrs. Quinn to accept some responsibility but her use of the word 'blame' was then queried.

"It's not about blame. I think my colleague said responsibility and you took that up as blame, but I think it's a different thing. It's actually only the bit that's your responsibility and not taking the blame for what's happened generally. I mean I think it's a question of maybe being able to come to terms with the fact that the relationship or marriage or whatever you want to call it is over."

Mrs. Quinn: "Oh I don't mind going along with that attitude, that's why I came".

Conciliator: "It's not a question of 'going along with it', it's a question of you being able to accept it in yourself which is much harder".

Mrs. Quinn is then queried on what she sees as accepting separation and the post-separation relationship with her husband. The conciliator intervenes with, "He's really in the wrong isn't he? (laughs)" and Mrs. Quinn replied, "Well yes up to a point I think he is in the wrong and so am I. I can't believe what he's done is the right thing." The conciliator's response of "Not the wrong thing?" was challenged by the mother's reply, "Well that's the way you look at it"(11).

This is the only case where the conciliator distinction between blame and responsibility is made explicit(12) and it is difficult here to be sure what the conciliators are conveying or what the mother understands by the distinction, especially as the word 'blame' is later used. It also points up the fact that the conciliator use of 'responsibility' is normally left undefined and is sometimes introduced into situations where parents have been talking about fault as for example in the previously quoted extract

where Mr. Cann talked of 'mistakes'. Similarly Mrs. Berry's feeling of guilt that, "It must have been me or he wouldn't have wanted somebody else in the first place" is queried with the statement that, "There's something on both sides. It isn't all totally your fault"(13). Clients and conciliators may well be equating 'sharing responsibility' with 'reallocating fault'.

(ii) Access difficulties.

Just as the conciliator advised Mrs. Quinn not 'to fall into a trap of finding some reason' for marriage breakdown other than mutual responsibility, so conciliators encourage parents not to use a reason external to themselves for access difficulties. In the following extract it is Mr. Gale's explanation of transport and accommodation difficulties which are constituted as excuses rather than as legitimate reasons.

Mr. Gale: "I haven't been to see the children because I haven't got my car now, so I haven't been able to get over there. That's the reason, and where would I take them, be fair".

Conciliator 10: "I see, so".

Conciliator 6: "What sort of distance. Is there public transport?"

Mr. Gale answers and then talks on another topic before the conciliator returns to transport.

Conciliator 6: "If you've actually got problems about transport, how are you going to plan to see the children?"

Mr. Gale: "... I can't afford it".

Conciliator 6: "Are you working?"

Mr. Gale: "Yes".

Conciliator 6: "Obviously you've got lots of practical difficulties in seeing the children, but whether or not you have a good relationship with them in the future I suppose will depend on how much effort they're willing to make so that you can see each other regularly, because you can't have a relationship with them if you don't see them".

Mr. Gale: "Yea, but it's difficult".

Conciliator 6: "Well I'm not sure I actually go along with can't, um, it sounds like it's difficult but I don't think that you can't. I mean you're not living 250 miles away from them, and parents have access to children when they're living hundreds of miles away".

Mr. Gale: "I will be in September anyway. I'm moving to X town in September".

Conciliator 6: "Are you saying that you don't actually want to have access to the children?"

Mr. Gale: "No".

Conciliator 6: "It's just that's how it's coming over to me. I was wondering whether you're finding it too difficult or too painful".

Conciliator 10: Yes I think if you're actually saying that it's too difficult or too painful to have access, I think it would be better to say that rather than to say it's the travelling"(14).

Not only are feelings - and responsibility for them - prioritised, but the original explanation is actually replaced by the use of 'rather than to say it's the travelling'. The travelling therefore becomes not one of two or more reasons but irrelevant.

In a similar way parents are encouraged to take their share of responsibility for a situation where the child is apparently not happy about access. For example, when Mrs. Lloyd explains that staying access has not been allowed because the daughter dislikes sleeping at anybody else's house, the conciliators constitute the mother as responsible in two ways: because of her own insecurity and because of her lack of firmness.

Conciliator 2: "But maybe she thinks you can't be left. It's maybe not that she can't leave you but that she feels you can't be left".

Mr. and Mrs. Lloyd argue about their daughter's clinginess)

Conciliator 1: "That may mean that she feels It's your need not hers".

Later: Conciliator 1: "When she does want to come home to sleep do you ever actually say to her "Oh nonsense, you're perfectly all right and it's going to be inconvenient for me"?"(15)

In Case 21 both parents, though more specifically the caretaking mother, are queried on their responsibility for the children's distress.

Conciliator 15: "How do you expect the children to be secure in their outlooks if in fact the two parents are unable to agree about patterns ... how do you expect them to be happy about the access arrangements with the extent of feelings around?"

Mrs. Baker: "I am not there when they are handed over, so they are OK".

Conciliator 2: "That's not actually true. I'm sorry but I would beg to differ and disagree with that because the children are handed over in the home and you are there ..."

Conciliator 15: "You're there emotionally. The emotional tension and pressure that goes on between you two is very high ... To me that's placing

the children in a very untenable position".

Conciliator 2: "And you're also giving them a very mixed message, because effectively you don't want them to go".

Mrs. Baker: "I think they're better off without it".

Conciliator 2: "So effectively you don't actually want them to go".

Mrs. Baker: "If you want to put it in black and white I would agree with that".

Conciliator 2: "So the message to them is 'You've got to go but I don't want you to go', so they must be torn. There's a difference between what you say and the feelings that go with it".

Mrs. Baker: "But my daughter has said to third parties 'I don't like daddy'."

Conciliator 2: "But mummy doesn't like him. In fact I'll put that at an even higher level, mummy actually can't contain her feelings that she feels towards this man"(16).

Again there is a similarity here with the interventions to share responsibility for marital difficulties. Outwardly 'going along' with separation or access is not enough, there must be a positive acceptance of responsibility for the ending of a relationship, (signified by some form of 'confession'), and there must be positive acceptance of the benefits of access. Feelings must not just be contained but changed. Responsibility therefore includes the duty to change one's feelings as well as one's practices.

In several cases one parent denied responsibility by pointing to the 'aggravation' -general or specifically at access time - of the other parent

as the causative factor in access difficulties. This is queried in several ways. For example Mrs. Spencer was queried on two counts: that she ought to put up with it and that she in any case reads too much into Mr. Spencer's action.

Mrs. Spencer: "If things were better between us I wouldn't mind him coming to the house more often ... He does nothing to ease the situation ... I didn't do nothing at all".

Conciliator 1: "You know if he'd done everything you wanted you'd still be married to him. He didn't do what you wanted when you were married to him. You couldn't get him to do what you wanted when you had him all the time".

And later : Conciliator 1: "But one of the problems is that when he's with his mates and laughing you immediately assume he's laughing at you. You do read all sorts"(17).

The mother is therefore being constituted as responsible because of her inability not to ignore her ex-partner and because even in marriage she learned she could not make him ease the situation, so cannot expect him to do so now. As with the initial setting out of positions at the beginning of conciliation, there is no attempt to examine the facts of the situation which is seen merely as an occasion for the display of feelings.

The responsibility to initiate change if the other is 'incapable' is also made evident when Mr. Upton is urged to accept that the mother has certain attitudes and therefore he must do something to allay them. For example he is told,

"And I think if you are saying that you can see a future where access is stopped and you cannot change to accommodate the possibility of it not happening then you must take part of that destruction as being yours" and, "It's all right saying it shouldn't be necessary, but the fact of the matter is that it is necessary."(18)

Responsibility in this instance is therefore constituted to include a duty to ensure the other parent's attitudes are positive, which will entail more than what would be seen as 'a fair share' of the change necessary for access to take place. This is clearly a very wide definition of responsibility and one which goes very much beyond fault. Nevertheless in this case fault is also being reallocated -both parents are challenged when they place total blame on the other. In one instance the challenge took the form of, "Can I say to both of you that the destruction that I feel is in this room here around me is what you two carry between you"(19) and Mrs. Baker's perception of Mr. Upton's 'aggressive' attitudes is also queried with, "But sometimes attitudes are displayed but it's reaction".(20) Again responsibility for attitudes is being transferred.

2. Joint responsibility after separation.

In almost half of the observed sample there are parental comments in the course of conciliation which clearly show a lack of a sense of a joint parental responsibility for the children post-separation. This is queried by conciliators who constitute post-separation parenting as joint through interventions to modify three main areas of perception - whether pre-

separation responsibility is relevant, whether the other parent really cares for the children and whether the burdens of responsibility are shared.

(i) Past responsibility

Past responsibility as parents is important to caretakers who query the motivation of non-custodians in wanting to have access. In this sample such caretakers are all mothers, angry at the father's access plans. Mrs. Adams for instance queried her ex-husband's motivation in applying for access after a two-year gap, and further instanced the 'fact' that he had spent very little time with their child when they had been together as evidence for her view. Here the conciliator query took the form of suggesting this was quite normal for fathers and babies and the fact of living in the household as a father is itself significant.

"That depends I suppose. With a small child fathers have less contact sometimes, don't they, than when the children are older? But you were actually living as a family? For almost two years and that's different isn't it?"(21)

Mrs. Spencer with a similar view was queried with a different argument - that the post-separation situation is not the same and the past is not therefore relevant.

Mrs. Spencer: "He wants the children to a quarter to eight in the evening, but when we were actually together he couldn't wait to get home of a Saturday evening 'cos he used to go out with his friends. I could guarantee you those children, well we'd be back by at least well quarter to seven at least, 'cos he had more time for his friends than he did for us".

Conciliator: "But I think you've got to remember that when you do split up

life is exceedingly different for both of you".

Later the mother is criticised by the father for spoiling the son in the marriage, and therefore affecting the access relationship now. This is rebutted again by a reference to the normal which therefore removes individual responsibility.

"The reality is: in families little boys usually do go to their mother and little girls tend to go to their dads. That's a fact in a family, but the other side of it is that as little boys grow older they do need to have a relationship with their fathers"(22).

Instead therefore post-separation responsibility is imposed - a joint one because of children's needs. Another example of this is after Mrs. Lloyd queried the father's motives because of his absences and his behaviour towards her when they were together. Conciliator: "But you see we both feel strongly that unless a father is actually detrimental to his children in so far that he was beating them up or sexually assaulting them or something like that, we actually feel a father's influence or a mother's influence is in the children's best interests".(23)

The type of parenting pre-separation and its lack of jointness is not therefore relevant except for these two provisos.

The type of parenting at the time of separation is also constituted as irrelevant. In the following case the complaint is by a father who has de facto custody.

Mr. Parker: "..... and I also think that was it very responsible the fact that you wanted to do this (have care and control) at a later date and take off

for another town which means that you take the children away from their schooling, their hobbies and their immediate friends?"

Conciliator: "I think that you are asking questions which quite frankly there are no answers to.."

Mr. Parker: Surely parents should be responsible? Did she consider responsibility when she was planning to go? How much did she consider the children's benefit when she walked out of the house?"(24)

In this extract the conciliator's attempt to remove responsibility for the effects of changes in child arrangements following separation from a concept of joint responsibility is not successful. With Mr. and Mrs. Adams the attempt is to remove any individual responsibility for failure of access immediately after separation.

"The situation was a bit different then wasn't it? There must have been a lot of feelings around for both of you about seeing the other parent because access in the home is quite difficult and uncomfortable."(25)

ii) Joint Parental Love

In other cases constituting joint responsibility entails constituting joint caring.

This involves querying a mother's belief in the other's lack of love for the children and the priority the father gives them over other commitments, as the following excerpts show.

"Well he has made some during the summer hasn't he? He is seeing his son".(26)

"But she loves her Daddy and wants to see him and he wants to see her".(27)

Conciliator: " it is very important for any child especially of the age she is coming up, to actually feel that daddy cares".

Mrs. Lloyd: "I would like to feel that".

Conciliator: "But he does care".

Mr. Lloyd: "She doesn't believe that I do".

Conciliator: "But he does care and we hear that he cares the children could actually see something different if they were allowed to sit in the middle and look in both directions. They could actually see a loving mum and a loving dad".(28)

In case 21 however, the Conciliators do not assert that the father does care -the fact of his fatherhood is taken to mean that the mother should share her parental responsibility in order to give the father a chance to share. In this case, past responsibility and caring becomes totally irrelevant.

Conciliator: "They are his children".

Mrs. Baker: "Yes I know".

Conciliator: "Under the normal course of events, he would expect to see them every day".

Mrs. Baker:"If he was a caring father - a man who really showed that he cared".

Mr. Upton:"You have no concept".

Conciliator: "Let me finish, he is their father".

Mrs. Baker: "Yes, O.K. he is their biological father, but if he was a caring

father".

Conciliator: " He wasn't a caring husband - you are denying him his right to attempt to be a caring father".(29)

3. Joint Parenting Burdens

Basically conciliators are concerned that "unfair burdens" which present or proposed child care and access arrangements create, or might create, are not to be perceived as a problem. In this sample, most of the examples were of mothers seeing the problem as children upset by access, and therefore being more difficult to care for. For example Mrs. Berry saw the problem as the "come back" after access visits in the form of angry, upset and spoilt children.

"I think that's always the problem - on the one hand you have got mum who usually has the children all the time saying exactly as you have said, but on the other hand you have got dad who sees the kids once a fortnight thinking "Oh what can I do with them when they come. I've only got a few hours, how do I fill the time without making it seem strange?". You know lucky old wife, she's got the children all the time ... it can work both ways. I mean, dad can feel just as left out as much as you are feeling right in the middle of it".(30)

Clearly definition and solution situations may often merge at this point because if such explanations are accepted then the solution of no access to remove the upset is no longer a viable one. In this case, and almost identically by another conciliator with Mr. Spencer(31), the mother's

burden is equalised by the father's pain at not seeing the children every day, and his spoiling of the children is likewise legitimated. This is projected as " always" the problem and therefore not a problem for the agenda.

In other cases, the mother's complaints about problems caused by the burden or preparation for access and the results of it - not just in emotional terms but in physical tasks of laundering, shopping and preparing meals at awkward times(32) are also undermined by stressing the father's inability to share these tasks within the confines of access times, and his distress at the lack of opportunity. In one case however, it is the father's perceived burden - restrictions on bringing back times - which is to be reallocated. The conciliator concentrates on explaining that Mrs. Spencer has the burden of getting them ready for school the next day, and will assume the father's lack of thought for her is the cause.

"I think it's very difficult to be the custodial parent, and I can see lots of problems arising when you expect children back at a certain time, and they don't come".(33)

3. Modifying Individual Parental Responsibility

Conciliators also query parents' perceptions of the extent and character of their parental responsibility. In general terms, Sections 1 and 2 above have shown how concepts of parental responsibility are broadened to constitute what parents see as individual into joint responsibility. In a sense the sum total responsibility is spread out over the parental unit. Examples in this

section however, show how responsibility is sometimes confined. Joint responsibility can mean that one parent does not have any responsibility when the other does, and it can also mean a parent does not have total responsibility even when care taking. This can therefore entail restricting individual parental responsibility.

i) Responsibility during access

The most common conciliator interventions in this section were those to query the custodial parents feeling some responsibility for what happened to their children during access, especially how they were transported and fed. For example, Mr. Adams has previously taken the two year old in the front seat of a van, and Mrs. Adams therefore felt that the problem was transport and wanted the solution to be concerned with arrangements about transport. The Conciliators queried the inclusion of this on the agenda, and Mrs. Adam's responsibility on four levels - that she could always say no on the day if the father turned up with inadequate transport, that "it's only happened once", that "nobody's perfect", and that "it's his responsibility to provide adequate transport.(34) Here, the mother's responsibility is restricted but not totally removed. In another case, the responsibility for transport and excessive sweet-eating during access visits is totally removed.

"I think this is always a difficult one this - it is hard to accept, but I think that whenever the children are with the other parent, then the other parent has to accept that they are responsible for them, and if you accept that Mrs. Spencer, it's worrying . Yes, sure very worrying, but he has to trust you when the children are with you most of the time."(35)

Such placing of sole responsibility on the non care-taking parent even applies if the 'culprit' is the new partner, in this case Mrs. West's:

"Can you not let go to the extent that you think she will make good judgements about her children's safety? You see, I think you have really got to leave it to her to handle her new partner. I don't doubt if he was driving in a silly way, I think she is going to tell him. Aren't you?"(36)

Not only is responsibility placed, but the other parent is constituted as being capable of responsibility. There is no investigation of past events which might or might not prove this, nor are there to be guidelines to ensure it. So, as with Case 1 when the Conciliators blocked discussion on transport details, here discussion about what the new partner says or does and his share in spoiling the children are also blocked.

"The access parent often falls into the role of 'treat parent' - they don't see them that much. It is pretty natural, it's pretty common I don't think you can lay down guidelines".(37)

Indeed in Case 12, these differences about parenting are constituted as benefits with, "At its best what that does is actually give them a different view of life which is good for them".

ii) Responsibility for the Parent/Child Relationship

In addition the care-taking parent must also perceive that joint responsibility entails allowing the other parent to be totally responsible for the type of relationship and the extent of the contact he or she has with the children. In other words, joint responsibility does not imply certain duties of joint parenting - each parent is to be solely responsible for

working out the extent of his or her responsibility in practice - subject to the constraints imposed by the concept of responsibility so far constituted.

So when Mrs. Kay, a care-taking mother, complains that "he doesn't help maintain their bikes, or netball nets - I've been giving him opportunities to do something constructive for them I have total responsibility. His help has been non-existent and his demands excessive", this is constituted partly as a result of the mother's difficulty in leading a separate life. The father's chosen restricted parenting role is therefore legitimated with, "I think the trouble is that when people first separate, that you have to actually get used to having separate lives and it's terribly difficult, it's terribly difficult for you because you are not having any help but it's also difficult for the dads because you haven't got the children there all the time, and it's a sort of finding a new balance, and going through all sorts of problems that people do go through when they are trying to make their new lives".(39)

The mother's complaint is also dealt with in terms of a burden to be equalised and as a normal problem of adjustment. There is no norm of more equal sharing of tasks conveyed. The problem is therefore not one of the father's unequal share of care-taking, and the solution is not how to persuade the father to joint care taking. Instead, the problem is the mother's attitude and the solution will be that the mother is to adjust to the perceived greater share of care-taking. Similarly, Mrs. Spencer wanting the father to be more protective and constructive with their son,

was told:

"I think what you are saying is that you're wanting to make a relationship between your son and his father, and what I would suggest to you is that they have got to find their own relationship - either good, bad or indifferent".(40)

3. Restrictions on responsibility

The above examples are ones of restrictions of individual parent's determination of the content of joint parenting. There are however, interventions to restrict individual determination of one's own parenting in two areas - that of the concept of possession of children, and that of not necessarily acting on children's verbalised wishes. Three cases provide good examples of the querying of the concept of possession.

Mr. Lloyd: "I have not been the perfect father, but I have a right I believe to see the children".

Conciliator: "The girls have a right to see you".(41)

Mr. Owen: "She sent the baby away to stop me seeing her".

Conciliator: "Well, at the moment you couldn't see her unless there is an agreement or a Court order".(42)

Conciliator: "But, when you say, Mr. Young, 'he is taking my kids out', he is taking her kids out. A lot of this is to do with sharing isn't it, and responsibility".(43)

As regards children's wishes, care-taking parents are reminded it is not part of their responsibility to believe and act on these wishes if they run

counter to their psychological needs regarding the absent parent. Several examples are to be found in Case 12, where Mrs. Lloyd believed her daughters when they told her they disliked access. She was queried on two counts: that they might not be telling the truth and that even if they are, such feelings should be discouraged. The first count was used on two separate occasions in one appointment.

"Sometimes children have to tell separate parents two different things, I mean sometimes they have to, sometimes they feel that the parent they live with can't take good things from the ex-husband or the ex-wife. Do you feel that couldn't possibly be true?"(44)

The second count is used to show the damage the mother is allowing to happen to her daughter.

"Have you ever thought what effect it has on the child to actually, I mean if what you say is true about the way the older child thinks about her father, have you ever thought what effects that actually has on her to feel that way about her own father, because the father she knows is half of herself".(45)

Similarly a father who had dropped an access request because his daughter was hostile was asked "Do you feel it right that you should stop seeing her?"(46)

On the other hand, the conciliators queried Mrs. Field's belief that she knew that her son wanted access. However, it is possibly significant that this case and the Lloyd's were ones in which the Conciliators had, early in the appointment, mooted the possibility of, and need for, the children's attendance. In another case, where the child was present but not involved in the appointment because of his age, the father was queried for stating

that he did not know his son.

Mr. James: "No, I know he is my son, but I don't know much about him (pause)."

Conciliator: "I think you could answer that actually. I think you need to discuss it".(47)

D. Endorsing parental views

Endorsings are a difficult group of interventions to analyse. Numerically, they do not appear as important as non-aligned questions or querying(48). Indeed four cases have no endorsing of parents at all, and six more cases have only one instance of one parent being endorsed in each(50). However, in eight cases both parents are endorsed on between one and three occasions each giving a total of thirty four conciliator interventions which in some way "took sides" and therefore cannot be ignored.

Endorsings are also difficult to assess because of the variety of ways in which they are inserted. In approximately one quarter of all instances, the endorsing immediately follows parental answers to initial or gap-filling questions (51) so that there are instances of early conciliator support for a particular view. A slightly larger group shows endorsement of one parent's view immediately after the other parent has been criticised so the conciliator, at that point, is partisan.(52) A smaller group shows endorsements inserted after querying that parent's views. This can be seen as a very powerful endorsement of a point which has been 'proved' by cross questioning. Both these groups include instances of endorsing very late in the appointment (53) so that it can be another method of enforcing a view promoted by other forms of intervention.

What does appear significant is how a conciliator's selection of views to endorse is quite limited. Put simply, conciliators endorse a parent - either parent - whenever the view they express fits in with the conciliator's perception of what the problem is and the explanation for it. Conciliator endorsements therefore cover the following range of views.

1. That the parents' care-taking is not a problem.
2. That the parents' motivation is worthy, legitimate and not a problem.
3. That the children's behaviour can be explained by reference to parental feelings and past or present conflicts.
4. That difficulties over access and care taking are 'genuine' difficulties, and therefore part of the problem to be solved.

1 and 2 above therefore lead to an exclusion from the agenda of whether a parent's child care is adequate, or whether a parent is properly motivated. Views 3 and 4 may lead to the inclusion of a particular view of a problem situation which therefore modifies the problem. 1, 2 and 4 have been encountered in other types of intervention,(54) only 3 is somewhat unusual.

1. "Does that deal with that one?"(55)

One parent's good-care taking of the children is endorsed in only four cases. In three of these cases the issue is related to access and the fourth to care and control. In two cases the father's care of the child during access is endorsed -either by not condemning the 'spoiling' of the child, or by believing the father's story that the children had a good time. In the latter case, the father's story was used specifically to counter the mother's belief that the daughter didn't like staying overnight anywhere.

Mrs. Lloyd: "She has always been like that".

Conciliator: "But she has been to stay with her father before now, and apparently according to him, had a very good time down there".(56)

However this case had previously included an endorsement of the mother's assertion that she had gone to a lot of trouble to prepare the children physically and psychologically for earlier access visits, and the conciliator had endorsed this with "you tried to make it easy for them".(57)

The Vaughans' appointment is unusual in that the conciliators endorse the mother's statement that she has encouraged access and also endorse both parents allowing the child to refuse access but they do go on to suggest changes in the future. The care and control example is an endorsing of Mr. Young's assertion that he does usually insist that the youngest child distinguishes between her "real" and her "new" Mummy so undermining some of the mother's case against the father. This intervention also ends with the conciliator's phrase "does that deal with that one" which seems to sum up the status of all the interventions in this group -very much seen by conciliators as "clearing the ground for more important points".

2. "You're asking us to help you get there". (58).

The second group of endorsing all concern parental motivation. In 7 cases at least one parent is accusing the other of 'wrong' motivation and lack of good faith in asking for a particular outcome. In 5 of these cases the mother believes the reasons for father's access demands are therefore problematic and need discussion. The conciliators however support the fathers' views that they have positive genuine motivations. For example, when Mr. Adams asks for access after a 2 year gap and Mrs. Adams

believes this request is a tactical one concerned with pending ancillary proceedings the conciliators first query and then endorse Mr. Adam's' position by a series of interventions including, "So you now feel more secure and settled yourself; you feel you can offer him more" to support the view that access only ceased because of particular difficulties.(59)

In another case where the parents are unmarried and the mother, Miss Taylor, denies any significant family relationships ever existed the conciliators endorsed the father's belief that he and the mother had lived as husband and wife with the child to whom he wants access, as a pre-requisite to supporting his request.

viz. "Yes that's quite a long time....so you had at one time a good relationship?"(60)

This endorsing happened at the very beginning of the appointment after a few initial gap-filling questions and only makes sense in terms of a very early conciliator assumption that access was to be encouraged and that the father did have a legitimate motivation for his demands. Likewise in cases 7, 12 and 21 the father's good faith is upheld against the mother's accusations that the access demand was part of a campaign of 'aggravation'. (61)

The rest of the examples in this group are somewhat varied. In 3 cases the mother's actions are endorsed as legitimate and not, as claimed by the father, as obstructive or destructive. One of these entails endorsing the mother's decision to live at her mother's home (62), one supports the mother's decision to leave the marriage by endorsing her view of not feeling wanted as a sufficient reason (63), and another endorses the mother's statement that her opposition to the proposed long term access plans is due to a legitimate belief that the father cannot plan long

term.(64) Finally, Mrs. West, contemplating applying for care and control of the eldest child, is supported in her motivation of seeking the child's best interests. The conciliators counter the father's belief that the proposed application is because the mother wishes to assuage the guilt she feels at her earlier neglect of the child and they end their intervention with,

"At the moment it doesn't seem to me that he is much to hanker after. He is going to be a right headache to somebody". (65)

3. "She's got considerable difficulties at the moment" (66)

This group of 5 cases in which there are instances of conciliators endorsing practical difficulties as genuine, are interesting in that many of the interventions discussed in this chapter divert from the facts of the situation to the feelings and conflicts causing the situation. The function of the interventions is to constitute the parents' motives and actions as good and therefore practical difficulties as legitimate not obstructive. The clearest example is when Mr. Davies refuses to give guarantees to implement monthly access but continues to press for flexible access which Mrs. Smith sees as inconvenient and the result of the father's lack of effort. One conciliator stops this argument implicitly to endorse that public transport is too difficult and expensive and that the father's transport difficulties are genuine.

"I'll tell you what I'm thinking, I think that there must be a very important reason why he actually can't give the guarantee of once a month because he says he cares for the children and he understands about the anxiety so it seems to me that what we're really about is this very important reason why he can't actually give a guarantee".

Mr. Davies then explained that he had no car so that he had to borrow one

off a friend. When he concluded "I can't always twist his arm because he wants it himself" the Conciliator reiterated, "But you're telling us we're right - there is an important reason."(67) This intervention proved to be crucial in the development of this particular conciliation session and outcome. Clearly if accepted such an endorsement shifts the problem from the father's "failures" on to genuine difficulties, and the responsibility for the solution is likewise shifted from the father to the parents jointly.

The example from Case 24 also centres on access difficulties but in this instance the care-taking father is critical of the mother's sharing of access with "so many different boyfriends". The conciliators endorse that Mrs. West needs help with transport and accommodation from her boyfriends when they intervene with, "It must be very hard having access to the children living at the YWCA", and endorse the boyfriend's presence at access times with, "But he is part of her mum's life in that your new partner is part of your life the reality is you've both got new partners." (68)

In a sense in these and similar instances (69) what the conciliators are doing is helping to define what is capable of change and what cannot or should not be changed because it is part of the reality. This function is revealed in a very different case -the James- when the conciliators support this as a genuine difficulty and query the father's view that the mother can do something about it. In this case the implication is that change on the part of the father as well may be necessary. (70)

4. "You're on to something aren't you". (71)

This group covers 8 cases in which one or both parents were endorsed when

they offered particular explanations of problem situations concerning the children. "You're on to something" also suggests again that conciliators formulate their own explanations, even before clients have produced theirs, against which clients' explanations can be evaluated and responded to appropriately. This particular quotation is part of a series of interventions to endorse Mrs. West's belief that Robert is manipulating them, not that she is manipulating Robert as asserted by Mr. Young. Later in this appointment Mr. Young's explanation of why Robert has been acting out is also endorsed.

Mr. Young: - "I used to go off with him at the weekend when we were all together and he did get my undivided attention. Now there is a stable family and I now spread my attention equally."

Conciliator 5: "And to add insult to injury you go and have a baby".

Mr. Young: - "He hates me, he hates me, he hates the baby".

Conciliator 5: "What sex is the baby".

Mr. Young: - "Boy" (pause).

Conciliator 7: "But you're saying he was deprived of his Dad when you and your new wife got together. He didn't have all your attention so he got his own back didn't he?"(72)

This combined explanation of putting responsibility onto the child but finding a reason in the marriage which jointly failed is common in this group. So Mrs. Vaughan is endorsed in her lack of responsibility for not getting access going with, "It's not you that's stopping them". (73) but parental bitterness is later introduced as a reason for Frances' hostility. Similar instances can be found in the appointments of the Lloyds and the James so that 'divided loyalties' in the children becomes the explanation, and the responsibility becomes a joint parental one.(74)

The remaining four incidences of endorsing in this group all entail parental concern that the separation and bitterness has or will cause the children to suffer. For example at the very beginning of her appointment Mrs. Berry had said regarding access difficulties:

"You know it was my fault; - I found it very difficult for him to come and visit the children without getting into great arguments and so it had a big effect on the children ... really this last few weeks we've decided that, for the children's sake, I should keep my mouth shut and just to be as pleasant as possible."

The conciliators had followed this with, "And is that working?" The parents having agreed that it was now better, the conciliator responded with, "So it's only in the last few months that you've found it possible to actually change your attitude?" Therefore the mother's explanation that the crucial factor was and is her attitude is implicitly endorsed.(75)

There is also one case - the Parkers - which is unusual in that both parents, from different angles argue from the beginning of their appointment that the root cause of their marital difficulties is inadequate communication. Therefore in this case all conciliator endorsements support the father's view of the problem as communication and the mother's explanation of the communication difficulties. The first intervention in unit 2 is the clearest example.

"So if I can interpret what you've been saying, you see the problem as one of basically being unable to communicate, unable to talk to each other, share your burdens, share your anxieties or appreciate what each is putting up with."(76)

The endorsement in this case, which on its own admission ("interpret") includes rephrasing, is more akin to the content of conciliator interventions in the next session - suggesting - than the rest of this section.

E. Conciliator Suggestions

Conciliator suggestions as to what the problem or its explanation is are important, not only because of their use in most cases, on several occasions(77), but also because their detailed explanations of what the problem 'really' is, give a very clear picture of how and why responsibility is being allocated within the parental unit.

As with endorsements, suggestions are inserted at various points but the largest group is inserted during and after parental arguments or after criticism of one parent by the other. The second group of suggestions tends to be inserted later in the appointment after both definition and solution work has been started whereas the third group covers suggestions inserted early in the process after gap filling questions. The remaining suggestions are inserted after endorsing or querying a parent.(78)

Though suggestions cover both problems and explanations of problems, in practice the dividing line between the two usually disappears because a particular explanation reconstitutes the problem itself.(79) It is also necessary to realise that not all cases concentrate on single problems - there are multiple, though related, problems.(80) Most suggestions imply a reallocation of responsibility for the problem which again makes it a joint one though a minority allocate responsibilities specifically to one parent.(81) All suggestions can however be catagorised into five main types of suggestions, (to be dealt with separately):

1. Parental lack of communication.
2. Parental lack of control or commitment.
3. Parental conflict and tension.
4. Parental attitudes

5. Manipulation by the child not by one parent.

1. "What you don't do is communicate about them"

Suggestions that the problem is parental communication involves conciliator definitions of such communication. So for example, the above suggestion was refuted by Mr. Davis', "Yeh I communicate, I ask on the phone", but the conciliator went on to explain that, "What you don't do is communicate about them in a way which says 'I bury my hatchet about the past' ".(82) Similarly Mr. Upton and Mrs Baker are told that, "It's much easier to argue about what's gone in the past than make constructive plans for the future and that their arguments over maintenance and access "occur because you two can't actually have a dialogue".(83). Communication is therefore more than talking and must include no references to the past but should facilitate adequate 'hearing' as is pointed out to Mr. and Mrs. Parker.

"What you were saying just now suggested to me that you were feeling small and put down. (Pause) I wonder if that message ever got through to him? 'Cos I'm suggesting that had it got through things might be a bit different".(84)

This definition of communication again creates a situation for which both parents are mutually responsible, contrary to the pre-conciliation beliefs of the parents quoted, and one which enables particular practical disputes to be subsumed under "mutual communication difficulties". For example a dispute over Mr. Spencer's giving of sweets to a child who is having expensive private dental treatment paid for by the mother is transformed by, "I think it is a matter of not clear communication" which entails the mother telling the father about the tooth problem until he understands.(85)

Furthermore parents who believe that communication is not a problem are warned that pre-separation difficulties will re-surface.

"In divorce the conflict between different communications is still there even though it may appear that everything has sort of quietened down a bit".(86)

The ground is therefore prepared for future, as well as present, problems to be seen in terms of communication difficulties. On the other hand the communication difficulty is sometimes defined as less than is implied above. For example a non-sequitur question to Mr. and Mrs. Ward, "...and have you been able to talk together before?", led to the following complex conversation which constituted the problem as a lack of meeting and talking per se (and therefore in a sense the appointment was part of the solution)

Conciliator 2: "How does it feel for you two to be sitting in this room having shared a car I guess. How does it feel?"

Mr. Ward: "She feels sick".

Conciliator 2: (To Mother) "How do you feel?"

Mrs. Ward: "I don't know a bit of relief after years of resentment".

Conciliator 20: "You now feel that you are not resentful?"

Mrs. Ward: "Yes."

Conciliator 20: "It's a nice feeling isn't it?"

Conciliator 2: (To Father) "And how about you, ' cos I guess you had more to lose?"

Mr. Ward: "Its all past now."

Conciliator 2: "So the resentment for you has actually passed?"

Mr. Ward: "I don't have to hide in a shop doorway now".

Conciliator 2: Does it feel like you are not going to have to dodge in shop

doorways now?"

Mr. and Mrs. Ward: "Um' yes"

Conciliator 2: "How's that going to affect Stephen?"

Stephen: "I dunno, it's all right I should think".

Conciliator 20: "Good - I think that both of your parents can now express their care for you, they haven't got to hide from one another. They can come out in the open and say they are still your parents even though they are separated".(87)

This last statement also constitutes another communication-parenting relationship. Not only is communication the problem which is causing particular difficulties of parenting but post separation parenting is not deemed complete unless it contains the ability to communicate with each other and the children jointly. In some cases parental realisation that this is the kind of parenting expected causes resentment which is countered with a restatement of its necessity as in the following:-

"What I am hearing is that you are both resenting the feeling that you are actually not free of each other and so on and really this is the difficulty you are in - that while you have children that you both still love you actually are not free of each other and somehow you have got to co-operate in something for these children".(88)

There are also three cases where the problem is defined more generally as the parental relationship itself, but including its communication aspect - again to stress the mutuality of the problem:

"Can I say again - you have actually found the key to it - and that is what is happening between you two".(89)

"It's sad isn't it that it's four years and there is so much bitterness it's quite

hard to live with".(90)

"But I actually think that all your suggestions are not valid because the same trouble between you - the same relationship - will be there".(91)

2."What we need to see is how you could hold your breath and count to ten"

This is obviously a suggestion for a solution but is a good way of summing up all eight instances in this group which view the problem as a lack of parental control or commitment, often to counter one parent's wish to explain the problem as specific failings in the other. For example the above quotation follows on from the conciliator having explained to Mr. and Mrs. James, "I think Mum and Dad have got exactly the same problem as their son. There comes a point at which it is too irresistible not to lose your temper or lose control and that's when it happens".(92) Similarly, Mr. and Mrs. Kay were told, "When people are in the grip of strong emotion, as I guess you both are in your different ways, it will be quite easy for arrangements to come unstuck".(93) The reason for this lack of control is sometimes defined as parental commitment to do so, as for instance to Mr. Upton and Mrs. Baker:

"I think that my feeling is that neither of you have got an enormous amount of vested interest in coming to an agreement and yet it's three children - they are your children - you created them and they are living with feelings and they are certainly carrying yours and it is my opinion that parenting is about carrying your own feelings so that the children can grow up without them".(94)

In two instances this lack of commitment is seen specifically in terms of lack of trust so that responsibility for creating distrust is to be shared with

the parent unwilling to trust as in this statement to Mrs. Adams:

"So it seems to me about trust - trusting that any commitment that's made can be kept so that you feel safe about Simon having a relationship with his dad." (95)

3."What is damaging the children is this tension"

Sometimes parents bringing to conciliation an agreed problem about the child's behaviour are explicitly told that the problem lies in the parents not the child. Sometimes the cause is again defined as divided loyalties, as for example to Mr. and Mrs. Berry:

"I think all children in this situation find themselves with terribly divided loyalties and they really don't know quite - they fear that if they like their father they might upset their mother and they fear that, you know, this makes children angry and resentful".(96)

Indeed a conciliator comment to Mr. and Mrs. Cann suggests that such divided loyalties are inevitable and must be considered as a future if not a present problem.

"But I suppose although your son will cope with his relationship with both of you he is obviously dependent on how you two relate to each other. Obviously particularly as time goes on and it becomes obvious to him that you are permanently separated then there will be some conflict of loyalty at some stage".(97)

The very existence of feelings, without active parental conflict, is also sometimes constituted as a problem.

"I think there must be a lot of pressure on your children because whatever cover-up job you are doing they know something is wrong".(98)

"I feel this has been going on so long now that your girls must have been in the middle of it and I don't see how they could possibly be expected to be comfortable in a situation with these feelings around".(99)

Such tension is also used to undermine the statements of children about the situation which imply more blame in one parent.

"Its not surprising to me that what is happening is happening...because she has obviously made up her mind that she is going to get off this bit and she has jumped your way".(100)

Indeed in two cases where parents are seeking to locate the problem, and therefore the solution, in one parent only conciliators suggest parents are simply using the children to continue the parental conflict - there are no real practical problems at all.

"I still would like to put it that there is a circular thing here".(101)

"I think that um..you know what I hear, very sadly is the fact that you are actually between you using the children to get at each other".(102)

4."We usually find children are very much barometers of what's happening between parents"(103)

In a sense this quotation sums up not only this group of suggestions but also the three groups so far discussed in that "What's happening between parents" is always prioritised and has so far implied joint parental responsibility for the problem. However the nine cases in this group have been isolated because they contain suggestions which seem to show that if the prioritisation of feelings and relationships conflicts with the constructions of joint responsibility then the former takes precedence. In five examples the relationship suggested as the root of the problem is the

parent/child one, but this is linked to the parental relationship in those cases where the mother is addressed, as in the suggestion to Mrs. Vaughan that Frances will want access, "When she doesn't think it is going to upset you so much um..I think that is probably the main reason that's stopping her".(104)

However where the father is addressed this link is not made: "Richard is desperately uncertain of his relationship with you and you with anybody seems to be a barrier to him".(105)

"I am wondering whether perhaps the girls need time to rebuild the relationship with their father".(106)

Therefore in these few instances the responsibility allocated to the mother seems to imply fault but not so with the father's responsibility. In other instances however, though parents are not constituted as jointly responsible, allocation by conciliators of responsibility to one parent is done in the context of that parent wishing to place full responsibility on the other. Therefore both parents are to be seen as responsible for the problem but severally. For example Mrs. Spencer constructed the problem partly as the aggravation caused by the father living in close proximity by choice but the conciliators stressed that this proximity was reality and the mother's non acceptance of this fact would aggravate the access problems.(107) Similarly Miss. Taylor's previous experience of men, not the father's alleged shortcomings are constituted as the cause of the mother's "difficulty" in agreeing to access.(108)

Lastly, Mr. Cann himself was constituted as part of the problem because of his refusal to accept joint responsibility for the separation.

"I think that actually if you look at what has happened its not 95% responsibility....between you you've got there and I think it has to be between you because the children themselves will pick up your attitude that "it is not my fault"(109)

This whole group is very small but it is possibly significant that in two out of the three father-responsible cases the problem is in a sense constituted as the lack of feeling and in four out of the six mother-responsible cases the problem is the existence or intensity of feelings.

5."He's manipulating isn't he?"(110)

This is only a small group but interesting because it is not so much constituting parents as jointly responsible as removing all individual responsibility so that parents are jointly not responsible except in so far as past events have influenced the child's present behaviour. This is done in all cases by defining the child's pro-active behaviour as the problem. In Case 24 such suggestions reinforce endorsements already discussed in constructing the problem as the son's manipulation of the parents and not vice versa (111) and also one precipitated by Robert pushing his parents.

"You are both absolutely at your limits aren't you?"

Mrs. Berry's children are also constituted as powerful with: "So there is a certain amount of playing one off against the other."(112)

With Mr. and Mrs. Lloyd conciliator suggestions focus responsibility on the children by stating that parents are not lying but are passing on conflicting stories given by the children who have been unable to express themselves adequately to each parent separately and that the child's dislike of staying access is a child initiated fear of insomnia and not therefore the fault of

either mother or father.(113)

The other instances, though not so prominent in their particular cases, all use elements of the above examples.(114)

.Conclusions

This chapter has detailed how conciliators challenge parental conceptions of the problem on which conciliation is to proceed. In this process the role of endorsing parents is small - the bulk of conciliator questions query parents or provide them with different explanations of the problem area. Parental responsibility for the construction of the problem to be solved is therefore considerably diminished. Even more significant is that the construction of a particular concept of parental responsibility is itself part of the process of problem construction. The process of conciliating solutions therefore depends on a large measure of conciliator responsibility for the problem and the for the 'meaning' of responsibility itself.

CHAPTER 5: NOTES

1. See Appendix 4.
2. Case 3(22): Conciliator 11.
3. Case 3(23): Conciliator 17.
4. Case 5(9): Conciliator 11.
5. Case 5(2).
6. Case 5(12-14).
7. Case 16(8,9).
8. Case 14(1): Conciliator 8.
9. Case 17(6): Conciliator 6.
10. Case 17(6): Conciliator 14.
11. Case 17(6-7): Conciliators 6 and 14.
12. Though in the extract from Case 16 above the conciliator does agree it is not about 'fault'.
13. Case 2(5): Conciliator 1.
14. Case 7(12,13): Conciliator 6.
15. Case 12(18).
16. Case 21(26).
17. Case 19(28,29).
18. Case 21(10): Conciliator 2.
19. Case 21(11): Conciliator 2.
20. Case 21(24): Conciliator 2.
21. Case 1(6): Conciliator 6.
22. Case 19(7,12,13): Conciliator 1.
23. Case 12(10,11): Conciliator 1.
24. Case 16(13): Conciliator 12.
25. Case 1(8): Conciliator 6.

26. Case 10(23): Conciliator 10.
27. Case 12(15): Conciliator 1.
28. Case 12(20): Conciliator 2.
29. Case 21(13): Conciliator 2.
30. Case 2(12): Conciliator 17.
31. Case 19(22): Conciliator 1.
32. Cases 4, 6, 10, 12 and 19.
33. Case 19(3): Conciliator 2.
34. Case 1(12): Conciliators 1 and 6.
35. Case 19(19): Conciliator 2.
36. Case 24(14): Conciliator 7.
37. Case 24(20): Conciliator 7.
38. Case 12(5): Conciliator 2.
39. Case 11(14): Conciliator 10.
40. Case 19(12): Conciliator 1.
41. Case 12(22): Conciliator 1.
42. Case 15(3): Conciliator 13.
43. Case 24(29): Conciliator 7.
44. Case 12(5): Conciliator 2 and also at 12(17).
45. Case 12(17): Conciliator 1.
46. Case 22(1): Conciliator 3.
47. Case 10(3): Conciliator 10.
48. There are 44 interventions to endorse, compared with 77 and 11 interventions to question or query respectively.
49. Cases 3, 5, 6 and 20.
50. Father only: Cases 1, 4, 7. Mother only: Cases 2, 17, 23.
51. There are 11 instances of endorsing within the first 7 units and they

are usually in units 2-3.

52. There are 14 instances of such endorsing with 7 instances of endorsing after querying a parent's view.
53. For example in Case 21(29).
54. 1 is sometimes also constructed via a leading question and 2 via querying, for example.
55. Case 24(9): Conciliator 7.
56. Case 12(9): Conciliator 1.
57. Case 12(3): Conciliator 1.
58. Case 21(24): Conciliator 2.
59. Case 1(3,5,9): Conciliator 6 and also 1.
60. Case 15(11): Conciliator 13.
61. Case 12(16) and Case 21(24): Conciliator 2 and Case 7(2): Conciliator 10.
62. Case 15(5,7): Conciliator 13.
63. Case 16(5): Conciliator 12.
64. Case 19(7): Conciliator 2.
65. Case 24(17): Conciliator 7.
66. Case 24(20): Conciliator 7.
67. Case 4(10): Conciliator 10.
68. Case 24(7,20): Conciliator 7.
69. Case 19(2,3,4,24): Conciliator 1 and Case 21(17,29): Conciliators 2 and 15.
70. Case 21(29): Conciliator 2.
71. Case 24(4): Conciliator 7.
72. Case 24(10): Conciliator 7.
73. Case 22(7): Conciliator 1.
74. Case 12(6,12): Conciliator 2 and in Case 10(7): Conciliators

- 1 and 10.
75. Case 2(1): Conciliator 1 and similarly, in Case 23(11): Conciliators 2 and 20.
76. Case 16(2,3,10,11): Conciliator 12.
77. There are suggestions in all cases except 7 and 20, and in each of cases 1 and 15 there is only one suggestion. Excluding these 4 cases the number of interventions range from 2-11, averaging 3-5 instances in an average length appointment.
78. The largest group of suggestions inserted after parental argument cover instances from the following units in 10 cases: 2(10,13,14), 3(24,26), 4(4,12,24), 6(4), 10(7,22,25), 11(5), 12(16,20,22), 19(4,18,23,27), 21(18,20,27,32), 24(8,10,24). The second largest group, inserted later in the process, covers the following instances in 11 cases: 2(7), 3(22,24), 12(13), 16(14), 17(6,9,10), 19(20), 20(4), 21(15,31,34), 22(8), 23(5,6,7), 24(14,15,18). The third group, inserted after gap-filling questions cover the following instances in 8 cases: 2(6), 3(4), 5(4), 6(2), 11(2), 12(4), 23(2,3), 24(3,5).
79. In 11 cases the suggestion outlines the problem as the parental relationship with its lack of communication, and in a further 6 cases the problem suggested is the lack of parental trust and commitment. The rest of the suggestions cover explanations of the problem: in 8 cases that it is due to parental conflict and in 6 cases that it is caused by the child's behaviour resulting from a parentally-induced situation.
80. See notes 78-79 above for instances of cases appearing more than once.
81. The minority of cases covers 9 instances: in 3 responsibility is allocated to the father (Cases 3, 10 and 12) and in 6 cases

- to the mother (Cases 2, 11, 15, 19, 21 and 22).
82. Case 4(12): Conciliator 15.
 83. Case 21(18,27): Conciliators 15 and 2 respectively.
 84. Case 16(5): Conciliator 12.
 85. Case 19(9): Conciliator 2.
 86. Case 17(10): Conciliator 14.
 87. Case 23(7).
 88. Case 19(20): Conciliator 1.
 89. Case 10(25): Conciliator 1.
 90. Case 22(7): Conciliator 3.
 91. Case 5(11): Conciliator 12.
 92. Case 10(22): Conciliator 10.
 93. Case 11(5): Conciliator 7.
 94. Case 21(18): Conciliator 15.
 95. Case 1(8): Conciliator 6.
 96. Case 2(6): Conciliator 17. The quotation heading this section comes from a similar comment, but stressing parental responsibility, by Conciliator 15 in Case 21(31).
 97. Case 17(6): Conciliator 6.
 98. Case 3(26): Conciliator 17.
 99. Case 12(4): Conciliator 2.
 100. Case 12(20): Conciliator 1.
 101. Case 21(34): Conciliator 2.
 102. Case 19(27): Conciliator 2.
 103. Case 2(15): Conciliator 1.
 104. Case 22(8): Conciliator 3. A similar comment is made to Mrs. Baker by Conciliator 2 in Case 21(26) and also to Mrs. Berry in Case 2. In 2 further cases (10 and 12), it is suggested to the

mothers that the problem is the lack of relationship with the father.

105. Case 10(9): Conciliator 1.
106. Case 12(7): Conciliator 2.
107. Case 19(11): Conciliators 1 and 2.
108. Case 15(7): Conciliator 13.
109. Case 3(24): Conciliator 13.
110. Case 24(5): Conciliator 7. This group covers only 6 cases (2, 6, 12, 19, 23 and 24), though 2 of these cases (12 and 24) have 6 instances each.
111. In Case 24(5,18,22), with the following quotation by Conciliator at 24(8).
112. Case 2(10): Conciliator 17.
113. Case 12(11,16,22).
114. For example Conciliator 1 in Case 19(23), Conciliator 10 in Case 6(4) and Conciliators 2 and 20 in Case 23(2,5,6).

CHAPTER 6

"Let's think of where you are, and what the alternatives are now."

"The real solution... is that the two of you reach some sort of compromise." (1)

Chapters 4 and 5 have analysed the ways in which conciliators influence the construction of parental views of 'where they are' and the problems they are facing. This chapter seeks to show whether, and in what ways, the range and content of 'alternatives' under discussion are also a focus of conciliator interventions so that some understanding can be gained of what counts as a 'real' solution and in what senses it is a compromise. It is useful to look first at those solutions which parents propose and conciliators endorse.

A. Endorsing

This is a good starting point for two reasons:

1. It reveals the extent to which parental solutions are to be part of a compromise the content of which is consistent with conciliator views of an acceptable solution.
2. It reveals which of parental solutions are to count as solutions.

Analysis reveals however that conciliators appear very loath to endorse parental solutions in that there are only about 30 examples, with equal numbers endorsing the mother and the father. They are found in only 12 cases and in only four of these are there more than one or two instances in each case. (See Appendix 4) There are two possible reasons for this: that conciliators equate endorsing with showing support for one parent which

could be seen as evidence of a lack of neutrality, and that they do not believe the majority of parentally proposed solutions are real solutions. As conciliator querying of parental solutions does not reveal a similar reticence (2) the more plausible explanation would appear to be that very rarely are parental solutions seen as acceptable. This suggests that there may not be significant parental responsibility for the solution which forms the basis of discussion.

In most cases endorsement of parental solutions is not significant within the conciliation process in that other types of interventions often prioritise the same solution. For example there are only four cases in which there are three or more instances of endorsing and in three of these cases the same solution is advocated via other means either earlier or later in the appointment. In one appointment only -the Todds - does endorsing appear crucial, when conciliators consistently endorse the solution agreed by the parents prior to conciliation, whereby Mr. Todd is given care and control of the two girls, despite the fact that Mrs. Todd does have some misgivings (3), as the following comments show:

"Now that is one thing that does concern me - I think a girl needs a mother."

"The other alternative is for me to stay put and for him to go. One of us has to do it. We can't both stay in the same house."

Discussion of the parental decision, or the way in which it was made is pre-empted by the following conciliator response: "Indeed not, no. And you've already decided who is going to look after the children. Yes, and that is your decision as agreeing parents, which is marvellous if I may say so." (4)

This response implicitly endorses father care-taking but, more importantly, it prioritises an agreed solution.

However examples from other cases do not give a clear idea of the range of solutions which are acceptable as the content is varied and often case-specific, as for example endorsing Mrs. Spencer's belief that the solution should entail the children being home by 6 p.m. on a Sunday or Mr. James' belief that his son would enjoy spending access in his shop. More general parental statements that conciliators endorse include the following: that a son should have access to his father, that children like settled arrangements, that an open door policy concerning access is satisfactory for a fourteen year old and that repeated changing of care-takers is detrimental to children.(5) In addition, conciliators endorse solutions which entail a focus on the relationship between mother and father: for example that a more harmonious relationship will ameliorate the son's behaviour problems (6) and that using 'unreasonable behaviour' as a ground for divorce would exacerbate feelings and so harm the children. (7)

It is clearly necessary to analyse other forms of interventions to see in detail how and why conciliators influence solution construction. It is easier to do this than analyse problem construction because solution construction is less 'subtle'. (In definition work questioning was most important and much of this, together with rephrasing, was not explicitly constructing a particular problem - even non sequitur questions were usually made to appear as the natural progression of the conversations.) Also the different categories of solution interventions are less distinctive in terms of their content and functions.

There are however similarities between the work done on definition and solution. There is an almost identical number of interventions made to query to the views of one parent in both the solution and problem construction and as there are slightly fewer conciliator interventions

concerning the solution, querying takes on an even greater significance. However it is easier to pick out the main solutions proposed by looking at conciliator suggestions and, to a lesser extent, non-aligned questioning.

B. Conciliator Suggestions

Parents attend conciliation with problems concerned with access, custody and the actual separation and solutions are related to these three areas though the bulk of suggestions are about access with hardly any - only three - suggestions concerning separation, all of which frame separation in very positive terms, as in "So perhaps the sooner the divorce is through, the sooner you can feel there is a new chapter beginning" (8)

However conciliator suggestions also apply to a fourth area - the parental relationship itself - because, as chapters 4 and 5 have shown this is constructed as either the real problem or the explanation of the other problems. In all four areas there are specific practical suggestions and also general ones of principle but the latter form the majority of suggestions concerning care/custody and the parental relationship.

There are also some very case specific suggestions, as for example, "Is it necessary to end up in the same pub....are there two bars in this pub? Could you be in separate bars?"(9) but the majority can be analysed under the following three groups.

1. Care and Control

"The truth is of course they need both of you" (9)

This group of examples is dominated by cases 3 and 5 - the only two cases with unseparated parents in open and direct conflict before the conciliation appointment over custody proposals. Unfortunately these two cases have a common conciliator (10) which may well contribute to similarities of advice but three other cases in (16, 17 and 20) where custody plans were agreed at the time of the appointment, were nevertheless open to possible change and therefore also provide examples. Only one of these examples concerns practical suggestions of how to set up custody arrangements and that is at the end of the second appointment of Mr. and Mrs. Cann when conciliator 11 said "Let's be practical", told the parents to get their diaries out and suggested a time table for the mother to leave, take one child and have access to the other children throughout the summer. The rest of the suggestions are general principles and the one expressed in four cases is that care should be shared as much as possible and custody should be joint.

The rationale for the idea of shared care seems to be conveyed in the following statement.

"You have two young children who I think if we were to be able to ask them 'what do you think of what's happening to mummy and daddy', their reply would be almost predictable, 'We want both mum and dad and we would prefer it if they lived together and we had a proper mum and dad again'."

(11)

So Mr. and Mrs Cann are told that, even with one parent having daily care and control, "Children expect some sort of freedom between the two of you they don't want to be tied either to dad or mum they want to be free to enjoy both. You two have got to work out a system whereby those children can move freely between you". Similar comments are made in two other cases.

"When you are actually living apart you are both still going to share the

care of the children".(12)

"Presumably the son is going to go between the two he is going to share".
(13)

On none of these occasions is the extent of the sharing discussed. However it is worth putting this alongside a comment made to Mr. Quinn who was considering more equal shared care of his son whose age was similar to at least one child in each of the above families quoted.

"It's fairly crucial at his age particularly to have somewhere where he can put down roots and feel that it is his home. I mean he may well have a second home, an access home, but at his age he really does need to have a base somewhere he looks on as his home". (14)

'Shared care' is therefore being utilised as an idea to buttress a concept of joint parenting rather than a practical suggestion of joint caretaking and this idea is also to be strengthened by seeking Joint Custody Orders.

Conciliator 12: "And what I would advise you to draw up would be, by consent, joint custody which means that the one who has the care and control of the children is under an obligation to discuss with the other party all major factors concerning the development of the children like health, schools, leaving the country for any particular reason, um, yes and if the children want to married under age, big things you know". (15)

The constitution of joint parenting in this way does however have a specific function in that it reduces the status and power of the sole care-taker. So the 'merging' of access and care, as in the comment to the Canns quoted above, or the denial of sole custody to the care-taker, serve to reduce the winner/loser component by constituting care-taking as a smaller gain.

In many of the examples specialist knowledge that such suggestions are what is best for the children is conveyed. For example: "I mean what you can have is joint custody which is the right thing for most children if parents can talk reasonably".(16)

This is very important and will be dealt with fully in chapter 9. It will therefore not normally be commented on when it occurs in the examples in this chapter.

Another theme of conciliator suggestions is that the choice must not be the child's but the parents' jointly as the following statement makes clear;

"I think probably one of the dangers is in actually asking Stuart to choose. I mean I don't go along with the "old enough at eleven" bit. I mean I think our feeling is that children are much older before they are actually able to make decisions for themselves ... I am sure if you were living together under the same roof you wouldn't be delegating most decisions to the children until they were well into their teens".(17)

Another suggestion implies that "well into their teens" can mean fourteen onwards.

"Barry by then will be fourteen ... when he sees where the two of you are living he will actually make his own decision and the important thing is that you don't fight over him....".(18)

It is perhaps significant that in this case conciliator effort has been to construct the problem as separation itself and not custody. Hence the solution was not to entail custody decisions at all and therefore the conciliators had no concern at this stage regarding who would ultimately make the decision.

This example is also unusual in that it is saying that the custody position should be deferred. A series of suggestions to Mr. and Mrs. Cann (19)

advised them to make the decision soon and this is also the line which is evident in interventions to query parental solutions. This advice is based on construction of the problem as tension in the family and leads on to the advocacy of parentally agreed solutions, because the legal system cannot make decisions soon enough. It is also advocated that a care decision "does not have to be a final decision", (20) which is again an argument for putting off legal endorsement of the decision. As with "shared care" advocating a solution capable of early implementation but which is not necessarily permanent lowers the stakes. "Losing" care is not such a loss because it is not so total and permanent as originally conceived by parents.

However, advocating early decisions and trial arrangements led conciliators to suggest to Mrs. Cann and Mrs. East that they move out without their children before matters are resolved by the legal system. This is urged because of the strain caused by the mother's desire to end the marriage though the effect of this tension on the children is stressed to Mrs. Cann and the effect on her health to Mrs. East. In both cases the fathers wanted custody and were prepared to apply for it but Mrs. Cann was specifically advised to leave without the children, temporarily or permanently because,

"What I am saying is its going to take at least six months before a Court is going to make an Order for custody and the difficulty for a Court to make an order is that, if they don't see you in the new home with the children that you are going to live with, it is not going to be very easy for any Welfare Officer to make any recommendation". (21) Therefore the conciliators are putting the mother in a "catch 22" situation - if she stays in order to apply for custody on divorce she is seen as not likely to get custody until she leaves without custody. However these two cases have

additional factors - Mrs. Cann will have a large step-family if she leaves and Mr. East, having been made redundant, is the main caretaker.

Nevertheless, a conciliator principle is clear - it is not in a family's interest to delay a practical solution and the solution must entail a joint parental decision which may only be possible through compromise even if this means "the children cannot have the ideal." For example, Mr. Cann is told, "That your middle daughter stays with the other children might be better if their mother would agree and there wasn't any bitterness, but if she isn't likely to agree to that, then that is the two choices".(22)

Therefore, a real solution must above all be an agreed one and one which allows children to retain contact with the absent parent. The vast majority of conciliator suggestions concern the way this contact is to be managed.

2. Access

"It doesn't matter at the moment what happens - just keep it going" (23)

All conciliator suggestions assume access should and will take place. The construction of the solution is thus perceived as a matter of balancing what the child needs with what the parents can manage so that the different solutions suggested are simply different weightings of these two factors depending on the particular circumstances of each case. Clearly this puts a premium on conciliator definition of children's needs and parents' abilities. Out of context some of the suggestions appear contradictory. This is particularly so with suggestions regarding the type of access arrangement - whether regular or flexible - and whether children should be given the choice. The following principles can however be detected in conciliator suggestions.

1. "Secure in her father's life"

Access is often advocated as a solution to the children's problems. As the above quotation suggests, Kara Lloyd's insecurity can be eased by the building of some security in her relationship with the non custodial parent. Similarly Richard James' behaviour is defined as due to insecurity which requires that "Whatever happens he still needs to feel that you both care and love him and are concerned about him", (24) and that access must be continued and persevered with to prove this. When access does not happen it is urged upon the parents because "If Frances can feel good in herself about her dad it will make her feel better as well". (25) Access is also constituted as a solution which confers future benefits on children who have an access 'home' as in this statement to Mr. and Mrs. Todd:

"If you see life as a series of choices as long as each parent does not make it difficult for them to move in and out probably I think they have a very good chance in the future of that actually helping them because the more people can make choices the more flexible they are, the more they can negotiate problems that they find in life. I think children who have only one rigid set of rules to abide by become very inflexible adults". (26)

However conciliators do usually suggest that children are not given choices about access but instead must be given a joint parental decision on the matter and preferably one which is conveyed to them by parents jointly as the following comment indicates:

Conciliator: "I think that we were thinking that it would be a good idea for the children to come so that you two together could tell them what arrangements you had made about the access. Can you see the difference?" (27)

It has also been previously suggested to this father, Mr. Gale, not to take

any notice of Clare's wish not to see him because, "It is actually quite common that if children feel there is a lot of disagreement amongst parents they actually feel they can't bear to be caught in the middle." (28) In other words access is a solution only if it is agreed by parents who are not in conflict. Also access is not a solution if it allows children to hold power over both parents: access must increase, not decrease, parental control as this suggestion to Mr. Young reveals:

"We have seen children who have said they are only going to see their mother without the new partner. They really must not be allowed to control you in that way". (29)

So control is prioritised as an element of parenting and parental conflict is portrayed as undermining this control.

(ii) "You need something fairly concrete" (30)

Conciliators advocate a fine balance between defined and flexible access. For example the above quotation is taken from Mr. Todd's appointment but the following sentence from the same meeting seems to state the opposite: "Many parents regard access as only safe when they have it detailed down to the last minute and that is a prescription for disaster." However it later appears that being "detailed" is only detrimental if details have been imposed via the courts. If parents decide jointly that detailed access plans are easier for them to manage then they are the best for them.

"Most are written off as 'reasonable access' which is really the best. It allows scope for changing the arrangements". (31)

"Well the Courts could say 'reasonable access' should be granted to the children to their mother which really means, providing everybody is reasonable, it's o.k. for them to work it out The Courts can also say that 'defined access' and that is where partners are not trusting each other". (32)

It appears also that detail is beneficial as long as it is not too complex and facilitates regular access.

"I'm not very keen on complex formulae but every other week's easy" (33)

"My guess is, that if you had something concrete that you knew absolutely, it could work".(34) Therefore whilst urging co-operation and flexibility on infrequent occasions when regular arrangements are inconvenient for the children themselves or one parent as with Mrs. Field where the conciliator suggested it is O.K. if "It wouldn't happen more than once every three months" (35), flexibility is generally seen as a goal of perfection to be aimed at and something that, "You can actually build in" (36) to regular arrangements, especially at holiday times. This is seen as "easier for both parents and the children."

"It just seems to us we obviously have had experience with quite a lot of other parents with access problems. It does usually happen that if you have a fairly set time and fairly regular - that's easy".(37)

So not only is such access portrayed as good for the children, but it is also constituted as an arrangement which is therefore a solution to the problem of parental conflict itself. Regularity is therefore seen as avoiding repeated conflict over individual access dates and the stress within each family of maintaining such a regular routine is constituted as a lesser problem than the stress of parental conflict. Furthermore there is a winner/loser element again - pre-set access into the future is a greater gain to be set against the loss of care and control.

(iii) "Stave off problems by planning"

The benefits of forward planning are advocated generally to remove opportunities for future parental conflict even in cases where there is no present conflict, as in the following advice to Mr. Quinn. "You see in a

year's time you may see no reason whatsoever why Richard can't come and stay with the pair of you but that won't mean that his mother may not see any reason why that should happen and I think you actually can stave off problems by planning. (38)

The same conciliator also urged Mr. Adams to plan a slow gradual re-introduction of access with a new partner being introduced quite late in the day.

"I mean it may need stages.... to do it sort of gradually, very gradually....so I assume a gradual introduction for your son will work for your new partner too." ((39)

It is also suggested that this forward planning should also include transport and handover arrangements. For example, advance planning is urged on Mr. Davis so that he has time to "make arrangements with your friends" to borrow a car and further conciliator interventions suggest a contingency plan regarding how and when to telephone the mother and what notice she should expect if she is to share the transporting.(40) Planning concerning the handover of the children at access time is also seen as crucial because "this can be another sticking point and a very painful bit, delivery and collection of the children".(41)

Sometimes conciliators suggest a particular time-table for access as the basis for parental plans. For example the conciliators suggest to the Adams a time table for restarting access in May until the child goes to school in September (42) and to the Spencers a time table for access weekends over the three months until Christmas with a further meeting to plan Christmas access itself.(43) In several cases suggested plans are like this one accompanied by a suggestion to meet again to plan the next group of access visits,(44) And in two of these the suggested plans are

specifically constituted as trials. For example, access while Mr. and Mrs. North are still living separately in the matrimonial home is seen as a trial run for real separation and "the more you get in before you separate the better it will be".(45)

Second appointments and access as a trial would again appear as a way of lowering the stakes and altering the winner/loser balance. In these cases access is not to be seen as permanent and is to be seen as re-negotiable in the comparatively near future. Therefore with short term planning what is being gained is less. Whereas in a long term plan the gain is the hoped for lack of future conflict with the amount of gain depending on attitudes to such conflict and perceptions of the outcome of such conflict.

Conciliators also make suggestions about holiday access plans, "joint" access on special occasions, access within the former matrimonial home and the behaviour of the father during access, but all of these suggestions apply to only one case each. The importance of access to grandparents and suggestions as to how this can be achieved are made in two cases (46).

Specific practical suggestions about access are therefore to be found in sixteen of the taped cases. However, as examples have indicated this does not necessarily mean that conciliators are working on a practical problem of access: the suggestion is often a solution to the problem of parental feelings per se, as the following quotation makes clear:

"But I think if both of you could do what you actually came for which is to try and do some work on sorting out the access for the children - this can go a little way towards healing some of the bitterness"(47)

3.Parenting

"I'll tell you the thing that you will absolutely have to do and that is work together". (48)

"You know it is possible still, actually, despite the fact you are now living separately to still go on being very much together as far as being parents is concerned. Sometimes the wife feels she can't cope with that".(49)

However, in over half the taped cases(50) there are suggestions relating directly to the problem of the parental relationship which urge very general solutions of parental communication, commitment, avoidance of conflict and joint decision-making, with the corollary that decision-making by the legal system should be either avoided or handled with care.

(i) Parental decision

As already noted, that the decision should be a joint parental one is prioritised over consideration of the content of the decision. It seen as good for the children per se and not just in its results.

"It's probably also a good thing to allow children to see that although you actually can't live together as man and wife you actually can work together as parents.I think that's the bit they need to hang onto where Mummy and Daddy are not together as a married couple." (51)

However, parental decision making is at the same time usually urged as the mechanism likely to produce the right decision for the children, as in this example from the Canns' appointment:

"I mean I can't say I - there is quite a chance.....If you put the responsibility onto somebody else to make the decision for you, they can make the wrong decision".(52)

This sort of statement is made not only about potentially justiciable issues of custody and access but also of everyday issues like homework, as in the suggestion to Mr. and Mrs. Kay that "I think this is another instance where you two having discussed it together, can say to her 'you're going to have a pretty busy weekend -we both want you to make sure the homework is done.' " (53)

The only case where anything other than parental decision-making is encouraged is Case 15 where the very young mother still lives with her parents and the conciliators therefore assume decisions will also "be made perhaps by Mum and Dad"(54) .

Parental decision-making is also seen as requiring "checking out" what the children tell each parent as for example in this suggestion to Mr. and Mrs. Berry whose children may have been "fabricating" a possible holiday abroad.

"Could you check it out between the two of you, I mean is this an opportunity where you could actually, I mean we found that on one occasion we had a couple and each side were paying the kids' pocket money thinking that they were the only ones who were doing it you know".(55)

This quotation also indicates another aspect of parenting as a solution -that is communication.

ii) Communication

Communication is urged on parents as a solution to the general problem of conflicted parental relationships and one which of itself is good for the children. "It may take some of the pressure away from them if they see that you are talking".(56) As a solution it is applied to several specific situations. Firstly, it is the logical solution in those cases where grievances

have been rephrased as a joint communication difficulty. For example direct communication is urged on Mr. and Mrs. Todd to avoid antagonism arising from listening instead to what third parties told them about the other parent (57) because it is assumed complaints and criticisms are not justified but due to inadequate communication. Likewise where the conciliator had suggested to Mr. Upton and Mrs. Baker that arguments occur over maintenance and access "because you two can't actually have a dialogue" the solution becomes a practical one as to how to communicate. "Sounds to me all of those can in fact be swept aside by a commitment to actually talk to each other and not about anything other than the children". (58)

It is also constituted as a way of avoiding problems which may arise in the future, if for example, a child had to go into hospital, which was a possibility with Barbara Cann: "And it is important that you work out the thing now that leaves you able to talk about these things because you are still going to have to meet".(59) It is seen as a way of remaking decisions which may be unsuitable.

"If after that she is unhappy then she is going to tell you and I mean that's the whole point of you being able to talk because if you can then communicate with each other hopefully you can reach some kind of solution". (60)

Communication is however constituted in various ways in order to count as a solution in specific circumstances. With Mr. Davis and Mrs. Smith it is constituted as a sharing of explanations and feelings, which mirrors the construction of the problem as parental feelings.

Conciliator "But actually if you have got to carry on a conversation you've got to learn to converse in a different way. That's why I asked you whether

you were saying there's no way of conversing. I mean people can learn new patterns. Some people are very good at learning new patterns."

Mrs. Smith: "I'd rather converse. It would be a lot easier for me".

Conciliator "Yeh O.K. so (pause) you see if I was dad - he must tell you what he feels himself - If I was dad and you said "no it would complicate things" a hundred and one questions leap into my brain.... It is important that dad actually understands that pattern of complications and understands why you feel it would be difficult for you because that's what communication is about. Communication is not about short phrases but about saying "I feel this" ". (61)

Later:

Conciliator: "This set of walls can create more problems than they can actually solve if you two don't actually do a little bit of chin wagging about the children." (62)

The subject is returned to again with the advice that "It is a stupid thing to say but sometimes you have got to count to ten before you actually respond to a particular invitation or particular carrot that is dangled in front of you. You two are actually quite good at winding each other up". (63) So in this case communication is to be the answer to their problems arising from the need for a small degree of flexibility in the access arrangements. It focuses on feelings and may need "learning".

On the other hand the communication being urged on the Berrys in order to solve the problem of children possibly fabricating plans is obviously much less "intense".

"So in fact if you two could communicate more openly about this kind of thing. If you actually felt that you could pick up the phone or write a note or whatever...." (64)

Nevertheless for Mr. and Mrs. Lloyd the setting up of communication

clearly entails meeting -if only initially.

Conciliator 2: "Perhaps the most important thing is that you are actually here together..."

Conciliator 20: "You see it is still possible to remain good parents even though you are perhaps not good as marriage partners....perhaps by future contact you will be able to improve on that as well". (65)

Communication is therefore not constituted in one particular way and depends on the problem which had been constructed. Therefore the practical suggestions range from how to convey messages to how to explain feelings and motivations. However, at a general level, all parents are encouraged to 'talk to each other' at conciliation and afterwards. It is not only a type of conciliator suggestion but it is a requisite for many others. It is important to stress that its significance in relation to conciliation is greater than these few specific examples might imply. It also entails encouraging children to communicate^{with} both parents and therefore "keeping the lines of communication open and allowing them to show when they are angry or upset or whatever and not pretending that it hasn't happened and that their father is not to be mentioned or whatever" (66) is seen as beneficial, but impossible without an adequate relationship between the parents. The next section discusses further suggestions to improve this relationship.

3. Avoid Conflict

A third group of suggestions connected with the nature of post separation parenting all focus on the need, for the sake of the children, to avoid bitterness and conflict and instead to be trusting and reasonable. A good example of this is when Mrs. East is urged not to dispute custody in the

early stages of the separation and provoke a legal fight "because every dispute has bitterness and every bitterness between the two of you is damaging to your son".(67) Again trust and co-operation is seen as the best guarantee of avoiding future problems and more efficacious than legal "guarantees". These future problems ranged from common practical problems to major decisions over custody and access, as the following excerpts indicate.

Conciliator: "You see the key really to making this work is for you two to gain a little trust in each other and not feel that things are recurring like tennis lessons or whatever - are some machiavellian plot to keep the girls from you", (68)

Conciliator 12: "The problem is I hear you both saying and particularly you Mrs Todd saying "I want some sort of guarantee or I want something wrapped up""

Mr. Todd: (to the mother) "The reasonable access thing - because its one of the things you've been much more worried about than I am - is that what happens if I cease to be reasonable, that's what you want to know isn't it?"

Conciliator 2: "Then you come back to conciliation".

Conciliator 12: "And if you were unreasonable you must bear in mind that the children would see you as unreasonable.... No I think you are going to have to accept that this is one of the most difficult things about separating and divorce".

Conciliator 2: "I think it goes back to getting married and investing in the future. On separation you have to admit that it didn't work but what you have to find is some parental trust ... Why look for trouble....He might always be a paragon of virtue then won't you feel bad about having had these nasty feelings about him". (All laugh) (69)

(This extract begins with querying of the father's position but is included for the purpose of understanding the extract)

Conciliator 7: "...What you're really wanting is a lot of guarantees about a lot of things but people can't issue guarantees".

Mr. Young: "So what I am looking at then is a future which is uncertain".

Conciliator 7: "Like the rest of the world (pause) - nobody's going to give me a guarantee that I'm going to get home safely tonight".

Mr. Young: "That is slightly different I think".

Conciliator 7: "It's not that different".

Mr. Young: "I think it is".

Conciliator 5: "But you have heard Mrs. West saying that she is not going to do that....But nobody's going to guarantee that it won't happen somewhere" (Long pause).

Conciliator 7: (To both parents) "Your best guarantee is a very co-operative parenting that lets these children know that you have made a decision whatever it is and then work very hard at making some framework". (70)

This second extract includes another factor - that trust and co-operation require hard work. The "commitment to actually talk to each other" urged on Mr. Davis and Mrs. Smith (88) is therefore extended to commitment to trust and co-operate with each other. So the following suggestion is made about the agreement under discussion. "Well it will only last if you two are prepared to make a commitment to it, that's all". (71).

Many of these suggestions focus on trust as an alternative to dispute resolution by the legal system, which is seen as a provoker of parental conflict. In some cases the use of legal professionals is constituted as a positively detrimental solution. For example there is a very long

conciliator summary of options to Mr. and Mrs. Parker which includes the following:

"Because the alternatives are that you rush off and see your solicitors or a solicitor each. You then get somebody to compare what he or she thinks will be your case. It is put into a solicitor's terminology - this would be divorce and matters of custody and access - and solicitors have a certain terminology, a certain way and a method of presenting your case, in what they believe to be in your best interests. Which might well cause a great deal of unpleasantness because the other side, and you would be on sides - don't see it like that... Now all that seems to me to be quite legally proper but I question whether it is proper for children to wake up one morning and find themselves and their future being decided by a person in a CourtI'm not saying that solicitors are unhelpful or obstructive or anything like that.....All that as I say makes for contest and conflict, aggression perhaps and all sorts of things that don't help". (72)

However the use of legal help is positively urged for maintenance matters (73) and in one case the use of a joint solicitor is urged by the same conciliator who outlined the above disadvantages using the legal profession.(74)

Also when solicitors have to be used, strict control is urged on their activities in another case.

"I think in these situations it is important for each side to actually insist to their solicitors that they check every letter before it is sent through to the other side's solicitor because quite often we hear over and over again that a letter is sent out on the assumption that it would be what clients want and actually it causes all sorts of difficulties and problems and panic on the other side" (75).

C. Questions

Questions which are not a response to a specific parental solution nevertheless prioritise a solution and in effect amount to a suggestion. However, this category is not numerically important (76) nor is it ostensibly so neutral as questioning in the definition construction group in that over half of these questions are addressed to one parent only and of these questions two thirds are addressed to the mother alone (77) They share characteristics with the querying category of interventions and this imbalance will be discussed within that section.

However, questions are often important in that they set the scene for suggestions or bridge the gap between parental solutions and conciliator suggestions. The solutions prioritised are similar to those advocated via explicit suggestions except that joint parenting as a solution is rarely dealt with via non-aligned questioning. So there are for example three cases with examples concerning the trust and commitment necessary for access to happen and how it could be encouraged.

"Is there anything you can say to her at all, Mr. Ward, to make her feel better?"(78)

"What could he do to convince you that he wasn't going to hit you?" (79)

"How can we make it better for you so that you can make it better for Thomas -'cos my guess is that if you can find the strength and the courage to give Thomas to Mr. North then Mr. North will find the strength and the courage to let you go a bit more easily".(80)

In all three cases the mother is seen as needing to have trust, so that the father can be constituted as a responsible parent and joint parenting can be advocated and particular grievances not addressed. So it is assumed that

Mr. Owen will no longer beat his partner and that Mr. North will negotiate responsibly. Similarly with the Berrys the solution to post-access behavioural difficulties is constructed as shared parenting and not, as the mother would like, some control over the father's responsibility for the content of access. So the shared parenting again focuses on the communication aspect: "I mean do you discuss it with them?"

The vast majority of conciliator questions however concern solutions specifically to access difficulties which can be categorised in a similar way to conciliator suggestions and again with great emphasis on planning. However the questioning group has a much greater percentage of interventions concerning the actual handover of the children at access time (in 7 cases) and also on staying access. Basically the parents are being asked for suggestions as to how the situations could be improved to remove the opportunity for parental arguments or distress. This is therefore related to the whole area of conflict free parenting with an emphasis in some units on asking the parent originating the complaint to offer a solution involving the other.

For example:-

Conciliator: (to Mrs. Smith) "So what do you think would have to happen for Mr. Davis to be able to come to your house and pick up the kids and for you to be able to go to his house to deliver them".(81)

Conciliator : "So what would you suggest Mrs. Gale to make it easier?"(82)

Conciliator: (to Miss. Taylor) "Is there any way baby could see his dad without you getting hurt?"(83)

In these cases it is the mother who is seen as crucially "responsible" for the handover suggestion either because her feelings are constituted as the source of the the problem or, because it happens in her home and therefore

her control is assumed though with the James family the question is addressed to both parents ("What else would have to happen?" (84)), as the problem at handover had been constituted as the mutual lack of control of temper.

There is only one case where the father's feelings are implied to be crucial despite initial joint questions.

Conciliator: "What would have to happen for the two of you not to argue when you are handing over the kids?"

(Parents argue about what does happen at handover)

Conciliator: "I was just wondering whether your son was old enough to take charge of getting the children out of the door so you two did not have to meet. Would that help?"

Mrs. Gale: "Yes, but he still tells the children to fetch me".

Conciliator: (to Mr. Gale) "Could you do without seeing her".(85)

All these questions imply solutions which are the result of the reallocation of responsibility which occurred as it did in problem construction. The parent who tried to constitute the other parent's action as the problem which the conciliators tried to reconstruct as the joint relationship difficulty, is now being asked to supply the solution to reinforce the mutuality of the problem.

Staying access is also the subject of questions which either put a case-specific solution on to the agenda or generally stress the planning of staying access. The following examples cover both types:

Conciliator: (to Mr. Field) "They were suggesting that in the holidays they might come and stay with you. (To both) Do you think that would

work?"(86)

"How are you actually going to sort out him going on this weekend?" (87)

"Have you thought out about his having access to you when your new partner is around. Have you thought that out ahead?"(88)

Otherwise planning of access including trial access, and decisions about the type of access are again an important area. Sometimes these questions are asked before the parent had agreed to the principle of access so lending weight to the conciliator's general encouragement of access. For example such questions were repeatedly used by conciliators to by pass Miss Taylor's expressed objections to access per se as in the following three quotations.

"What sort of time would work if he was going to see the baby. It would have to be an afternoon wouldn't it?"

"So what sort or time would be all right for him to take out the baby or both if you are committed to that, what sort of time?"

"So if Mr . Owen did come up say after her sleep, say 3 o'clock and then had her for tea and then brought her back after tea how would that be".(89)

Other questions take the form of checking out whether the plan is sufficiently detailed - whether it includes actual dates (90), contingency plans for transport (91), cancellation - the amount of notice and the arrangements for extra access (92), and what to do in wet weather (93). Again this reduces opportunities for future conflict. Lastly some questions again probe the relative merits of flexible and regular access and all implicitly support regular arrangements as for example in "Would it work better if you had more set arrangements for when you saw them?"(94) However an exception is made as the children get older with the statement

that "they are more and more likely to need a flexible arrangement".(95)

Lastly the questions also focus on children in the form of how to make and explain arrangements and difficulties to them again prioritising parental communication, control and decision-making. So the idea of parental not children's choice is implicit in questions to Mr. and Mrs. Gale asking how they are to explain to the children what they the parents decided rather than asking the children what they want in the future or why they had refused in the past. (96) An example of how decision-making is stressed is this one addressed to Mr. Young and Mrs. West: "I wonder is you could perhaps think together about what you might do to make things better for your son".(97)

There are only seven instances of questions concerning custody and they all again put planning as part of the solution by asking what each parent's plans are. (98) They are important in the two cases (3 and 5) where the mother is encouraged to leave the matrimonial home in that the questions put the possibility of the solution on the agenda before actual suggestions are made.

Conciliator: (to Mrs. Cann) "So suppose it means that you have actually got to move out without the children have you thought about that?"(99) This and other questions directed at one parent only may appear as querying but they do not arise out of parental positions: they are conciliator originated and therefore classed as questions.

Suggestions, questions and endorsing have therefore shown that conciliators endorse or initiate solutions that focus on arrangements to remove present or future parental conflict, which encourage various forms of parental communication and which are constituted as requiring joint parental

involvement and responsibility. This is not a surprising conclusion in view of the type of problem constructed in conciliation. However in the construction of the solution, querying of a parentally desired solution is numerically almost as important as suggesting and questioning.(100) Querying interventions can also provide particular insights into the questions this chapter seeks to answer.

(c) Querying Parental Solutions

Querying is clearly inter-changeable as a strategy with other forms of intervention because analysis of the progression of appointments does not show querying invariably following or preceding non aligned questions or suggestions but it does show that particular solutions are promoted in various ways. For example the solution of avoiding parental conflict and allowing trust to develop is introduced by suggestions in seven cases and is prioritised via querying in eight cases with two cases where there is both suggestion and querying.(101)

Analysis of what is put forward via querying, either explicitly or implicitly, also produces a list of possible solutions which are already familiar in this chapter. The following conciliator solutions are typical of those promoted via querying.

Access:

Access should be encouraged and staying access planned for,

Access should be regular and built up slowly if this is necessary,

Flexibility should be introduced later only if possible,

What happens in access should be left to the non-custodial parent's responsibility.(102)

Custody and Access:

Some decisions must be made quickly, others should not yet be made permanently.(103)

Be wary of using a legal solution,

Do not ask children - the decision must be a parental one.(104)

Completely shared care needs thought.

Parenting:

Solutions must include learning to communicate, controlling feelings, encouraging trust and mutual acceptance of responsibility and may entail changing patterns of behaviour.

A very similar list emerges from questioning and suggestions with over half of querying interventions again being concerned with access, though requiring parental planning and control and being dependent on particular allocations of responsibility. Therefore the content and aims of conciliator querying is not distinguishable from other forms of intervention to construct a 'real' solution. Nevertheless it does seem important to analyse querying interventions more closely for the following reasons.

1. It is important as a conciliator strategy in that it sometimes acts as "a softening up" process for a specific suggestion either several units later or within the same unit. Conversely conciliators use querying when parents do not appear to accept conciliators' previous suggestion. In the development of each case when querying is used it is therefore a necessary component and indeed in a third of the sample querying of parents comprises over half the total of interventions to construct a solution.(105)

2. Querying is also important because it entails conciliators giving more explicit "proof" of the rightness of their solution than is given in unchallenged or unopposed interventions. Querying interventions are thus a good place to begin looking at the arguments used by conciliators.

3. Querying of parental solutions also entails more than suggesting a different solution. It requires an explanation of why a parent's solution is not satisfactory or the best in the circumstances and it may entail attacking the assumed reasons and motivation behind a parental proposal. It can therefore throw further light on conciliator views and assumptions.

4. Parental solutions are clearly allied to their perception of the problem. They may not therefore be based on the same problem as the one on which conciliators are working, despite the definitional work already done in the appointment. Therefore querying of solutions may also entail querying of clients' perceived problems. This reinforces the importance of the definition stage and reveals which problems are not accepted. Indeed this point illuminates the fact that some of the definitional work, particularly that constituting the burdens of parenting as joint, was inextricably intertwined with solutions.(106) For example Mrs. Kay sees the problem as the father's choice of a new home far enough away to make access difficult so that her solution is largely that the practical difficulties of access must be the father's responsibility. The conciliator response in this case therefore queries both the problem and the solution with "I don't think honestly that the material matters would make a great deal of difference. I think it is a great deal to do with the way you two are feeling". (107)

5. It is thus also important to analyse querying in terms of what is queried: which solutions are preferred by parents and how they are queried, the grounds used and the proof given. But it is also important to look at who is queried. The totals of interventions querying the mother and the father are almost equal (108) but this average is not reflected in each case or in each topic and therefore there are various imbalances to investigate.

It seems profitable therefore to group interventions in this querying category by the client solution to which the conciliators are responding. By far the largest group of these interventions is aimed at the solution of 'no access' or 'restricted access' and this will be sub-divided according to the reason given by parents. Other interventions can be similarly categorised and will be dealt with under six further types of parental response.

1. No Access

"They should have separate lives"(109)

This response, implying that the only solution is to be stopping or limiting access can be sub-divided according to the problem the parents perceive it as solving. Basically there are five main "reasons": that the child is upset by access, that parents or step-parents are upset by it, that access depends on one parent's actions and is therefore unfair, that access entails contact with a new and undesirable partner and that access is not beneficial.

(i) Access upsets the Child

In 5 cases the mothers resist access generally, or staying access in particular, as a solution including two cases where mothers are refusing access totally because of perceived upset to the child. Mrs. Vaughan, who is insistent that Frances is upset even at the thought of access is queried with the possibility that when the divorce is completed "You will not get so upsetIt sounds to me as if it's they don't want to hurt you". (110) Two points are put forward to the Adams: that the child is upset because the parents are in conflict and that the child needs access despite being upset. "On the whole we tend to find that when both parents are in agreement and are happy about an access arrangement that those children find access less traumatic." "If he actually believes as he gets older that he does have a

father somewhere and this father is actually living with another family and he doesn't have a relationship then he may actually feel rejected and he may actually feel his dad has chosen someone else rather than him."(111)

There are also three further cases where the mothers specifically want no staying access as part of the solution and in two cases the mothers' motivation for such a response is challenged and by implication invalidated.

Mrs. Berry: "They have never been over to stay yet. I don't really want them to".

Conciliator 1: "You're not very keen on that?"

Conciliator 17: "Are you living on your own? Is that why you are a bit unsure about it?" (112)

Conciliator 2: "How dangerous is it for you Mrs. Baker to actually let those children go to their dad?"

Mrs. Baker: "I think it is a situation which needs to be handled carefully."

Conciliator 2: "But how dangerous is it for your personally?"

Mrs. Baker: "In what way?".

Conciliator 2: "In - with the background of the marriage".

Later

Conciliator 2: "And my feeling is that you are scared to let the children go because your feelings about their father are very strong." (113)

In this second case the mother and father jointly are also challenged on the grounds that the upset is caused by the parents who are constituted as unreasonable and therefore the solution is that they can change the situation.

"But you seem so powerless to do anything about it - You can identify a solution but you both sit back and say we are totally powerless to do

anything about it. It is as if you were both motivated and forced along a particular avenue by all manner of things as if it is beyond your powers to be reasonable people." (114) Mrs. Lloyd's solution is queried on different grounds - that she would be responsible for too drastic consequences .

Mrs. Lloyd: "I am not stopping him seeing her but she does not want to go and stay in Somerset."

Conciliator: "But what you are saying is that he must come here and do that and he is saying that just isn't viable so you are putting a condition on that which in fact means the end of that relationship". (115)

Such responses are dealt with in two main ways: many of these queries rely on re-stressing definitions of the problem as either the custodian's emotional state or the parental conflict and secondly specialist knowledge is used to stress the over-riding need of the children for access despite any draw backs.

(ii) Access Causes Parental Tension

In six cases one parent suggests that "the aggro" surrounding access is sufficient to stop or at least change access and in one of these cases the mother goes further to suggest that the tension will harm the child. Two counter arguments are made here - as above that change can be made, ("Yes you have got to learn how to be parents of this boy.") (116) but the other is somewhat unusual in that it appears to countenance a degree of parental hostility.

Mrs. Adams: "This is why I think Mr. Adams and I need more meetings like thiseven if we are not talking there is this tension".

Conciliator 6: "But Simon is not going to expect you to be bosom pals or you would be living together". (117)

All the other cases in this section depend on focusing on the child's needs and marginalising the parent's needs so "In this matter of divorce the children's welfare is paramount - what happens to the adults is tough and that's the way it has to go" (118) even when the adult is a step-mother who has born the brunt of post access upset; and a mother's "As far as I'm concerned the access can stop altogether" is queried with "But it's not as far as you are concerned, it's the children".(119) Again too the child's need for access, even when the child is a baby without a long relationship with the father, is paramount. In this case Miss. Taylor was queried with, "How are you going to feel - I mean you obviously have got this close relationship with your dad....How are you going to feel when your kids grow up without a dad". (120)

This case however has another unusual feature in this sample - there are undenied allegations of violence to the mother but the mother's wish to deny access in order also to avoid her contact with the father is queried by conciliators who state that violent husbands are not necessarily bad fathers.

Miss. Taylor: "Even my health visitor said he won't have a chance - she knows what he's like, how he is bad to me."

Conciliator: "That's not to say that he is going to be like that with the baby. I mean people really can be absolutely rotten husbands or rotten boyfriends and they can be very good dads". (121)

(iii) Access Causes an Unequal Parenting Burden

This explanation is found in only two cases but it is important to include it because it provides the only explicit examples of the sense of injustice or unfairness which is more apparent in client follow up interviews than in the conciliation appointments themselves. Mrs. Spencer uses this reason for pressing for very defined access because she felt that she had the burden of access in both preparation (meals at certain difficult times and laundry) and in the frustration following from the father's constitution of access as a bonus for the mother. She had therefore taken the drastic step one week of not sending the children with all their necessary clothes and the conciliator had criticized this solution as harming the children per se and also harming them via the consequent parental 'aggro'. No attempt was made to suggest shared care at access as the solution. (122) Both Mrs. Spencer and Mrs. North made a similar point at the end of the appointment which showed dissatisfaction at the way responsibility had been allocated and which again reflects the re-ordering of the winner/loser balance.

Conciliator "I hope things settle down".

Mrs. Spencer: "That depends on me doesn't it?"

Conciliator: "No, No on both of you". (123)

Mrs. North: "I still have a feeling I am being got at some how and I am losing out. I mean I'm the one who is giving way all the way round really".

Conciliator 8: "But you are going to get as well".

Mrs. North: "Yes I know but at the moment it feels as if I have put something in and I'm not getting anything out".

Conciliator 2: "Sometimes you know we have got to plant seeds and wait for the flowers to grow".

Conciliator 8: "And now you have really shown maturity in spite of your fears".(124)

These are interesting excerpts in their different treatments of the mother's response. In the first the input is constituted as joint and in the second the inequality appears to be endorsed but compensated for by future gains. In neither case the feeling of "unfairness" itself is given any great attention. Indeed Mrs. Field is explicitly told: "But if you get very steamed up about what is fair and what is not I think you are going to be counter productive. Do you understand what I am saying?" (125)

(iv) Access Entails Seeing the New Partner

This response is made in four cases (126) and all place responsibility on the care-taker to accept the access parent's partner. Case 10 is somewhat unusual in that Richard James' "upset" amounts to actual violence particularly during or after meeting his father's girlfriends, but the concept of "change is possible" by parents and child is used when the conciliators ask the mother "why should your son be different from other children who do eventually accept the idea with some help? (127) With Mrs. Berry, her no access solution is constituted as a non-permanent response open to change with, "But you seem to be moving towards the situation where you could allow them to stay", (128) whereas Mr. Parker's denial of access because of his concern for his wife's boyfriend's irresponsibility is queried with a re-statement that access is the child's right "So the kind of people children meet with....Some are good some are bad....and the children will think all kinds of things about who their mother or father lives with". (129) In other words the children will survive and parents' partners are no different from other people they may

meet.

(v) Access is not Enjoyable

Although this statement had been used during the definitional stage three mothers still criticized access on this ground at the solution stage and in both cases the conciliators aimed to stress that lack of enjoyment at access time is not a problem and therefore needs no solution except that of acceptance by the care-taker. Similarly Mr. Spencer's wish to fix access dates by the date of his monthly wage packet was also queried because access did not have to be an expensive treat.(130) The following quotations show the various ways in which the idea of an ideal access visit is challenged.

"That's O.K., the point about access is that it is not the warm positive experience. It is actually good for them to go and they see that being with dad is sometimes boring the same as with mum and things like that". (131)

"But it is the love that you want him to give not the love that they can haveThey might be willing to put up with something different if you can let them". (132)

"What about the hundreds and thousands of fathers who after a divorce actually opt out.....It may not be as much as you think they deserve but it's more than an awful lot of children in this situation get".(133)

"I think enjoy is a bit of an odd word when it comes to children. You are asking him to do things with the children on his access visits whereas in actual fact I would suggest to you that when the children are with their dad they are his responsibility. The children should be free to tell their dad what they want". (134)

Therefore, through all these responses there again runs the idea of the absent parent's total responsibility for what happens in access, though this is not taken to include total caretaking responsibility. Conversely, the care-taking parent has the responsibility of accepting that the children cannot have 'the ideal' at access.

2."Its Not Going to Last" (135)

This group of querying interventions covers various problems but the basic parental view being challenged is that the solution may be suitable but could not be implemented adequately. So far the majority of conciliator queries analysed have been prompted by the mother's proposed solution but in this group however there are two fathers as well as well as six mothers who perceive the difficulties of implementation as due to the alleged failings on the part of the other partner .

Such views are countered in several ways. One is by the very general statement already quoted that, "You can't have guarantees about that - no one can offer you guarantees that as from this day forward the father is going to keep up his access regularly. We can only listen to what he has to say and take the fact that he is here as being a good intention on his part and the sort of assurances that he is trying to give you about wanting to build up a relationship but we can't give any guarantees I don't think ever".(136) This particular intervention continues with another type of querying made, "I mean the otherside of the coin is what it means to your son".(137) The first strategy therefore entails urging that "today would be starting point" (138) and that the untrusting parent ought to give the other the opportunity for this fresh start.

Conciliator: "I mean you are saying you don't actually trust that he means what he says and it seems to me like he could go on for ever beating against a brick wall which is still there and still saying 'I do mean it, give me an opportunity' and you would still sit there".

Mrs. Adams: "He has said so many things to me over the years that he hasn't meant and disprovedI would like to believe him...."

Conciliator: "But because we can't give guarantees, that's going to be very much a question of adjustment - actually giving it a chance isn't it?" (139)

So this form of querying again entails that past parenting is not to be a basis for predictions about post separation parenting even when past events are by implication endorsed via a conciliator's insistence that "people can change". Interestingly Mrs. Adams argues against this possibility on general grounds as well as by reference to her own ex-partner and in fact in the second appointment, when the father did not turn up, she returns to this theme. The conciliator therefore argues generally for the possibility of change with "I can understand from your point of view that it is jolly difficult to actually think 'God he is 35 and he is never going to change' and so on but some people go to their graves and have never matured and other people do it at all sorts of stages in their life and may be some things which have happened to him recently have made changes."

Again therefore the solution is to be adjustment to a new outlook. This is made clear with the following conciliator statement to Mrs. Spencer: "The otherside of that is what you've got to find - A little bit of trust that now you have split up.....maybe you can a little bit of trust to believe that he will try".(140) Lack of commitment to the possibility of change is also constituted as a problem with, "But if you are convinced they're going to fail it probably will".(141)

Nevertheless when change in Mr. Adams is suggested as a possibility the conciliators also use another argument - that the situation itself has changed and therefore access will not be such a difficult situation for the father to cope with. "I mean your son is that much older anyway....and more able to do things that are easy....It's easier to take a child of 4 or 5 out than it is a child of 2 and from that point of view it will perhaps be easier to relate.(142)

The second strategy of the child's needs is less used in this group. But a third strategy is used to stress the 'power' of the parent who feels that he or she is being asked to give control over access to one deemed incapable of the responsibility. For example, Miss Taylor's power is constructed in the following three ways.

"I'll say that he is learning that if he badly treats you, you have got a very good weapon to badly treat him with, which is saying that you won't let him see the baby".

"You have got a weapon because he still loves you,did you know that?"

"In fact you have got custody. I mean there is no doubt that care and control is with you and he wouldn't have a leg to stand on if he didn't bring her back and also if he did that he would make a difference to his future access so that would be a very silly thing to do".(143)

These all entail constituting the father as able to maximise rationally his gains. They also seem to imply an effectiveness of legal rights and solutions which is unusual in that the conciliators normally query and firmly discourage parents' desires to acquire guarantees via the legal system.(144)

It is also stressed that it is the children's right of access and that the concern of both parents for their children is a guarantee that access will continue to be encouraged though the balance of this next intervention designed to alter conceptions of gains and losses, might seem to suggest the opposite.

"We are well aware that if one parent does create problems around access, the parent the children are living with really must have the edge and the children become very confused. It's an awful situation for them they get into this terrible sort of yo-yo thing and in lots of cases the children themselves make a decision and the parent they are living with is usually the winner in that sense but nobody wins and I mean I think we can say this now, and I am sure you will recognise that nobody wins, because the children miss out if you have got two little children who you both care about and who are stable well integrated personalities that you want them both to go on being like." (145)

This excerpt also ties in with the conciliator's view that the problem is a lack of trust and commitment by one or both parents and not based on real "fears". Using the legal system is seen to imply a lack of trust which therefore exacerbates the problem and makes less possible the implementation of the best solution which is a parental agreement.

3. "They Have Got Tongues In Their Heads"(146)

This group of interventions deals with the parental proposal to base the solution on what the children say they want. The conciliator response is to urge the contrary - that the decision must be the parents'. All the parents wanting to implement the child's decision are fathers, two of whom do not wish to push for access at all if the child continues to say no to access,

and two of whom believe the child's wishes accord with their preferred solution. In the former case the two main arguments made by conciliators are firstly that children need access, they need to know both their parents love them and stand by them and that children often change their minds quickly and therefore decisions should not be based on possible temporary wishes. The second argument, focusing on the parents, is that children may fear to want access because of causing pain to one parent or conflict between the two parents. Therefore one strategy depends on conveying specialist knowledge about children and the other in re-defining the problem as the parental relationship, though this may also entail such knowledge. The following are typical of the first strategy:

Mrs. Gale: "She might change her mind later on."

Mr. Gale: "Pigs might fly an' all".

Conciliator: "No I think it is much more common that children do change their minds they do actually need to be reassured that their father and mother really care about them and maybe she will test you out to see whether you come back a second time if she says no the first time".(147)

Mr. Davis: "I mean all they've got to turn round and say, just turn round and say we want to see you. They have got tongues in their heads".

Conciliator: "What my colleague has been saying, at least I feel this is what she has been saying, how does it feel to the children and you say they have got tongues in their heads. That's quite a lot of responsibility on the kids isn't it?" (148)

However the idea of the child's inability to communicate its true feelings is usually part of the second strategy that of making the problem the parental relationship in that children are seen as having to say what they believe the

asking parent wants them to say and therefore their views are not valid. For example the following conciliator comments to Mr. Parker are typical. "I would have said that any child the age of your children (both under 10) will give the answer that you want them to give or they think you want them to give. Now that is what children are bound to reply. (Mr. Parker interrupts). And if you are going to tell me that your children are very intelligent or very bright (Mr. Parker: 'One of them is.') - alright all the more reason why they should see through the situation and start playing games with you and saying to you what you need to hear and telling their mother what she needs to hear because that is the way that they have of balancing their little act".(149)

This "little act" is seen as necessary because the parents are in conflict and the children may therefore avoid access in order to avoid either the conflict or the need for this balancing act to contain the conflict. This is pointed out to Mr. and Mrs Gale:

Conciliator 10 - It isn't actually going to accomplish anything with the children now if you two carry on your quarrel across the children".

Mr. Gale: "I am not quarrelling with her. I just hate her guts".

Conciliator 10: "Yes but if the feeling comes across when the children are here I am sure your daughter won't say that she wants to see you."

Conciliator 6: "Whatever feelings you have for each other the children don't share them and presumably they would be a lot happier if they could respect you both as parents and didn't see you arguing...and if you do argue with each other in front of the children then all the children will do is run away as far as they can from you." (150)

The result of this querying is that both Mr. Parker and Mr. Gale are held individually responsible for the problem - in the former case for feeling

hurt by the daughter's attitude and therefore not approaching access positively and in the second for not being willing to change sufficiently to sustain access .(151) Nevertheless all these conciliator responses must be viewed in the context of their suggestions or endorsement of the attendance of children at conciliation in Cases 6 7 8 and 12 in order to ascertain their views in a context where it is deemed they can speak freely.

4. "I want to See them Once a Week"(152)

Many cases have parents whose access solution is a specific time table proposal. In three cases (1, 11 and 20) the conciliator responses query the parents' plan on the grounds that once a fortnight is more suitable. In Case 1 it is the mother's opposition to access once a week or fortnight "because we have our own lives to lead" which is queried with expert knowledge of the child's needs. "For a child of that age (4½) I think time is different. I think long gaps may do him more harm than short periods of access but closer together".(153) However Mrs. Todd's desire for weekly access to her children of 11 and 9 years is viewed as too much, (154) as is Mr. Kay's wish for two weekends and one Saturday per month "because it can become difficult because of their commitments. On the other hand once a month is too little because "a month in a child's life is a very long time".(155)

The other queries in this group are case specific, for example whether Saturday afternoon in the father's shop is a good time and place for access, except for two statements made by conciliators about timing - that splitting Christmas Day and Boxing Day so the parents have one day each is not good for the children(156) and about objections to access based on

whether the caretaking parent influences the child too much.(157)

It is therefore difficult to generalise from this group. The concentration appears to be on the needs of the children but these needs are not clearly put forward "with one mind" as in other sections, and so these interventions are again dependent for effect on the status given to them by conciliator's claim to specialist knowledge.

5. "It feels ridiculous to me that you've got to make arrangements (158)

This group is made up of the responses of five non-custodial fathers who feel that regular defined access arrangements are not a suitable solution and also two custodial mothers and one custodial father who prefer more flexible access. In all cases the conciliators uphold defined access rather than flexible.

Parental objections in principle are countered on the grounds of self interest as well as children's needs. An example showing both these arguments can be found in this response to Mr. Gale's solution of 'unfixed' access dates.

Conciliator - "Would it be sensible for you to come a long way and get to the house and there's no-one there when in fact you could be told that the children have got something on at school or they're going to a birthday party or a disco or something. The children have rights and they are at an age when they have interests and hobbies and obviously they're not always available 24 hours a day".

This case also goes on to add another well used intervention - that this need for plans is not just due to the fact of separation, but is "normal".

"But actually that's something as your children get older that you'll have to do whether you're living with them or not. I mean I have to make appointments to see my children because they're in their teens now ...".(159)

Parents are also queried for wanting flexible timing for access. For example, Mr. Field is encouraged to see as legitimate the need for the mother to know a regular return time in order to prepare meals as and when necessary. The children's need for pre-arranged regular access is also advocated per se and is deemed to necessitate more than a fortnight's pre-planning."There's nothing worse as a child -I remember this as a child looking forward to something and it doesn't happen"(160).

Unlike other groups therefore, little re-definitional work is done here: the concentration is on knowledge of the children and how this relates to practical arrangements.

6. "I'll think about it"(161)

In 5 cases there is a disagreement as to when the decision should be made and whether it is to be an interim solution or a permanent one. As with suggestions, conciliator queries are not consistent in that both immediate and deferred decisions are advocated in different cases or at different points in the same case. So in 3 cases(162) a decision is urged sooner than the Court could decide (because of the children's need for access and a known future), as in the comment to Mr. Young: "You're looking a bit doubtful ... but crisis time is upon you - crisis time".(163)

However, there is also again querying of parental desires to make early

permanent decisions about custody in 3 cases (3, 16 and 24) on the grounds that "What it feels like to me is very early days yet".(164)

All the comments in these cases appear to depend on the amount of strain and conflict conciliators perceive a delayed decision, and especially a Court-imposed decision, will cause, balanced by fears of a permanent unsatisfactory decision being made. But again however, conciliators are also probably influenced by the effect of such comments on the perceived gains and losses of their clients in their bargaining positions. So for example the Canns' proposal to split the three children is seen as better for the children(165) as it will facilitate a quick agreed decision which is in the children's overall best interests because it avoids for them the stress of all three being moved to a totally different area and new family and allows for the possibility of a trial period and future changes.(166) The father's "win" of the middle child is therefore not such a "loss" to the mother because of its possibly temporary nature.

7. "I don't see why she should get any of it"(167)

There are 4 cases where, at least initially, the fathers refute a solution on the grounds that it is unfair because the mother is irresponsible in wanting to end the marriage. In Cases 5 and 14 the issues are financial assets and the home as well as custody and access and, in Cases 3 and 16, custody and access. In these cases there is clearly no acceptance at this point of conciliator definitions of the problem as a mutually caused marriage difficulty and mutually caused present conflict. Therefore in all cases the conciliators return to constructing the problem as joint and use the children's needs as a support for this construction. A good example is the following comment to Mr. Cann:

Conciliator: "But I do think it is important that you shift a bit in this way because of the messages the kids are going to get (the father queries this), but if you feel -that's the point. You say they are not going to get a different story but they will pick up the feelings. If you manage say to convince yourself that it wasn't my responsibility that the marriage ended at all and the kids get the message it's not going to be helpful for them in the future".(168)

Conclusions

There are therefore clear divergences between conciliator and client views at this solution stage. Parents are concerned that access should be good in itself and does not put too much strain on the new family's routine, is not done against the child's wishes and that allocation of fault and assessment of past behaviour are not irrelevant to present and future parenting. Conciliators on the otherhand are concerned that access is an overriding good regardless of its content and drawbacks it entails, including the strain on a new family. Conciliators are also concerned that parents are in control, plan, co-operate and assume sufficient trust and ability can be found in the new situation. Therefore the importance of work in constructing a definition is made clear at the solution stage and continued difficulties are caused by the parents' concern with the concept of fairness and fault. Though the conciliator stance is slightly ambivalent there is also a dichotomy between client and conciliator views of the power of the legal system to solve the problems in practice, in that clients reveal the need for guarantees and believe that Courts can provide such, whereas conciliators constitute the Courts as powerless to solve many of the custody and access problems.

Basically the solution constructed in conciliation, whether by querying, endorsing or suggestion is aimed at the parental relationship which has been constituted as the problem or the cause of the children's problems. It focuses on those aspects of the parental relationship which are deemed significant by conciliators: communication (especially of feelings), mutual trust and commitment and the ability to make joint decisions. Solutions are therefore also supported by the concept of joint parental responsibility which was constructed in the process of problem definition but is now further elaborated in solution construction.

Such a solution construction is however more than a logical conclusion to the type of problems constructed. It is also a means by which, in individual circumstances, responsibility for the solution can be reallocated in order, not only to sustain the concept of joint parenting, but also to alter parental images of winners and losers such that particular solutions are perceived by each parent as more or less attractive. Clearly such a process in order to succeed needs conciliator power: this chapter has shown how conciliator, not client, solutions become the basis of a proposed agreement and the use of specialist knowledge to support conciliator solutions is crucial in this process. These 2 aspects - the parental images changed in the conciliation process and the specialist knowledges conveyed are therefore very important and will be dealt with more fully in Chapter 9. One factor in the construction of problem and solution has however been omitted so far -that of attendance at conciliation of the children themselves. This will be discussed in the next chapter.

CHAPTER 6: NOTES

1. Case 3(7): Conciliator 11 and Case 3(9): Conciliator 17.
2. In both problem and solution construction there are more interventions to query than to endorse parents' views but this is more marked in solution work.
3. Case 20(3,4,6,7): Conciliators 2 and 12.
4. Case 20(7): Conciliator 12.
5. From Cases 6(5), 7(3), 12(7), and 24(18) respectively.
6. Case 10(21).
7. Case 20(8).
8. Case 20(9): Conciliator 12.
9. Case 20(7): Conciliator 12.
10. Conciliator 11.
11. Case 16(13): Conciliator 15.
12. Case 3(21): Conciliator 11.
13. Case 5(3): Conciliator 11.
14. Case 17(5): Conciliator 6.
15. Case 20.
16. Case 3(28). Conciliator 11.
17. Case 17(12): Conciliator 6.
18. Case 5(4): Conciliator 11.
19. Case 3(7,17,26).
20. Case 3(10): Conciliator 11.
21. Case 3(7): Conciliator 11.
22. Case 3(14): Conciliator 17.
23. Case 10(16): Conciliator 10.
24. Case 12(19): Conciliator 1 and Case 10(19): Conciliator 10

respectively.

25. Case 22(8,9): Conciliator 1.
26. Case 20(14): Conciliator 12.
27. Case 7(10): Conciliator 10.
28. Case 7(9): Conciliator 10.
29. Case 24(20): Conciliator 7.
30. Case 20(15): Conciliator 12.
31. Case 11(6): Conciliator 7.
32. Case 20(15): Conciliator 12.
33. Case 11(10): Conciliator 7.
34. Case 14(14): Conciliator 2.
35. Case 6(23): Conciliator 3.
36. Case 19(14): Conciliator 2.
37. Case 6(16): Conciliator 3.
38. Case 17(9): Conciliator 6.
39. Case 1(13): Conciliator 6.
40. Case 4(14,15): Conciliators 10 and 15.
41. Case 19(17): Conciliator 1.
42. Case 1(18): Conciliator 6.
43. Case 19(16): Conciliators 1 and 2.
44. In Cases 4, 7, 10, 11, 14, 16, 19 and 21.
45. Case 14(14): Conciliator 2.
46. Cases 2(7) and 19(16).
47. Case 19(12): Conciliators 1 and 2.
48. Case 24(14): Conciliator 7.
49. Case 20(16): Conciliator 2.
50. Cases 2, 3, 4, 5, 11, 15, 16, 17, 20, 21, 23 and 24.
51. Case 2(8): Conciliator 17.

52. Case 3(26): Conciliator 11.
53. Case 11(16): Conciliator 7.
54. Case 15(12): Conciliator 13.
55. Case 2(7): Conciliator 17.
56. Case 2(8): Conciliator 1.
57. Case 20(16): Conciliator 2.
58. Case 21(27): Conciliator 15.
59. Case 3(21): Conciliator 11.
60. Case 3(26): Conciliator 17.
61. Case 4(18): Conciliator 15.
62. Case 4(19): Conciliator 15.
63. Case 4(23): Conciliator 15.
64. Case 2(10): Conciliator 1.
65. Case 23(12).
66. Case 2(14): Conciliator 1.
67. Case 5(16): Conciliator 11.
68. Case 11(13): Conciliator 7.
69. Case 20(15).
70. Case 24(24).
71. Case 4(16): Conciliator 15.
72. Case 16(17): Conciliator 12.
73. Case 17(14).
74. Case 20(10): Conciliators 2 and 12.
75. Case 22(6): Conciliator 3.
76. There are only 60 instances of non-aligned questions in the solution category out of a total of 344 interventions.
77. At least 20 are obviously aimed solely at the mother, and 12 solely at the father.

78. Case 23(12): Conciliator 20.
79. Case 15(5): Conciliator 13.
80. Case 14(13): Conciliator 2.
81. Case 4(13): Conciliator 10.
82. Case 7(5): Conciliator 10.
83. Case 15(11): Conciliator 13, and repeated at 15(15).
84. Case 10(22): Conciliator 10.
85. Case 7(6): Conciliator 10.
86. Case 6(19): Conciliator 3.
87. Case 21(21): Conciliator 15.
88. Case 17(10): Conciliator 6.
89. Case 15(18): Conciliator 13.
90. Cases 7(4), 10(18) and 19(25).
91. Case 4(15).
92. Cases 7(14) and 19(25).
93. Case 24(25).
94. Case 6(2): Conciliator 3.
95. Case 2(6): Conciliator 17.
96. Case 7(9,17).
97. Case 24(9): Conciliator 7.
98. Cases 3(5,11,28), 5(3) and 17(8,10,11).
99. Case 3(5): Conciliator 11.
100. Suggestions and questions = 168; Querying = 144.
101. Suggestion only: Cases 1, 6, 10, 15, 19 and 21.
Querying only: Cases 2, 5, 17, 21 and 24.
102. Access: In all taped cases except 3, 5, 17, 22 and 23.
103. In Cases 3, 5, 14, 15, 16, 17, 20, 21 and 24.
104. In Cases 1, 4, 5, 6, 7, 10, 15, 16 and 19.

105. Cases 1, 6, 10, 14, 16 and 21.
106. See Chapter 5.
107. Case 11(7): Conciliator 7.
108. 76:68.
109. Mrs. James in Case 10(9).
110. Case 22(7): Conciliator 3.
111. Case 1(11): Conciliator 1 and Case 1(15): Conciliator 6 respectively.
112. Case 2(11).
113. Case 21(11,14).
114. Case 21(15,31).
115. Case 12(24): Conciliator 2.
116. Case 1(17): Conciliator 1.
117. Case 1(17).
118. Case 24(22): Conciliator 7.
119. Case 4(16): Conciliator 10.
120. Case 15(13): Conciliators 2 and 13.
121. Case 15(13): Conciliator 2.
122. Case 19(27,30): Conciliators 1 and 2.
123. Case 19(31): Conciliator 1.
124. Case 14(16): Conciliators 2 and 8.
125. Case 6(19): Conciliator 3.
126. Cases 2, 10, 16 and 24.
127. Case 10(9): Conciliator 10.
128. Case 2(11): Conciliator 17.
129. Case 16(20): Conciliator 12.
130. Case 19(3): Conciliator 1.
131. Case 4(21): Conciliator 15.

132. Case 12(21): Conciliator 2.
133. Case 12(21): Conciliator 1.
134. Case 21(3): Conciliator 2.
135. Mrs. Adams in Case 1(8).
136. Case 1(14).
137. Case 1(14): Conciliator 6.
138. Case 21(17): Conciliator 15.
139. Case 1(14): Conciliator 6.
140. Case 19(15): Conciliator 2.
141. Case 1(16): Conciliator 1.
142. Case 1(17): Conciliator 6.
143. Case 15(6,17): Conciliators 2 and 13.
144. Case 21(7,32).
145. Case 20(12): Conciliator 12.
146. Mr. Davis in Case 4(8).
147. Case 7(16): Conciliator 6.
148. Case 4(8): Conciliator 15.
149. Case 16(16): Conciliator 12.
150. Case 7(17).
151. Case 7(24) and Case 10(15).
152. Mrs. Todd in Case 20(16).
153. Case 1(11): Conciliator 6.
154. Case 20(16): Conciliator 2.
155. Case 20(16): Conciliator 2.
156. Case 11(17): Conciliator 7.
157. Case 11(12): Conciliator 10.
158. Mr. North in Case 14(15).
159. Case 7(15): Conciliators 6 and 10.

160. Case 4(8): Conciliator 15.
161. Mrs. Baker: Case 21.
162. In Cases 3(8,15), Case 21(33,38) and Case 24(21,27).
163. Case 24(21): Conciliator 7.
164. Case 16(15): Conciliator 12.
165. Case 3(8,11).
166. Case 3(11,12).
167. Mr. East: Case 5.
168. Case 3(25): Conciliator 11.

CHAPTER 7: CONCILIATING WITH CHILDREN

"Neither of us knew quite which way to go until you walked on the scene and sorted it out for us."(1)

So far the analysis of the conciliation process has contained no reference to the presence or involvement of children. It is therefore incomplete in that, in those appointments where children are present, they often play significant roles in the process of problem definition and solution selection. The observed sample included six cases where children were present at part or all of at least one appointment. Therefore in 25% of the cases children attended at some stage which is a higher proportion than the 13% of the joint sample(2) though this may be artificially low because of inadequate recording of child attendance. The six observed appointments entailed the attendance of nine children: one of these was an only child and three were siblings who attended together, but the rest were children who attended without any or all of their siblings.(3) The length and type of attendance are detailed below.

Case	Ages of Children	No. of Appointments	Children only and parents	Children
6/Field	11,13,15	2	1½hrs.	1½hrs.
7/Gale	13,14	1	Nil	25mins.
8/Hall12		1	25mins.	25mins.
10/James	9	1	Nil	1½hrs.
12/Lloyd	12	1	15mins.	10mins.
23/Ward	18	1	Nil	1hr.

It is not possible to say whether this amount and type of children attendance is in any way 'typical' of other out-of-court services though the

ages of the children present tally with the guidelines for in-court conciliation given in three Practice Directions issued 1982-4(4) in connection with new procedures being established at the Principal Divorce Registry in London. The first of these dealing with contested custody and access applications included the direction that, "the party who has living with him or her any child aged 11 years or over, in respect of whom the dispute exists, should bring that child to the conciliation appointment"(5). The third direction lowered the minimum age limit from 11 to 9 years, but added that if only one or two children in the family is 9 or over a younger child or children may attend. However, County Courts have issued their own directions for conciliation appointments and it is not yet known how many encourage attendance of children and at what ages(6). As yet there is no research specifically on children in conciliation, either for out-of-court or in-court schemes, and the theoretical literature on this subject is also sparse. The only article devoted solely to the subject is one produced by Lisa Parkinson for the NFCC (1985) and which is partly incorporated in her recent book.(1986: 160-169) Her survey of the views of practitioners reveals a very small number of publications in which the issue of the attendance of children is addressed. There is also a further difficulty in assessing the literature because the structure of appointments, that is with children alone or as a family, are not always made clear.

What the literature does reveal are widely divergent views concerning the perceived benefits and disadvantages of children attending. For example several Divorce Court Welfare Officers have expressed strong approval for child attendance because children are seen as having a 'right' to attend (7) and to avoid their becoming 'prizes' to be bargained for. (Guise, 1983:58-60) (8) However, Parkinson (1986) has outlined many reasons for the misgivings of practitioners and researchers: that the principles of

conciliation may become blurred with welfare principles (p100), that conciliators may become 'double agents working to a double agenda' (p160), that it may increase pressure on children (p99) and heighten their anxieties (p164) and that the views of children expressed in such circumstances are unreliable (p73).

However, conciliators at the service researched are not against the attendance of children in principle, though many have reservations and all feel the decision must be made on the circumstances of a particular case. In the observed sample seven conciliators were involved in the appointments with children, six of them being within the group of ten conciliators doing three-quarters of the work load of the Service(9). In four of these six cases the initiative for the attendance of the children was from the conciliators. In cases 12 and 23 the 'invitation' was made before the first appointment. In case 23 the decision was made because of the age of the child -18- and in case 12 because the family details given by the parents when appointments were arranged by telephone, were felt to warrant it. In this latter case Mrs. Lloyd declined to bring the child and the request was made again half way through the first appointment. The second appointment was given only on the basis that the children would attend: when they were not brought the appointment was postponed for half an hour to enable Mrs. Lloyd to fetch the younger child. In case 6 the suggestion was made very early in the first appointment(10) and in case 8 there was conciliator insistence throughout appointments 3 and 4 that there could be no more appointments without the attendance of the child at some stage within appointment 5 or 6. In cases 7 and 10 however, the suggestion came from the parents: in case 7 Mr, Gale almost immediately requested the children's attendance(11) and a second appointment was eventually given for this purpose, and in case 10 Mrs. James asked if she

could bring the child to the fourth appointment because it was the school holidays and the conciliators agreed it would be helpful. Therefore the initiative for the child's attendance is not generally the parents' responsibility and indeed in cases 8 and 12 the offer of further conciliation without children was withheld so that Mr. Hall and Mrs. Lloyd were pressured to agree. Furthermore the literature suggests conciliators are very wary of parents who do want their children to attend, seeing this as unacceptable pressure on conciliators (Parkinson, 1986:183) by a parent who believes the child will make comments 'favourable' to his or her position.

Both within appointments to parents, and before and after appointments in talks with colleagues and researcher, the conciliators involved in these cases gave reasons for planning the future attendance of children or for believing attendance had been useful. There is no correlation between anticipated and actual advantages: for example, the attendance of the son in case 10 did not "speed things up a bit". Nevertheless these comments provided a useful starting point, supplemented by the literature and by observation of appointments, for analysing the five taped cases in order to determine the possible roles for children in the process of conciliation. Analysis presented particular difficulties because of the varying 'structures' of child attendance and the different approaches stemming from age differentials. It is also a very small number of cases from which to attempt any generalisations. However the insights they give do suggest factors that may lead to an analytical framework for further, much needed, research in this area.

Analysis therefore proceeded by investigating the existence and use of the following list of functions of child attendance. They are not all

analytically distinct but they do help to clarify the possible roles.

1. Fact collecting; i.e. the children, not parents, are to provide the facts and explanations needed for the definition of the problem.
2. Solution finding: i.e. the children are to be involved in the selection, construction and implementation of a solution.
3. Communicating to parents the feelings and position of the children, either directly by the children or via the conciliator.
4. Communicating to children information and explanation, either directly by the parents or via the conciliator.
5. Giving support and relief to the children either by their witnessing of parental co-operation or by conciliators directly acknowledging the children's difficulties.
6. Controlling parents: i.e. influencing parents by the children's attendance to be less openly hostile and more likely to adhere to an agreement.

1. Fact finding

Whilst conciliators have expressed doubts about the reliability of children's comments, many conciliators have also expressed similar doubts about the adequacy and reliability of parents' statements. Parkinson for example quotes research done by Mitchell (1985) showing the considerable discrepancy between parents' perceptions of their children's feelings and accounts given by children themselves, and evidence that "working solely with parents could result in arrangements being made which purport to be

in children's best interests but which actually serve parents' interests at the expense of their children". (1986:161) and gives a case study example of the use of child attendance to provide the necessary 'facts' (pp 166-7). Divorce Court Welfare Officers have expressed similar views. For example Pugsley and Wilkinson (1984:89) question the assumption of parental competence at a time when, according to Wallerstein and Kelly's research, parents "tend to focus their attention on their own troubles". (1980:36) Similarly three South London Probation Officers point out concerning conciliation meetings;

Appreciating other family members' reality is an important function of these meetings and hearing from the children is an integral part of the process. (Day, Jones, Owen. 1984:202)

Conciliators in the observed sample gave a similar reason for requesting or allowing the attendance of children. For example in case 6 conciliators appeared to be envisaging the need for children to attend at the time of the following conversation.

Mrs. Field: "Well surely what's best for the children is to see their father on a regular basis?"

Conciliator 8: "We don't know that - it's what they want partly. I mean do we know what they want?"

Mrs. Field: "Yes of course they want to see their father."

Conciliator 8: "Well we don't know it for certain."

This led to a parental argument about what the three boys wanted, which was terminated by the following intervention.

Conciliator 8: "I mean I'm wondering how we find out what the children want 'cos that's - I was going to say this is one of the routes forward."

Conciliator 3: "I think the children being the age they are and if you're happy for them then it makes sense."

The conciliators then asked whether the boys should be seen together with parents or not and acceded to Mr. Field's request that they be seen on their own. After the appointment the conciliators said their reason for requesting the boys' attendance was to acquire more facts about sibling rivalry, James' feelings for his father and Edward's feelings for his mother.

Cases 8 and 12 included similar conciliator beliefs that the conflict between the parents' views of what the child wanted or was best for the child could only be resolved by information gained directly from the daughters involved.

Conciliator 1: "And it also appears to me that these two lasses are of an age where may be its pretty important that they are actually able to speak for themselves rather than have the two of you giving us different versions."(12).

In this case the conciliators explained that they wanted the girls to say whether they wanted access and why they did not like staying access.

Therefore 'facts' about the children's perceptions of the problem are seen as crucial and these facts are to include feelings as well as practical details. In the cases observed conciliators asked for information about two general areas: the past history of the family and significant others and the the dispute itself, and secondly the present needs and wishes of the children. The aim is therefore two-fold - to increase conciliator 'understanding' of the family situation and dispute and to provide facts specifically on the children's outlook on the dispute. The latter aim can itself have two functions (dealt with under section 3 below): to enable the conciliator to define the problem and to allow 'fact validation' in the sense of enabling parents to 'hear' what the children say. Whatever function occurs the intended result is that both parents directly or via the

conciliators accept the same set of facts and explanations: the first two necessary stages in Backett's model.

Case 6 is the most obvious example of such fact collection where the three boys are 'interviewed' by conciliators for nearly 1½ hours. A considerable amount of time was spent acquiring details about the past history of the family covering many areas including the following:

Conciliator 3: "One of the reasons we wanted you to come is because we wanted to hear - you know - what you've got to say about them." (i.e. their parents).

Conciliator 8: "When your dad first went what were the feelings for you at the beginning?"

Conciliator 8: "Did you all go and see Dr. White? Have you been to see anybody else - social workers or anything?"

Conciliator 3: "You're not really very jealous of each other as a family are you?"

Conciliator 3: "So your mum hasn't got much in the way of support really has she? I mean she hasn't got a new boyfriend, or has she?"

Similarly Stephen Ward is asked numerous questions regarding the break up of the family and his employment history and Kara Lloyd is asked about her parents:

Conciliator 2: "I am thinking - is there anything else you would like to tell us about how you feel about mum and dad?"

Conciliator 2: "I wonder if your mum worries about you when you go out with your dad."

Conciliator 1: "How do you get on with your step-mother?"

In addition the conciliators give Katherine Hall a bowl of stones to select various ones to represent each member of her family and then ask her to arrange them in order to elicit information about the type and extent of

the various relationships.

However, in these cases and more so in those where children are only present in the company of both parents, questions are also designed to elicit information about the children's present needs and wishes.

Conciliator 3: "So from your point of view does it seem right - the access you have to your dad at the moment?"(Case 6)

Conciliator 6: "Would it be hard to start (access) again Clare? (Long pause) Would it?"(Case 7)

Conciliator 2: "I wonder if you can tell us how it feels to you to be sort of in the middle?"(Case 12)

However, the wide-ranging nature of these few examples is in a sense misleading. Conciliators make every effort to make children feel at ease and to a large extent they succeeded with the boys in case 6 who had some experience of such meetings, but the remaining children and young people were clearly tense and nervous throughout. It would be naive to think that they could volunteer unsolicited information in such circumstances. Therefore even more than is the case with their parents, the information they provide depends on the questions they are asked. Chapters 4 and 5 stressed how vital is the form and content of conciliator questions in the definition of the problem and the same conclusion is valid for those parts of the conciliation process which involve children. The same kinds of initial questions are asked which prioritise feelings.

Conciliator 3: "Is it best to start where you are now? I mean what's the situation as you see it?"

Conciliator 8: "And you may see it differently and that's fine."(Case 6)

Conciliator 2: "I guess what I want to ask you Stephen is, how you feel about being here tonight."(Case 23)

There are also initial questions which delimit the discussion by assumptions. For example in case 12 the first question is "I understand that you would like to spend some time with daddy?", whereas the expressed purpose of the meeting was to ascertain whether Kara did or not.

Similarly 'filling the gap' questions are used to confirm what subjects the interview is to be about - the past history of mother:father and parent:child relationships, the history of custody and access and present feelings and hopes. More importantly children, as well as parents, are asked leading questions to elicit particular facts and lead the discussion into specific areas. For example the conciliators follow on from Kara Lloyd's reply that she does not like staying access to ask her why, and then by their questions concentrate on a particular explanation.

Conciliator 1: "Is it noisy or is the bed uncomfortable or were you worried?"

Kara: "Worried."

Conciliator 1: "That's the reason you find yourself unable to get off to sleep?"

Kara: "Um."

Conciliator 2: "What are you worried about?"

Kara: "I get a bit homesick."

Conciliator 2: "Worry about mum and how she's coping with you?"

Kara: "Yea". (laughs).

Conciliator 2: "Do you worry about your mum? "

Kara: "A bit."

Similarly examples can be found from cases 6 and 23 of questions prioritising particular explanations.

Conciliator 2: "Do you feel Stephen that this, that your parents have split

up has affected you then? Do you think this is what's caused you to give up your job? A difficulty at work?"(13)

Later:

Conciliator 2: "How did the bit of you leaving your mum feel?"

Stephen: "I dunno. I think I was at an age where I didn't care much."

Conciliator 20: "And they done all sorts of things to you, so in a way it was quite powerful to do things back."

Conciliator 2: "Do you think you were getting back at mum? You know it's very common. A lot of people would feel like that."

Stephen: "Possibly."(14)

Conciliator 3: "Is that one of the reasons why you like seeing your dad, so you can see your big brother?"(15)

Children are also asked non-sequitur questions though, because of the reluctance of many of the children to answer questions, it is more difficult to draw a dividing line between these and other forms of fact finding questions. However, in all cases it is possible to find questions which reveal conciliator interest in topics or explanations not raised or suggested by parent or child as in the following examples.

Kara: "I can't get to sleep there. I like to go out for the day with dad but not stay there."

Conciliator 1: "Um, you've got a little half-brother there haven't you? And you like him?"

Kara: "Yes."

Conciliator 1: "Because he's only little. He can't make the - it's a long journey isn't it? Are you looking forward to the things you've planned? (16)

Conciliator 10: "Have you got some other friends whose mummies and daddies don't live together?"

Richard: "Um, David."

Conciliator 10: "There will be quite a lot of boys in fact (pause) well our guess is if you ask around you would find some. May be the other boys don't talk about it 'cos they feel quite sad about it. You don't think so?"

With Kara Lloyd the conciliators are therefore using particular questions to establish a link between seeing the father and the half-brother which can therefore be used later to encourage a more positive attitude to staying access, and one which gives the father a legitimate reason for insisting on staying, rather than visiting, access. These points had not been raised in the sessions with the parents alone. Similarly Mr. and Mrs. James had not raised the question of whether or not Richard feels isolated or different so the conciliators are therefore using the questions to the son to suggest this possible link between his situation and his behaviour, which does not entail blaming his parents. This ties in with their aim to reallocate responsibility for the problem away from the individual parents though it sits uneasily with the concept of joint parental responsibility for the situation.

Not all appointments with children begin with this type of fact collection about the problem and family situation as some are arranged specifically to concentrate on the solution. Indeed, as the examples from Kara Lloyd's appointment have already indicated, there is often a fine line between problem definition and solution selection when children attend after the parents and conciliators have been involved in both these stages of the conciliation process. Therefore the use of different types of questions to delineate the area deemed relevant and the explanations to be prioritised is also applicable to questions asked of children about possible solutions, as section 2 will illustrate.

2. Solution Finding.

The literature contains several arguments for the attendance of children to help specifically with this stage of the conciliation process. There is the view that children may be able to supply details of their needs and commitments which can then be acknowledged in any viable agreement - for example their desire to attend regular club meetings or irregular birthday parties(17). On this basis Haynes (1981) recommends that children should only be brought in to review arrangements already agreed between parents. This function therefore overlaps with function 4 -that of communication to children. However Parkinson, referring to the research of Walczak & Burns (1984), has pointed out that children "may rebel against arrangements which are imposed on them without explanation or discussion and thus make life impossible for all concerned". (1986:165) On this argument children need to be offered "a chance of contributing to the discussion" (Drake 1985:66) in order to ensure their co-operation in the agreement made. Within the observed cases conciliators referred to both these advantages. The Gales are the only parents for whom conciliators arrange attendance primarily as a means of imparting information to the children about the agreement but also as a means of acquiring possible solutions to the problem of the content of access. It is therefore both a review of general arrangements and involvement of the children in the details of them:

Conciliator 10: "Mummy and daddy are going to talk to you now about what the arrangements are they'd like you to make."(18).

Conciliator 6: "There are other things you could suggest to dad, Philip?"

Philip: "Perhaps there's a BMX track where dad lives."

Conciliator 6: "What do you want to do, Clare?"(19)

However, in retrospect conciliators working with the Fields and Lloyds also

believed these factors of involvement and review of solutions had been important. Certainly the Field boys were told "It's a question of what's going to work and what's going to help make it work isn't it?"(20) and then asked for their suggestions. Again some of the questions are leading questions:

"Do you think that forcing your dad to see you is the best way of doing it James?"

"Are you saying that it will work better if you make your own arrangements?"(21)

Questions to the Gale children are limited by the nature of the agreement being considered by the parents (an outline of access) but it is conciliator initiative which limits questions to Kara Lloyd to the details of staying access: the parents have not agreed staying access and Kara had already told conciliators, "I like to see dad but I don't like going to Somerset. I don't like staying there". Nevertheless the conciliators proceed to ask Kara if she has any suggestions for making staying access easier. Therefore the conciliators do limit the area from which children can select a possible solution. Children are not encouraged, and in this group did not volunteer, to provide unfettered ideas.

In practice, however, in two of these observed cases the children were given another role in solution construction - that of playing a part in the actual implementation of the proposed solution which was not only crucial to the viability of the solution but also partially removed parental responsibility for it. This entailed using the Field boys to telephone their mother about any changes of returning home times and to telephone their father about access dates. The access arrangements proposed were only viable if the boys accepted this role and so avoided the need for parental

communication. Children attendance was therefore being used to ask the children directly to accept responsibility for implementation. Similarly the compromise solution of several days' access depended on Kara Lloyd agreeing to phone her mother after two days of access and telling her whether she wanted to stay longer. Therefore responsibility for making and communicating the decision about the exact length of access (between 2 and 5 days) was given to the 12 year old.

However, the conciliation process as described in chapters 4-6 is concerned with interventions other than 'neutral' questioning - there is rephrasing of answers, querying of parental definitions and solution and conciliator suggestions concerning the problem and its solution. Such aspects of the process are also found in conciliator/child and conciliator/family dialogue. The literature does not however analyse child attendance in terms of querying or suggesting to the child in conciliation. It is therefore necessary to see how the material delineated by the conciliator and supplied by the child is further modified within the functions of child attendance supplied by the literature. One such function is the two-fold communication between parent and child within conciliation.

3. Communication to the parent.

Clearly the fact and solution finding functions may entail or result in communication to the parents of the child's feelings and suggestions. If the children attend with their parents this may be done directly; indeed one benefit of their attendance is seen as enabling both parents to hear directly from the children, and thereby lead to fact 'validation' and the likelihood of parents realising the pressure they are placing on the children by continuing conflict. For example in case 12 the conciliator had explained to Mr. and Mrs. Lloyd,

"Maybe we could actually provide the setting where the children could say what they wanted to say and where people would actually have to listen to them because sometimes it is easy to ignore the things children say that are hurtful, but we do have experience of enabling the children to say what they want to say where it's actually heard because the hearing of it is quite important."(22)

On the other hand if children are first seen separately then either conciliators or children must report back to a family meeting. However, in both circumstances there is scope for further modification of the material supplied by the children. By conciliator responses to what the child says, information supplied in the presence of parents can be altered in status and this is particularly so with the Gales and Wards where the children were not seen first by conciliators. In such cases status is affected in two main ways - by placing whatever is said in a particular and positive context and by diverting from 'unhelpful' child responses. The first method, which is also used when the family reassembles after separate children interviews, entails constituting the parent/child relationship as a mutually loving and needed one and/or the parents as wanting the child to be open and honest.

Conciliator 8: "Well it's very nice to be here ... in spite of all the difficulties that there's been between you, today is about finding a way of the three of you to make things better so you can see your parents and your parents are both agreed on that ... so that's very nice, very positive."(23)

Conciliator 6: "The thing is they're both here because they care about you, because they both think it's important they should carry on being mums and dads even when they're not living together. That's one good thing."(24)

Conciliator 1: "Well we've had a lovely chat and she's a super girl and the message we get from her very loud ... that she loves you both very

much."(25)

Conciliator 2: "Perhaps the most important thing is that he can say what he wants to say and it's OK. Is that OK?"(26)

Secondly, not all answers given by children are accorded equal weight: some are 'ignored' by the use of questions which move the centre of attention, by suggestions which do not take account of particular answers or by rephrasing which modifies the answer itself. The following exchange with Clare Gale, who prior to conciliation had refused to go and see her father, gives examples of several of these techniques.

Conciliator 6: "What do you want to do Clare? "(i.e. on access visits)

Clare: "Not very much."

Conciliator 10: "Were there things you did with dad when he was at home?"

Clare: "We didn't do things with him at home."

Conciliator 10: "Are there things you can think of you can do with him now? (pause: no answer) Mum was telling us you liked swimming. Have you seen dad swim?"

Clare: "No."

Conciliator 10: "Well, that'd be exciting for both of you wouldn't it?"

Conciliator 6: "So you've got plenty of ideas haven't you?"

Another example of diverting attention occurs in the Field case when the youngest son expresses a wish to see more of his dad, especially by staying in the holidays. The conciliators refer to possible problems with the father's new partner and when the father confirms that he is not putting pressure on her to accept his youngest son the conciliators change the subject to discussing recent access visits that have been successful(27).

The reporting by conciliators to parents of information by the child is however more complex. Very rarely is all that conciliators and children have discussed privately conveyed. Indeed with the Fields nothing is conveyed, conciliators simply opening the joint meeting by asking the boys to outline what access arrangements they would like ideally. The conciliators appear to regard the information obtained in the long session with the boys as useful for their own understanding of the situation in order to plan the structure and aims of the family appointment(28). Nor do the conciliators pass on Kara Lloyd's statements, made twice earlier in the separate interview, that she did not want to go to her father's, nor her lack of an answer to their "but you do want to see your dad?"; instead they rephrase the following conversation which itself includes rephrasing of Kara's monosyllabic answers.

Conciliator 2: "But you'd like a longer time?"

Kara: "I'd like to but I wouldn't like to stay overnight ... I like staying, I just can't get to sleep you know, never can."

Conciliator 1: "I wonder whether - you were going down there for a week originally ... I wonder whether maybe at the moment a week seems too long for you and I wonder whether if you felt that mum was happy about it you could go down for three days? Two nights? ... Is that a possibility - do you think you could manage that?"

Kara: "Um."

Conciliator 1: "Do you?"

Kara: "Yes I think so."

Conciliator 1: "Is that a kind of half-way mark that might be OK with both of them and all right with you?"

Kara: "Yea."

Conciliator 1: "And not too long away from your sister. Do you think you

could manage that?"

Kara: "Probably."

Conciliator 1: "Is there anything Kara that you would like to say to dad about making it better for him? How do you get on with your step-mother?"

Kara: "Pardon."

Conciliator 1: "How do you get on with your step-mother?"

Kara: (Pause) "O.K."

Conciliator 1: "All right?"

Kara: "Yea."

Conciliator 1: "She's nice and she looks after you and you like, you love your little brother."

This is conveyed by conciliator 1 in the following statement to the parents:

"... The message that we get from her very loud ... and that she does very much want to see her dad, and that, for this holiday that you've arranged what she'd really like to do, if you're both happy about it, is for her to go down to Somerset for, two nights and three days, three days and two nights, and see how that works ... and if all is going well, and she's sleeping - she seems to have a little bit of trouble getting to sleep down there 'cos she says she's worried a bit about missing you and being away from home - she loves you so much - and therefore you know the holiday could stop there if that was enough on that occasion."(29)

The conversation about her step-brother is conveyed with "er she does like to see him - she thinks it's great to have a half-brother".

Conciliators do of course face the ethical problem of whether they should pass on all that children have told them. As Parkinson has written:

If parents are to be informed afterwards of what the child has actually said, this may put the child in an intolerable position. On the other hand, promising confidentiality to children may place the professional in the untenable position of holding information without being able to act on it. (1986:163)

With the Halls, conciliators did face such a dilemma. After about 20 minutes of interviewing the child separately the conciliators asked Katherine what they had permission to relay to her parents. She answered yes to questions requesting permission to tell them she liked fixed access, Christmas access and would more like more flexibility in access arrangements when things got easier and that she liked going to her father. However she made no answer and appeared upset when they asked if they could pass on that Katherine would like to know how her mother feels when there is access. Conciliator 8 told Katherine she did not have to say yes as she realised Katherine might think this would upset her parents and make matters worse. Conciliator 2 however, felt that the parents were adults and "could take it" and that, if Katherine were her daughter, she would rather know. She therefore asked Katherine if she would allow her to take the responsibility upon herself to tell the parents. The conciliator said she would tell the parents she had taken on this responsibility because she felt they should know and that it was not good for Katherine to carry the burden. Katherine agreed and this was done. The mother did become upset and angry and I was asked to take Katherine out and look after her while conciliation proceeded, with no agreement being reached.

Clearly what conciliators choose to pass on and the manner in which this is done can be crucial.

4. Communicating to children.

The presence of children at conciliation also allows direct communication

of information and explanations to children as well as to parents. Using children either to review details of arrangements made or to be actively involved in the earlier stages of problem solving involves parents telling the children their positions and their reasons for them. However, as with section 3 this communication can be direct or via conciliators and in both cases allowing conciliator intervention, which may again rephrase and select. However it may also initiate a suggestion believed to be acceptable to both parents but not actually discussed first with parents and therefore constituting not a reporting from parent to child but rather from conciliator to child. The excerpt from Kara Lloyd's meeting quoted above is an example of this. The suggestion of a long weekend rather than a week did not originate with the child and the parents had discussed no compromise solutions. There is therefore an element of persuading a child to a particular solution so that the solution can be viewed as the child's. This is not to suggest that pressure is always employed or that the solution is not 'wise' but it does imply that separate interviews with children can be used to suggest to children what conciliators had felt unable to suggest directly to parents and this is a development which requires open discussion.

When conciliators saw the Field children separately, they did not suggest solutions; they did however suggest various explanations and advice that might help the boys to accept particular arrangements if they are agreed by the parents, as in the following examples.

"It seems to me that if you look at it sort of a distance, from right outside where I am, the way that it's going to be better is if you get on with your dad's girlfriend isn't it?"

"I think Edward if we, if there was any possibility of your mother knowing

when she was going to see you it might stop her getting at your dad."

"Your mother fighting for you, I think, thinks the two of you should go together but it seems that you actually have got your own way of making it work with your dad occasionally."

"But in the meantime I think if we could just make - the first suggestion is avoiding lying to your mother, do you think?"(31)

In cases, 7, 10, 12 and 23 communication to children is done in the parents' presence. This takes two forms: firstly, as with the Gales and Fields it involves 'coaching' parents to do the communication themselves and secondly, in all cases it entails speaking for parents. Such roles are undertaken by conciliators because it is believed dangerous to assume "that parents are both capable of and willing to talk to their children in a sensitive and supportive way about the decisions they are taking". (Parkinson 1985:6) So Mr. and Mrs. Gale were asked at length in the previous appointment and during the 40 minutes before children were brought into the second appointment what they were going to say to the children. The following examples give the flavour of this coaching.

Conciliator 10: "What would it be helpful to talk to Clare about? ... Suppose you two explained what we'd agreed today ... What do you think Clare is likely to say? ... The reason why I'm asking is that sometimes it doesn't help to go back over what's happened in the past. It might be easier just to see if she's agreeable to visits in the future." (32)

Conciliator 10: "When the children come in what have you got to tell them that you're going to do to see them? Because that's what they're going to want to know.

Mr. Gale: Can I just say one thing? If Clare doesn't want to come I dunno what to do 'cos I miss her you know."

Conciliator 10: "You could tell her that." (33).

Conciliator 6: "If you put them on the spot and ask them a direct question they only have two choices - yes or no. Whereas if you leave it for a while and tell them that you want to see them and about your situation, then you're giving them a chance to think and you may have a different answer at the end of it." (34).

This coaching continues when the children are brought in and Mrs. Gale says immediately, "Your dad's going to phone up when he might see you 'cos he might be going to Scotland. Are you going to see him?" The conciliator intervenes with "Shall we hold that question for a moment because I think Mr. Gale has got something to tell the children first of all about wanting to see them" and continues to intervene when parents ask direct questions or comment unhelpfully on the motivation behind children's answers. ("I think he said that 'cos he felt guilty").

In some cases conciliators are speaking openly on behalf of the parents, to help persuade the children, as in the following example when the Lloyd family is seen together.

Mr. Lloyd: "When would you like to go? Tomorrow OK?"

Katherine: (Laughs).

Conciliator: "Dad's come up hoping that you're going back with him. It's such a long journey up and down."

Katherine: (Pause)"Yes." (35)

The following examples aimed at the Field boys and Stephen Ward respectively, show how intervention can amount to an endorsement of a parent's position.

"Now I think there's a lot on you three boys to remember that your mother does lead her own life as well and that's a bit you can bear in mind."(36).

"And I think there's a bit in there too Stephen about don't restrict your dad too much 'cos he might want to fly himself. (laughs)" (37).

It can also amount to a summary of what conciliators believe parents have said:

"Good I think that both your parents can now express their care for you and they haven't got to hide from one another - they can come out in the open and say yes they are still your parents even though they are separated." (38)

It can go further and summarise what the conciliators assume the parental attitudes are or will be.

"Cos my guess is right now your mum's feeling guilty about the breakup of your parents' relationship because in some way I guess she's feeling that she's got something to do with where you are now." (39)

"And daddy's perfectly happy, he's quite happy if you say, on Sunday morning 'I really want to go back home'. He's not going to think that you're not being nice to him; he knows you, I think. He's not going to think that you're pushing him out. He's going to say this is the arrangement we made." (40)

"Even though they don't live together they're still your mum and dad ... the thing is they're both here because they care about you because they both think it's important they should carry on being mums and dads." (41)

All these statements were made in the presence of the children. Many seek to 'normalise' a situation seen as problematic by the family: a conciliator technique seen in interventions to rephrase parental grievances

but even clearer in interventions addressed to the children. One function may therefore be to change the images the parents hold of themselves, the other is to change the children's image of their parents to one that is more conducive to co-operation with them and their arrangements. The following comments, made to children separately, have this latter aim as their sole one:

"So your mum has got company at home. Your mum's a big girl isn't she? I mean she's a grown up person, she actually can manage very well." (42)

"I mean, I get the feeling when I meet her that one of the reasons why she's a bit excitable ... it's no crime to shout but it's partly that she's feeling that she hasn't got much backing." (43)

5. Supporting children.

Conciliators do not always seek to change children's images of parents for the 'better'. They can buttress existing images or create images of parents and significant others as being in some way unsatisfactory in order to be supportive of the children by acknowledging their difficulties. Many examples of this can be found from the interview with the Field boys, of which the following are representative:

"I mean it must have been awful, awful ... didn't get on with your mother and now there was another woman turning against you."(44).

"I mean I'm feeling that the grown-ups have not managed to behave very well and are actually expecting that the young people behave superbly ... but actually the grown-ups around you haven't behaved very well."

(and later)

"You are stuck with difficult adults aren't you?"(45)

However, interventions not influencing such images that children may hold of their parents but nevertheless being supportive of the child and allowing

the child relief of feelings are made at both separate and family meetings. Indeed the conciliators gave this as a reason for requesting the attendance of Kara Lloyd and Stephen Ward. As regards Kara the conciliators felt that, as she was already in the conflicted situation, attendance would not be harmful and that it would help her to be 'allowed' to say what she felt to decrease the feeling she probably had, like many children of divorce, of 'total helplessness and blame'. With the Wards conciliators afterwards remarked that the significant factor for all concerned, including the son, had been the 'coming out into the open' of the various feelings and therefore relief of the tension their containment was deemed to have caused. So, Kara Lloyd when interviewed alone, was asked

"... I wonder whether there's anything you'd like to tell us about mum and dad? It's good for us to hear from you - when we listen to mum and dad we feel that we're pulled in two directions, first of all with mum, and then with dad. We wonder how it is with you, how it feels ... to be sort of in the middle?"(46)

Later in the family appointment the parents are told that it's important for Kara to say clearly what she needs and this is repeated specifically to Kara. Similarly Richard James is told at the beginning of the family meeting:

"So lots of mummies and daddies come to see us to try and sort out arrangements for the children cos it's hard for children when mummies and daddies split up as well as being hard for parents. Does that make sense?"
(47)

Likewise towards the end of the Fields' family appointment the boys' difficult position is similarly acknowledged with, "But these three have got to manage now loving you both as best they can and hating both at

times"(48).

The literature and some of the conciliators in this sample also view attendance itself as being a relief and support to children if they are able to witness parents co-operating and communicating in a relaxed atmosphere with friendly conciliators. Mrs. Registrar Moorhouse, speaking of in-court conciliation, argued more specifically that it might "hopefully abate fears that decisions as to their future were being made by a fearsome person in such a fearsome place as only a child's mind can envisage"(49). The conciliators felt it was important for the Gale children simply to see their parents in the same room so that 'a bit of reality' could be given to them, and that Stephen Ward had needed to witness his parents communicating. However conciliators point out that the situation must be carefully controlled for this benefit to be possible and had sent out Katherine Hall when they felt the atmosphere was 'becoming unhealthy.' There was also a point in the Fields' appointment after a prolonged period of parental argument, where one conciliator expressed misgivings at the children's attendance, ("I'm wondering whether this is helpful to the children to be allied with the parents"(48)) but her colleague felt that progress was being made and the boys were anyway used to the situation. In this case the next anticipated benefit for the attendance of children - that of controlling parents - was definitely not occurring.

6. Controlling Parents.

The literature suggests that a family systems approach may enable parents to focus more easily on the children and arrangements for them. For example Jenny Guise has reported that the presence of children can restrain the 'psychological games' parents might otherwise play against each other. (1983) The conciliators had hoped this would occur with the

Fields and Gales though the benefit had in practice been only partial. However the Lloyd family session was very brief - only 10-15 minutes- but that was in great contrast to the parent-only appointments for its lack of expressed aggression and bitterness.

However, some conciliators envisaged child attendance as controlling parents in a different sense, not at but after appointments. They argued that, with the Gales for example, it was important that the children heard their mother being praised for supporting access because she could expect some comeback from them if she 'sabotaged' access. Similarly Stephen Lloyd had heard the parents being told that he was now a man who needed independence and he could therefore 'use' this in future difficulties. The conciliators also felt Mrs. Lloyd would not have implemented the access agreement if it had not been made in the daughter's presence, (and also not arranged for the next day).

The other possible role for conciliation mentioned in the literature (Parkinson,1985:7;1986:167-9) - that of preparing children for meeting and then having access to an 'absent' parent by having first separate and then family conciliation meetings, is not relevant to this sample.

When Gwyn Davis discussed children's attendance in 25 of such cases he observed at Bristol County Court in 1982, he stated "The reason for wanting the children to be present is fairly obvious: the dispute often centres on different interpretations of the children's wishes". (1985:46) Whilst chapters 4-6 have illustrated that different interpretations of children's wishes are indeed a factor, they also reveal that many cases do not centre on this. It is also clear from these few cases observed and discussed with conciliators that the reason for wanting the children to be present is far from obvious and does not always include using the children

to settle the issue of different interpretations of their wishes. In this sample six specific reasons were both articulated by conciliators and were the basis for different types of conciliator approaches during the attendance of children. Cases may involve several such reasons though in this small sample there was one main one in each: In cases 6, 8 and 12 to collect facts, in case 7 to ask for details of the solution, in case 10 to control the parents in the session, and in case 23 to be supportive of the 18 year old. In practice their effective functions were sometimes different. In case 6 the importance of the boys' attendance was in allowing an arrangement to be made which gave them responsibility, so by-passing parental conflict. In case 7 attendance was used to persuade the children to co-operate with access plans and in case 12 to urge acceptance of a compromise access arrangement which gave the child some responsibility, to avoid parent communication.

Secondly Davis' statement that "the welfare officer is placed in a very weak position once the child (perhaps under considerable pressure) has expressed a view" (p46) does not appear so characteristic of these out-of-court cases. In cases 7 and 12 the daughter's anti-access statements were glossed over and the conciliators proceeded in both cases to discuss the details of access. Similarly in case 6 when the boys expressed specific wishes they were not always pushed by the conciliators and the result was not, as Davis concludes, that "all the welfare officer's negotiating strength has gone". Indeed in case 23 the son's more negative statements were used by conciliators as proof of the need for parents to agree. It is not therefore inevitable that 'once the child has spoken, there can often seem very little left to negotiate about; into the little harbour of mediation has come sailing the QE2 - with the result that the welfare officer is left spluttering on the shore'.(Davies 1985:46)

It may well be however, that the difference is that the conciliators observed in this sample were concerned to make sure that the ship was a much more manageable craft. It would seem indeed that the process of conciliation does not become so radically different when children are present. Children and parents are both asked questions to elicit particular areas of facts, their answers are rephrased, endorsed and queried and suggestions are made to both. Indeed the quotations in this chapter often seem surprisingly familiar: the language and content of conciliator intervention is not so different for the 12 year old as the parent.

Nevertheless, the attendance of children can be crucial because of the control their attendance occasions. It is not simply what the children say as what they are represented as saying, but even more so as what the children are hearing. Given the images constructed by conciliators, parents may be more likely to wish to be seen as agreeing, responsible parents if the children are present and may therefore be more motivated to make an agreement. They may also be less likely to default on the agreement for the same reason. This is presented as a benefit but this rests on the assumption that both parents will feel equally 'guilty' at not giving ground.

Furthermore, separate interviews are seen as a way of taking pressure off children and allowing them to say what they 'really' feel. It may be however, that such interviews allow more direct pressure on the children as regards particular solutions.

If these factors are valid for other cases it would suggest that the attendance of children is doing both more and less than settle interpretations of facts: less because it becomes only part of a conciliation

process already envisaged by conciliators, and more because it is motivating both parents and children to come to some agreement.

CHAPTER 7: NOTES

1. Case 12(32): Conciliator 1. i.e. the conciliator speech at the end of the 2nd appointment at part of which Kara had been present.
2. See Table 13, Chapter 2.
3. See Appendix 1 for the family profiles.
4. Issued by the Senior Registrar on 2 November 1982, 23 September 1983 and 31 October 1984 (see Family Law Vol. 15 p20).
5. Family Law Vol. 13(1983) p5.
6. But see Davis: 1982 concerning Bristol In-Court Conciliation.
7. James and Wilson (in press) but discussed in Parkinson: 1986.
8. See also Shepherd and Howard: 1985 and Day, Jones and Owen: 1984.
9. The conciliators were 1(Cases 10,12); 2(Cases 8,12,23); 3(Case 6); 6(Case 7); 8(Cases 6 and 8); 10(Cases 7 and 10) and 20(Case 23).
10. Case 6(4).
11. Case 7(3).
12. Case 12(11).
13. Case 23(3).
14. Case 23(6).
15. Case 6(8).
16. Case 12(25).
17. For example see Parkinson: 1986, 164-6.
18. Case 7(18).
19. Case 7(18).
20. Case 6(10): Conciliator 3.
21. Case 6(10): Conciliator 3.
22. Case 12(12): Conciliator 2.

23. Case 6(14).
24. Case 7(22).
25. Case 12(30).
26. Case 23(2).
27. Case 6(14,15): Conciliator 3.
28. This case was discussed at a lunchtime C.S. support meeting, the significance of various items of information being discussed and the available strategies compared.
29. Case 12(28).
30. Case 12(30): Conciliator 1.
31. Case 6(11): Conciliators 3 and 8.
32. Case 7(9): Conciliator 10.
33. Case 7(16): Conciliator 10.
34. Case 7(17).
35. Case 12(30): Conciliator 1.
36. Case 6(23): Conciliator 3.
37. Case 23(13): Conciliator 2.
38. Case 23(7): Conciliator 2.
39. Case 23(3): Conciliator 2.
40. Case 12(31): Conciliator 2.
41. Case 7(22): Conciliator 6.
42. Case 12(26): Conciliator 1.
43. Case 6(13): Conciliator 3.
44. Case 6(12): Conciliator 8.
45. Case 6(13): Conciliator 3.
46. Case 12(27): Conciliator 2.
47. Case 10(17): Conciliator 10.
48. Case 6(22): Conciliator 8.

49. Report of a talk given to the Young Solicitors Group of the Law Society, Jan. 1984 reported in Family Law (1984) Vol. 14, p69.
50. Case 6(18): Conciliator 8..

CHAPTER 8: MANUFACTURING MOTIVATION

If the parties, or one of them, is, to begin with, not motivated for having the conflict resolved, or in any case not motivated to agree to any compromise, such motives must be created in him. (Eckhoff, 1969:172)

If we are going to work with people we must manipulate their motivation if they are not already personally motivated.....We back them up in their corners....It is a phenomenal piece of manipulation.....If they don't want to agree for Christ's sake why should they?....why can't I just say 'go away' and leave the standard model?.(1).

These are two very different quotations. The first, a generalised comment on mediation, assumes the motivation to agree can and should be manufactured in the parties involved. The second, is a quote by a conciliator arguing against the 'manipulation' of motivation, which she saw as part of the 'standard model' of family conciliation. These comments therefore raise some important questions:

1. Is the conciliation process as analysed in preceding chapters deemed sufficient by conciliators to create this parental motivation? If so, wherein lies the power of conciliators to 'create' agreement?
2. Is the manufacturing of motivation seen by conciliators as 'extra' work which has not been analysed as part of the conciliation process?

It seemed useful to begin the search for answers to these questions by analysing what conciliators themselves had said about their roles and the perceived reasons for their 'successes' in interviews with them after each appointment. (2)

From discussions with conciliators during the period before the project got underway, questions were constructed using "conciliator language". Therefore the two questions most relevant to this section were phrased as "What do you think your main roles were in the session?" and "Was there any movement during the session on the part of the mother or father and if so why?"

Conciliator Roles

As regards the first question, conciliators were initially given the following list of possible answers which had been compiled from the roles they had allocated themselves or discussed at meetings. Viz. Umpire/Chairperson, Task Setter/Provider of possible solutions, Educator/Provider of information, Counsellor, Other- please specify. Clearly this is a leading question but conciliators did not feel constrained by it and provided their own job descriptions if necessary. The commonest extra ones were "facilitator" and "focuser". Explanations of the "meaning" of such phrases were not asked for though conciliators usually did enlarge upon their answers.

Conciliators usually saw themselves as having two or three main roles in any appointment.(3) These roles covered three main categories which can be used for classifying conciliators' answers. This categorisation is to an extent imposed on the material in the sense that it is the observer's understanding of what conciliators are generally talking about when they have used a variety of terms in their own language. 'Facilitator' caused most difficulties in that the conciliator interview material provided only two definitions: that it is a "giving of opportunities for parental communication" and "a focusing on the needs of children not on bitterness".(4) However in the last case conciliators said that their roles

were "also" that of "a focuser on the needs of the children". Conciliators used the word facilitator in many subsequent discussions assuming a common understanding of it. Clearly facilitating could mean a variety of interventions (and again points up the prioritisation of communication and parental feelings) though for the purpose of this analysis it has been taken to imply some control of the agenda of conciliation as has the term 'focuser' (5) which was always used in the context of children's needs and parenting. However various other replies have also been taken to imply a controlling role over the process itself and these include chairing the meeting, (defined by one conciliator as "control to keep them to relevant topics"), "Shutting them up", "Umpire," "Setting boundaries", "Holder of boundaries", (defined as who may or may not speak at any particular time) "Agenda setter" (defined as giving clients a "small manageable bit at a time"), and taking control to give clients "space".(6) All these answers have therefore been categorised as a role to control the agenda on a continuum which ranges from marginal to active conciliator intervention.

Another group of answers has been categorised as a counselling role.(7) This includes the following:

"Nurturer", "Counsellor or rather enabler", "Containers", "Acknowledger of pain", "Holder of feelings", "Parenting" (defined as "reinforcement of good things" and not giving in to what the client wants and therefore "Staying with needs rather than wants), "Therapist," "Reality Counselling" and counselling "to get at a mother's feelings". "Acknowledging" appears to have been used with two possible meanings - that of conciliator acknowledgement that the client is hurt or of getting the client to acknowledge that he or she is hurt. "Containing" or holding feelings also appears to have two possible meanings - to control by limiting feelings and also by exploring feelings.

Thirdly, nearly all the remaining replies could be classified as some sort of client education and conciliator suggestion. For example, in two cases the suggestions regarding access and parental communication were specifically described as a task-setting role and there was also "advice giver", "giver of realistic options" and "a suggester of possibilities".(8) The Educator role was seen specifically as a provider of information regarding the needs of children in seven cases, in four of which education regarding legal rights was deemed to have been a role.(9).

Therefore a main role of controlling the agenda in some way was perceived by conciliators in thirteen cases as was a counselling role and an educative role in twelve cases. The average of two roles per case is not found in any particular combinations though all but one of the thirteen multiple-roled cases included a counselling role. (10)

"Movement" By Clients

The second question asked conciliators to give details and suggest why they thought 'movement' had occurred within a conciliation session. Their replies can be arranged in five main groups though there were multiple answers.

1. In 9 cases (11) the main reason was seen as the acknowledgement or release of feelings and in half the cases this release was seen as applying to the mother only.(12) In none was it seen as applying to the father only. A selection of answers given in this group was therefore that progress had occurred because of "therapeutic working out of feelings", "Ventilation of feelings", "Acknowledged her pain", "gave her permission to talk", "Realised conciliators knew what they were going through and therefore were able to acknowledge their feelings", "Recognised her emotional

needs", "She was able to express her guilt ". (13)

2. In five cases, three of which overlapped with those in 1. above, conciliators saw progress as stemming from their building up of a parent's sense of personal worth or as they put it "reinforcement of the adult self", "backing" a client " as a mother", refusing to agree that the other parent "is a bad guy", refusing to disregard a mother's feelings so that the father was helped to realise they were important and believing that "parenting has held the adult bit". (14)

3. In 9 cases the fact of the conciliation meeting itself is seen as conferring the conditions which led to movement. In three cases the face to face listening and talking between the parents is seen as crucial "because they had been given space to talk which they had never had before".(15) In three further cases the exchange and valuation of parental feelings, because they have "seen" such feelings at first hand, is seen as as the most important aspect. "Her concern and distrust came across as genuine....He accepted it as genuine".(16) In two cases the psychological effect of the parents having met and survived the meeting was seen as the crucial factor in motivating an agreement and in another case the important factor is believed to have been the change in patterns of interaction which began in the conciliation meeting itself.

4. In nine cases a crucial factor is viewed as being the clarification of issues, options or disagreement which had taken place in the appointment.(17) Sometimes this clarification is specified as focusing on the children's needs, diverting from issues of principle or challenging parental assumptions. So for example conciliators felt that control had enabled Mr. and Mrs. Kay to focus onto immediate issues and that Mr.

Young's realisation that "he hadn't the options he thought" was crucial. All these answers entail some conciliator control of the conciliation process. Much of this clarification refers to definition of the problem, though clarification of options would seem to refer to the solution stage and focusing on child needs could entail both a narrowing of the problem constructed or a prioritising of particular solutions.

5. In nine cases (18) a major reason for movement was believed to have been the suggested solution which conciliators preferred backed up by their particular specialist knowledge. In some cases this is seen as 'simply' conciliator ability to suggest possibilities that clients may not have thought about - "to open up new avenues"(Case 2) and to offer advice over the practicalities of separation (Case 20) But in five cases client agreement is seen to rest specifically on the knowledge of legal requirements and possible legal outcomes that conciliators could give, as in:

"We told her custody was not on legally".

"She perhaps saw that it is unlikely - if an application were made - that he would lose access altogether and therefore she might see conciliation as a way of reducing the flack for her".(19).

In two cases specialist child knowledge was seen as even more crucial than the legal knowledge. "We were determined to show them they were crucifying their kids".(20)

In four cases motivation was also seen specifically to have arisen from the help conciliators had given the parents in "accepting reality" - either that "the marriage was in difficulties and change was necessary in some way", that "the present situation is fragile and unrealistic" or that "he hadn't the option to do any other" (21) In all cases the result was to "remove" one

parent's preferred solution (for example the status quo) and motivate that parent to agree a compromise.

These five groups of answers can be seen as basically three main reasons held by conciliators for movement:

(i) Change brought in client's personal feelings or self esteem (groups 1 and 2 above = 11 cases)

(ii) Change brought as product of the structure of conciliation i.e. the setting (group 3 above = 9 cases).

(iii) Change brought by influencing the conciliation process (groups 4 and 5 above = 14 cases).

This analysis of conciliator interpretations of what motivates clients to modify views and make agreements suggests the following:

1. That conciliators do attach importance to the effect of feelings on agreement production.
2. That conciliators realise they are counselling and that it is more often directed at the mother.
3. That at least some conciliators do have their own idea of what the "reality is" and wish parents to accept their version.
4. That conciliators see their use of expert knowledge concerning the children and the legal system particularly as very important to the outcome of conciliation.

So, conciliators are suggesting three main reasons for their potential power to motivate agreement: control of the agenda and structure of conciliation, the use of expert knowledge and also 'feelings work'. The second reason - expert knowledge - has already been shown to be important in the conciliation process. The claim of conciliators that 'education' is important

is therefore a valid one and will be dealt with more fully in Chapter 9. Their claims for the importance of control and counselling need further investigation to see whether, and in what ways, these aspects encourage parental motivation.

1. Control

Chapters 4-7 have shown how conciliators, through a series of interventions, control the construction of problem and solution. They have also provided material illuminating how the construction of a particular concept of joint parental responsibility is an integral part of the conciliation process itself. However, analysis revealed a significant number of interventions (22) addressed to both parents and not allied to problem or solution but aimed solely at constructing joint parental motivation. All cases have such interventions and they can be classified into five groups depending on whether they are:

1. Statements concerning parental progress or previous agreements.
2. Predictions concerning future parental ability.
3. Assumptions concerning parental responsibility.
4. Statements concerning the need to agree.
5. Statements concerning the need to focus on the children.

These can be re-classified into two main types: the first three groups, constituting parents as able and good, are morale boosting ones; the fourth and fifth groups are normative statements outlining why parents should agree. Almost an equal number of interventions can be found for each of these two main types so that conciliators appear to be balancing their use of the carrot and the stick. (23) However the totals are influenced by four

cases where more normative statements are to be found. (24) Without these cases the totals reveal that conciliators use more "positive" than "negative" encouragement and this is reflected in most of the remaining cases.(25) Analysis of when different types of interventions in this category are used by conciliators does not show any standard pattern and nor are there any clear links between the use of these different categories and any other particular interventions. The two main categories can therefore be discussed solely on content.

(i) Morale Boosters

"Well that sounds smashing to me" (26)

Interventions in this category are in a sense oiling the wheels of the conciliation process. There are interventions to "set a positive tone" at the beginning and end of the appointment and to do the same in the middle (either in preparation for conciliator suggestions or to end parental arguments). (27) It is however easier to understand what these interventions are doing by looking at each of the sub sections separately.

i) Past Agreement

Basically parents are congratulated on past progress, either progress before the conciliation appointment or progress in the conciliation meeting. The interventions early in the meeting take the form of commenting on access arrangements so far implemented, on parental control of the feelings surrounding the separation and on any agreements concerning custody and access already made. Interventions in the course of conciliation to end parental arguments or to restart the appointment on a positive note often take the same form. Therefore the following interventions are typical of both.

"Well that sounds good....I think that's a tremendous advance from when we met last time".(28)

"So you actually did arrange that together - that really is a considerable move 'cos it's early days yet for both of you".(29)

"So we know that so far you have managed in spite of all - absolutely amazing that the two of you have managed so far".(30)

"It sounds from what you are saying that things are going a bit better....I feel that - I mean you've got to look at the positives and the positives so far are quite good. I mean the last two weeks have worked better".(31)

Conciliators are looking for any signs of such progress and constituting parents as good and able.(32) Even when the evidence of this is at least ambivalent. For example the "absolutely amazing" quotation comes from a case referred by Social Services because of grave concern over the child involved and the "tremendous advance" is an optimistic interpretation of the fact of informal contact between the father and son at the school gates. In one case however the agreement which is praised is one which is in a sense "is manufactured" in order to control a session which began with very long conflicting accounts by both parents of past problems and future hopes.

Conciliator 10: "Let's hold it for a minuteI think we need to establish that there actually is an agreement that you both want the access to take place".

Conciliator 15: "Well it's quite important that we sort of recall that you both want access to take place and I think my colleague is right. It is important that you are both in agreement over that first and it is a very good starting point too".

Conciliator 10: "Yes it's a very positive starting point".(33)

Interventions to restart the process or to close the meeting on a positive note also used progress made in the appointment - in some cases specifically to counter parental disbelief that the meeting had achieved something as when the conciliator insists to Mr. Davis and Mrs. Smith, "I think you have actually made some agreement tonight you know".(34) Parents are therefore often sent away with congratulations on their behaviour in the meeting and their post-separation progress generally as in the following quotations.

"Well I think it is remarkable the stage you've got to at the moment".(35)

"I do congratulate you. It's been really hard for you".(36)

"Right - congratulations all of you and I hope you have a smashing time".(37)

Therefore wherever they are used in the process of conciliation these comments are confidence boosters. Their aim is to alter parents' expectations of whether agreement is possible by constituting parents as already trying to keep the parental relationship going and able so to do. The spousal relationship, continuation of which motivated parents to seek consensual images, is therefore by implication being replaced by a parental relationship which parents are being constituted as able to continue and which will then provide the motivation to make agreement desirable in the present situation.

ii) Future Agreement

This is a small group of interventions(38), which are also morale boosters by expressing conciliator confidence in parents' future ability to parent jointly. For example, when Mr. and Mrs. Cann feel unable to affirm their agreement to a proposed agreement as yet the appointment is drawn to a close with the following comments:

"I actually think, because you both care a lot you can achieve - I mean you have got a lot going for you".

"Whatever decision you make it is going to work out because you are both committed to the children".(39)

Similarly when only partial agreement is reached between Mr. and Mrs. Kay the final comments are "I think we will wish you good luck" and "I feel quite confident".(40) In two other cases these predictions are used to divert from parental arguments. They, by implication, rephrase the conflict as one of feelings which will become more positive.

"But you will get it right.I wouldn't be throwing my hands up".(41)

"I think you will find that possible....in general soon after you break up you have difficulties then you begin, maybe after a year or two of actually being separated to actual develop regular and positive patterns". (42)

A further example constitutes the parents as being able to find in the future "the strength and the courage" to implement an agreement if one is made.(43)

This type of confidence boosting, used especially where there is little agreement at conciliation itself, is more specifically aimed at encouraging parents' commitment to avoiding future conflict and to encouraging implementation of the suggested - and possibly agreed - arrangements. This sort of comment is used infrequently but stresses the conciliator's search for praise-worthy items and their insistence on optimism so that the parental unit is seen as a viable one and worth agreeing for.

iii) Present Responsibility

The previous two sub groups had been based on evidence that parental motivation to agree could or had existed. This group works by directly

assuming this parental motivation. Examples are found in fifteen cases and include the comments discussed in Chapter 3 which impute a meaning to the attendance at conciliation itself.(44) Such comments, often found at the beginning of appointments (45), are intended to prove parental love and concern as in these examples:

".....But you actually both came here because you wanted to do the best for the children"(46)

"Well thank you both very much - it can't be easy to decide to come."(47)

Developments within the appointment are also used as occasions for comments which assume positive attitudes. For example when conciliators conveyed to Mr. and Mrs. Lloyd for their consent a particular arrangement which had been constructed in a private interview with the child, they did not immediately respond. The conciliators therefore addressed themselves to the child with "and Daddy is perfectly happy. He is quite happy if you say on Sunday morning "I really want to go back home." He is not going to think you are not being nice to him....Mum is not going to be worried".(48) Such comments, at a time of parental ambivalence, are obviously very powerful in urging agreement and in this case particularly so because of the presence of the child. Here the father's desire for a week's access is undermined by imputing to him an understanding attitude to his daughter's wishes, which may be present but is difficult to refute.

The timing of other comments is not so crucial - they contribute to an overall construction of parental responsibility which presumes parental love and focuses on the responsibility to make an agreement as the following examples show:

"It's a rough situation....but obviously the two of you are wanting the best

for your children and that is very good. So there are things which we can help you to agree on.....".(49)

"We are here to make offers. We are here to make it possible for you to do something else, but the real answer is in your hands entirely."(50)

All the conciliator comments to boost morale therefore build up parental motivation by making statements - not always on evidence - which constitute parents as able to make an agreement and which also constitute this ability as part of the responsible parenting which is being advocated. Sometimes this constitution of responsibility is made in conjunction with a more directive statement as for example in the following.

"You are separated now and you have got to do what's best for the kids and you obviously both want to do what is best for the kids".(51)

This "you've got to do" element in conciliator strengthening of joint motivation will therefore be analysed next.

2. Normative Statements

"I think focusing on the children is a marvellous exercise"(52)

"The real answer to it is that those issues are dealt with by the responsible parents and not by the Court"(53)

These quotations point to two sub groups of interventions in this category, those stressing the need for parents to concentrate on the children and those urging the need for a parentally made agreement, though they are often very closely linked. (54)

However the examples in these two sub groups can be very different -the amount of weight being given to the encouragement to agree varies

considerably. Focusing on the children may be no more than a gentle reminder to the parents that the conciliation service does deal only with child matters and custody and access and not disputes over possessions and maintenance so it may affect the agenda as much as the motivation. But it is also seen by conciliators as a technique to enable parents to shut their minds to destructive issues "because in fact it holds your feelings and your thoughts at that level and I think it can be a release from some of the pain and feelings."(55)

At this end of the continuum the normative element is small though it is still present in that focusing on the children is seen as preferable to focusing on other matters. However the second quotation, which is much stronger, also stresses that parental agreement is preferable not only to the lack of agreement but also to adjudication of the dispute by the legal system. Such statements are found in only a minority of cases, (56) in all of which there is in existence an actual or proposed application to the Courts regarding the children.

i) Focusing on the Children

This group therefore comprises the larger number of comments(57) which are found in 13 taped cases (58) more evenly spread throughout the appointment than morale boosting comments.(59) Some of them simply ask parents to concentrate on the children - even to the extent of visualising their presence at the meeting.

"But what I hear is two people who actually care very much about their children. Both of you care very much about your children but you keep forgetting the children. We ought to have them in the room sitting here, you know, to say "remember us remember us"because all the time you are

actually forgetting them." (60)

"You are using all these things to beat each other with and in the middle - right here - is that little boy that you both love".(61)

Such comments appear to be encouraging motivation by inducing parental guilt; they also affect the agenda itself in that they often lead to a concentration on establishing the children's needs which are usually posed in juxtaposition to parental needs. This again encourages parents not put their needs first as this would label them bad and not responsible parents. One conciliator spells this out when she says:

"But you don't actually come together as husband and wife but as Mum and Dad - the parents of the children. You come together so that you can actually talk about it and say:perhaps there are occasions when I have to stop looking at it in terms of what I want and start looking at it in terms of what I have got to do, what are my responsibilities as Mum and Dad".(62)

By implication therefore the parental solutions have been constituted as resting on parental needs so that these solutions are not legitimated and parents are motivated to seek other solutions which can be agreed and which do not therefore induce guilt, as the following interventions point out more specifically.

"May be it's to try and look at what would be best for the children and forget what suits either of you."(60)

"I think we always have to address ourselves to the girls more than to what feels to be giving you two what you need".(64)

Many comments specifically relate the parent/child needs division to another division - that between the marital and the parental relationship. Conciliators believe that the parenting relationship can continue after the

spousal one has ended, that people can separate the two and that parents should be committed to the continuance of this parental relationship, not least because the children do not want the continuance of the marital relationship into present parenting.

"They look upon you both as parents and presumably they would be a lot happier if they could respect you both as parents and didn't see you arguing."(65)

"Because.....however awful people are as husbands and wives to each other -that's their view - everybody can be good Mums and Dads - it's a different relationship."(66)

The separation of these relationships is not envisaged as an easy one though, perhaps paradoxically, the failure to do so is constituted as a matter of immaturity.

"And a very difficult task you both have to build up a partnership which has to do with being mother and father, a partnership which was husband and wife".(67)

"All that is now keeping you together is the fact that you are the parents of these children and unless you can be adult enough to be parents and to forget about man and wife relationships.....but you have to put that to one side for the sake of the children". (68)

Most of these comments however have to be viewed in the context of the concept of joint parenting, with its major component of parental agreement, which is being built up in conciliation and therefore the above comments, mixing confidence boosting with guilt production, are in fact motivating agreement itself. As one conciliator puts it "we must focus on the children first and foremost. Today we must talk about motivation and moving forward and we must stop you if you go back into the married

relationship".(69) At this point in this particular appointment the concept of parenting is itself being constituted at the same time as it is moulding both the agenda and parental motivation.

ii) Urging Agreement

There are only eighteen independent instances of conciliators urging the need for parents to agree per se but there are many more which form part of conciliator suggestions. Many compare Court-imposed solutions with parentally agreed ones and use three main arguments to support their preference for parental agreement: that allowing Courts to make decisions is irresponsible parenting, that "parents know best" and (therefore make the best decisions) and that the prolongation of conflict is bad for children. They are therefore very similar to interventions already quoted as conciliator suggestions in Chapter 6. The following excerpt, revealing the use of the first two arguments is therefore characteristic of many.

Conciliator: "Hang on a minute I think it is unrealistic to expect that my colleague and I can judge between these and it is irrelevant because what's coming over to me is that the two of you seem to be saying that you want a Judge or a Welfare Officer to choose where your children should be. Now I think this is something you have got to think about. You ought to choose between yourselves.

Mr. Cann: "I feel very strongly, as apparently she (my wife) does, about what should happen to the children and I am not prepared to accept her solution."

Conciliator: "I think you actually need to negotiate with each other because actually you are asking - you are actually pushing the parents' responsibility on to somebody else outside, who may not know better than you do and probably won't. You know your children and you know your parenting." (70)

However, to urge agreement more strongly, the Court is conveyed as actively wanting parents to retain the responsibility.

"Well the thing about going to Court is that you sort it out first and then go to Court and say we have actually agreed this. This is what the Court will do because they don't actually want to take your parental responsibility away from you."(71)

"Well the Court would expect that you and her father would be the persons to make the decisions about access:you would be the responsible people."
(72)

Sometimes, as in Case 21, the legal system is being constituted as a game in which the children are 'pawns' who are used by parents when "ideally the decision should be yours." (73) Avoidance of labelling as a bad parent again therefore requires an agreement. Sometimes, as has been seen, this labelling depends solely on the concept of responsible parenting conveyed as via the comment "I question whether it is proper (my underlining) for children to wake up one morning and find themselves and their future being decided by a person in Court".(74) Sometimes the labelling is one of 'uncaring parenting' because the parents are constituted as ignoring their superior knowledge about the child's needs or because the parents are depriving the family and therefore the child by squandering financial resources on a Court fight.(75)

The third main argument used by Conciliators urges commitment to an amicable parenting relationship by stressing that non-agreement means a detrimental conflict for the children, as in, "I think what I am trying to suggest is if you can actually talk to each other and agree on a plan this is better for your children than a fight."(76)

In a sense this argument, which depends on acceptance that conciliators have expertise to define what is 'better' for children, is in opposition to the previous arguments that depend on the maxim that 'parents know best'. Sometimes this divergence is overcome by predicting future developments: "You are saying that they are not now but they will".(77)

(iii) Conclusions

Therefore, in the motivation of parents jointly, the assumption that joint parenting will continue is the most powerful and most used technique but there is an almost equal use of directions that the parental relationship should continue. This aligns with the definition of motivation made by French that it is both "the push of discomfort and the pull of hope", (1952) though in the context of conciliation it is possible that the effect of these two opposite characteristics may well cancel each other out.

2. Counselling

As conciliator replies have shown, conciliators also see their role as having a counselling element and believe that work on clients' emotional needs has been instrumental in encouraging 'movement'. However, investigating this aspect of the creation of motivation causes problems for two main reasons.

i) Though conciliators interviewed stated the importance of 'feelings work', the conciliation movement as a whole is very defensive about this possible role and this conciliation service itself reflected such ambivalence in team meetings.

ii) Though analysis of appointments did reveal a minority of interventions which could not be classified as part of the construction of problem, solution and joint parental motivation and which appeared

to be personally supportive, such interventions appeared to have a variety of possible functions within the conciliation process.

Therefore, before analysing these 'personally supportive' comments it is useful to look at the extent of, and possible explanations for, the confusion of attitudes within the conciliation movement which may be affecting both the pronouncements and practices of conciliators.

i) Attitudes to counselling

It is not difficult to find a reason for conciliator ambivalence. On the one hand literature on marriage breakdown does stress that personal confidence is usually undermined by this crisis and that confidence as a parent is bound up with confidence as a husband or wife. (Hart,1976; Parkinson,1983a & b) so conciliators therefore believe that parents need "supporting" as individuals in order that they can take part in the conciliation process. In other words it is a question not of creating motivation but of strengthening the capability to be motivated. So Parkinson has also written of a case example that "intensive work was needed to nurture the faint glimmer of co-operation" and that "people in crisis are less resistant to change and the conciliator can be a catalyst for intensive emotional work". (1983a:28-29,32) Similarly, Pugsley and Wilkinson argue that: "When people feel that a sustained effort has been made to see things from their point of view, when they feel they have not been and will not be attacked the possibilities of change are much much greater".(1984:89)

On the other hand, conciliators are well aware of the fact that much of the academic literature on conciliation has focused on the fear that conciliators might be "doing" therapy under the guise of conciliation. For example Gwyn Davis has referred to the need for the distinction in several

articles. In 1983 he wrote "I do not want to suggest that all conciliators with a social work background are practising undercover family therapy or welfare investigation" but went on to quote the title of an Institute of Family Therapy course on conciliation which offered a "family systems approach" whereby "Course members can begin to develop family therapy skills intervention" and he concluded that "to equate conciliation with any kind of therapy is thoroughly misconceived".(1983a:11) The mixing of conciliation with "overtones of counselling or therapy" (Davis,1983b:139) is therefore seen as a development strictly to be avoided for various reasons. For example K. O'Donovan says that "the emphasis on therapy is combined with the virtual elimination of judicial process and its substitution by administrative and welfare services. The dangers to civil liberties of such an approach are self evident." (1985:195-6) M.D.A. Freeman has also argued that "once adjudicatory forms are abandoned, consideration of individual rights and of justice between the parties can be subverted by notions of treatment and therapy".(1981)

In this context Roberts has expressed a similar concern about conciliation objectives; "particularly the relationship between supportive intervention (counselling and therapy) and help with joint decision making", and he argues that a broad distinction should be made between supportive or advisory activity and assistance with decision making, given the skills which the respective forms of intervention demand and the confusion suffered by disputants if they are mingled".(1983:551,553)

Such criticisms of therapy are presumably the reason why Lisa Parkinson has included the following defensive comments about conciliators in her recent book.

They may be accused in any case of practising under cover therapy

especially if they claim that effective conciliation has therapeutic effects. If angry feelings are defused in the course of working out mutually acceptable arrangements the couples concerned may express considerable relief but the process which produced these therapeutic results was not necessarily therapy. There are differences between conciliation and therapy in the expectations, functions and roles of those involved in each process. (1986,153-5)

She goes on to state the need for a further delineation of conciliation from divorce counselling and lists the differences in structure and aims in each process. In another chapter she also parries attacks on the use of family therapy and concludes, "Davis may not have appreciated that some techniques derived from family therapy can be used with families without submitting them to therapy as such". (p.104)

However such defences muddy considerably the waters of the conciliation/therapy debate. This particular line of defence undermines Robert's belief that a broad distinction should be possible because of the different skills demanded. Indeed a list of knowledges and skills needed by conciliators which was part of a Report on Training for Conciliation (83) states that "Many of the skills are similar to those required by all counsellors", that is, "Listening, assessment, focusing, confronting, sustaining, ability to articulate clearly as well as specialist skills to assess the individual couples', families' and child's emotional state and needs".(Institute of Family Therapy:1982,24-5)

Another defence that is used is that counselling and therapy can be distinguished. This likewise causes difficulties. A text book by C.H. Patterson is entitled "Theories of Counselling & Psychotherapy" (1980) but the introduction begins "Counselling and Psychotherapy are both used in

the title of this book because it appears to be impossible to make any distinction between them" and goes on to argue that both have similar lists of theories and both "are processes involving a special kind of relationship between a person who asks for help with a psychological problem (the client or the patient) and the person who is trained to provide that help (the counsellor or the therapist)".

Conciliators in the Service researched knew of this debate and in group meetings concern as to whether therapy was being done and ought to be done was also voiced. For example, when discussing a conference attended at the Institute of Family Therapy it was noted that the counselling and conciliation difference was still of great interest and the conciliator who reported this was unsure of the difference herself but felt the problem of counselling's need to "release" anger was important for conciliation. Another conciliator pointed out that the conference speaker had urged that conciliators must concentrate on the present not the past and wondered if this made it different from counselling.(78) At another meeting the discussion was about a conference attended by some conciliators where Kaplan's statement that divorcing parents needed a great deal of support because of their inability to make "rational decisions" at that stage was approved of, as was his comment - "the only important thing is knowing where you are heading, what you want to do with clients". Apart from providing an interesting insight into at least one professional's attitudes to client control of appointments these comments seem to allow of the use of any techniques of support and direction if they are deemed relevant.

Such ambivalence is mirrored by confusion within the pro-conciliation lobby in that counselling and conciliation are often terms which are used interchangeably or in tandem, without explanation of the difference. For

example Susan Maidment talks of the need for "adequate counselling and conciliation support services"(1984a), Doctor Dora Black in an article arguing for the role of child psychiatrists in conciliation of child custody disputes refers to the American experience where Cougler (1978) has described a technique of structured mediation by trained counsellors with divorcing parents .(Black & Bentovim, 1982) and M.J. Drake in an article on Australian conciliation(1985) refers to the personnel as counsellors.

However much of this confusion is explicable by the confusion within the therapist profession itself as to what therapy is. Patterson's book dealing only with personal, not family, therapy outlines the intense conflict between the five major approaches which he delineates while stating that "existing theories are at a primitive stage"(pp7-9) These five approaches - learning theory, rational, psychoanalytic, perceptual and existential - are all vastly different forms of personal therapy with different theories and techniques and aims, though all are concerned with some form of behaviour modification. (79)

There is also another reason for confusion. The list of counsellors' skills quoted is in counselling language but Pat Hunt in her report on "Responses to Marriage Counselling" uses client's words and aligns these to counselling literature. She therefore finds that "warmth, understanding, empathy and genuineness were noted and appreciated" and that these "related closely to those four conditions needed by a counsellor which had been identified by Rogers". (Hunt,1984:75; Rogers,1957) She also made the following remark, "An interesting feature of clients' comments on what had happened in counselling is that many of them relate to what Ryle (1981 :132) has identified as the non specific factors in counselling. Ryle suggests that quite basic factors like listening attentively, maintaining hope, providing

support, helping with clarification, aiding communication, giving permission, promoting new learning and encouraging different behaviours are potential therapeutic factors in any counselling encounter".(p77)

In other words, like Molière's Monsieur Jourdain (80) who was delighted to find that he could speak prose, we may all likewise be amazed that we have been "doing therapy" all our lives. Clearly the use of a particular "jargon" cannot prove therapy is being done anymore than the lack of it proves it is not. Nor does the argument that only the techniques of therapy are being used settle the issue because if, as Jill Barnes states, techniques are developed "to enable members to say things to each other in different ways"(1978:179) then the use of such techniques pre-supposes a worker definition of the problem, in this case inadequate communication. Similarly techniques to help a parent "understand" his or her particular "blocks" also pre-suppose a definition of the problem as residing at least partly in one parent's emotional state and therefore the solution will involve improving this emotional state. In other words asking whether the work done under the heading of individual motivation is therapy is (to mix metaphors) both a red herring and a red rag to the bull of academic analysis. What is important is to look at the function in the conciliation process of those techniques which might be labelled therapy if the problem of defining it was not so complex.

ii) Supportive interventions

In order to analyse the place of such interventions in the conciliation process the significant question to be asked is - what does the timing and phrasing say about its function in a particular case of conciliation? In the case therefore of these personal motivation interventions the possible questions to be asked are: do they aim to make a parent more or less giving

in relation to a specific arrangement, do they aim to re-establish conciliator's goodwill, do they aim to use compassion pragmatically to prevent conciliation ceasing immediately, do they aim to instill confidence in the parental unit or what are they doing? The need therefore is to look at what is said in particular appointments at particular stages.

However the discussion above reveals that it would be wrong to give the impression that if there is therapy being done in conciliation the personal motivation interventions are the only places where it could be found. The list of counsellors' characteristics already quoted shows that much ordinary "speech" could be labelled as therapy and so indeed could all those conciliator questions about feelings that have been analysed as part of the construction of the problem. For example in Case 16 the conciliator questions seek to construct the problem as one of mutual lack of communication. As Mr. Parker maintains the problem of the marriage was Mrs. Parker's inability to communicate the conciliator therefore needs to establish some father "liability". But the resulting work to "diagnose the problem" could well be found in a marital counselling session.

Viz.

Conciliator: (to Mrs. Parker) "Would you say that you ever tried to tell him how you were feeling?"

Mrs. Parker: " I don't know. I did on a number of occasions (inaudible) but he overpowers me when he talks."

Conciliator: "So you actually did try to put things over to him. Did you find him a good listener or any listener at all?"

Mrs. Parker: "(inaudible) He had said his piece before I had said what I had got to say and that held me back".(Pause)

Conciliator "So what happened then did you just leave him to go on as it were? (Pause) Would you like to say that you came out feeling sort of

battered a bit, cos you have been saying in my terms that he was always the dominant talker and you were left feeling (inaudible) the effect has been on you for a very long time in your life of being made to feel like that? Can you talk about how you feel now?" (81)

Similarly initial questions asking parents to set out their views of the problem could be relabelled as "facilitators of therapeutic intervention". Again jargon can obscure not clarify. The problem is not therefore of whether conciliation is "doing therapy" but whether therapy is "doing conciliation" and in what ways and its legitimacy must be established on the same criteria as all conciliator interventions. There^{are} at least fifty of these found in sixteen of the twenty taped cases (104) and over half the interventions are acknowledgments of the "it's hard for you" variety. However these can be categorised in three different groups with further categories acknowledging progress and diagnosing feelings.

a) Acknowledging unequal loss

Interventions found in five cases all concerned the greater distress or loss suffered by the father in relation to the children, partner and matrimonial home. For example in Case 7 the conciliators say "Cos that's quite hard for you too", (83) in reference to the fact that the wife is in the matrimonial home and shortly afterwards when arrangements have been proposed which entail no mother/father contact at access they say "It's hard isn't?" and "It's a rough situation", of the loss they perceive the father is suffering at not having an opportunity to see his ex-wife. (84) Mr. North is a Catholic father and therefore an extra factor in this loss is acknowledged with, "Well her religion is her business....but I can see this makes it that much harder for you" (85) and his unequal loss of children is acknowledged while access arrangements are being discussed with "I know

it feels very hard to be dad and have to make times".(86) Similar comments can be found in Cases 15 and 17 where the father's loss of home and family are acknowledged and the pain of Mr. Upton is again inferred with, "I feel it must be painful to have your children's names changed".(88)

b) Acknowledging Unequal Burdens

These interventions are usually aimed at the mother and refer mostly to the burdens imposed by access. The following comments are typical.

"That (Sunday blues) obviously must be a great burden to you".(89)

"It's you that's having to work the hardest to get this going."(90)

"But it's hard for you 'cos you are going to have to cope with your son afterwards".(91)

In two cases the mother is also supported by comments acknowledging her difficulties when the father left.

"You seem to be left with the sticky end really don't you?"(92)

"It's terribly difficult....it's the sort of finding a new balance and going through the sorts of problems people do go through when they are trying to make their own lives."(93)

Both these above groups of interventions can therefore be equated with the constitution of parenting as joint despite perceived inequalities in the burdens. When influencing the construction of "the problem" the conciliators had been concerned to stress the burden of loss to equalise the burden of practical caretaking and vice versa. Here support is neutralising feelings of inequality and hardship.

c) Acknowledging Present Difficulties

In three cases the interventions acknowledge that the present situation is

sad or hard. For example, Mr. and Mrs. Field are told "It's very difficult to keep your cool when you are as uptight as you two are and be sensible with the children all the time. I mean you are human" (94) and Mrs. Field's frustration at not being able to persuade the father to have access to the middle son is acknowledged with "This is the trouble for you because the things you want most, if you go towards it with him, you are actually going to lose and that's an awful position for you but I think it is where it is".(95) Mr. Vaughan is told "It's sad that you lost touch with Frances completely".(96) and Mr. Young and Mrs. West are told concerning their misbehaving son "By God it's hard to live with".(97)

A variant of this is the group of interventions, found in three cases directed at both parents/^{which} places a conciliator belief that "It will get better" against present difficulties as in the following:

"I think the other thing we need to say is the pain does get better. I think people think that it never will but it does, doesn't it?" (Other conciliator agrees) "And I think you have to hang on to that" (98)

This example also stresses the importance in conciliation of having two conciliators. The agreement of one appears to validate an otherwise individual opinion.

Altogether this is a small group with each intervention seemingly doing different work. The first quotation is doing the work of a normative statement to encourage joint motivation by its use of "sensible" and its reference to human frailty; the second is in effect querying the mother's response to the father's preferred solution; the third by its label of 'sad' is implying that the proposed solution of no access is not a satisfactory one, and so is again a form of querying and the fourth ties in with the

conciliator suggestion that the problem is the son's manipulation which requires a quick joint parental response. The examples aimed at both parents and focusing on brighter days ahead could be part of joint motivation examples. These few examples do therefore point up the fact that the content of interventions is less significant than their place in the conciliation process.

d) Acknowledging Personal Worth

Examples of this occur in five cases again mostly directed at the mother.(99) In one case she is praised for her emotional progress since the separation and in the rest for her mothering, as in the following examples.

"I think it is very evident from these three splendid boys how well your motherhood has worked".(100)

"He looks jolly healthy to me".(101)

"She's a fantastic mum".(102)

The one father supported in this sample is told "I think you have done a very good job" at building up a relationship with his son via access.(103)

The majority of the interventions occur after criticism expressed or reported regarding parenting and therefore whilst being personally supportive they are also blocking construction of the problem as residing in an individual parent's mothering or fathering.

e) Acknowledgement by Diagnosis

In three cases particular feelings are diagnosed as being experienced by one parent. In two cases this feeling is one of guilt in a father and mother respectively.

"As you said, you do love her a bit and you feel guilty too".(104)

"Cos my guess is right now your mum is feeling guilty about the break up of your parents' relationship....am I right?"(105)

In the second case the mother and later the father is also asked "You now feel that you are not resentful? (Mother "yes") It's a nice feeling isn't it?"(106)

Here the conciliators' diagnosing or acknowledging of guilt may be seen as a necessary corollary to the attempt to reallocate guilt and constitute responsibility as joint. However the work in Case 15 could be seen as a variant of rephrasing in that the anger and refusal to agree is "really" hurt and sorrow because there are several interventions which diagnose Miss Taylor as being hurt by past events and which both constitute and acknowledge that she has "natural desires" to cut herself off from the past, not see the father and not make an agreement with him as for example in: "...That's hard isn't it and I can understand that what you want to say is 'O.K. I have been hurt but now I am going to cut myself off from that and start again'".(107)

These 'counselling' comments are not numerically significant in conciliation (108), with less than half the total for interventions to construct joint parental motivation, but they do occur in over three-quarters of cases. Furthermore, the point has been made that work specifically on joint or individual motivation is very similar to other interventions. Such work, therefore, whether separate from problem and solution construction or an integral part of it, is part of conciliation.

Nevertheless, this conclusion leaves unanswered questions:

i) Conciliators believed 'feelings work' had been crucial to the outcome of conciliation in over half the cases but, to what extent is such work regarded by conciliators as part of conciliation? In other words, in practice do conciliators deal with their own doubts about the conciliation/therapy divide by the 'rationed' use of 'counselling'?

ii) Why, in supportive work, is there such an imbalance of interventions as regards the two parents (about 30 are definitely addressed to the mother whereas only about 10 each to the father alone or the mother and father together) and why is this type of intervention used in preference to comments more obviously aligned to the decision making process?

How much counselling?

Several appointments observed proved much more difficult than the others to analyse in terms of the model constructed. It was therefore very comforting to find conciliator comments for these cases (109) which supported the idea that "something else" was happening in these appointments. The special characteristics of these 'roque' appointments are outlined briefly below.

Mr. Owen/Miss Taylor

Although only one example of supportive comments was "counted" in each unit in which they occurred because of the need not to imbalance the sample with this one case, supportive comments in this case were much more frequent, sustained and repetitive than in any other. Therefore several units consisted of little more than such supportive comments. In this case both conciliators agreed their main role had been "therapist for the mother" (This is the only case where the conciliators felt their main role was therapist.)

Mr. and Mrs. Parker

Though there were few supportive comments as such, there were considerably more conciliator questions and suggestions concerning feelings than any other appointment and also more diagnostic work concerning communication between the clients as husband and wife. One conciliator, a Divorce Court Welfare Officer, said that this was "a different case from all the others I have done" and both conciliators expressed concern about the mental state of the mother.

Mr. and Mrs. James

This has many more examples of a particular type of intervention, which is found in only four of the taped cases, and which take the form of "coaching" parents to communicate. It is also found briefly in Cases 4,7 and 11 but extensively in Case 10.(All these cases have a common conciliator - conciliator 10 - who does not take part in any of the other cases in the sample and who is also a family therapist). This type of intervention usually takes the form either of "ask him" or "ask her"(110) or is an exhortation to parents to talk directly to each other and not via the conciliator. In Case 10 there is also an unusual passage where the two conciliators discuss parental motivation at length in the presence of the clients (111) which conciliators explained was a deliberate use of the "Peggy Papp technique" whereby "conciliators and therapists" take opposed positions and have an argument in front of the clients which enables conciliators to say things which they might otherwise be unable to. In addition the conciliators said that they felt throughout that they had to "do the unexpected - straight conciliation would not have worked. It would have only provoked conflict not change".

Also notes on the observation of appointments of the untaped Case 8 and

brief analysis done on the rest of the tapes of appointments of Cases 11 and 14 show further evidence of the above concentrations of "unusual" interventions in certain appointments (Cases 8 and 14 also have a common conciliator - conciliator 8 who has a Marriage Guidance Counselling background, and conciliator 2 with a School's Counsellor background is also present in Case 14 and part of Case 8). Conciliators also commented on these appointments.

Mr. and Mrs. Hall

After the sixth appointment conciliator 8 was concerned that the mother had "stopped moving" and again become "manipulative" and wondered whether the reason was that she (the counsellor) "had gone too far in counselling" and pointed out that during the appointment she had admitted that she had "possibly overstepped the appropriate boundaries" of conciliation by encouraging discussion on the extended family and the mother's family history.

Mr. and Mrs. Kay

After the third appointment the conciliators said that prior to the appointment they had discussed the case and agreed that they needed to be "much firmer". They had therefore decided "not to act as conciliators" but be "pressurizers" and positively to encourage different patterns of communication.

Mr. and Mrs. North

After the third appointment conciliator 8 said that she did not regard it as conciliation - she felt that instead she was "doing a social work job" but this was justified because the Social Worker had stepped down while the Conciliation Service was trying to solve the problems.

Therefore it would seem that the conciliators in their own minds do make what Roberts calls "a broad distinction" between supportive activity and help with decision making, (1983:553) though the siting of the line between the two would appear problematic. In other words individual conciliators do seem to have their own internal boundaries for what they define as conciliation and make a judgment on when conciliation has become therapy or when they believe therapy is part of conciliation. Such a conclusion would seem to confirm the existence of therapeutic interventions within the conciliation process rather than help to draw a distinction between conciliation and therapy.

Why is there an imbalance of supportive interventions?

There are three main hypotheses which could account for this:-

- (1) That the supported client has been extensively queried regarding his or her conception of the problem and solution. Therefore support is to counterbalance the possible resulting lowering in morale, feeling of unfair treatment and disinclination to give the conciliators the satisfaction of their reaching an agreement. In other words it is a deliberate attempt to prevent the client feeling "got at" because of the conciliator's attitude and views.
- (2) That the supported client is perceived as needing to accept "the reality" of the situation which is disliked by him or her but preferred by the other parent. This client is therefore being asked to 'give' more than the other parent in order to secure an agreement and so proportionately more encouragement and confidence is required.
- (3) That the supported client is seen by conciliators as the emotionally weaker partner, less able to cope personally with the situation and conciliation in particular.

Therefore cases have been analysed to see whether any inequality in querying of parents in their definition and solution correlated with inequality in the number of supportive interventions, whether any parents were visibly upset by conciliation and whether this too correlated with support.

In the group consisting of seven cases where all supportive interventions are directed at the mother only and in two further cases where most of the interventions are directed at the mother, there are two cases (6 and 12) where the mother is queried considerably more on her definition of the problem and the proposed solution than is the father(112) This also applies to Case 1 though there there is only one instance of support for the mother. In four of the remaining cases the mother cried on at least one occasion in the appointment (Cases 2, 15,17 and 23) and in three of these at least one supportive intervention immediately followed such visible upset. In Case 16 Mrs. Parker was silent for most of the appointment and appeared very unhappy and depressed. The remaining case has only one instance of such an intervention which was in response to Mrs. James saying that she felt used and criticised. In both Cases 6 and 16 the supportive comments implicitly criticised the fathers for their perceived domination or intransigency.

In contrast there are only three cases where the father alone is explicitly supported. In two of these (Cases 7 and 14) there is again an imbalance of querying of the mother and father though this is not so in Case 21.(113) It is more difficult to assess whether the fathers were upset at or by conciliation because of male conditioning which renders such visible distress less acceptable but certainly in Cases 7 and 14 the conciliator comments afterwards revealed their belief that both the fathers were

upset and certainly the fathers appeared very unsettled physically throughout the appointment. Mr. Upton expressed much anger, bitterness and resignation and all three fathers were seen by the conciliators as "losing out" in some way: Mr. Gale because he had emotionally and physically depended on his wife and was not coping well without his wife, home and children, Mr. North because his ill health meant that he must allow care and control to the wife who might not be so good a caretaker as he was and Mr. Upton because his wife was seen as having "little grasp on reality" and therefore unable to negotiate access.

The cases with only one instance of support each for the mother and father separately contain three instances of mother crying but otherwise provide no strong pointers as to any reasons for the conciliator's interventions.

There is therefore some evidence to support, almost equally, all three hypotheses. However this evidence alone cannot prove even for this sample that supportive comments are strengthening inequalities or undermining legal rights any more than they can prove that one parent has felt supported. All but one (Case 16) of the mother supported only cases are where the mother is the caretaker but they are not all mothers resisting more access: Mrs. Field and Mrs. James want more access and Mrs. Ward is not being asked to give it. Nor is the giving of joint custody an issue on the agenda of these cases. Those mothers who are resisting access and are "persuaded not to do so" are clearly giving up their right to resist the father's application in Court and in Cases 1,12 and 15 an application is a possibility. However the effects of a relatively small number of such supportive interventions may be less than the total of all the other conciliator interventions as well as external factors and therefore may not be the sole or even the main factor in persuading all three mothers

eventually to make an agreement over access.

The same comments apply to the interventions aimed at the father. In two of these three cases the fathers had already, via the legal system, lost custody of the child and gained access orders and in the third case the father had been advised by the solicitor previously not to apply for care and control. Furthermore Mr. Gale and Mr. North wanted a large amount of flexible access, they did not want defined access and therefore it would be difficult for them to use the Court again as a reasonable access Order is not equivalent to unlimited flexible access. Mr. Upton already gained various defined access Orders but these had not always been implemented to his satisfaction. The mixed support cases are all ones where the Courts were already dealing with at least some of the issues and all proceeded in the knowledge that the parents would return to Court.

Conclusions

Despite some confusion and ambivalence most conciliators' comments support the idea that change is possible in clients and it is the conciliators' job to make that happen. Furthermore, conciliator comment about Mr. March that "his enmeshed state regarding the marriage means that he cannot be expected to give much" suggests that diagnosis is made by conciliators of how much change is possible and in some cases inadequate "personal resources" might entail asking the weaker parent to give less. However this chapter revealed the use of techniques to enable parents to give more and conciliator comments make this explicit. For example after Mr. Hall's first appointment when conciliators talked of "liberating

his adult self" they explained that their saying things like "you are trying to think of your wife" had liberated him to "go further". In Case 18 however the conciliators disagreed as to how far Mrs. Hayes should be encouraged to give. One felt more giving by her would help establish trust which would then lead the father to give but the other believed that "He would chop her feet off if she moved a step forward" and therefore felt any work with feelings should only be to give the mother "the courage of her own convictions" which would entail her not giving. Also some comments imply that conciliator satisfaction came from change in feelings per se, as when a conciliator said of Mrs. Vaughan, "I am so glad she cried" Yet in Case 17 the conciliators said that they had concentrated on Mrs. Quinn's feelings because they would affect events "later on" and they felt "very sad" because "they could n't really reach the deep feelings".

It would therefore appear that conciliators link motivation, change and feelings work but conciliator comments have to be treated carefully. Much of their discussions and their comments in interviews did centre on feelings and conciliators showed great interest basically in working out how clients ticked. Some of clients' comments were recalled afterwards as "fascinating" and led to speculation of upbringing, background and the marital relationships. Comments of the "I would love to know" variety were frequent. However conciliators, specially with marriage guidance or social work backgrounds, often explicitly said that they had to remember in conciliation that they did not have their "counselling hat on" and ought not to ask such questions. Therefore conciliator discussion after conciliation may well reflect other professional interests and not what preoccupied them or their interventions in conciliation.

It would therefore be misguided to focus on those interventions which

might be termed therapeutic as the source of the creation of motivation. The manufacture of motivation is addressed most frequently and more subtly through the whole process of conciliation and particularly through its linchpin - the concept of joint parenting.

CHAPTER 8: NOTES

1. Conciliator 15 after the 1st appointment of Case 21.
2. See Appendix 9 for a discussion of the difficulties in conducting these interviews.
3. Conciliators were able to answer this question in 21 cases. In Case 16 they felt unable to say, in Case 24 conciliators were unable to complete the interview through lack of time and in Case 21 disagreed about 'the reality of the situation' and their role.
4. From Cases 1 and 14.
5. Used after Cases 8, 14 and 19.
6. Found in Cases 11(2nd appointment), 4, 5, 14, 6, 7 and 20 respectively.
7. A counselling role is given for Cases 4, 5, 8, 11, 14(1st appointment), 14(2nd appointment), 15m 17 and 20 (with replies quoted in that order.
8. Cases 2 and 10 and Cases 20, 3 and 8 respectively.
9. Cases 2, 11, 22 (children's needs only; Cases 12, 14, 15 and 18 (both).
10. Cases, 1, 3, 4, 5, 8, 9, 11, 12, 14, 15, 17, 19, 20, 22 and 23.
11. Cases 1, 8, 15, 16, 17, 18, 19, 22 and 23.
12. Cases 15, 18, 22 and 23.
13. Cases 1, 8, 15, 16, 17, 20 and 23.
14. Cases 8, 14, 12, 19 and 14 respectively.
15. From Case 13. Similar examples are found in Cases 3 and 15.
16. From Case 1. Similar examples are found in Cases 4 and 19.
17. Stated in these words in Cases 3, 4 and 5. The other 6 cases are 6, 7, 11, 13, 20 and 24.
18. Cases 2, 5, 9, 11, 12, 14, 18 and 20 with Cases 5, 9, 14 and 24 which

talk in terms of 'focussing on the reality' of options.

19. In Cases 8 and 12 respectively, and also found in Cases 5, 9 and 14.
20. Case 11 appointment 3 and also in Case 5.
21. In Cases 5, 9 and 24 respectively.
22. See Appendix 4 which shows a total of 113 interventions concerned solely with such joint motivation.
23. Morale boosting interventions: 61 (Group 1=24, Group 2=7, Group 3=30).

Normative interventions: 52 (Group 4=19, Group 5=33).

Most cases have both types: the exceptions are Cases 1 and 22 which have only the morale-boosting type and Case 15 which has statements only on the need to focus on the child.

24. Cases 15, 16, 19 and 21 where the ratio of morale-boosting to normative statements is 0:2, 3:5, 2:9 and 1:9 respectively.
25. The morale boosting:normative ratio then becomes 55:27.
26. Case 19(10): Conciliator 2.
27. For example, statements constituting parents as responsible are found at the beginning of 7 appointments and the end of 2. 10 cases had morale-boosting at the end of the last appointment analysed as opposed to 5 cases having normative statements in the last 3 visits.
28. Case 10(1): Conciliator 10 and repeated in 10(5) by Conciliator 1 with, "That sounds good to us and sounds something to build on".
29. Case 11(4): Conciliator 7.
30. Case 14(13): Conciliator 8.
31. Conciliator 3: Case 6(15,18), i.e. beginning of 2nd appointment.
32. Instances can also be found in Cases 3(14), 19(10), 20(7), 22(2) and 24(22).
33. Case 4(4).

34. Case 4(23): Conciliator 10 and similarly Case 3(17): Conciliator 11.
35. Case 2(14): Conciliator 17.
36. Case 6(23): Conciliator 8.
37. Case 23(14): Conciliator 2.
38. Only 7 examples are found in 6 cases; 3 of these examples were at the end of appointments.
39. Case 3(28,29): Conciliators 11 and 17.
40. Case 11(2): Conciliators 7 and 10.
41. Case 24(22): Conciliator 7.
42. Case 4(5): Conciliator 15.
43. Case 14(13): Conciliator 2.
44. See pp ante.
45. For example at Cases 1(4), 3(22), 10(1,7), 11(5), 12(1) and 23(3).
46. Case 11(5): Conciliator 10.
47. Case 14(16): Conciliator 8. Similar examples are to be found at Case 1(10,14), 3(22), 4(1), 6 (23), 7(6), 10(1,7), 12(1,11) and 23(3).
48. Case 12(31): Conciliator 2, with a similar comment at 12(32).
49. Case 7(6): Conciliator 10.
50. Case 16(12): Conciliator 12.
51. Case 19(26): Conciliator 2.
52. Case 11(19): Conciliator 7.
53. Case 21(16): Conciliator 15.
54. This is because the needs of the children are constituted as the reason why parents should agree. The best example can be found in Case 3(9).
55. Case 11(19): Conciliator 7.
56. Cases 3, 5, 15, 16, 19 and 21.
57. 33 as opposed to 19.

58. Cases 3, 4, 6, 7, 11, 12, 14, 15, 16, 19, 20, 21 and 23.
59. 11 of the examples are used to end parental arguments, 8 follow on from querying a parental solution.
60. Case 4(11): Conciliator 10 and also at 4(22).
61. Case 14(12): Conciliator 11.
62. Case 4(12): Conciliator 15.
63. Case 6(4): Conciliator 3.
64. Case 11(9): Conciliator 7.
65. Case 7(17): Conciliator 6.
66. Case 14(7): Conciliator 2.
67. Case 11(7): Conciliator 7.
68. Case 19(28): Conciliator 1.
69. Case 21(23): Conciliator 2.
70. Case 3(9): Conciliator 11.
71. Case 19(16): Conciliator 2.
72. Case 15(15): Conciliator 13.
73. Case 21(10): Conciliator 15, and repeated at 21(16,34,37).
74. Case 16(17): Conciliator 12.
75. Case 5(7): Conciliator 2.
76. Case 3(8): Conciliator 11.
77. Case 19(28): Conciliator 1.
78. Conciliators' Meeting 1.5.84.
79. See Brewer and Lait (1980) for common social work 'borrowings' of these techniques and also Walrond-Skinner (1981) for various different approaches of family therapy in practice.
80. In *Le Bourgeois Gentilhomme*.
81. Case 16.
82. The exceptions are Cases 3, 4, 5 and 20. No obvious reasons are

apparent to account for these exceptions.

83. Case 7(5): Conciliator 10.
84. Cases 7(6): Conciliators 10 and 22.
85. Case 14(6): Conciliator 8.
86. Case 14(15): Conciliator 2.
87. Case 17(13): Conciliator 14.
88. Case 21(8): Conciliator 2.
89. Case 2(12): Conciliator 1.
90. Case 2(14): Conciliator 2.
91. Case 1(17): Conciliator 1.
92. Case 15(1,3): Conciliator 13 and also at 15(2).
93. Case 11(4): Conciliator 10.
94. Case 6(6): Conciliator 3.
95. Case 6(22): Conciliator 8.
96. Case 22(6): Conciliator 3.
97. Case 24(13): Conciliator 7.
98. Case 11(20): Conciliators 7 and 10. Similar comments are found in Case 19(17) and 24(29).
99. Cases 2, 6, 10, 15 and 21 with only Case 21 having such interventions directed at the father.
100. Case 6(20): Conciliator 8.
101. Case 10(20): Conciliator 1.
102. Case 15(17): Conciliator 13.
103. Case 21(18): Conciliator 15.
104. Case 11(19): Conciliator 7.
105. Case 23(3): Conciliator 2.
106. Case 23(7): Conciliator 20.
107. Case 15(10): Conciliator 13.

108. These are 50 such comments compared with 442 for problem work and 345 for solution work.
109. Conciliator replies were not analysed until tape analysis was complete.
110. The intervention is simply this in Case 4(17) and Case 11(19).
111. In Case 10(4).
112. In Case 6 the ratio of mother:father querying of problem definition is 4:2 and of solution is 8:3.
- In Case 12 the respective ratios are 12:1 and 3:1.
113. Mother:father querying ratios here are
- Case 7 1:3 (definition) 0:7 (solution)
- Case 14 1:6 (definition) 3:5 (solution)
- but Case 21 11:10 (definition) 9:7 (solution).

CHAPTER 9: IMPLANTING IMAGES

Conciliation is a very specific activity, namely the process of a trained conciliator facing both parties and directing their minds to the reality of the situation. (Cornwall, 1984:99)

Cornwell's statement clearly envisages examination of the 'real' parental situation as central to the conciliation process and previous chapters provide evidence to support this claim. In addition, conciliators, in and out of conciliation, begin comments about a family situation with "but the reality is" or talk about their roles in terms of "reality counselling", "giver of realistic options", "facing them with the the reality of their situation" (1), and their successes in terms of "opening the eyes" of parents to see that their own solutions are "unrealistic". The literature includes a similar emphasis. For example, Margaret Robinson, a family therapist and conciliator in *A Comparative Table on Conciliation, Psychotherapy and Family Therapy* (1985) puts "Reality Testing" as a feature of all three systems.

However, these conciliator comments also emphasize that such work by conciliators entails challenging parental perceptions of that reality. In this process, to refer again to Backett's model, conciliators have to change images held by parents so that such images become compatible with the reality being conveyed. Furthermore, as previous chapters have indicated, a very important source of conciliator power in this process of implanting new images is the use of expert knowledges to buttress such images. Indeed analysis of all conciliator interventions included decisions on whether they had the function of changing images held by parents, (See Appendix 5) showing that most units did have "image work" (2) which was affecting the

three main categories of images held by parents: their self image, their image of the other parent and their image of the child.

This chapter therefore has a two fold aim:

1. To look more closely at these images to give an overall view of the reality being legitimated and to illuminate "the universe of meanings and values within which the process of mediation goes forward." (Roberts, 1983:550)

2. To discuss the knowledges used and assess their validity, again using the categorisation of knowledges used within each unit of the conciliation process.

A. Reality Construction

1. Images of Children

(a) Grounded Images

Backett, in her discussion of the images held by the parents in her sample found that they divided into two kinds: grounded images based on what the actual children in question were taken to like or need and abstract images based on what children generally are thought to need.

In conciliation there is very little work done via grounded images except where the children are present. This is largely because conciliators do not have sufficient knowledge about the actual children because they usually do not request it. In those cases where conciliators do ask and receive more information it is usually because conciliators believe the "way forward" is to find out more about the child's needs and wishes and this is then achieved via the child's attendance (3) rather than "using" the information given by parents. Conciliators may sometimes ask parents to imagine their

children present at conciliation with them but in most cases an observer could not picture the particular child apart from its age and sex. Indeed with the four Davis children even these aspects would have been difficult to visualise. Nearly all image building statements are therefore concerned with children in the abstract. This clearly puts a premium on parents being able to accept that their children are "normal" and therefore that grounded images and abstract images can be merged.

In those appointments therefore, where more does become known about individual children (for example about Angela Berry and Richard James, both of whom had been the subject of psychiatric intervention before conciliation appointments) and in those where parents try and stress the individuality of their particular children, conciliators specifically construct that child as normal in order to make abstract images relevant:

"Why should your child be any different?"

"If you're going to tell me your child is intelligent then all the more reason ..." (4)

Therefore children are assumed to align with certain pre-known images and parents who argue otherwise are seen as refusing to face reality or wishing to construct a difference between images in order to continue the fight.

(b) Abstract Images

The child image being constructed by conciliators has six main aspects to it. Examples of these can be found throughout the text of chapters of 4 to 8 although some aspects are more prominent at particular stages of the conciliation process. (5)

(i) Children are harmed by parental conflict. An image is purveyed of a child who suffers divided loyalties due to the conflict between his parents. This conflict of loyalties causes tension in the child which can lead to anti-social behaviour, insecurity and sadness and can cause the child to opt out, now or later, from a relationship with one of his parents or can also lead to lack of respect for both parents. The parental conflict also makes access traumatic for the child and can give the child the power to manipulate his parents and therefore control the content of access or the provision of material possessions which is detrimental to the child. Furthermore the child needs a role model of agreeing parents for his healthy future development and will therefore benefit more from an agreed compromise which ends parental conflict than from an ideal but imposed solution which will not.

(ii) Children are affected by parental attitudes. Children cannot be protected simply by parents "doing the right things" because children have no difficulty in picking up parental feelings. Parents cannot hide their feelings and therefore a difference between attitudes and actions leads to children receiving mixed messages which are harmful to them. Parental feelings also affect children directly if these feelings are not contained because the children will then "carry" adult feelings which will lead to tension and possible behaviour problems. It is also harmful for a child if the parental attitude gives him the belief that one parent only caused the separation because feeling that one parent is "bad" leads to a detrimental feeling of badness in the child. The child therefore has a need to like both parents if his future psychological development is not to be affected adversely.

(iii) Children need both parents. Access by a parent is proof that that

parent cares for the child and therefore no access can lead to feelings of rejection and insecurity because the child needs to know that both care. Losing one half of the parental relationship is detrimental to the child's future development. The contact is the important factor; the state of the parental relationship and the content of access are not so important.

(iv) Children cannot always be believed. What children say need not be the basis for parental action because children are not mature enough to be sufficiently competent to express themselves adequately and also because they do not always feel they can say what they want to because of the conflict of loyalties. Children should be able to say what they want to but often cannot because they do not want to hurt or upset a parent - usually the care-taking parent - and therefore they may have to lie and say they do not want access.

(v) Children want parents to make decisions for them. Children are harmed if inappropriate decision making responsibility is placed upon them because of the strain this causes and because children need an element of control. Children also change their minds frequently and therefore are unable to make suitable longer term decisions. Children need parents to make decisions quickly because uncertainty is detrimental to them.

(vi) Children need regular arrangements. The strain of families negotiating individual access arrangements is detrimental to the child. The difficulties for the child involved in sticking to regular access and the strain this imposes on a re-constituted family are less stressful to the child who can accept these difficulties more easily. The security provided by regular pre-arranged access is beneficial although the child needs to know arrangements are re-negotiable if circumstances change.

Images of children therefore all concentrate on psychological and emotional needs. Whilst all child images, because of the dependent status of children, will involve parental actions these images are nearly all very directly linked with parental behaviour itself, not just what parents are doing for or to the child. Children need their parents to control them (the children) but also to control themselves (the parents). Such images, as previous chapters show, alter parental conceptions of the problem and acceptable solutions by altering not only the image of the child's needs but also the image of the child's capabilities. The child needs to know both parents love him and is capable of understanding an explanation that his parents both remain parents whilst the absent parent is only living elsewhere because the parents do not love each other. However by implication the child is not capable of understanding an explanation that the absent parent cannot be seen often or at all because of the strains and tensions caused by the lack of love between the parents. The child is harmed by conflict between his natural parents, he is not harmed or less harmed by conflict between natural and step-parents caused by the continuance of the relationship between his natural parents. The images therefore help construct reality by delineating what can be explained away, what can be changed, what should not be endured and what has to be accepted.

2. Images of Parents

Having seen how "parents-cent red" are the images of children purveyed it is therefore less surprising to note that, at least in numerical terms, images of parents are more important in the conciliation process than images of children. (The parent:child images ratio varies considerably however over the 20 taped cases.(6)) In other words because focusing on the

child is in practice a means of focusing parents' minds on themselves, then the necessary image of family interaction can be built up equally on parent or child images because one is the inversion of the other. (7) However the use of more parent images is also a reflection of the fact that parent images embody more grounded images in that some comments are directed to parents about themselves or about the other parent ("you are a good mother," "he is a good dad"). Most of these images -grounded and abstract - are concerned with the 'ideal' parent to be aimed at and are more often employed to alter the parent's self image than a parent's image of the other parent (8) although the self:other ratio varies considerably. (9)

(a) Self Images

These are constructed in two ways:-

- (i) By constituting the parent as already good but, by outlining why he or she is already good, intimating what a good parent is like and
- (ii) By constituting the parent as bad and explaining what characteristics are equated with bad parenting.

The first category however is used much less frequently than the second (10) as regards individual images, though more so regarding joint parental images. It constitutes a parent as good, reasonable and responsible and therefore able to look for possible ways of agreeing. A good parent also realises that parents know best and must make decisions about the children.

The second self image constitutes parents as bad parents if they continue with the present form of parenting. To avoid this self image parents should communicate and co-operate with each other, should not ask the child to make decisions and should not retain unhelpful feelings and attitudes

towards each other, including the denial of responsibility for the problem. A parent is also bad if he or she, because of the above, is depriving a child of regular conflict-free access.

Overall there are more interventions aimed at changing the mother's self image than the father's - this is reflected in 14 out of the 20 taped cases. (11) This imbalance is more marked in the "existing good" image building category and ties in with imbalances already analysed in querying and supporting interventions. These figures therefore cannot prove consistent differential mother/father treatment although they do suggest, in conjunction with the previous analysis that at a general level the mother is both more supported and more criticised. However joint parental image building is also important being found in 16 of the cases though in most there is less work on joint images than work on the parent to whom most self image work is directed. (12)

(b) Other Parent

Interventions to affect a client's image of the other parent are however, over the 20 cases, almost equally aimed at the mother and the father. Imbalances within particular cases usually tie up with similar imbalances in self image work. (13) Few of the 'other parent' images are aimed at parents jointly and, as with child images, many images alter conceptions of personal abilities and responsibilities so that a reality is constructed which is a determination of what can or cannot be changed. There are four main images. One is that of the other parent as a loving and caring parent whether or not he or she was a loving and caring spouse, and one sufficiently able and trustworthy to implement the proposed solution. Another is that of the other parent as good and caring, not solely responsible for the problem and therefore not solely responsible for the

changes necessary for a solution to be possible. A third constructs the other parent as good and caring but unable to take his or her fair share of, or implement an, ideal of caring and responsibility because of legitimate factors which make this not possible. Lastly the other parent is not constituted as good but the image is of one who is unable through some defect of personality or psyche to make the changes asked of him or her. (14)

What counts for reality therefore consists of conciliator defined good and bad parents, parents who cannot change their personality and circumstances and parents who can. Therefore the reality may be that the father can no longer be expected to contribute to children's games fees, to move out of his lodgings in the adjacent street, or to allow the middle child to go with the mother. (15) In these cases the reality must be that the mother pays the games fees, ignores the father in the next street or leaves with only one child. Conversely if the reality is presented as the mother being unable to stay in the matrimonial home while the father is there, or the mother needing to take one child to continue a mothering role, (16) then the reality also includes the father having to accept arrangements to see his son or having to split the siblings to allow one child to go.

That such constructions of reality have significant practical corollaries is no novel idea. As W.I. Thomas wrote in 1928. "It is not important whether or not the interpretation is correct -if men define situations as real they are real in their consequences". (p572)

Previous chapters have shown how these images and their subsequent reallocation of responsibility have prioritised different problems and solutions. What they also do if accepted is reallocate power. The

constitution of both parents as able to caretake adequately so that physical caretaking is not on the agenda also entails the down grading of the main caretaker's experience and expertise in that role. (17) Acceptance of some element of unchangeability in the other parent reduces the power inherent in the continuing possibility of causing the other to change. Accepting the other parent as trustworthy entails relinquishing some control over the outcome in order that trust can operate.

It is also possible to see an important factor present in child, self and other parent images -that of the reallocation of guilt. Not only is this guilt reallocated within the parental unit so that it is not felt by one parent only but the substance of the guilt itself is changed in that spousal guilt is removed and parental guilt substituted. Parents are not to feel guilty for the part in the marriage breakdown - that is not seen as a legitimate cause for guilt -but they are to feel guilty as parents for the way they are harming their children, not by the separation per se, but by the feelings and conflicts which continue.

(c) Images of the Family

All the images so far discussed must also affect the images of the family itself which parents hold. Parents when they come to conciliation talk of the break-up of the home and marriage in terms which makes this synonymous with the break-up of the family. They talk about 'new' families - either by re-marriage or by building a new life as a single parent family and about deliberately working out new patterns of living, cultivating new friends and, if relevant, building relationships with new partners and step children. Conciliators when they talk of the family are usually referring to the "original" family - the one whose members are the subject of conciliation -because part of the reality is that the triangular relationship

linking mother, father and children must continue. The children must not simply move between two new family triangles but the existing triangle must straddle these two new ones because the parental relationship, not just the parent child relationship must continue.

"While you have a child that you both still love you are actually not free of each other" (18)

The image is therefore one of the family continuing despite the ending of the marriage and physical separation of the parents. Significantly a conciliator in talking about the handover arrangements added "then you can go out as a little family together" (19) New families are not discounted (20) but the image of the good parent is of one who "runs" two families in tandem if necessary whilst it is the bad parent who tries to replace the old with the new.

The image of this "continuing but separated" family is also in character little different from the image of the family prevalent this century which Skolnick has referred to as the "sentimental model" appearing in its "earliest and most saccharine form" in the new mass media in the last quarter of the 19th Century. Skolnick believes this model is now weakening but the image of the continuing-but-separated family would seem to be giving this model a new lease of life despite the fact that many would agree with Skolnick when he argues that "by prescribing inner states rather than behaviour modern standards of family perfection makes success almost impossible to achieve" (1979:310) For what Barbara Laslett refers to as the family's "socio emotional specialisation" (1979:233) is still the rationale for an image of a separated family that must continue for the sake of the children's welfare because such welfare is seen primarily in socio emotional terms. So the same elements of harmony support and

communication and sharing of emotions are perpetuated in the image of the continuing but separated family. Thus when discussing a particular appointment where the child has cried and both parents had been visibly upset the conciliator said that this had been good because "a family who cried together stayed together" (21)

(d) The Negotiating Parent

All images of children and parents open up the possibility of aligning parental images of the child so that the groundwork shown to be so essential in Backett's model of agreed decision making can be accomplished. What the analysis of the construction of parents self images also includes is a particular image of a "willing to negotiate parent" who, as a good parent, is able to bargain and make a compromise agreement about the children. Such an image, if acted on, would lead not to parents in agreement but to parents willing to make an agreement because any agreed settlement is seen as a greater good than an ideal but imposed one. This image may be constructed alongside images aiming at agreed problems and solutions as for example in case 24. More often it is introduced later in the process when conciliators perceive previous image work to have "failed". In some cases therefore it is used to counter parents wanting to "stick out" for what they believe is best for the child. It was used as seen help convince Mr. and Mrs. Cann that keeping the three siblings together was an ideal which had to be sacrificed in order that they could agree not contest arrangements.

It was also used to try and suggest to Mrs. East that her son staying with what she regarded as a "narrow minded father" would be less detrimental to him than a long running contested custody case. Similarly conciliators agree with Mrs. Field that it would be better if all 3 children had access

equally to the father but suggest that she should not push for the idea in order to make more possible an access agreement to end the fight quickly. In other cases the image is introduced into a more "confused" situation in that parental views of the problem and solution though different are also complex and to some extent undefined and the appointment may have included intermittent but diffuse parental argument. In these cases the Conciliators first diagnose the problem as one of widely divergent views with little parental desire to negotiate.

"You see you two - you are at opposite ends of a pole" (22)

"But what I'm hearing are two people who are saying "what I want....." and neither of you are willing to come any way to meeting each other in the middle". (23)

This is then followed either by images of bad parents who do not try and meet in this middle or ground or by exhortations to "improve".

"Both of you are going to have to give a little because you are absolutely in fixed positions". (24)

"The real solution and the only solution that is going to work in the long term is that the two of you have got to compromise and let the other have what they want or you are both going to have to shift ground a little bit and meet somewhere in the middle". (25)

The good parent therefore does move into this middle ground and, as is envisaged, may have to do it unilaterally to the extent of crossing all or most of the middle ground, "because sometimes it is the parent who is most caring and thinking of the children who has to say 'I can see this is the best way forward'". (26)

Conciliators may then sum up what they see as the middle ground as for

example in "I think what we've got in the middle is sort of the difference between say £12,000 and £20,000 and the difference between one year and two years" (27) or they may then suggest possible compromise solutions. For example, the Spencers' disagreement over 6 or 6.30 p.m. return time was settled by a 6.15 compromise and the conciliator initiated compromise suggested to Mr. Upton and Mrs. Baker was that staying access be a one-off trial access for Gregory only. (28) Also because of conciliator belief in the optimum good of agreement per se client compromises are usually endorsed by Conciliators, a notable exception being when Mr. Young suggested that the adoption of two children of the marriage be placed against guaranteed access to all three children. Here the response was, "I don't think you can trade that sort of thing". (29)

A glance at the footnotes for this section however shows that few conciliators actually talked to clients in terms of negotiating and bargaining. Conciliator 3's "this is all about finding a compromise, let's face it" is unusual but the vocabulary used sometimes where the good negotiating parent is being upheld is that of "movement" or "giving" to encourage reciprocal movement by the other parent. This approach does not appear to encourage one-of unilateral movement to achieve an agreement but is instead concerned that one piece of "giving" should alternate with another until the middle ground is crossed. Clearly this type of conciliated controlled bargaining puts a premium on what is legitimated as giving. For example at the beginning of a second appointment the following conciliator comment is made about Mr. Upton's offer to cancel a proposed Court appointment: "But he did make that offer which was the movement I think I was asking from Mr. Upton last time we met". The conciliator therefore felt justified in arranging another meeting and asking the mother to respond.

Similarly throughout the appointments of case 14 the conciliators used this "alternate movement" bargaining. For example after appointment 2 they said that they had stressed to Mr. North that Mrs. North had "given" access in the first two appointments and hoped he would therefore give in the next appointment. When Mr. North was "unwilling to move at all" in appointment 3 regarding money maintenance for his son they therefore felt they could not back his demands and push Mrs. North to give more access. (30) However an hour after my post-appointment interview with the conciliators one of them communicated that she was distressed because she had not followed up Mr. North's comment, "I realise I'll never get custody" because the implication was that he had given up the custody fight. This fact could have been used to show movement on his part and so keep the negotiations going. In the following appointment therefore Conciliators had been "able" to urge the mother to give christmas access which she did. (31)

However it is important to point out that many appointments neither talk in terms of bargaining and movement nor appear in practice to be bargaining in terms of polarised solution positions. The use of the image of the negotiating parent is therefore not so important as those images through which problem and solution are constructed. (32) Davies' conclusions about In Court mediation that "the tendency is for the bargain or compromise to reign supreme" (1985a:48) is not valid if referring to explicit bargaining over solutions.

3. Conclusions

Clearly many child and parent images constructed by conciliators are very different from those held by parents when they come to conciliation. The view of reality held by parents when making their initial speeches at the

appointment is one made up of facts about the behaviour of the other parent, personal convictions of the relevance of past happenings to the present and future situation and particular views about parental responsibility (33) Parents will not therefore automatically assimilate these images so that acceptance depends on conciliator power to convey these images as more valid, more real, than those held by the clients. Some of this power, as chapter 3 showed, comes from the conciliators working within an organisation which, by its title is assumed to have expertise at conciliating and about which clients, with very little actual knowledge, make further assumptions regarding its legitimacy as the giver of advice, holder of welfarist functions or organiser of parental discussion and settlement seeking. Power may therefore derive from this imputed status as a Conciliator and also from a status made explicit by Conciliators who refer to their experience as a Conciliator, Counsellor or Divorce Court Welfare Officer. There is additional power in the conjoint working practised by this and many other conciliation services: agreement, tacit or expressed, gives legitimacy to the statements made. Also, as analysis has shown, power resides in the ability to use various techniques of questioning, re-phrasing and controlling the structure of the appointment. Within this process there is above all power to buttress images by using "information" which conciliators convey either as received wisdom or the summation of recent research. This implicit and explicit transference of skills and information - of knowledges - is vitally important in the process of implanting new images. (34) This relationship between knowledge and power has been analysed by Foucault in various institutional and historical settings. (1967,1977) It is therefore no longer novel to see knowledges in terms of "the technology of power" or to trace a connection between specialised knowledge, power and the construction of reality. For example,

We must cease once and for all to describe the effects of power in negative terms - as exclusion, repression, censorship, concealment, eradication. In fact power produces - it produces reality". (Foucault, quoted in Tagg,1981:297)

The next section will therefore look at these specialist knowledges which help conciliators to impose their view of reality

C. Specialist Knowledges

A problem immediately arises: that of defining specialist knowledge, for some diagnostic and predictive statements made by conciliators are conveyed as common sense, others as the latest research findings and the rest as arising somewhere along the continuum linking these two points. A helpful model at this stage is that produced by Berger and Luckman to postulate three stages in the social process of constructing reality. (1966; also Conrad & Schneider,1980:21)

Viz:

(i) Externalisation or the construction of a cultural product. The example given is the idea that strange behaviours can be caused by a mental illness. An example relevant to conciliation could be that disturbed behaviour in children can be caused by conflicted parents.

(ii) Objectivation or the taking on of objective reality by the cultural product for example that mental illness (or conflicted parents) causes strange behaviour.

(iii) Internalisation or taking for granted that for example mental illness (or conflicted parents) causes strange behaviours. The end result is therefore that the cultural product becomes part of the available store of knowledge of that society.

In a sense therefore any definition of specialist knowledge is artificial in

that it has to cut through this continuum but dealing with the last stage separately from the first two does help to illuminate the taken-for-granted as well as specialist knowledge on which conciliation relies.

1. Taken for Granted Knowledge

The knowledge that conciliators assume parents share with them is the knowledge which is part of what the Newsoms have referred to as "the cult of child psychology" (1974:53) whereby the main pre-occupation of parents and child care professionals is no longer simply physical survival but also the possible psychological consequences of the methods used in rearing children. Because both the reader and writer of this thesis belong to the society in which this pre-occupation is taken for granted a conscious effort is required to see this knowledge as a social construction of the 20th Century and to make strange the following typical comments focusing on the children's psychological health.

"Is he acting out because he wants attention? Is it a cry for help?" (35)

"But you're saying he was deprived of his dad and when you and your new wife got together he didn't have all your undivided attention so he got his own back didn't he?" (36)

There is evidence that conciliators are justified in assuming the existence of such knowledge. For example, Backett found the abstract images parents held of children were ones prioritising their psychological needs.

The major image which seemed to dominate their parental behaviour was of the child as a being to be "understood" by its parents. (1982:102)

If two words dominated the interviews with this group of parents these were security and stability. (1982:115)

It is also easy to find taken for granted causal explanations of child

behaviour in the mass media. A token example could be the closing sentence of a full page advertisement in a national daily newspaper for a television drama about separation which said of the child, "Carted from parent to parent is it any wonder he starts to lose his bearings?" (37) Adrian Mole the most popularised fictional adolescent of the 1980s, also provides evidence that the adolescent as well as the adult is deemed to take this link for granted.

Mrs. O'Leary said 'It is the child I feel sorry for' and all the people looked up and saw me, so I look especially sad. I expect the experience will give me a trauma at some stage in the future. I am all right at the moment but you never know". (Townsend, 1982:54)

Such an assumed link between parental and child behaviour would have been impossible when "in the past a bad child was seen as a misfortune" (Harris, 1983:240) rather than a reflection of parental shortcomings or when, before the 19th Century, children were regarded, if not with the indifference that has been argued by some historians,(Laslett,1971:109-11) then certainly differently. (Pollock:1983, Burnett,1982:13) One cannot imagine the images constructed by conciliators as co-existing with those conjured up by John Burnett's vignettes of mid 19th Century children: the boy who slept in the same bed as his bosses who were man and wife, the six little girls who helped to carry their friend's coffin or the girl whose father, oblivious of the need to nurture a child's self esteem and individuality, would not have any of his 19 children christened but "would call them anything that come up -sometimes Betsy, sometimes Sarah just as it happened". (1974:96,76,55 respectively) However as C.C. Harris has argued the definition of good parenting depends on "the significance accorded to childhood" and if childhood is constituted as it is now as a period of moral formation and experience affecting adult character and that normal development depends on parental love then "the significance of parental care is enormously

extended" (1983:240) Why childhood is now so constituted cannot be dealt with here but it is interesting to note how longterm are some of its antecedents in that it depends ultimately on the emergence of concept of childhood and of the child-centred family, both of which are the subject of historical debate. (38) In the shorter term it also depends on the development of psychology as a discipline and profession, on particular psychological theories especially the "new psychology" of the 1920's and the 1930's (39) and the development of medical and sociological theories stressing the family as an interacting unit. (40)

2. Non- Internalised Knowledge

In a sense Berger and Luckman's first two categories of knowledge are easier to identify. The "can cause" or "do cause" types of knowledge explicitly conveyed by Conciliators can be listed and categorised and some conclusions drawn as to which knowledges are most important - at least numerically - and which elements of these knowledges are most used. Whilst such questions are not central to this thesis they need to be asked for two main reasons. Firstly there is concern within and without conciliation services about the "accuracy" of such knowledges purveyed. Conciliators are concerned to keep up to date on latest research findings concerning families and divorce through reading and training sessions. (58) Clients too express the hope that conciliators "know what they are talking about" (Mr. Cann) and lawyers are anxious lest conciliators explain the law inadequately. (41) There is therefore some demand for research to show what conciliators are conveying in their educative role. Secondly this type of analysis of the content of these knowledges does emphasise the validity of a social constructionist approach to the "regime of truth" (Foucault,1977:27-8;Tagg,1981:301) conveyed in conciliation. It provides evidence of assumptions and dichotomies within these knowledges which

stress that conciliation not only depends on and uses knowledges but at the same time validates and generates such knowledges.

Analysis of appointments (42) showed that in all except two cases the most widely used areas of knowledge were the Psychology of children and separating parents. (43) In total knowledge of the law is the next most used though it is used very little if at all in over half the cases (44) so that in only nine cases is it comparable to the use of knowledge regarding children and separation. (45) Knowledge of the practical management of separation (46) is used in sixteen of the cases though most of this latter knowledge is conveyed as the result of the conciliator's personal experience with separating couples or is part of taken for granted knowledge. The most important specialist knowledge for conciliator use is therefore knowledge regarding the psychology of parents and children and to a large extent these are but two sides of the same coin.

a) Child Psychology

Each of the images of children presented by conciliators obviously mirrors the various "truths" from child psychology - that parental conflict is detrimental to child development as are "unhealthy" parental attitudes, that children need the love and control and regular contact of both parents and more specifically that detrimental conditions may "force" children to lie. These truths do reflect current pre-occupations within the "children professions". Brophy has discussed the largely psycho-analytic studies of children which have concluded that parental conflict in the post separation situation is detrimental to children. (Brophy,1985:107-8) The most quoted - that of Wallerstein and Kelly (1980) -conflicts in its conclusions about the management of access with an earlier and also widely quoted study - that of Goldstein Freud and Solnit (1973) but both stressed the child's need for

healthy relationships with both parents after separation if possible. Hetherington, Cox and Cox (1982) have suggested that whether or not families are split up is less important a factor than whether a conflictful situation is resolved, and likewise Hess and Camara state that "the family relationships that emerge after divorce affect children as much or more than the divorce itself" (1979:79,94) The objectivation of this idea is seen in Leupnitz study which argues that the developmental level of a child is the chief predictor of his or her response to separation and divorce. (1982:1019-21)

In 1982 Richards and Dyson wrote that the research supporting these conclusions was 95% American (1982:10): this is not now so. Studies completed by Anne Mitchell (1983, 1985), Mary Lund (1984), Walczak and Burns (1984), McLoughlin and Whitfield (1984, 1985), amongst others, all make the same points but now drawing on non-medical and retrospective as well as clinical research of the effects of various post separation situations. Typical is therefore the comment of McLoughlin and Whitfield in referring to age-specific coping strengths.

However the interviews described here would suggest that the behaviour of parents is an important factor in determining whether the adolescent can satisfactorily utilise these coping strengths. (1984:170)

Many of these studies also analyse the detrimental effects on children of parents attitudes towards their ex-partners: a point which Margaret Southwell(1982) brought out when she found a strong connection between unwillingness to end the marriage and the existence of access disputes. James and Wilson(1984b) also found a correlation between access difficulties and the hostility of the custodial parent towards the absent parent and less direct effects of parental conflicts and attitudes have been

analysed by Woody et al in their study of the relationship of parental stress to child adjustment. (1984) This interactional model has been pursued by the Clarks(1978) in a book to refute the "critical early years" view of child development but which instead by positing the whole of childhood and adolescence as important for future development puts a premium on the effect of later family experiences.

Similarly evidence can be found in these studies, especially that of Wallerstein and Kelly, that children need both their parents and, because of the need to retain the support of each they feel compelled to lie. Indeed the work of Wallerstein and Kelly is so crucial to this body of knowledge that because it concluded that open communication between parent and child is impossible if the parents are conflicted, Bankowski et al designed a group therapy to help children adjust to this (1984) and Pruhs et al (1984) outlining their own mediation scheme point out that the findings of Wallerstein and Kelly are discussed with all parents before conciliation begins. Lewis and Feiring (1978) in their analysis of transivity relationships have studied the indirect effects of one parent absence and concluded that the fathers support for the mother will have an effect on the child even if the father is not present and similarly how the mother represents the father's absence will influence the father-child relationship.

Neither is there any shortage of "evidence" that children want parents to take control and make decisions. For instance the review of the literature on parenting undertaken by the Rapaports and Strelitz for the DHSS expresses a view that more parental competence is needed generally to manage divorce and separation constructively (1977,1978) in the interests of the children. The need for regular access is also postulated in those studies quoted which argue for continued parental contact as well as in the

"popular" books on divorce and separation which are to be found even on the shelves of a small local library. (47)

The knowledge purveyed by Conciliators does therefore appear in line with the bulk of published material in this area and the evidence for the reality being constructed by conciliators appears overwhelming. Hence it would be quite wrong to give the impression either that conciliators have not "done their homework" or that they are consciously manipulating given data. However there are anomalies omissions and ambivalences within these knowledges which supports the hypothesis that they are being constructed as well as used. One factor is that particular research studies are presented as more convincing than a close methodological look might warrant. For example the apparently crucial work of Wallerstein and Kelly was based on 60 families (with no control group), all in California, all self selected and without analysis of what specific social and economic factors may have been operating. Some of the generalisations about childrens attitudes at various ages also have to be taken with care as some are based on very small samples, for example fourteen 5 to 6 year olds.

Another factor is that ambivalent conclusions are made to appear less so or discordant conclusions are constituted as minority views. For example the work of Kulka and Weingarten on the long term effects of parental divorce in childhood on adult adjustment concludes that "two modest trends" are stil evident and that "contrary to much of the literature and popular thought these early experiences have at most a modest effect on adult adjustment". (1979:50) Yet, if quoted at all this study is used solely to lend support for the idea of long term harm caused by conflicted parents. Similarly McLoughlin and Whitfield make the point of stating that "the findings of these studies are equivocal". Even more forthright is an article

based on research by James and Wilson specifically to obtain empirical evidence to evaluate "the possible benefits of a clean break between non-custodial parents and the children at the time of the separation" because "the current state of knowledge based as it is on assertion and influence is unsatisfactory". (1984:487,491) This study suggested that access "should not automatically be assumed to be a benefit to the child" (pp504-5) Nevertheless this assumption continues and such research findings are not quoted by conciliators.

On the other hand some of the much quoted studies do include "rogue" findings but explain them such that the basic premise remains intact and is used by conciliators without qualifactions. For example Anne Mitchell's recent book includes the following:

No children said that they had blamed themselves, although there is a common belief that children do so, perhaps thinking that their naughtiness drove one parent away. Research has shown that it is usually very young children who feel responsible in this way..... In this study few children had been under 8 at separation and for them the interview was more than 10 years later, so any feelings of guilt may have been long forgotten. (1984:109)

There are however minority views. Jean Moore in a recent book on child abuse (1985) says that she is in a minority in wishing to focus on the child not the parent and talks of the "erroneous assumption" that change in parental attitudes leads to better parent child relationships. Such a minority view was echoed by only one conciliator interviewed and served to confirm fellow conciliators in their opposite opinions.

"It is a myth in our unit that parents must communicate there is a

relationship with children regardless of whether parents communicate".
(48)

Discrepant results and minority views do not therefore affect the reality portrayed by conciliators. Furthermore, research reports include comments which could affect the conclusions if the relationship were noted and conversely conclusions do not directly lead from findings. In other words, as David Ingleby has pointed out (1974:298) in regard to studies of child development, "usable conclusions may be drawn from such research only by the addition of unstated and untested assumptions". So for example findings of the need for continued parent child contact are used to prove the need for regular access whereas many forms of contact other than alternate Saturday outings could conceivably be envisaged. On the other hand the presence of such assumptions can lead to the ignoring of the possible significance of factors. To take another example from Anne Mitchell: "Separated parents are inevitably pre-occupied with the changes in their own lives and are often unfit emotionally to give comfort and support to their children", (1983:175) yet conclusions centring on the need for parents to do just that are still made.

Lastly these knowledges embody two different views of the child: as inherently good and as inherently evil - or, to put it another way, as "little devils" needing control or "sensitive plants" needing nurture. (Compton: 1980:8-13) The dominance of one or other of these views can be traced historically and both are still held today. What is interesting is that conciliations images can embody both views -the child is evil and manipulative if the desired image is to be one of "innocent" parents who need to control: the child is good and sensitive if the image is to be of uncooperative parents who need to protect and nurture. As Loewenberg

has written of social workers attitude to theory "some have elevated eclecticism to a principle of professional competence" (1984:310) which results in "a smorgasbord of seemingly unrelated concepts" (Goldstein:1980; Oakley:1974:13) but this factor does suggest organisational aims rather than unified theory determines the selection of knowledge.

b) Parent Psychology

Much of the psychological knowledge purveyed about parents, as pointed out, is the corollary of knowledge about children because of the constitution of images of children which are dependant on images of parents. So knowledge explaining the relationship between parental hurt and anger and between such feelings and the ability to achieve present or future adjustment is necessary if well adjusted parents are to be seen as essential for the child's welfare. In addition there is knowledge of psychology used in conjunction with specific 'other parent' images -for example that adults are capable of changes of personality and of learning new skills, but much of the parent image building is not accompanied by specific knowledge except insofar as child knowledge is used. Instead, as analysis has shown parents are constituted in particular ways. However, parent images are sometimes accompanied by other knowledges - about practical problems (49) and, more often, about the law and the legal system.

c) The Law

All knowledge concerning law was categorised as referring either to substantive law or to procedural law and practice. In total there was almost equal number of instances in each category with substantive law spread over 14 cases and procedural law over 13. Only a minority of cases had a significant number of instances in both categories (50) with five

cases having no instances of either.

i) Substantive Law

Generalisations are not possible because substantive law introduced was usually case specific. So comments to Mr. and Mrs. Cann (51) relate to the question of custody of the three children and suggest that the award of care and control of all three children by a Judge to the father "seems to me a very probable decision" but that, as this might be a wrong decision it would be better not to require a Court Order yet but experiment with splitting the siblings. Another legal point is made by the same conciliator in case 5 in reference to whether the mother, Mrs. East who wants the end of the marriage, should move out without the children. In both cases the mothers are advised that they should consider moving out: Mrs. Cann because the Divorce Court Welfare Officer needs to see her in her new home at access time before he can judge the suitability of care and control in those new circumstances and Mrs. East because "the reality is that you don't know that you are going to be better off apart from your husband until you have actually tried it". In Case 14 the knowledge conveyed is about a matrimonial care order which the father is threatening to suggest.

"It's not on Mr North, it won't happen..... I can't believe anyone will take a child away from its parents and put it in care which is not ideal when there doesn't seem any proof that the parent ill-treats the child".

(52)

Cases 15 and 20 have an unusually large number of instances of substantive law conveyed: Mr. Owen's present lack of a legal right to access, the Court's presumption in favour of granting him access, the Court's taking account of his not returning the child after access in future access applications and the Court's not taking account of marital fault in matters

of access. (53) In Case 20 they range over the unlikelihood of a Court making a change in care and control (54) or of the Court refusing to give care and control - even of girls - to Mr. Todd, (55) the problems of using unreasonable behaviour grounds (56) or expecting the law to guarantee access. (57) In Case 24 the knowledge covers the law's principle of the paramountcy of the welfare of the child, the Courts' reluctance to allow step-parent adoptions, and knowledge of the types of defined Access Orders local Courts usually make in particular situations (58) Case 21 also stresses the Courts' reluctance to restrict access and their inability to impose any more than "minimum definitions" (59) All other cases have only one or two instances of substantive law which cover some aspect noted above, with the addition of the encouragement of joint custody.

Knowledge of substantive law is therefore relatively sparse but where it is used it can have one of two significant results - either that the range of possible solutions is narrowed because the shadow of the law is constructed in a particular way or that the range of solutions is widened because the shadow of the law is removed: "the legal rules are not there". (60) An instance of the narrowing of options could be when the Conciliators stress Courts would order access so that "no access" is no longer seen as a solution, and an example of the widening of options could be the urging of parents not to use legal rights and procedures so that the range of possible solutions can include the use of trial schemes of custody and access. Substantive law is therefore not used directly to affect images of parents or children but to influence the selection of solutions to be promoted via these images. Procedural law however is used to buttress these images.

ii) Procedural Law

Knowledge about the legal system itself has the function of promoting a

very particular image of parents and children who do not use the legal system, as the following conciliator quotations clearly show.

"The real answer to it is that those issues are dealt with by the responsible parents and not by the Courts no matter where the bloody Courts are Your problem is you're using a legalistic system to deal with your children and your children are not pawns in the game" (61)

"Don't you think that actually, that if you look at most situations, most divorces, if adults always behaved in what was the correct way and if they always put the interests of the children first then most of the cases that go to Court wouldn't go to Court anyway". (62)

These two quotations, make the point that the good parent does not abdicate responsibility by using courts to make decisions about the children. This point is made repeatedly in several appointments (63) and at least once in two thirds of the cases. In those cases where Court action is a mooted possibility it is the means by which parents are constituted as bad if responsibility for decision making is not accepted or retained. The knowledge content takes various forms: it may stress the time consuming nature of Court procedures and remedies, the cost of using the legal system, the bitterness generated by the use of Affidavits and Courts (64), the inflexibility and inconvenience imposed by Court Orders (65), and the inadequate knowledge on which Courts base their decisions (66). All these aspects therefore stress the practical drawbacks for parents of using Courts but they are also linked to images of children, so the time factor is seen as leading to prolonged tension and indecision which harms the children, the financial aspect is seen as harmful to children because of its selfish diversion of resources away from them, the inflexibility and lack of knowledge factors are seen as imposing solutions at times now and in the future which may not be right for the children. However the knowledge

content includes two more and rather surprising factors - that Courts themselves dislike usurping parental responsibility and that imposed conciliation and Divorce Court Welfare Reports are ipso facto harmful to children.

"Well the thing about going to Court is that if you sort it out first and you go to Court and you say 'we've actually agreed this' this is what the Court will do because they don't actually want to take your parental responsibility away from you". (67)

"That's why this organisation is set up to prevent this kind of distress to the children because the law is a very heavy handed thing for this kind of thing" (68)

The first factor suggests parents are "unwelcomed" at the Courts. The second factor does in some cases entail double think in that, whilst the use of Courts is discouraged to avoid conciliation and child involvement in Welfare Reports the attendance of the children at voluntary conciliation is urged as beneficial, albeit on the premises where conciliated Welfare Reports are prepared by Welfare Officers who are also voluntary conciliators.

The 'Shadow of the Law'

Knowledge about procedural law is therefore affecting the shadow of the law in different ways from knowledge of substantive law. It is neither reconstructing nor removing it but it is certainly darkening it; or to change metaphors, the legal system is seen as a bogey man to be avoided if at all possible for the sake of the children and for the avoidance of adverse parental labelling.

Fears about the extent and accuracy of legal knowledge conveyed are

therefore misplaced. Substantive knowledge is being conveyed but significantly so in only four cases (69) and all of these have one experienced Divorce Court Welfare Officer Conciliator with extensive knowledge of types of decisions local Judges and Registrars do make. The substantive knowledge conveyed, though selective, cannot be said to be an inaccurate representation of the law; contradictions and confusions to a large extent mirroring the confusions in present case law. For example Conciliator assurances that Judges are less inclined to stick rigidly to a preference for mother care and control and are anxious to treat each case on its merits, which allows for splitting of siblings and father care and control if appropriate would seem to accord with a recent statement of Dunn LJ.

There is only one rule; that rule is that in the consideration of the future of the child the interests and welfare of the child are the first and paramount consideration but within that rule the circumstances of each individual case are so infinitely varied that it is unwise to rely upon any rule of thumb or any formula to try and resolve a difficult problem which arises on the facts of each individual case. (70)

As is pointed out in an article on recent custody decisions "these rules of thumb represent the situation which applies in a majority of cases" but "to pray them in aid as some sort of principle of be applied regardless of the facts of the cases is no longer acceptable", (71) so the status quo principle (72) and the "tender years" maternal preference (73) still influence the Courts but are not necessarily determinants.

Admittedly in the Courts attitude to the splitting of siblings (74) it is less clear whether or not the rule of thumb is in existence. A -v- A 1984 (75) appears to have stated that, other things being equal, it is undesirable to

split children close together in age and fond of each other, but in *Greggory -v-Greggory* (76) Sir John Arnold allowed the family to remain split and refused the mother's application for custody of the two children with the father although in *Blair -v-Blair* he had dismissed an appeal against an Order reuniting siblings after one had lived with the father for 16 months (77) More interestingly a propos of case 3, in *Bell -v-Bell & Another* (78) the Court of Appeal upheld the Judge's refusal to make the Order, agreed by the parents for joint custody and care and control of two children to the father and one to the mother but had instead kept the children together by awarding care and control of all three to the father. However appeal cases may not represent the majority of decisions in local Courts where S. 41 hearings are conducted and, if recent research reflects national trends, then many Orders splitting siblings are in fact made. (Southwell, 1985:184)

However, conciliator teaching on "Joint Custody" is confused - on one hand it is urged so that non caretaking parents can share in parental decisions, on the otherhand many cases do not mention joint custody but constitute all parents as having obligations to share in decision making. This however reflects ambivalence in the case law concerning the definition of custody itself since *Dipper -v-Dipper* (80) included the following statements by Cumming-Bruce and Ormrod LJJ.

The parent is entitled whatever his custodial status to know and be consulted about the future education of the children and any other major matters. (at 640)

To suggest that a parent with custody dominates the situation sofar as education or any other serious matters is concerned is quite wrong. (ar 678)

In fact *Jayne -v-Jayne* (81) has since allowed a split order so that the

father with sole custody would then have a right to give consent to blood transfusions. Confusion as to the state of the law in this area would therefore appear quite justifiable.

In regard to the Courts' presumption in favour of access there is much less doubt since *M -v- M* (82) stated;

Access often results in some upset to the child. Those upsets are usually minor and superficial, they are heavily outweighed by the longterm advantages to the child of keeping in touch with the parents concerned so that they do not become strangers. (at 88 per Latey J.)

Access is a basic right of the child rather than a basic right in the parents..... No Court should deprive a child of access to either parent unless it is wholly satisfied that it is in the interests of that child that access should cease." (at 85 per Wrangham J.)

In recent cases where the Court has refused access it has made clear that such situations are envisaged as temporary (83) and in fact cases reveal evidence that the Courts "are becoming increasingly impatient with obstructive parents and may be prepared to consider drastic action in an extreme case (84). Indeed there is also evidence that Courts are trying to predict whether access will work and will award custody accordingly (85).

Conciliators also reflect quite accurately the practice of the Courts, if not the state of the law, when they argue that the law cannot guarantee access will occur because, as a recent article concludes, "Where access is not working the old judgmental approach typified by s. 63 (3), can be used, but the clear implication is that the Courts only favour its use as a last resort" (86).

In fact the "old judgmental approach" is embodied in recent law (87): Judges and Magistrates do have powers to fine and imprison the guilty spouse if Access Orders are not implemented but Courts take the view that the interests of the child point against this sanction being used when the guilty party is the child's caretaker. Certainly in the recent case of T. v T. (88) the Family Division criticised the Justices for using such "draconian powers" (per Bush J.) though the cases cited above which suggest attitudes to access may now in extreme cases be a factor in awarding or transferring custody would suggest that Court attitudes may be changing.

Other substantive issues referred to by Conciliators can be checked with similar results. For example that children should have one home base (89) and that older children cannot be forced to live with a particular parent.(90)

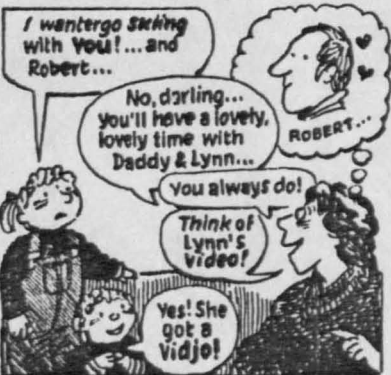
However, fears about conciliators' use of the law, though misplaced, are not unjustified. What is a cause for concern is their use of procedural knowledge to construct Courts as a place only for parents who have failed to be responsible parents able to make their own agreed arrangements. This ought to be a topic of debate because such labelling of parents can obviously remove legal rights far more effectively than an "inaccurate" precis of substantive law. Szwed may have been right when she warned "whereas the proponents of conciliation make no explicit claims about a conspiracy to abolish the role of Courts in family matters there is nevertheless a danger that they could do so". (1983:188)

D. Conclusions

Current knowledge - whether psychological or legal - is conveyed as more certain and taken for granted than it often is. Conciliators are not aware

that they are selecting and therefore validating particular items of knowledge. They believe their job is to educate and that further research will "prove their point" as indeed it will because current concerns will influence the focus of research and the type of data to be collected, which will in turn determine the outcome. Spector and Kitsuse have pointed this out in reference to deviance designations: when they supply the example of focusing on the problem characteristics of the dangerous car or the dangerous driver. (1980: 26) Whether therefore what conciliators convey is yet accepted knowledge, as Brophy fears when she argues that it "is tantamount to heresy" to criticise welfarist terminology" (1985), is in a sense irrelevant. What is important are the images these knowledges are used to buttress. Neither images nor knowledges are formed in a vacuum, they both result from and result in actions. At an everyday level Posy's cartoon (91) makes that quite clear. However whether these images and actions are acceptable to clients, and whether clients believe it is tantamount to heresy to criticise this knowledge base depends on the extent to which clients are passive victims of the conciliation process. This aspect will be discussed in Chapter 10.

Dad's Girl Friend



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CHAPTER 9: NOTES

1. These typical examples are from Conciliator 8: Case 14(2) and from comments made by Conciliator 6 after the untaped Case 9.
2. Those without image work were usually to be found at the beginning and end of appointments where initial questions or arrangements for another appointment were being made. The number of units per case with no image work ranged from 1 to 10 and averaged 3.5.
3. As in Cases 6, 8 and 12.
4. Cases 10 and 16: Conciliator 10.
5. For example that children want decisions made for them and want security of regular access are mostly found in solution work.
6. See Appendix 5. The percentage of interventions aimed at changing a child image as opposed to own or other parents' image varies considerably from 14% to 64% of the total. In 5 cases (7, 11, 12, 22 and 23), half the images concern children but in 9 cases (1, 4, 5, 6, 14, 15, 16, 19 and 21) less than a third.
7. A possible hypothesis that fewer child images reflects more initial convergence of parental images of the child does not receive support except possibly in Case 14.
8. See Appendix 5. This total is reflected in 17 out of the 20 cases, (not in Cases 19, 21 and 24).
9. Ranging from 17:2 in Case 3 and 11:10 in Case 12.
10. The 2nd category may only be significant in Cases 7, 11, 12, 15 and 16.
11. There are 5 cases: 5, 7, 14, 16 and 24 where more work is done on the father's self-image and one equally-directed case - Case 3.
12. The 4 cases without joint-image building are 7, 17, 22 and 23 and the

- joint image work exceeds individual self-image work are Cases 3 and 11.
13. This relationship between the two figures is found in 14 cases.
 14. This last image is perhaps most interesting in that it may entail inversion of responsibility for the solution. It can be found in 7 cases and refers to the mothers in Cases 3, 8, 14 and 21 and the fathers in Cases 3, 4, 5 8 and 19. A significant comment made of the mother in Case 21 was that she was unable to negotiate because she is out of contact with reality.
 15. Case 11: Conciliator 7, Case 19: Conciliators 1 and 2 and Case 3: Conciliator 11 respectively.
 16. Case 14: Conciliators 2 and 8 and Case 3: Conciliator 11 respectively.
 17. This is not to suggest that conciliators in this sample do explicitly downgrade caretaking though the literature suggests it is common, especially among male D.C.W.O.s. For example: "Most children in reality could be looked after by either parent". (Drake: 1985,67 quoting P. Jordan of the Australian Family Court)
 18. Case 19(21): Conciliator 1.
 19. Case 11(19): Conciliator 7, in the following context: "I would like to think you'd be able to stand in the hallway or lobby or whatever as the girls slip their coats on and then you can go out ..."
 20. For example in Case 11 the new wife and mother's brother attended one meeting.
 21. Conciliator 2 after the 5th appointment of Case 8.
 22. Case 21(14): Conciliator 2.
 23. Case 5(7): Conciliator 2.
 24. Case 14(7): Conciliator 8.

25. Case 3(9): Conciliator 17.
26. Case 3(27): Conciliator 11.
27. Case 5(7): Conciliator 11.
28. In Case 19(13) (and similarly in Case 6(18-20) re 7.30 p.m. return) and in Case 21 when this suggestion was accepted by Mr. Upton in the appointment; the mother wished to consider it at home and later refused to accept it.
29. Case 24(23-25): Conciliator 7.
30. This was a money/access 'bargain' which was unique to this sample and the conciliators justified it by arguing that money was symbolic in this particular conflict.
31. Case 14: Conciliators 2 and 8 in interviews on 18.9.84, 2.11.84 and 22.11.84.
32. Explicit bargaining can be said to have taken place in 7 cases: Case 3 over splitting siblings, Case 5 over finance/house, Cases 6 and 19 concerning access return times, Case 11 (4th appointment) concerning access arrangements, Case 14 concerning custody and house, Case 21 over access. But in all these cases such explicit bargaining is in addition to, and mixed in with, implicit negotiations over the definition of the problem itself.
33. See especially pp 236-253 in Chapter 6 which detail parental objections to proposed solutions and their reasons for unwillingness to accept proposed definitions.
34. Most units analysed did involve specialist knowledge being conveyed. See Appendix 5. Only Cases 1, 4, 15 and 16 had little or no knowledge from categories 1-5.
35. Case 6(5): Conciliator 3.
36. Case 24(16): Conciliator 7.

37. Advertisement in the Guardian, 3.7.86., for Channel 4's 3-part drama, "What if it's raining?"
38. See for example P. Arie's: 1962, L. de Mause (Ed): 1974 and Stone: 1971, 1981.
39. See N. Rose: 1985, particularly Chapter 7 'The Psychological Family'. See also Newsoms: 1974 pp 53-79.
40. See for example: H. P. Dreitzel: 1973, especially the introduction and articles by H. Richter and V. Bronfenbrenner and also S. Minuchin: 1974 for psychiatric theories.
41. See an article by D. Greenwood: 1986, where she comments of conciliation, "Inevitably it leads to several apparently authoritative people telling the clients different things." (p143)
42. See Appendix 5.
43. The exceptions are Cases 15 and 20 where law and law and practical details were mostly used. There is more child knowledge in Cases 1, 3, 7, 10, 12, 16, 22, 23 and 24 and more separation knowledge in Cases 4, 5, 6, 11, 14, 17, 19 and 21.
44. There are 90 instances comparing with 167 for child knowledge and 151 for separation knowledge. The 5 no legal knowledge cases: 1, 2, 4, 7 and 23 and the 6 little knowledge cases: 6, 10, 11, 12, 17 and 19.
45. Cases 3, 5, 14, 15, 16, 20, 21, 22 and 24. It is difficult to analyse why some cases use more law and others less. In 3 of these 9 cases (3, 21 and 24) applications to Court had been filed but this reflects a similar percentage in the non-legal knowledge sample. All these cases included one D.C.W.O. Conciliator and therefore might reflect their concerns but other 'D.C.W.O. cases' have no or little legal knowledge explicitly purveyed (Cases 1, 4, 6, 7, 11 and 17).
46. Category 5 in Appendix 5 with 75 instances - in Cases 2, 3, 4, 6, 7,

- 14, 20 and 24.
47. One recommended by the Conciliation Service is P. Rowland: 1980.
 48. Conciliator 15 after 1st appointment of Case 21.
 49. Examples would be the avoidance of both parents providing pocket money because of non-communication (Case 2(7), suggesting access patterns that have been known to work (Case 3(7), 6(16)).
 50. For example, Cases 3(4,10), 5(3,4), 20(9,7) and 21(3,5). The remaining cases had 1-3 instances in either or both group.
 51. Case 3(4,7,8,26).
 52. Case 14(2): Conciliator 2.
 53. Case 15(3,11,15,16,17 and 19 respectively): Conciliator 13.
 54. Case 20(3): Conciliator 2: "Certainly the Court would take the view it's important for kids to know their dads".
 55. Case 20(7,9). E.g. "I assure you on that point that the Courts and we as an organisation - the D.C.W.O.s - are becoming more and more familiar and indeed recommending more and more that fathers have children in cases where it's right".
 56. Case 20(8) e.g. "Children can wonder about that for a very long time - what 'unreasonable behaviour' was". (Conciliator 12)
 57. Case 20(11,12,15).
 58. Case 24(22,26,29,27 respectively): Conciliators 7 and 15.
 59. Case 21(27): (Conciliator 15: "It is the policy and the clear intention of the High Court that fathers have roles to play in their children's lives") and Case 21(32) respectively.
 60. Case 5(15).
 61. Case 21(16): Conciliator 15.
 62. Case 1(16): Conciliator 6.
 63. In 5 units each in Cases 16 and 21, 10 times in Case 3 and 7 times in

- Case 20.
64. Examples can be found for all these at Case 3(16,26,13,15) respectively.
 65. For example in Case 3(26) and 14(4).
 66. For example in Case 24(21).
 67. Case 19(6): Conciliator 1, and very similarly in Case 3(16): Conciliator 11.
 68. Case 12(15): Conciliator 2 and 1 earlier. Also at Case 3(16).
 69. Cases 3, 5, 15 and 20.
 70. *Pourtney v Morris* (1984) 4 FLR 381 affirming the statement of Cumming-Bruce L. J. in *Re W (A Minor)(Custody)*(1983) 4 FLR 492. Similar comments had been made a decade earlier by Davies, L. J. in *Re C (An Infant)*(1970) 1 All ER 309 at 313.
 - 71., *Just of the Peace* (1984).
 72. See the arguments of Lord Cross in *Thariyan v Thariyan* (1975) Family Law 123 upholding the President of the Family Division's order for transfer of custody after 5 years when the father had had custody, care and control. See also the comments of Cumming-Bruce L. J. in *Allington v. Allington* (1985) 15 Family Law 157 for which circumstances and time factors may be said to constitute a status quo.
 73. See for example, Megaw L. J.'s comments in *Aldcus -v- Aldcus* (1975) 5 Family Law 152 on the use by the Judge at first instance of the phrase "the ordinary rule" that children should be with their mother.
 74. It is also worth pointing out that in may recent cases the Court of Appeal has been more concerned with their powers of trying appeals. (See article in Fam. Law Vol. 13, No. 1 p20).
 75. *A. v A.* (1984) The Times, May 3.

76. Gregory v Gregory, Court of Appeal (Civil Division) (Transcript: Association) 14 June 1984.
77. Blair v Blair, Court of Appeal (Civil Division (Transcript: Association) 16 Dec. 1983.
78. Bell v Bell and Another, Court of Appeal (Civil Division) (Transcript: Association) 8 Nov. 1982.
79. The leading authority of the meaning of custody is Hewer v Bryant (1970) 1 QB 357 C.A. but further terminology has been introduced by the Children Act 1975, ss 86, 87.
80. (1980) 3 WLR 626, C.A. See also Maidment: 1981.
81. (1983) 4 FLR 712 C.A.
82. M v M (1973) 2 All ER 81.
83. See Re B(A Minor)(Access)(1984) FLR 648, Churchyard v Churchyard (1984) FLR 635 and Williams v Williams (1985) FLR 509.
84. Butterworth's Family Law Service July 1985 referring to R v G (Surrey County Council intervening) (1984) 3 All ER 460.
85. For example see D v M (1982) Times July 14 when the important factor was felt to be "The contrast between the mother's attitude to access by the father, which had been co-operative at all times and the father's which had been grudging. Also in Cutts v Cutts (1977) 7 Fam. Law 209 the Court transferred custody to the mother when the father frustrated access and in VP v VP (1978) 10 Fam. Law 20 C.A. a review of custody was ordered for the following year and the mother warned that her attitude to access would be a factor. For a discussion of the most recent cases following these lines see Justice of the Peace: 1986 p 79.
86. Again Justice of the Peace: 1986 p151.
87. Divorce Court: Maximum fine of £500/1 month's imprisonment (s14

of Contempt of Court Act 1981).

Magistrates' Court: Maximum fine of £1,000/2 month's imprisonment (s63(3) of M.C.A. 1980, formerly s78(1) of D.P. & M.C.A. 1978).

88. (1985) 149 J.P. 21.
89. See R v R (1986) The Times, May 28, where a child of 9 who, for 5 years, had lived for alternate weeks with each parent was given into the sole care and control of the mother.
90. See Atkinson v Atkinson (ibid.) where Oliver L. J. refused to force a 14 year old to live with his father unwillingly.
91. Reproduced on the following page by kind permission of Posy Simmonds.

CHAPTER 10: PARENTAL RESISTANCE

What they're doing is to get you friends in a way ... nice for the sake of the children. Why should I? (Mrs. Berry)(1)

This thesis has discussed the techniques used by conciliators to construct a problem definition and solution and to produce its acceptance by all concerned. The previous chapter has dealt specifically with the specialist knowledges used to enhance the 'sticking quality' of the images purveyed in this process. However this research has also been concerned to shed light on the factors 'external' to the conciliation appointment which might affect parental acceptance of such images and knowledges. Material for this is found partly in the conciliation appointments themselves but, more importantly, in the follow-up interviews. Not all parents could be interviewed (see Appendix 9). The sample is therefore of 16 fathers and 14 mothers, covering 21 cases and including 9 couples where both parents were interviewed. The aim however was not to check out one partner against the other but rather to isolate possible significant factors for comparison with social science literature and to enable more critical assessment of conciliation research generally. Therefore the general aim in this chapter is to examine the influences that parents bring to conciliation from their personal, marital and family history which may lead to their accepting or resisting conciliator attempts to reach agreement over the children.

1. Past Decision-making Patterns.

A recent book on family decision-making by Scanzoni and Szinovacz (1980) which has provided many useful insights in analysing the data for this chapter, makes the following claim:

Historians are fond of justifying the study of history by stating that 'we can't understand where we are unless we know where we've been'. That generalisation applies with considerable force to most types of joint decision-making and surely to family decision-making. Whatever has gone on between family members in the past is bound to influence how they carry on their current decision-making (p35).

As this appears very plausible and to help test the assumption that there has been joint parenting which can be continued in conciliation, parents were asked about their previous decision-making concerning the children as well as other matters (see Appendix 7). Parents were asked whether, for each of 13 decisions concerned with child rearing, they believed the decision had been theirs, their partner's or a joint decision. The 13 decision areas had been specifically chosen to include everyday and one-off decisions as well as decisions regarded as important (by parents and social science research) like choice of school, and unimportant like when potty training should begin. Not all areas were relevant to all couples because of the ages of the children and therefore the research yielded 266 parent answers (see Appendix 11), of which 39.8% were 'jointly decided'(2), 53.8% were 'mother only', 4.5% were 'father only' and a very small minority (1.9%) had decisions made by the mother for one child or stage in the marriage and the father for another. Couples interviewed therefore felt that 4 out of 10 child decisions had been decided jointly but that the mother alone had been responsible for making nearly all the remaining decisions. The 'father only' decisions exceeded 5% of the total in only 3 areas: whether the mother should be the full time caretaker, which school the child should attend and whether particular one-off purchases should be made for the child. The latter probably ties in with the father's control of the family finances as one mother clearly indicated when she said "He

didn't believe in most of these sorts of things so he didn't give me the money". (Mrs. James)

The general conclusions come from a sample made up of slightly more fathers and they would not appear to be based on all the mothers 'voting for' themselves; indeed mothers gave 'mother only' replies in a slightly smaller percentage of answers (i.e. 52.9%). In 9 cases where both parents were interviewed there are 88 valid pairs of answers for comparison and in 55.7% of these pairs the replies for mother and father are identical. Of those that are dissimilar there is however a majority (59%) in which the discrepancy is one of the mother giving a mother only response and the father believing that the decision was jointly made, compared with one pair (2.6%) where the father believed he had made a sole decision and the mother believed that it was joint. Conversely in 4 cases where the mother thought the father had made the decision alone, the father thought it had been made jointly. These discrepancies between mother and father responses therefore suggest family decision-making which is only partly perceived and conducted as a joint process and the similarities between replies appear to reflect a situation where the mother took, was given or had imposed on her sole responsibility for making over half the decisions connected with child rearing. As a significant percentage of these are likely to be ones where the father believed he had contributed to the decision-making then there is the possibility that the mother is being denied status as a sole decision-maker. On the other hand the mother clearly has more experience at making child-related decision(3) even in the more 'important' areas of education, substitute care and the purchase of expensive items.

However as Scanzoni et al point out, "The most significant things about

family decision-making are the sequences on which it is built", whereas most studies have looked at "who won". The above information is therefore subject to their criticism that "We don't know anything about how one or both parties went about their decisioning. All we have is the limited information of who decided" (p35), or more strictly correctly, who thought they decided. For this reason, and also to see how decision-making regarding the children relates to couples' decision-making generally, parents were asked whether the making of decisions in 9 decision areas (see Appendix 7) had caused them any 'difficulties'(4), whether they could explain why (or why not) and whether they could describe how they had made such decisions.

The results are not easy to interpret. Parents often found it difficult to analyse how decisions had been made. 'Help' to parents in the form of supplementary questions like 'Did you discuss it?' 'Did one of you give in?' led often to problems of assumed meanings, especially in regard to what discussion entailed in practice. What did emerge, as the literature has indicated (5), is that it is in most cases (6) not possible to generalise across all areas of decisioning in that parents usually indicated difficulties in some areas and not in others and also different methods of arriving at decisions in different areas. Fathers indicated difficulties in 1-6 different areas and mothers in nil-6 areas with an average of $2\frac{1}{2}$ perceived areas of difficulty per parent (mothers 2.35 and fathers 2.7). Nevertheless, it is possible to make some generalisations across the sample using the summary of areas of reported difficulty in decision-making which is listed overleaf:

<u>Decision Area</u>	No. of <u>mothers</u> reporting a difficulty	No. of <u>fathers</u> reporting a difficulty
a) Where to live	2)	7)
b) large item of expenditure	3)	9)
c) housekeeping budget	3	3
d) division of housekeeping and house maintenance tasks	4	3
e) visiting or entertaining	5	7
f) choice of holidays	4	4
g) leisure activities	5	6
h) whether to have children	2	1
i) children's upbringing	4	11

Firstly, therefore, for both parents the use of some or all aspects of free time (items e, f and g) presented a difficulty for about a third of the sample. In several cases it was a grandparent problem - either in-laws imposed by the spouse or own parents denied hospitality by the spouse (7). In others it was enforced acceptance of a spouse's 'excessive' leisure activities or preferred holidays or denial of resources to pursue one's own(8). Some parents expressed deep resentment at the practical outcomes of these decisions which gave them no control over their own or their spouse's activities.

I think my favourite saying was that I was way down on the totem pole and the Brownies came at the top and church next and all that sort of thing. (Mr. Quinn)

It was OK when it was her family ... like if her relatives came she

would give me money for a drink but not my relatives. (Mr. Spencer)

And National Housewives' Register, you know, he just didn't think that was er - it could be disposed of, you know, if it was in the way. (Mrs. Todd)

Secondly, whilst decisions over the housekeeping budget, division of household tasks and whether to start or increase a family caused difficulties for both mothers and fathers, there were some differences between mother and father perceptions of difficult areas(9). Indeed 3 mothers (but no fathers) reported that there had been no difficulties in making decisions in any of the areas(10).

We were very much on the same level. (Mrs. Smith)

We sound like the ideal couple up to now. (Mrs. James)

However this did not necessarily mean that an efficient negotiating system had been in operation. For example as one mother explained "I used to put forward the suggestion and he was quite happy to agree". (Mrs. Adams) Another pointed out later that there had been difficulties, "Well um I think I've blacked it out. It's very difficult to explain to people all this applies while we were together and hoping to make a go of it". (Mrs. James) However on numerous occasions Mr. James had forced her to leave the home, suggesting no agreement mechanism for major differences of opinion about their relationship itself. A third mother volunteered that "we always did a joint decision" which in 4 areas entailed discussions and in the rest entailed assumed agreement. A response of 'no difficulties' can therefore mean a lack of experience at negotiating decisions as well as expertise in settling conflict.

However it is the first and last items on the list which reveal very different mother:father concerns. In this group at least, fathers much more so than mothers (11) saw decisions about child rearing and decisions on the house and large items of furniture or equipment as causing trouble. As regards child rearing 3 fathers (12) expressed dissatisfaction that there had been no discussion before the mother had made and implemented decisions regarding, for example, medical advice, children's bedtime routines and playgroup attendance. As Mr. Cann said "It's not that we agreed to differ and that we discussed it. There was maybe not enough discussion". Six fathers felt that, though there had been some discussion, the outcome had been wholly or partially unsatisfactory to them(13) and 2 believed the discussion had led to their partial 'winning' but that they had realised their partner's dissatisfaction, for example at their spoiling the children and discipline generally.

The children were a bone of contention. (Mr. Innes)

It was just mainly discipline ... when I was trying to give her some advice um ... how to bring children up or if you're having trouble disciplining the children try something else - most of it I got back was 'You're not with the children all day'. (Mr. Parker)

Many of these 11 fathers felt they had no power to influence decisions because the mother was the caretaker and she in practice could implement her own decisions. As Mr. James said "She was at home and just did it". It is interesting to compare these comments with those of 5 fathers who claimed that child rearing decisions had not been difficult ones(14). 3 said there was no difficulty because the issues had usually been agreed to their satisfaction(15) but gave no details, whereas 2 felt that, as with other decisions, they disliked argument and therefore avoided it by giving in if necessary(16). On the other hand the 4 mothers who saw child rearing

decisions as involving difficulties all said disagreements had been discussed quite heatedly with varying degrees of satisfaction with the outcome.

He never gave in but I won less obtrusively. (Mrs. East)

The only causes of disagreement were the children. (Mrs. Field)

We didn't discuss it - he was right and I was wrong and I just had to do as I was told. (Mrs. Lloyd)

In each of these sub-groups therefore there is no data to suggest that differences are always negotiated, rather that conflict is avoided or outcomes imposed.

The other area where many father remembered difficulties was that of moving house and making large purchases. Of the 12 instances(17) the father in 8 felt that he had 'won' (either through control of resources or work constraints) but realised his wife had been unhappy and in 4 cases the father felt that his wife had won or he had left it to her to avoid conflict

You can't shift her very easily. (Mr. Upton)

It was her choice, I would just nod. (Mr. Field)

The quotations so far used also stress that "who won?" as with "who made?" can cover very different processes of resolving disputes. Even information that an issue was discussed is ambivalent as comments given reveal that very different forms of communication and negotiation can be covered by the client's use of this term as in the following examples:

There was no end of arguments. (Mrs. North)

When it came to practical things I don't think there was much discussion -I probably went away and researched and said 'What we should do is this, this and this'. We did talk about it but probably because I wanted her to say yes rather than I wanted a discussion.

(Mr. Hall)

I used to play golf. She wouldn't let me go unless I bought her a new dress or something. (Mr. Owen)

Also, these comments may be relevant to decision-making in one, several or all areas. For example Mr. Hall's comment is made in regard to areas a) and b), but he later explained that his wife did the 'research' for their free time - especially holidays. On the other hand the following similar comment by Mr. Todd that, "I am a very forceful character and if I make my mind up - oh I tend to go into things fairly - I'm a good researcher, my wife isn't," did not reveal a sharing of the research function and applied only to family expenditure.

Arguments were also often confined to one or two areas, though some parents indicated that on balance these areas of difficulty had been more important to them than the areas of easy decision-making. The most vehement expression of this was from Mr. Upton.

I mean what does this asking questions about each area of decision-making do for you really? ... Well that's the reason I asked the question because we're building statistics here and the answers I've given today I think you should strike them out because they aren't the reasons. I'll give you a simple example here - the whole reason why that marriage failed, the reason why we split up in the end was because ... I was gradually alienated from my own children ... there were disagreements all down the line as far as how the children were to be dealt with.

Apart from indicating how negative experiences in decision-making can outweigh more positive ones in other areas, this does stress again how

conciliation may be a continuation of perceived unsatisfactory rather than effective decision-making over children, even if decision-making generally had been satisfactory. However, whilst it is not possible to generalise about decision-making in one family, let alone the 21 covered by these interviews, it is useful to see how the data compares with the 5 models of decision-making outlined in chapter 1 (pp22-23). Using all parental responses to questions in all areas of decision-making it is clear that all models are significantly represented in this sample. Though numerical analyses need to be used with care because of the various uncontrolled characteristics of the sample it is however worth noting that allocation of responses amongst the 5 models is fairly even except that model 1 - that of assumed agreement - is characteristic of both more cases and more decision areas than the other models and that the one least represented is model 3 - discussion leading to a compromise agreement. Therefore more than two-thirds of parents felt that in at least one area, but more usually in several, there had been no difficulties over decisions because agreement had always been assumed and often reflected segregated roles.

We never really spoke about things like that. (Mrs. Berry of children decisions).

It just worked out like that. (Mrs. Spencer)

We were sort of the typical family where I did the male things and she did the female things as they were then considered to be. (Mr. Innes of 5 decision areas).

On the other hand only 6 parents(18) made comments suggesting the making of agreed compromises, also usually only in one decision area.

It was half and half ... you do take the rough with the smooth. (Mrs. Cann)

We agreed to disagree. (Mr. Lloyd regarding the upbringing of the

children).

It is therefore interesting how few parents have memories of 'successful' compromise solutions, though the data may well mask compromises which covered more than one decision area.

The other model of agreed decision-making is model 2 where outcome follows discussion and both parents are agreed the decision is the best one. As previous quotations imply, this may cover situations of unequal inputs into the discussion process and various grades of discussion. As in models 1 and 3 the examples arise from the perceptions of an almost equal number of mothers and fathers and range from the very general "Oh yes we talked about everything" (Mrs. Adams) and "We always did a joint decision" (Mrs. Smith) to a very detailed description of how houses were chosen and family outings fixed. The remaining comments are divided between models 4 and 5 except that there is a group of responses which could bridge these 2 models. These are ones where parents reported no difficulties in decision-making because they had wished to avoid discussion and conflict. Some had, whilst the marriage was happy, done this fairly happily, others remembered being very resentful throughout the marriage.

I never used to argue much with her . I just used to go and lay the tea. (Mr. Gale)

I'm a placid person ... I bit my tongue too often. (Mr. Berry)

... 'Cos eventually I didn't have difficulties because I just sort of backed down. (Mr. Field)

I suppose I'm weak and ought to stand up to him a bit more. (Mrs. Todd)

I didn't like making a fuss. (Mr. Lloyd)

There is therefore, at this point, a fine dividing line between those parents

who happily acquiesced in the implementation of the other parent's decision because of societal and religious pressures and work constraints, and those who acquiesced because the other partner had the resources - financial, psychological or stemming from expertise and education - to impose decisions, as the following quotations reveal.

Model IV:

All the major decisions were his. I accepted that for 12 years when we were happily married. (Mrs. Field)

Oh she was the woman of the house. She was better with money than I was. (Mr. Gale)

It was a question of economics. I saw the necessity and there was no resentment. (Mrs. East)

Model V

We differed. He was able to do what he wanted, I wasn't ... He just left everything to me that he wasn't interested in. (Mrs. Ward)

I did mind because I felt I wasn't being listened to - that I was being disregarded, that I would say my piece but it just washed over. (Mr. Quinn)

He decided that we needed a something or, if I thought, I had to work really hard I think to persuade him ... and the tumble dryer I bought because I couldn't, I simply couldn't cope with drying washing when I was at college but he would never let me use it because he always complained it used too much electricity. Every time I put it on he made me feel guilty. (Mrs. Todd)

Despite the complexity of parental responses about family decision-making it is possible nevertheless to isolate specific characteristics which could influence the parental role in conciliation.

(a) Past attitudes to conflict. There are several parents who made it clear

that much of the time they refused to discuss or argue because they disliked conflict per se. With the exception however of Mrs. Todd and Mrs. East, it was the fathers who 'walked away'. This could have reflected a power to refuse discussion - to hold out rather than give in - but in these cases it appears not to have done. These parents could therefore have less confidence and inclination to participate in the negotiations at conciliation and less ability to hold out for a preferred option. Certainly Mr. Berry who had 'bit his tongue' had not mentioned the issue of joint custody at conciliation, which therefore proceeded solely on access difficulties, even though he had presumed that the appointment was to discuss joint custody. Similarly Mr. Lloyd who 'didn't like making a fuss' had allowed his wife to dominate the first appointment despite his anger at the end about what had not been said. Mr. Vaughan, who had said in conciliation, 'I've always allowed you to say exactly what you wanted and I don't agree necessarily with it but I don't want to start arguing. That's always been the case', dropped completely his request for access when Mrs. Vaughan refused, as in effect did Mr. Adams who failed to turn up for the planned second appointment (and replied to no subsequent letters) to discuss the details of the partly agreed access reinstatement. His wife had referred to their decision-making as 'He was quite happy to agree' and certainly he had found difficulty in expressing himself and countering his wife's arguments in the first appointment. In cases 6, 7 and 12, all with fathers disliking conflict, the conciliator's use of the attendance of children might be significant.

On the other hand at least one of these parents, Mrs. East, 'abandoned' conciliation because she realised she had never been able to stand up to conflict with Mr. East and therefore preferred an arena in which she felt she would not be disadvantaged. She had therefore cancelled the planned

second appointment and instead made an application to Court for an ouster injunction. As she expressed it, "I realised he thought they were agreeing with him, so he was still only seeing one point of view ... It just wouldn't serve any purpose at all".

(b) Past experience of 'losing' in decision-making. Experience of having the other partner's decision implemented appears to have given several parents temporary or permanent inability to accept a compromise either because of a belief that present, as well as past decisions, would be unfair and imposed or because resentment at past losses was so great that winning was an important factor in itself. Certainly many parents had expressed such resentment in conciliation.

Mrs. Cann: "He's not prepared to bend at all ... The only thing Mr. Wonderful will give is access." (19)

Mrs. Smith: "I just feel that I've always got to give in ... I've got to say 'Yes all right that's OK by me, yes that's fine.'" (29).

Mrs. Lloyd: "But you don't like the truth, you've never liked the truth, you've always wanted to be on top and you're always the one who gives out the demands and everything and when you click your fingers everybody jumps." (21).

Mrs. Parker: "The impression I always got was that if everything was running smoothly as he wanted it he was happy... soon as I start to say something he's got to come up with an answer - he stops me in my tracks and I'm never going to finish what I'm saying." (22).

Mrs. Spencer: "I felt I was bashing my head against a brick wall. We could never sit down and discuss it. His answer was 'If you don't like the way I am, that's just tough.'"(23).

These parents, unlike those who had walked away from conflict, had tried

to argue their position and influence decision-making but felt they had not succeeded. All such parents in this sample were mothers, but it is not possible to generalise about the effect of such attitudes in conciliation. Mrs. Smith did feel that conciliation had "ended up as a bawling match really" and that she had as usual lost; Mrs. Parker seemed unable to contribute at all and requested a separate interview but did not answer subsequent letters from the conciliation service and appeared to have dropped claims to custody and access by the time of the follow-up interview with Mr. Parker. However, Mrs. Cann and Mrs. Todd had felt that the presence of conciliators had allowed a 'fairer' discussion.

Well he tends to be a bit dominant ... Whereas I find with conciliation, well, they know, I dunno, they seem to know a better way of raising questions or talking round the subject and also I think in such a situation he tends to be more, um, open, yes he tends to sort of think more about it. (Mrs. Todd)

(c) Past experience of unsatisfactory child decision-making. Half the parents interviewed (4 mothers and 11 fathers, covering 11 couples) believed that decisions about child rearing had entailed difficulties and Mrs. Field and Mr. Upton said it had been a major problem in the marriage. Therefore, for some couples difficulties in deciding about children appear not, as conciliators often suggest, simply to have been the result of separation. Certainly the Fields, Lloyds, Uptons and Easts (all of whom had been parents giving area(i) as one, or the only one, of several areas of disagreement) were unable to come to any agreements alone: the Fields and Lloyds did so when the children were present and were asked to take a large role in the implementation of an agreement and the Uptons and Easts referred the matters to Court. However the Canns and Norths, whose pre-separation disagreements about the children appear to have resulted in

some compromises, did both eventually agree on compromise solutions.

Pre-separation parenting patterns therefore appear very diverse - some support the image of the father excluded from control over child rearing decisions, some reveal an image of a mother denied power of such decisions when the father wishes it. The latter image is there but not as dominant as the literature might suggest. Segregated roles in decision-making, depending upon assumed shared images and giving little scope to practise any negotiating skills, are still very prevalent. Such a background may put a premium on a more active role for the conciliator. However, pre-separation patterns can be seen to be both continued into conciliation and reacted against: the wife 'giving in' fear is grounded but there is also the wife 'digging in'.

2. Past Caretaking Patterns.

Parents were asked who normally did each of 12 caretaking tasks (see Appendix 7). The answers, which do not reflect the length of time each partner spent in caretaking but rather the practical interest each partner took in a variety of tasks which are usually part of child rearing, were coded as either mother or father solely responsible for the tasks for all or nearly all the time or jointly responsible, covering doing a task together or sharing responsibility for the tasks. (For a summary of the answers see Appendix 12) Out of the 28 parents responding to this question 5 mothers and 3 fathers believed that the father had not been solely responsible for any such tasks; 2 mothers believed the only job the father had done was filling in forms sent by the schools and clubs etc. and a further 2 that the only job that the father had done had been organising family outings. Most mothers and fathers however, said that the father had been responsible for

only 1 or 2 tasks with the largest number of responses (12 fathers and 3 mothers) citing the mending of toys and children's equipment as being the father's sole, and possibly only, sole responsibility. Only 2 fathers felt that within their family they had been responsible for more of these items than the mother (cases 9 and 17) though in neither case did these items cover daily feeding, clothing and transporting of children.

However all fathers believed that between 3 and 7 tasks had been 'shared' (though only Mr. Field volunteered that this shared responsibility was 70:30). In 2 cases (5 and 21) the fathers said they had taken time off work to help look after a sick child or taken a baby to the Clinic but the rest said they had helped when shift work permitted. In the 7 cases where it is possible to compare the responses of mother and father in the same family there are 2 different pictures. In 3 cases (2, 3 and 5) both parents give similar answers but in the other 4 the responses are very divergent. In 3 of these latter cases this divergence is due to the father believing that he had shared tasks whilst the mother believed she had always done them. In the 4th case (case 12) the mother gave more joint answers but the father had said of most questions that "He couldn't really remember".

Such responses help to explain the various resistances to conciliator interventions which parents express in conciliation. For example 4 mothers believed they had only negative or nil experiences of their husband's caretaking abilities which gave them no confidence to trust the other's ability to handle access satisfactorily and therefore led to at least temporary non-acceptance of the constitution of the father as a responsible parent. For example Mrs. Adams explained at great length her distrust born of her husband's previous use of unsuitable transport for her son(24) and she further expressed her doubts as to his abilities in the

interview when she explained how he had refused to help with the neck exercises they had had to do with their baby son. Similarly Mrs. Spencer and Mrs. Gale argued that their husbands had no experience of taking the children out.

Mrs. Spencer: "Well he's never done it before anyway before we parted. Now he's taking them out to all these places - never done it before". (25).

Mrs. Gale: "But when he was living there he was never at home. When you was home you was down the pub. You never saw much of them anyway ... He never used to bother".(26).

Some mothers went further and resisted construction of fathers as caring because of their past lack of caretaking.

Mrs. Spencer: "We used to go out for lunch on a Sunday, he wants the children till a quarter to 8 now, but when we were actually together he couldn't wait to get home of a Sunday evening 'cos he used to go out with his friends on a Sunday evening. I could guarantee you those children well, we'd be back by at least well, quarter to 7 at least 'cos he had more time for his friends then than he did for us".(27).

Similarly Mrs. Lloyd resisted conciliator attempts to explain her non-acceptance of Mr. Lloyd's love for his children because it would be too 'painful' with, "No it isn't, it isn't. It has annoyed me that he hasn't been loving , it's annoyed me that he hasn't given them all the love that they deserve"(28). Such perceptions also led to a feeling of injustice that post-separation parenting was not being constituted as one containing a caretaking element so that, as with pre-separation parenting, the father had the 'easy' more enjoyable tasks, specifically access outings. So for example Mrs. Spencer expressed resentment that she was still expected to provide clothes and food before and after access because Mr. Spencer had

criticised her for not sending a spare set of clothes as the children had got dirty in the park and it had been 'embarrassing' to take them to his mother's the next day in a dirty state.

Mrs. Spencer: "What's wrong with you taking their clothes off? What's wrong with you? ... They went to bed didn't they? Why didn't you do exactly what I do?"

Mr. Spencer: Wash their clothes and get them dry for the morning?"

Mrs. Spencer: It's exactly what I have to do.

Mr. Spencer: Surely if I'm going to have them for the weekend I can have some things.

Mrs. Spencer: Well put your hand in your pocket then ... You've never put your hand in your pocket for those kids."(29).

Likewise Mrs. Lloyd felt that Mr. Lloyd had "not been putting himself out" for the children(30), Mrs. Smith argued that "If he wants to take 'em, I mean he can't expect me to run round and do their dinner and say 'Well hang on you bring them back and so on, I'll have their dinner on the table' ... If he wants to pop down and pop in and see them he's got to take the rough with the smooth"(31). Other mothers believed that post-separation parenting should include more elements of child rearing than the access day itself, whatever that day involved, as in, "It's more than just seeing the child once a fortnight, it's more than just access. I think it involves sports days and school functions."(32). This comment was made by Mrs. Adams, but Mrs. Field, Mrs. Lloyd and Mrs. Kay made similar comments in conciliation(33). This resentment at the father's continued lack of involvement in the child's life is illuminated by the mother's answers to questions of whether they would like the father to have more or less responsibility for children generally than in the existing situation. Mrs.

Kay was not interviewed but the other four all having care and control, together with Mr. Innes, a father with care and control, all replied that they wished the other parent to take more responsibility.

I do believe my ex-wife feels that the idea of me having custody and her having access is that I have the children all the time apart from the fact that maybe she'll see one of them a couple of hours a week if she is free -and that is said with a certain degree of bitterness.

(Mr. Innes)

I think he should take more interest in his kids ... he's got joint custody. I'd like him to sort of perhaps on the odd occasion when they're on holidays take a couple of them and make a fuss of them ... Last Christmas my son was in a pantomime, he was really good ... but he said I can't come to that right from where I live. (Mrs. Smith)

However, apart from seven parents who wanted the division of responsibility to stay the same⁽³⁴⁾, including three for which this meant that the other parent would continue to have responsibility, the rest, custodians and non-custodians, wanted the other partner to have less responsibility, though with the exception of Mrs. Cann Mr. North and Mrs. Quinn this involved a desire for more say in education and social development rather than more share in daily caretaking. Therefore whilst opposition to access arrangements may reflect resentment that post-separation parental responsibility is not sufficiently joint it also appears that more parents⁽³⁵⁾ want post-separation parenting to be their sole responsibility. As Mrs. Berry explained, the separation caused by her husband's sudden and unwanted departure had forced her to be independent and she was enjoying the achievement of bringing up children on her own. She saw this as the only happy result of a very unhappy situation and did not want it undermined by Mr. Berry sharing responsibility again. Mrs.

East's reason was different, she felt her husband's 'narrow outlook' was detrimental to their son and therefore she specifically wanted to remove her husband's influence. As could be anticipated many non-custodial parents also wanted more responsibility(36).

Some of these parents, like Mrs. Berry, are therefore expressing satisfaction at a new balance between decision-making and caretaking responsibilities; others are wishing to continue an old balance which gives certain tasks and responsibilities to the non-caretaker. Therefore whilst joint parenting as usually envisaged in conciliation (whereby the non-caretaker has access and some share in decision-making but little else) is reflecting a common practice of joint parenting in the intact family this practice may not always tally with social expectations of modern joint parenting or the father's perceptions of jointness. Feelings of resentment around post-separation parenting are therefore by no means isolated from parenting in the intact family. Resentment may have become acknowledged only post-separation when parents lose their desire to search for coping mechanisms and legitimations, but the resentment is born in diverse expectations and experiences within the intact family.

4. Personal and Marital History.

It is not however influences from previous family history only which influence parental reactions. The past generally is seen as important and in two cases fathers specifically rebutted in conciliation any rephrasing of the past.

Mr. Upton: You know you've really got to go back to square one on this thing before you two will even begin to see what's going on ...(37)

Conciliator: But we're now back in the past.

Mr. Upton: Of course, because that's where it started(38).

Conciliator: So there's differences of memory about facts as well.

Mr. Field: "I'm sorry there's no differences of memory - she forgets things and she twists things to suit herself - always has done(39).

Rephrasing of the past was also particularly unacceptable to Mrs. Lloyd who explained that forgetting the past had been a technique used by Mr. Lloyd to control her.

Mr. Lloyd: Can we just say 'look that's the past, let's talk together about how we're going to get together for the future'.

Mrs. Lloyd: Well I knew you was going to say that because that's how its always been. Forget what happens yesterday, the week before, last week. Forget that (claps hands). Right!

Conciliator: And you're finding it difficult to forget all that.

Mrs. Lloyd: It keeps cropping up. I keep forgetting.

Conciliator: There's a lot of pain and distress there.

Mrs. Lloyd: I keep forgetting. I keep saying OK ... it's all been, you know, forget that and go from one stage to the next and it's all the same. (40).

There are suggestions within parental responses that deliberate forgetting has also been a factor within the relationship of couples in cases 1, 9, 10, 11 and 19.

For example:

He had 6 affairs before this one .(Mrs. Kay)

There is quite a track record of other women (Mrs. Adams)

Two mothers also found it difficult to separate the father's personal and parental responsibility because their experience of his sense of responsibility generally led them to believe parental responsibility was not possible. For example Mrs. Adams cited her husband's illegitimate children and Mrs. Smith said previous experience led her to imagine that, "he could

just phone and say he can't have the car just to save himself the journey"(41).

In case 11 the difficulties of agreeing may have been compounded by the fact that the content of the agreement was related to an issue of principle which had been a major factor leading to separation. The husband did not want access to take account of the girl's sporting interests because he felt his wife had wrongly encouraged their girls to take up so many, whereas Mrs. Kay saw such an attitude as a reflection of the "rigid personality" which had wrecked the marriage.

It is however more difficult to assess how past general experience in marriage has affected parental morale and self-esteem and therefore the ability to participate in conciliation. There are individual examples which appear to indicate that similar roles are taken in conciliation as in pre-separation parenting. For example Mr. Gale, who had taken very little part in caretaking or decision-making generally in the family could offer, in conciliation, no practical suggestions about access and was unable to press his case against his wife's and children's opposition. On the other hand, Mr. East who said of most decisions that there had been no difficulties "because I did it all ... oh there's no problem there", said of conciliation, "I agreed with what the conciliators said but my wife didn't ... everybody has told her she's in the wrong but she wouldn't see it". He therefore would not contemplate compromise, though analysis of his appointment shows he, not his wife, was queried more by the conciliators(42).

There is also another possible factor - that of self esteem - which, as Scanzoni et al point out, has tended to be ignored by 'family power' literature though it has been included in some laboratory studies of

bargaining (Scanzoni 1980 : 31) with inconclusive results. Nevertheless they argue that such results, based on zero-sum or win-lose games, do not invalidate the possible impact of the self-esteem disparity that partners experience, and that such self-esteem is "connected to the ways in which partners actually carry out the decisioning processes" so that, "the person with more of this beneficial resource is likely to be more assertive during decision-making"(1980:32). It is however difficult to measure self-esteem in either conciliation or interviews. Only one parent volunteered directly relevant information when she answered the question of whether she regretted not saying something in conciliation with, "I cannot say what I think any more - he has so demoralised me over the last 5 years - I have to watch my p's and q's" (Mrs. Field), though in fact most of the years she was referring to were since the separation. There is evidence, as with Mrs. Berry, of greater self-esteem, but there is also the opposite in Mrs. Parker who could answer very few questions audibly, or at all, and made no further contact with her husband and children after conciliation. However one possible indicator is the extent to which parents felt the need to be seen by conciliators as 'worthy'. Mr. Berry at the end of the appointment apologised because, "I probably look a right pig" but otherwise comments defending oneself or revealing concern at giving poor impressions come only from 5 mothers. One of these, Mrs. Quinn, does not however reveal low self-esteem:

I think I probably came over as a religious fanatic (laughs). I felt it put me at a disadvantage. They wanted me to say that the marriage had finished and there was no hope for it, didn't they? and I wouldn't do that.

However, Mrs. Berry's comment is very different:

It was too difficult with him there to say what I felt .. I was worried I'd appear too critical of him and they'd form a low opinion of me.

Similarly, Mrs. Smith, Mrs. James and Mrs. Lloyd expressed concern that conciliators had got the wrong view of them:

I kept being interrupted all the time by him and the woman conciliator ... they kept pointing out what he was trying to do and I felt my hard work looking after the children wasn't acknowledged.(Mrs. Smith).

I think I came over as a bitter woman (Mrs. James).

I felt they were on his side ... They didn't hear how abusive he was ... They didn't care how I felt (Mrs. Lloyd).

Nevertheless conciliators are not unaware of possible imbalances in self-confidence and esteem. Mr. Gale was asked to remain behind after a joint appointment so that conciliators could explain he needed to be less vulnerable emotionally and more persistent practically if he hoped to get some of what he wanted. Mrs. Parker was given considerable encouragement and support and her husband extensively queried to try and redress a very obvious disparity. Mr. Innes believed that the conciliators "were more concerned with my ex-wife to ensure that she wasn't being coerced or forced into a certain life - I felt that very much indeed. Maybe that's because I tend to be the one who would normally do the talking ... I think they were probably right to be concerned with her".

5. Normative Frameworks.

Conciliators are also concerned not to be seen to be judging couples and therefore upholding any particular norms concerning marriage and separation. For example they asserted to Mr. East that "There is no right or wrong"(43). Such statements caused many parents to express anger at the conciliator's refusal to uphold 'traditional' norms.

It's you who walked out. Who is standing by his morals and value for life -frankly who's doing the right thing here?(44)

I find this whole system unsatisfactory. It's almost immoral in my opinion ... People are sort of actively encouraging the situation to exist where people separate ... To try and conciliate between right and wrong isn't necessarily the most moral thing to do. (Mr. Cann).

As the second quotation points out, parents may take a lack of condemnation as implicit condonation of the other's behaviour so that conciliator 'neutrality' is not always perceived as such. This was especially so of those parents who had committed adultery or who had left home without warning, as in case 17:

Conciliator 14: "He's really in the wrong isn't he? (laughed)

Mrs. Quinn: Well yes up to a point I think he is in the wrong and so am I. I can't believe what he's done is the right thing.

Conciliator 14: Not the wrong thing?

Mrs. Quinn: Well that's the way you look at it.

Conciliator 14: Well I wouldn't presume to make a judgment."

Other parents found it difficult to consider particular views and arrangements because they conflicted with norms regarding traditional roles. This was especially so of Mr. East who could not accept his wife's reasons for wanting the marriage to end and instead accused her of adultery and irresponsibility:

I've said to my wife, I've said I can understand an affair but I cannot accept ... that a woman could sacrifice her home, her children for the sake of a job ... and it's not a job she needs because we don't need the money because I'm keeping the family(45).

Mr. East therefore expected a 'traditional' wife, was concerned throughout the appointment to stress his role as breadwinner and believed a wife not prepared to conform to her role deserved neither custody nor maintenance. Such cases had been anticipated by Scanzoni et al who discuss the influence of sex roles on decisioning patterns:

If a man and wife share strongly traditional sex roles, the man will not have great difficulty in 'hearing' what she is likely to say ... And where couples share strongly modern sex roles they are also likely to experience high mutual empathy ... But if she is egalitarian and he remains traditional, he is not likely to have a great deal of respect and appreciation for what she's trying to say ... But their difficulties are not solely the result of poor communication, but also of sex-role differences". (1980 : 40)

There are therefore still great feelings of injustice held by parents in these groups. It had been hoped that divorce reform would help to eliminate 'blame' and allow more concentration on the welfare of the children without the 'fetter' of consideration of justice to the parties(46). Parents do however, still think in terms of guilt and innocence and it has been argued that this is exacerbated by the continued existence of fault grounds for divorce, viz. the grounds of unreasonable behaviour, adultery and desertion. For example Eekelaar and Clive (1977) found that parents using 'unreasonable behaviour' were less likely to have agreed regarding the children and Eekelaar and Maclean (1983) found that 'unreasonable behaviour' is more common for divorce where there are children of the marriage rather than for childless marriages. Parkinson has therefore referred to the present divorce law as "a kind of historical and moral layer-cake in which a thin layer of 20th century liberalism has been spread over a thick slab of Victorian moral values". (1986 : 16). This may be so and this

sample provided two examples of father refusing to accept 'unreasonable behaviour' petitions. Mr. East cross-petitioned on the grounds of his wife's adultery and Mr. Spencer, though by the time of conciliation he was accepting an unreasonable behaviour petition, had refused previous such petitions.

However, the impression given by more parents is the irrelevance of the grounds in the petition. This may be due to the possibility of the existence of false allegations to speed up divorce (Parkinson : 1986 : 16) but often appears less a use of false allegations as a choice of valid grounds which do not necessarily reflect or cause bitterness or conflict. The parental response to the question regarding the grounds in the divorce petition (covering 21 couples), did not generally lead to emotional statements and long 'digressions' as did so many of the questions, and one mother, who had a decree nisi but whose satisfaction certificate had been refused, was surprisingly vague about her divorce petition, saying "I don't know what's going on ... There aren't any grounds". The source of petitions in this sample (12 from the mother, 5 from the father and 3 not yet petitioning) mirrors the national figure of 70% of petitions being the mother's. (Parkinson : 1986 : 15). The grounds do show a higher percentage of 'fault' grounds than do the national figures for 1984: 37% adultery (28%) and 47% unreasonable behaviour (41%) with a lower percentage -16% - of 2 years' separation by consent (24%). (Parkinson : 1986 : 15). This may support the above research which shows a link between fault grounds and children disputes but explanations parents gave would suggest a more complex situation. Notably in this sample the case of two years' separation by consent covers two quite different situations. For example in case 20 the separation and children arrangements were amicably agreed, but in case 22, two year separation grounds had been conceded by a very bitter wife

who had refused for four years to petition the husband on the grounds of his adultery, as he had wished, and in this case all arrangements were contested. Conversely some of the wives' petitions on the grounds of the husband's adultery, were by wives who did not want their husbands to leave but wanted an agreed and easy end to a marriage they realised they could not save. Similarly the 9 unreasonable behaviour cases reveal complex situations. 2 of these are father's petitions, 1 was resented (being based on a denial of conjugal rights), 1 was the result of the father's attempt to help the wife to get the divorce she wanted. Likewise of the 9 mother's petitions, 4 had either reflected or caused great bitterness (Cases 5, 7, 19 and 21) but 1 (Case 14) was part of an agreed package regarding the separation, and the remaining cases revealed no strong feelings on the matter.

Whilst not denying the possible influence of what is said in a petition on the conflict and its settlement, it would appear that the parents' sense of injustice can both transcend and be independent of the petition and rest on what they believed 'really happened'. A sense of injustice runs through most interviews with these parents, possibly lessened but not eliminated by conciliation. Whether it is possible to 'conciliate away' such strong feelings must therefore be a matter for debate. If it is not possible in the very cases which need this to happen then it may be as wise to look for ways of satisfying this sense of justice rather than denying it.

6. Guilt Production

The denial or reallocation of fault to divert from feelings of injustice is also used to equalise power in bargaining by conciliators who believe a parent who feels guilty is likely to give away too much. Such views were expressed after cases 3 and 5 where it was the mothers who wanted to end

the marriage. However this reallocation of fault can also lead the other parent to begin to feel guilty. This may put pressure on this parent to agree or it may lead to feelings of injustice at an 'Erewhon' situation where responsibility appears to have been inverted(47). Two mothers particularly expressed such resentment:

I didn't sort of expect to be - feel as if I was the guilty party only ...

I thought they was sort of segregating me. (Mrs. Smith)

I felt they were on his side all the time ... they must live in some peculiar little world of their own ... they never tried to see it from my point of view ... for over 5 years he has seen his children. (Mrs. Lloyd)

Davis (1985a) similarly quotes wives who felt they had been 'made' to feel guilty at in-court conciliation:

I don't see that a lot of good comes out of the mediation - you are left with tremendous guilt if you haven't done enough yourself. (p44)

I felt I was a guilty party being taken to court for an offence ... I got the feeling that I was like a rotten woman stopping their father from seeing their children but I wasn't. (p48)

Such comments are predominantly from mothers and therefore feminist writers may have valid criticisms of unequal pressure that conciliation can put on women because of their apparently greater capacity to feel responsibility and guilt. Certainly if solution work is categorised by dominant types of intervention, then there are 6 cases in which querying of the mother is most used and 6 cases where there is much father querying, but in the mother cases querying alone is the most used intervention whereas in the father cases conciliator suggestions and questions are at least equally important(48). Furthermore 3 of the 6 mother query cases lead to a proposed solution which is similar to the father's preferred

solution and only 1 of the 6 father query cases leads to a solution which is similar to the mother's preferred solution. This may suggest that more mothers are 'persuaded' to the father's point of view than vice versa so that querying of the father appears more likely to lead to a compromise solution, not capitulation to the other's solution. However Davis makes the point regarding the second case quoted above that it soon broke down. The other side of pressure of guilt is therefore anger at having been made to feel guilty which may have an effect on the implementation of the agreement. Analysis of this sample does suggest that whereas the six 'mother query' cases do lead to more agreement than the six 'father query' cases (5½ to 3½ agreements respectively), nevertheless the rate of implementation of agreements is about the same. Therefore there is a suggestion that whereas mothers seem more able to be persuaded to agree such agreements are less likely to 'succeed'.

7. Power.

It is possible to view most of the influences discussed in 1-6 above as part of a question of power and control: power to control the content of decision-making and caretaking, power to make past events relevant and to impose particular normative frameworks on the discussion. The comments of two mothers, centring on control, summarise many of these aspects:

He won't ask, he tells - he'll want bigger and bigger things - he's asking for more already ... I shan't say anything till after the divorce - put it that way ... then I will say 12.30 or not at all and if he wants to take me to court it'll cost him money so he won't go. (Mrs. Spencer)

He seems to control everything you know in a sort of way because he has the day to day running ... some of the more major decisions he tends to regard as his ... I tend to think he sort of suits himself a

bit ... I feel I have to keep a good relationship otherwise it won't work. (Mrs. Todd)

In different ways these mothers were concerned, above all, with their ex-husband's continuing power over them and their techniques to resist it. Their comments also point up a factor about power differentials which is often forgotten in the literature - that is that power in the post-separation situation may be very different from the intact family. These two mothers, from different angles, reveal the potential power of custodial parents simply because of their everyday possession of the children. Mrs. Spencer also reveals another source of potential power - control of sufficient resources to contemplate or engage in a legal settlement of the dispute. Much valuable research has been done, showing the financial basis of sex inequalities and stressing the disadvantaged nature of mothers on divorce(49) but McEwen and Maiman (1984 : 45-6) point out that at the level of economic resources it can be the 'weaker' partner who may induce negotiation by imposing or threatening costs on the supposedly weaker party. Therefore in conciliation it may be the financially disadvantaged wife who has the advantage because of the availability of legal aid. Similarly we have seen that personal dominance in marriage is not always continued after separation, which itself gives some mothers, and at least one father (Mr. Field), a novel experience of independence and confidence and a determination to be dominated no longer. This determination is revealed in numerous comments within conciliation itself as the following selection illustrates.

Conciliator 15: Can you offer a guarantee that you will see your children one weekend every month as a minimum?

Mr. Davis: Yes I can see them. I can see them every 3 to 4 weeks.

Conciliator 15: Can you offer that as a guarantee?

Mr. Davis: No I can't offer that as a guarantee. I can offer it, but I'm not going to offer it as a guarantee ... I don't guarantee anything. I'm not going to guarantee." Later:

Mrs. Smith: But I'm not going to do it to suit him all the time because I've got my problems.

Mr. Davis: What I'm trying to do is to suit the kids not to suit you ... you're dictating to me to pick 'em up, bring 'em back.

Mrs. Smith: I don't have to pick 'em up, I do it as a favour to you.

Mr. Davis: You don't do it as a favour to me, you do it as a favour to your kids. (50)

Mrs. Kay: Whatever suggestion I make he says 'I don't have to do anything you tell me any more' and he's totally defensive in suggestions I make. (51)

Mr. Spencer: OK, well I feel as if she's dictating to me all the time when I can see the kids, well she is, I don't feel, I know she is.

Later:

Mrs. Spencer: He rings up and tells me what time he wants them and I'm supposed to jump. (52)

In such cases therefore parents can go through all the stages leading to an agreed decision - images may be shared and solutions be jointly acceptable - but they may still refuse to accept an agreement because it contains elements wanted by the other spouse and therefore implies some control. For example as Mr. Field pointed out in their second appointment, "I really don't want to get involved in any suggestions she makes, I'm sorry, because it's a lot of cobbler's". In such cases it would appear that the greater the

element of parental responsibility for the terms of a settlement the less may be the chance of that agreement being successful. In other words, conciliators may have controlled the process of problem and solution construction apparently successfully, but if a parent at the end of the process perceives the resulting solution to embody largely the other parent's wishes then the outcome, both in the short and the long term may be unsuccessful. This would further suggest that more overt conciliator control at the solution stage might be more successful. To test these hypotheses, however, the sample must be analysed according to the origins and outcome of a proposed solution. In other words the content of the final proposed solution must be compared with what parents had indicated before and during conciliation was their preferred solution and the amount of conciliator control of the solution stage must be compared with short and long term outcomes.

However this presents difficulties, depending as it does on various definitions: of each parent's preferred outcome, of the terms and existence of an agreement and of the 'success' of an agreement in terms of its implementation. All these are problematic. Referral forms and the initial speeches of parents give confused accounts or omit references to preferred outcomes. Secondly, conflicting accounts of the outcome, as between parents and between parents and conciliators, stress the difficulty of defining outcome. Therefore a prerequisite of testing these hypotheses is the necessity of making possibly unsatisfactory 'outsider' decisions about these matters.

However, given these provisos the resulting analysis is interesting. Whilst

all solutions embodied some conciliator suggestions there were five cases where settlement basically embodied the solution of only one parent.(53) Four of these led to an agreement in conciliation of which only one was implemented(54). Two cases could not be analysed in this way (55) but in the remaining 13 cases the solution was basically a joint parental or conciliator-proposed compromise which therefore embodied neither parents' optimum solution. Of these, 11 were accepted with five fully and five partially implemented(56). Parental resentment at accepting the other parent's solution therefore appears to have less effect on the rate of agreement at conciliation as on subsequent implementation of the agreement. Clearly the 13 cases with compromise solutions may cover complex situations of perceived control of solutions to account for the partial successes.

Another slant on the data is given by analysing those cases where the solution stage was most dominated by conciliator interventions - either suggestions or suggestions and questioning. The five with most such interventions led to five agreements, four of which were implemented(57). Secondly analysis can be done on the basis of conciliator suggestions and questions as a percentage of all interventions in Category Two. The five cases above all have 2e+ 2f as over 60% of interventions, but also seven cases with 50-58% of interventions,(3,4,7,11,12,15,24). Of these five could be said to have ended in agreement, only two of which were

implemented,(compared with four agreements in the remaining eight cases, of which two were fully implemented)

However such conclusions must be treated cautiously - they take no account of the control exerted by consistently querying both parents' solutions, (as in the 'successful case 3) or of the different balances in problem and solution work, (as in the 'successful Case 20 where the problem:solution ratio is 6:31).

Nevertheless they do suggest that conciliators need to reconsider the possible conclusion to be made here. Controlling the conciliation process in such a way that clients are constituted as controlling and responsible may lead to more apparent agreement at the immediate end of the process. However, it may be counterproductive in terms of implementation if one parent perceives this as enabling the other to control the outcome.

There is also another factor to be born in mind -differential treatment by conciliators of the resentment at perceived continued or reimposed power patterns. Conciliators seek to 'neutralise' such resentment by techniques illustrated in previous chapters: rephrasing, diverting, normalising, supporting, in one case confronting(58), but not all are equally acceptable to parents. Some see conciliator responses as ignoring or minimising the problem of control which led them to believe that conciliators had not seen the problem adequately so that the solutions proposed by the conciliators were regarded then or later as invalid. Therefore whilst most parents (11 out of 13 mothers and 15 out of 16 fathers) felt conciliators had been 'fair', not all parents were satisfied that their 'side' of the case had been 'got

over' satisfactorily at conciliation. Indeed half the mothers, compared with only three fathers, were 'not satisfied' (50% : 19%). Not all parents 'minded' that this was so, but four mothers and two fathers did(59).

Another variation on the control theme is to be found especially in cases 4 and 6(60) where the actual agreeing to a solution was seen as impossible because this guarantee of adhering to an agreement was seen as giving away power per se. Therefore the agreed fixed times desired by these mothers were resisted by fathers who saw flexibility of arrangements as necessary for their independence from their ex-wives. In another case the power issue centres more specifically on control of the child(61) :

Mr. Gale: "But I don't think that it's very fair a bloke has to make appointments to see his kids, do you?"(62)

Mr. North: "If I can't have him, yes." I do want my son to go into care(63).

Clearly no firm conclusions can be drawn about the influence of pre-separation parenting, decision-making and power issues except that the situation is more complex than literature at present allows for. Also conciliation is complicated by a further factor - that of the possible influence from sources other than the pre-separation family situation, specifically the advice that parents receive.

8. Advice.

Advice before and after conciliation may have the affect of influencing the acceptance of knowledges purveyed and conciliators themselves were concerned that parents might receive conflicting advice. For example in Mr. and Mrs. Cann's second appointment the conciliators specifically warned them:

Conciliator 11: "But if you discuss it and you agree, there are pressures which make you doubt your agreement, and they may even be the solicitors. They have no investment in your agreeing and not disputing it at court, and they may well feel that they have to say 'Are you sure this is right for the children?'"(64)

Indeed four mothers did say that they had received legal advice contrary to what they received at conciliation:

I saw a solicitor who literally tried to frighten me off - and make me stay put ... He was sort of saying 'You silly woman you don't know when you're well off, and for goodness sake stay where you are'. (Mrs. Todd)

The lady at the CAB said 'Well if you leave your children they might be put in care ... the Social Services would be interested if you left your children with just your husband because they wouldn't be properly cared for'. (Mrs. Todd)

At the moment I don't know what I'm doing because I get advised by one side that if I move now I'm jeopardising ever seeing the children as far as he's concerned. (Mrs. Cann at conciliation)

I think he's quite cross with me at times - he feels I'm too lenient with Mr. Spencer. (Mrs. Spencer)

He said 'I don 't think that joint custody is in the best interests of the child at the moment'. (Mrs. North)

However, the other parents interviewed did not report on any conflicting

legal advice, and most parents stated they used solicitors for maintenance and house matters and to 'do the legal bit'. Where comments were made they tended to reveal the solicitor as supporting the views of conciliators rather than opposing them:

He said it was better not to use the court. (Mr. Owen)

He said to try and do it by agreement. (Mr. Hall)

He said access must be agreed. (Mrs. Smith)

She said 'Try and do it by agreement'. (Mr. Hall)

Where advice was conflicting with images produced by conciliators (apart from the instances of CAB and other legal advice) it came from relatives and friends. Five parents were told to 'drag him through the courts' (Mrs. Adams) or to 'fight' for custody and access (Mr. and Mrs. Cann and Mr. Hall). Mr. Hall's comment however, sums up the attitude of all these parents: "They've probably been more aggressively on my side than I would necessarily agree with actually". Conversely, those parents who had been in contact with other agencies - notably Divorce Court Welfare Officers, Child and Marriage Guidance, also found advice very similar. As Mrs. James said of her various contacts, "They were all pushing access".

However, what may be more significant for the course of conciliation is that in this sample mothers and fathers are in contact with different sources of advice which may be producing a differential receptivity to particular types of advice. The following table is based on pre-conciliation advice only, as post-conciliation answers were either similar or applying to fewer agencies.

<u>Source of Advice</u>	No. of mothers in receipt of advice (Sample of 14)	No. of fathers in receipt of advice (Sample of 16)
Solicitor	13	15
DCWO/In-Court Concil.	5	5
S.W.	7	3
M.G.	7	10
C.G.	6	1
Relative/friend	13	13
CAB	5	1
Others	8	6

It can be seen that nearly all parents had seen a solicitor before conciliation. Both parents who had not (Mr. East and Mrs. Quinn) hoped for a reconciliation. The number of parents (57%) who had attended Marriage Guidance is significantly higher than national statistics (Hensler : 1984) which may indicate the type of parents attending this conciliation service and agreeing to be interviewed (Parkinson : 1986 : 174) and the same number of mothers as fathers had talked to a Divorce Court Welfare Officer, either jointly at court or independently at a Civil Unit. However, the remaining categories revealed differences. A total of 13 mothers had been in contact with Social Workers or Child Guidance compared with 4 fathers. Furthermore, though comparable figures are available for the 'others' category, this conceals different lists of advisers (apart from 1 mother and 1 father contacting a minister of religion). The mothers saw family doctors (4 cases), health visitors (2 cases), Gingerbread organisers (1 case) and nursery leaders (1 case). The fathers saw teachers (3 cases), and a psychiatrist (1 case) and 1 father read numerous books on separation.

Not only are these different lists but they reveal different purposes. Apart from Mr. Kay, all fathers made contacts in order to check the child's educational progress or for their own problems. Mothers however asked for, or were given, advice about the family generally, or specifically the child.

Finally the relatives and friends category also conceals differences. Whilst both 11 mother and 11 fathers talked to relatives, for the mothers the relative was usually a mother whose role was mainly supportive (Mrs. Smith: "Oh me mum was a brick") whereas fathers often found parents positively unhelpful (Mr. Lloyd: "They said they couldn't really help") or needing advice themselves (Mr. Kay: "I felt I was supporting them most of the time"), and instead some fathers turned to sisters or sisters-in-law. A similar percentage of fathers and mothers (10 fathers and 8 mothers) said they talked to friends, and both sought female sources of advice: for mothers this was usually female friends, for fathers it was often their new female partner. Fathers may therefore feel less emotionally supported than does the mother and more isolated.

Therefore the areas where the 'spread' of advice is different may be significant for conciliation in that mothers, rather than fathers, appear more likely to have received the kind of child-centred advice given by the agencies with which they have contact. This does not necessarily align with the caretaking role as 3 caretaking fathers interviewed (Cases 9, 16 and 20) seem to have received the 'male' spread of advice and 3 of the non-caretaking mothers declined to be interviewed (Cases 9, 16 and 18). However the previous caretaking role will probably have brought the mother into contact generally with child-centred advice as would contact with the female orientated media.

However, this would only be a significant factor if mothers accepted, as well as were in contact with, such advice which might produce the 'right attitude' for conciliation. Though differences are not marked there is a suggestion in that sample that the attitudes of mothers and fathers to the acceptance of advice is also different in that the mother's reported reaction to advice is more 'positive' than the father's, as the following examples reveal:

He made me realise I should offer access. (Mrs. Adams of Child Guidance)

It was quite a shock that she was advising me to let him go and stay with my husband and the woman he was living with - I had to come round to that point of view ... It took a week or two . (Mrs. Quinn of a Divorce Court Welfare Officer)

They said 'If you sort yourself out she'll be OK'. (Mrs. Ward of Marriage Guidance Counselling)

However, fathers made no such specific comments about advice given but they, more so than mothers, appeared ready to reject advice and an advice giver if necessary.

I changed my solicitor because he kept advising me to back-off all the time. (Mr. Berry)

A complete waste of time - that's my opinion generally. (Mr. Gale)

I was always adamant about the fact that I wanted custody ... so my solicitor only answered my questions. (Mr. Innes)

The only mother, Mrs. North, who changed her solicitor 'because he was no good' did it as a result of suspected incompetence rather than to reject unacceptable advice. Mothers may therefore be more receptive generally to 'specialist' knowledge - both before and during conciliation - than are fathers.

Conclusions.

This analysis of parental experiences which may influence the outcome of conciliation clearly raises more questions than it answers. Whilst revealing different ways in which previous caretaking and decision-making have affected present attitudes to the problem and to negotiation itself it has not proved possible to reveal any clear trends and instead questions explanations which seek to oversimplify the processes involved or support deterministic theories. No one factor determines in this sample any particular outcome, no one model of pre-separation decision-making is predominant, no one source or type of advice decides parental attitudes, no one course of action stems from feelings of guilt or attitudes to conflict, no one factor determines the level of self-esteem.

However, these negative conclusions have their place in setting the boundaries for present controversies surrounding family life in general and conciliation in particular. Firstly it is clear that family decision-making is still in a state of transition. It is still possible to find many couples with segregated roles making independent decisions in their own sphere as did Rainwater and Weinstein in the 1950's (1960), and their conclusion that such a pattern led to an acceptance of a 'two way option' (put up with the situation or get out) which left no scope for compromise may therefore still be valid. Conciliators therefore need to heed the following statement of these researchers which does echo the sentiments of several parents in this sample:

The middle ground of negotiation, give and take, and mutual understanding requires both too much faith in the basic goodness of men and too much assertiveness on the women's part to be readily considered (1960 : 73).

In conciliation therefore there may still be a two-way option - to give in or not give way at all, but whereas traditional studies have seen the wife as the one with this option, as regards conciliation in the 1980's this could also apply to the husband.

Secondly, it is not safe for conciliators to assume joint or egalitarian decision-making did take place. Indeed if research done in the 1970's (Osmond and Martin : 1978) which concluded that, 'The Egalitarianism of the decision-making process is the single most important variable for explaining marital intactness' (p328) is valid, then non-egalitarian decision-making is more likely to be found in couples coming to conciliation because its presence helped precipitate the separation and therefore the present problems.

Thirdly, conciliators must not assume any patterns of joint caretaking or even of joint interest in caretaking. In all the families in this sample the mother had been the main caretaker for most of the years before separation, with apparently great variation in the amount of involvement in terms of time and interest from the father. Assumptions of a capacity to care and expertise in so doing may therefore produce, not confidence and trust, but anger and resentment.

A very complex situation can therefore produce complex influences on conciliation and suggest multiple reasons for the lack of success. For example, of the parents interviewed, 17 believed that conciliation had led to an agreement and of these 13 said they had been satisfied at the time, but 4 mothers said they had not been satisfied yet had still agreed. Of these one said her dissatisfaction was due to a feeling of being 'belittled' by her ex-husband. The other's dissatisfaction appeared to stem from her

belief that the solution was not aimed at the 'real' problem. However, 11 parents reported that some or all of the agreement had not been implemented and their reasons reflect various aspects discussed in this chapter. For instance 2 fathers (Mr. North and Mr. Owen) felt failure had been due to the influence of the mother's family, and 2 parents (Mrs. Smith and Mr. Gale) said arrangements had broken down because transport agreements had been impracticable. A further 2 parents believed the breakdown of arrangements was due to the father's lack of real interest in the children:

He was never really serious about wanting access. (Mrs. Adams)

It was too much of a bind for him ... He's never had dealings with children. He doesn't think they should be amused - they should just be there. (Mrs. James)

However, in at least 3 cases arrangements appear to have floundered on the issue of control, for example

Once I purposely said to them 'You can't. No I'm not taking you home by a single time because, especially James, he's very brainwashed by his mother and he said 'You've got to. Mum will be waiting' and I said 'Bloody good job, let her wait' and we didn't get there purposely till about quarter to nine. (Mr. Field)

He turns up late and demands them at certain times, so I said 'No' but he keeps on doing it. (Mrs. Spencer)

Scanzoni et al (1980 : 35-39) in trying to isolate the past influences on current decision-making identify four dimensions representing ways that people evaluate how others have behaved during past decision-making. These are co-operativeness (to make a decision of maximum joint profit), trustworthiness (based upon past levels of implementation of decisions),

fairness (the degree of mutual equity within previous decisions) and empathy (based on communication and understanding). As they go on to point out, "Much has been written about communication being the cure all or key factor in solving all mental/familial problems" but argue that it is not a 'magic wand' permitting complexities to be overlooked (39-40) and its impact is simplified because it is discussed apart from sex roles. Conciliators do concentrate on the construction of empathy and communication as both the problem and solution whereas co-operation, trust and fairness are either assumed to be present or their noted absence is rephrased, removed or diverted from. Scanzoni et al believed that communication must be seen as only one part of a four-fold problem: the quotations above from dissatisfied and disappointed parents would suggest that these other dimensions of the past impinging on the present do need more conciliator attention if new concepts of post-separation parenting are to be grafted onto such a wide variety of past patterns of parenting.

NOTES: CHAPTER 10

1. Follow-up interview to Case 2.
2. The highest percentage of 'jointly decided' answers were given for (in order) where the children were to be born (though this was often determined by medical advice), whether the children should be involved in any religious instruction or activity (though this was often joint by default), whether the children should join any clubs or uniformed organisations, whether there should be substitute care and which should be the child's first school.
3. It is significant that fathers had more difficulty in answering such questions and typical answers were, "I expect she did" and "I can't remember". (Cases 7 and 12)
4. The use of the term "difficulties" was deliberate so that parents could answer on their own terms.
5. See Chapter 1, pp23-26.
6. All parents gave replies indicating areas of 'difficulty' and 'no difficulty' except for 3 mothers who indicated that there had been no difficulties in any areas for any children. (See note 10)
7. Mr. Berry, Mrs. East, Mrs. North and Mr. Spencer.
8. Leisure: Mr. Cann, Mrs. East, Mr. Innes and Mr. Quinn.
Holidays: Mr. Field, Mr. James, Mrs. North, Mr. Spencer and Mrs. Ward.
9. In the 9 cases where both parents were interviewed there were between 1 and 3 areas of difficulty recorded in common. Child-rearing difficulties were common to 4 cases and house-moving difficulties common to 3 cases.
10. Mrs. Adams, Mrs. Smith and Mrs. James.

11. 62% of fathers and 28% of mothers reported difficulties re: child-rearing decisions.
- 12., Mr. Berry, Mr. Cann and Mr. Lloyd.
13. Mr. East, Mr. Field, Mr. Innes, Mr. North, Mr. Owen and Mr. Upton.
14. Mr. Gale, Mr. Hall, Mr. Kay, Mr. Spencer and Mr. Todd.
15. Mr. Gale and Mr. Kay.
16. Mr. Hall, Mr. Spencer and Mr. Todd.
17. 'Winners': fathers in cases 3, 7 8, 9, 14 and 20.
18. 'Losers': fathers in cases 2, 6, 11 and 21.
19. Case 3(10).
20. Case 4(22).
21. Case 12(8).
22. Case 16(10).
23. Case 19(5).
24. Case 1(12).
25. Case 19(22).
26. Case 7(2).
27. Case 19(7).
28. Case 12(21).
29. Case 19(26).
30. Case 12(5).
31. Case 4(18).
32. Case 1(15).
33. At Cases 6(20), 11(4) and 12(5,6).
34. Mothers in Cases 14, 17, 22 and 23 and fathers in Cases 15, 16 and 20.
35. Mothers in Cases 2, 5, 10, 19, 22 and 23.
Fathers in Cases 3, 5 and 16.
36. Mothers in Cases 3 and 20.
Fathers in Cases 2, 7, 8, 11, 12, 14, 19 and 21.

37. Case 21(6).
38. Case 21(9).
39. Case 6(16).
40. Case 12(9,10).
41. Case 4(14-15).
42. Case 5. The mother/father ratio is 2:5 (problem) and 5:10 (solution).
43. Case 5(14): Conciliator 2.
44. Case 16(6): Mr. Parker.
45. Case 5(1).
46. For example see 'Putting Asunder' (1966: Archbishop of Canterbury):
"If after hearing the evidence the Court decided that the relationship was 'dead' ... it would not be giving a decree in favour of the petitioner or endorsing his or her conduct but simply giving effect to a finding of fact" (p32).
47. See S. Butler: Erewhon (1872).
48. Cases 1, 6 and 10: most instances of mother querying. Case 20: most instances of mother querying and conciliator suggestions. Cases 12 and 15: most instances of mother querying and questioning.
49. For example see J. Pahl (1983, 1985).
50. Case 4(9,14).
51. Case 11(7).
52. Case 19(13,20).
53. Father's solution: Cases 1, 4, 12 and 15; Mother's solution: Case 24.
54. The Lloyds' agreement was implemented the following day. (Case 24 was not followed up).
55. Case 9 (because of confusion at the previous s41 hearing as to what the parents did want) and Case 16 (where Mrs. Parker did not express an opinion).
56. The 13 such Cases were 2, 3, 5, 6, 7, 10, 11, 14, 17, 19, 20, 21 and 22.

Cases 2, 3, 17, 20 and 22 were implemented and Cases 6, 10, 11, 14 and 19 were partially implemented.

57. Mostly suggestions: Cases 2, 5 and 22. Mostly suggestions and questions: Cases 17 and 23.

58. They confront Mr. Field at Case 6(20).

Viz Mr. Field: "They can do as they like. I just won't be told."

Conciliator 3: "You're paranoid about being bossed around and perhaps because your new partner's quite controlling; I don't know but that's how it seems to me ... but my feeling is you've been bullied by women too much. You don't want to be bullied by us anyway so you're super touchy about it."

59. Mrs. Adams, Mrs. Berry, Mrs. Smith, Mrs. Lloyd; Mr. Berry and Mr. Gale.

60. In Cases 4(9,14,19) and 6(1,3,6,15,18).

61. See C. C. Harris (1983) and J. & E. Newsom (1974) for a discussion of the power held by a child because of its social importance for the parent.

62. Case 7(15).

63. Case 14(11).

64. Case 3(29).

CHAPTER 11: CONCLUSIONS

The most significant attribute of divorce mediation is that the divorcing couple assumes responsibility for determining the ingredients of their divorce agreement. ... though the mediator may supply information, affect balance, stimulate empathy and provoke focussed dialogue, the course of the negotiations as well as their outcome rests with the bargaining couple. (Bishop: 1984, 3)

The above statement, from an American lawyer-mediator, embodies an assertion common to conciliation literature on both sides of the Atlantic. Such assertions provided the impetus for this research. This thesis has therefore sought to analyse the process of conciliation: to see how and what information is conveyed, how and what balance is affected, how and why empathy is stimulated, how dialogue is focussed and what it is focused on. Such an analysis, of itself, has accomplished one aim of this research - to give an understanding of 'what happens' in conciliation so that the conciliation debate may be conducted on a firmer base than has often happened so far. Secondly, it has made a response to Bottomley's statement that "the task of deconstructing the discourse of conciliation is the immediate need", (1984, 301) in its analysis of the normative framework within which the process occurs. Thirdly, it has sought throughout to illuminate the relationship between this process and parental responsibility: responsibility for and in conciliation and the meaning given to the concept of parental responsibility within this context.

So Chapter 3 looked at the question of parental responsibility for attendance at conciliation and for informed participation in the process of conciliation. Though parental comments revealed complexities masked by

the referral statistics it is nevertheless possible to suggest, on the basis of the replies from 13 out of the 30 parents, that almost half of parents attending conciliation did so because it was expected of them or in order to establish their good faith, rather than because they had taken responsibility for choosing or positively accepting conciliation as an alternative method of dispute resolution. Similarly a large proportion of parents appear to have no or inadequate knowledge of what the conciliation process entails; for example a third of parents interviewed believed it to be an advice or welfare agency and therefore did not anticipate active involvement in a negotiating process. As conciliators in only 5 of the 20 taped cases tried to explain the nature of conciliation and then very briefly and inadequately, there can be no assumption that parents attend and take part knowing that they are 'supposed' to be responsible for a particular process and outcome. Whilst this research was unable to isolate determining factors, it did nevertheless reveal various differentiations along lines of sex and referral agents which may well significantly affect attitudes to, and therefore levels of participation in, conciliation. These features require further research.

Analysis of the process of conciliation likewise revealed how, in practice, parental responsibility for 'setting the agenda', that is problem construction and solution selection, was limited by the interventions of conciliators. To repeat a quotation from Roberts (1983:549), "In so far as the mediator succeeds in transforming the disputant's view of the quarrel he comes to share with them control of the outcome", indeed not only the outcome but the process itself. So Chapter 4 showed how conciliator use of particular initial and gap-filling questions, whilst creating the impression that clients were responsible for providing the problem to be placed on the agenda, was nevertheless narrowing the 'area' from which the problem could be taken.

Further, by the phrasing of their questions and re-phrasing of client responses, conciliators were prioritising feelings and presenting specific past grievances and disputed situations as either irrelevant or as only part of a general relationship difficulty between the parents. This Chapter showed how, within these boundaries set by conciliators, leading, non-sequitur and explanation - seeking questions further transformed the problem by legitimating certain aspects of the problem as presented by clients.

Chapter 4 therefore revealed and analysed a very delicate process of altering the problem as presented by parents and a process which supports Abel's contention that "Informal institutions claim to render parties more autonomous when they actually engage in more subtle manipulation" and "preach the laissez-faire gospel while constraining choice". (1982a, 9) This manipulation depends ultimately on asking the 'right' question before and after particular client contributions and remaining silent after others. Chapter 5 however, focusing on conciliator querying and endorsing of client statements of the problem and conciliator initiated problems and explanations, revealed a much more visible process of dispute transformation and, significantly, one which relied on the construction of a particular concept of parental responsibility which itself legitimated the reallocation of responsibility deemed necessary to transform or remove the parental conflict.

The problem construction phase is therefore vitally important. Appendix 4, showing the numerical balance of conciliator interventions, reveals that overall, more conciliator effort seems to be directed at problem construction and this impression is reinforced by comments made by conciliators after appointments and by conciliators reverting to 'problem

work' in conciliation in order to query solutions presented by parents. The negotiation of the problem is therefore not only an integral part of conciliation but it is a process of negotiation strongly influenced by conciliators' interventions: it is not a bilateral process between parents and its completion in a manner satisfactory to conciliators as well as parents is essential for the smooth negotiation of solutions. Indeed the substance of the problem on which conciliation proceeds is very rarely a negotiated compromise of parental views. In so far as it is possible to ascertain 'original' parental views of the problem it would appear that only in case 20, where parents arrived at conciliation with an agreed problem (due in large part to attendance at Marriage Guidance) was the problem on the agenda that of both parents with virtually no conciliator input. In all other cases the 'accepted' problem is wholly or partly produced by conciliator initiatives. Furthermore in 7 cases the problem is a conciliator transformation of the problem as presented largely by the father (Cases 1, 4, 6, 10, 12, 15 and 21) and in 4 cases of a problem presented largely by the mother (2, 3, 5 and 24). Therefore in over half the cases the responsibility of at least one parent for the problem construction consists only in the fact of acquiescence in a problem constructed from material supplied by the other three participants.

A similar situation pertains to solution selection except that direct conciliator initiatives are both more numerous and more obvious. Appendix 4 shows that conciliator suggested solutions (Category 2e) amount to almost a third (31.3%) of all interventions concerning the solution compared with conciliator suggestions regarding the problem being only 18.7% of interventions. Chapter 4 also showed how few parents are asked for their aims at the beginning of conciliation - problem definition is usually kept strictly separate from and unconstrained by solution

preferences. Furthermore, construction of a problem not originally perceived or accepted by parents may preclude the possibility of parents having an opportunity within the conciliation process to articulate their original preferred solution. With such provisos, it would appear that the solution on which the conciliation appointments end is often a conciliator articulated compromise - either a particular mix of client wishes (for example cases 6, 11, 12 and 19) or a compromise which was, in effect, a different solution from either parent's (for example cases 3, 5 and 7).

To the extent therefore that conciliators mould parentally perceived problems and offer solutions to this constructed problem, in that degree is parental responsibility for the course of conciliation diminished. The data supplied by parents is therefore used by conciliators with prior beliefs about the problem and its solution. Full parental responsibility would only be possible in the hypothetical case where what is supplied by parents is acceptable to conciliators. The existence of prior beliefs amongst conciliators necessitates therefore a normative framework, which guides conciliator approaches to clients and their problems, and of which a particular concept of parental responsibility is so important a part. Eekelaar is therefore justified in criticising the statement of the Booth Report (1985, para. 3.10) that the conciliator "should be neutral not only in the sense that he does not take sides as between the parties, but also in the sense that he does not have a preconceived solution to any particular problem". Given that this committee, in common with other writers, has restricted itself to solutions rather than 'preconceived problems', Eekelaar's comment is valid that, "It may be that the search for a totally neutral conciliator is a vain one. Conciliators will inevitably bring with them their own and their society's conceptions of proper behaviour". (1986, 233) What conciliators bring is in fact a particular amalgam of conceptions

and knowledges drawn from inter-related disciplines - social and probation work, marital counselling, family and psychotherapy. Chapter 6 showed in relation to conciliator proposed solutions that these do not always tally with clients' conceptions of proper behaviour and may not tally with majority views in society as a whole. As Freeman puts it "Welfare Officers and Social workers involved ... have their 'images of man' (Stoll: 1968), in most cases rooted in determinism; their beliefs in how the family should function." (1985, 163) Bottomley has argued similarly that "psychology, therapy or social policy are not neutral bodies of knowledge" (1984, 296) describing the approach as generally a welfare oriented one, and using as evidence the argument that conciliation is substituting 'conflict resolution' for dispute solution. Certainly this research supports such a view in its cataloguing of the means by which past and present disputes are subsumed within parental conflict generally. Indeed the most recent report of out-of-court services (Yates: 1985) includes amongst its conclusions the following clear statement: "Whilst written agreements between couples indicating a settlement of disputes are highly desirable the main aim of conciliation, the reduction of conflict between the parties, must not be forgotten". (p41)

This does not mean that the norms form a homogeneous set. Loewenberg has pointed out, regarding social work practice generally, that "Until a unified social work theory is available social workers will choose eclectically relevant theoretical formulations from the large number of middle range theories available to them from other professional disciplines" (1984, 309) and argues that "Some have elevated eclecticism to a principle of professional competence". (p310) Certainly this applies to conciliation in that examples of conflicting advice given may be found across the cases in the sample based on different knowledges and

approaches and that conciliators openly argued that they must use all available 'resources' and approaches to help individual couples, depending on the nature of their particular difficulties. It therefore produces what Abel sees as a characteristic of informal dispute resolution, that is "an expanded repertoire of remedies" (1982b, 11), documented from this sample in Chapter 6, so that advice can be individualised in order to maximise the possibility of agreement.

Nevertheless there is a basic consensus amongst conciliators, an overriding norm by which the various specific solutions are rationalised, which guides problem and motivation construction and is used to control arguing parents. The linchpin of this consensus is the concept of parental responsibility itself which is constructed and purveyed in a variety of ways, most notably in the querying and endorsing of parental problems (Chapter 5) and in the manufacturing of parental motivation to agree (Chapter 8) or what the influential American conciliator John Haynes refers to as "strategies to close the gap between the two parties' willingness to settle" (1985, 79). The concept of a responsible parent is of one who wishes and is able to uphold harmonious co-parenting after separation, who is able to understand the child's needs, but is willing to put the child's need for agreeing parents above any specific needs of the child, who is able to agree and communicate with the other parent and can resolve conflict without recourse to Courts, who wishes to share the child with the other parent, who wishes to restrict individual responsibility and principles for the sake of this post-separation parenting and who believes that people may act very differently in their parental and spousal roles and also that parents are able to separate their parental and spousal feelings.

Bottomley has referred to "images of continuity and consensus" (1984, 297)

used in conciliation and these are certainly important aspects of the parenting advocated, as Chapter 9 showed. That chapter also analysed the knowledges used to buttress the images of parents and children, and showed how the 'evidence' for particular aspects may be taken-for-granted knowledge but may also be a distortion of research. Abel goes further and argues that a "Rhetorical device employed by the advocates of informalism is the invocation of false comparisons". This research provides an obvious example in the form of the frequent statement by conciliators that children dislike being involved in a divorce court welfare report and therefore parents should avoid the possibility of this by agreeing. In fact the only comment to be found in the literature is that of Walczak and Burns who reported that the only two children who had been interviewed in their sample by divorce court welfare officers had liked and benefited from the experience (1984, 62). Nevertheless, whatever the basis of such knowledges and images, Tufte and Myerhoff pointed out their power.

Inevitably when images used are positive, they become standards against which we measure ourselves. They become normative (in the sense of obligatory) and operate as models, affecting a great range of action and response ... Even when we recognise such images as false idols ... they haunt us in moments of vulnerability (1979, 10).

Parents interviewed made comments indicating a belief that their present time was one of these moments and, significantly, many expressed doubts as what they 'ought' to do and what was 'expected' of them in the novel situations in which they found themselves. There is clearly therefore a sense in which conciliators cannot avoid being normative and influential: like the researcher they faced the problem that lack of response carries particular connotations and any response will be influential.

It is against this background therefore that the implications of the concept

of parenting purveyed need to be addressed, and specifically the fact that this concept is founded on a particular construction of responsibility as joint. This definition of joint parental responsibility also includes joint responsibility for the past spousal relationship on the grounds that this is an essential pre-requisite for non-conflicted post-separation parenting. Such a concept may therefore entail a deprioritising of marriage and a consequent hastening of the end of a marital relationship (as in Cases 3 and 5) in order to promote parental consensus and stability. The importance of such a concept of joint parental responsibility lies however in the fact that parents rarely perceive or easily accept it as joint. Both the literature and follow-up interviews with clients reveal a less-than-joint parental responsibility pre-separation and most parents in conciliation expressed a belief in non-joint responsibility for the failure of the marital relationship. Therefore such a concept necessarily entails reallocation of responsibility in order to prepare the ground for an acceptance of a particular problem construction based on mutual parental difficulties and the constitution as joint of responsibility in and for post-separation situations and solutions not perceived as such by at least one parent. Therefore as regards separation, reallocation must make one parent feel more responsible and the other less so, and, as regards reallocation caretaking, must downgrade one parent's contribution and upgrade the other's. In so far as this reallocation is achieved by constituting as responsible (with or without connotations of blame) those parents who had believed the other was totally responsible for an unsatisfactory situation (be it access or separation), and conversely, by implication or explicitly reducing the responsibility of the other, then Abel's generalisation concerning informal dispute resolution, drawing on Foucault, applies to conciliation:

Fewer are categorised as 'bad' so that everyone can be seen as 'mad'.

When all are guiltless, all are by the same reasoning equally 'guilty',

'Tout comprendre, c'est tout condamner'.(Abel: 1982a, 6)

Such a construction of responsibility as joint does however have other corollaries. Firstly, it may lead to an assumption that parents bring similar inputs to conciliation. Sometimes pre-separation inequalities are acknowledged by the specific constitution of parental responsibility as joint from the day of separation, but this acknowledgment is not always explicit. Therefore discussion of differences is usually precluded. This is especially significant if the use of a concept of continuing joint parenting prevents discussion of pre-separation decision-making and its effect on present decisioning. Evidence from the literature and from follow-up interviews, shows that three-quarters of the total of decision-areas had been decided via role-related mechanisms or as a result of constraints. This suggests not only a lack of consensus on the meaning of pre-separation 'joint' decisioning, but also that a majority of decisions were not the result of mutual and articulated negotiation. Therefore, parents who may not 'understand' what conciliation is supposed to be doing may not only have varying degrees of competence to participate in negotiated decision-making, but are likely to have little experience of such decision-making regarding children.

Secondly, the constitution of responsibility as joint does not involve discussion of the meaning of joint in terms of exact shares of responsibility. (Case 3 is possibly an exception where Mr. Cann raises the question of percentages of 'fault' for the ending of the marriage.) The implication of 'joint' is therefore of equal responsibility whether referring to the past, present or future. Whilst interventions concerning individual motivation (Chapter 8) may acknowledge some unequal burden, conciliators generally try and constitute as equal what appear to some parents are

unequal shares of responsibility. So for example the practical problems for the caretaking parent of access are seen as balanced by the non-caretaker's emotional problems arising from infrequent contact with children.

Such constructions and uses of a concept of joint responsibility have their dangers. The constitution of both parents as caring and able implies that 'parents know best'. This further implies that each parent equally knows best, whereas everyday knowledge of the child pre- and post-separation may have resided in only one parent. Such a constitution may therefore lead to acceptance of inadequate knowledge about the children on which to base problem or solution construction. Even more importantly such constructions, whether implying joint responsibility for separation, caretaking or decisioning, lead to feelings of injustice -infrequently expressed at conciliation but frequently in follow-up interviews (Chapter 10). Abel sees this as an inevitable result of informal justice taking place at a time when there no longer exists an underlying normative consensus grounded in tradition:

Because western capitalism is characterised by a high degree of normative dissensus and rapid change, norms must be imposed by informal institutions and will often seem unjust to one or both parties (1982b, 4).

Davis, speaking specifically of conciliation, seems to suggest the opposite - that informal resolution can avoid feelings of injustice:

Any relationship will have its own history - a culture in which some behaviour is accepted as reasonable and some is not ... Mediation since it involves the parties directly, enables their subjective ideas about fairness to be taken into account (1983b, 137).

This has some validity but it makes the assumption that parents possess a

joint culture and a joint concept of fairness. The evidence for the lack of joint pre-separation parenting as assumed by conciliators may well indicate this assumption to be unwise and in any case separation may result from or in a breaking down of such a consensus. It would indeed be very likely that the reallocation of responsibility, which is so central to the conciliation process, would be liable to cause feelings of injustice, depending on the degree of subtlety and effectiveness of conciliator techniques used. To the parent whose perceived unequal contribution is lost in a notion of jointness, the second condition for injustice found in the statement derived from Plato with which Ginsberg begins his influential book 'On Justice in Society' (1965:1) would appear relevant: "Injustice arises when equals are treated unequally and also when unequals are treated equally."

The significance of this problem for the practice of conciliation is clearly bound up with general notions about the importance of a sense of justice. Western liberalism has generally seen justice as an important component of an acceptable society: J S Mill stated that it was, "the chief part and incomparably the sacred and binding part of all morality" (1863, in Sandel:1982, 1) and more recently Rawls refers to it as "the first virtue of social institutions as truth is of systems of thought" (1971, in Sandel: 1982, 5). It is not surprising therefore that a sense of personal justice is so important to clients at conciliation. The client finds it difficult to accept the deliberate removal of a concept of justice from the area of family law when the state continues to uphold the validity of the concept in other areas.

It may be that conciliation would be better served by a deliberate avoidance of the implication that 'joint = equal'. It is possible to constitute responsibility as joint and yet to acknowledge more openly one parent's

greater responsibility for separation, caretaking and decision-making. This may be necessary, not only because of the sense of injustice felt by those mothers who feel their years of caretaking have been devalued or who have felt guilty as a result of being constituted as jointly responsible for a husband leaving, but also because many fathers express resentment at being encouraged to share responsibility for a mother wanting to leave when the various conflicting concepts of fatherhood which exist had allowed them to believe that their share of parenting had been more than the norm so that the wife is seen as unreasonable. Harris in his study of intact families found such feelings to be dominant: wives perceived resentment that 'it's the dads what get the pleasure and the mums what get the blame' was paralleled by husbands' anger and incomprehension.

His wife's increasing anxiety and hostility will be incomprehensible to the husband, who regards his working life as the discharge of an onerous responsibility to his family and his contribution to child care a meritorious act of superogation (1983, 242).

Jointness therefore aimed at removing conflict may well inflame it: its meaning may be different for different sexes and different couples and its vagueness allows the generation of various complex emotions because of the divergent views of 'normal' fathering or mothering in the intact family. Instead of fostering conflict therefore, more discussion of such divergent views may reduce feelings of injustice and thereby reduce conflict.

The concept of joint parental responsibility may also disadvantage caretaking mothers and there is a widely expressed fear that conciliation does just that. This thesis has provided examples of how the rephrasing and normalising of grievances has undermined what may be legitimate complaints and how caretaking may be devalued. Cases 3 and 5 showed also how the assumption by conciliators that joint custody will be agreed

may alter the bargaining stakes in that the wife no longer has this to 'give away'. The content of this concept of parenting with its emphasis on communication, co-operation and concentration on feelings may also disadvantage mothers. For instance the prioritisation of communication requires that a parent on each occasion of communication takes the initiative. When this factor is juxtaposed with conciliator use of child knowledges which may be more familiar and acceptable to mothers who also have more previous experience of children's needs and feelings, then the result is likely to be a mother who feels she still has 'to get on' with, and organise, the other parent so that access happens 'for the sake of the children'. Refusal to initiate communication or the inability to be 'conciliatory' can be very powerful and can negate potential power residing in the possession of the child by the main caretaker. This was apparent in Case 4 where Mrs. Smith said she felt she 'had' to say yes to her husband's access demands even though one conciliator reminded her that she had the child and was therefore in a powerful position. Likewise a non-caretaking mother still felt she took an unequal share of the maintaining of parental harmony.

I feel I have to keep a good relationship with him, otherwise it won't work ... I am convinced that the best thing for the children is that I keep a good relationship with him. (Mrs. Todd)

Similarly the prioritisation of feelings may disadvantage the mothers. This research revealed more concentration on a querying of the mother's feelings than the father's. If this is because the mother is less often seen as immovable than the father and more often seen as capable of change because of her apparent greater ability to feel guilt and responsibility regarding the children and generally, then the result will probably be disadvantageous to the mother. In both prioritising communication and

feelings therefore in order to construct joint parenting as a mechanism to facilitate access and shared decisioning, conciliators appear to be doing what Jean Hardy sees as typical social work.

And the more the State backs up the primacy of the nuclear family, the more the social worker continues to encourage a mother to cope with the vagaries of her particular lot (1981, 42).

However it is distorting this research to claim that it therefore supports the view that conciliation disadvantages mothers. It may well disadvantage some mothers, but this research also reveals occasions when fathers are disadvantaged. Follow-up interviews seem to show that fathers are generally more isolated and unsupported post-separation and yet in conciliation they receive less supportive work than mothers. There are also instances in almost half the cases where the dominance of the father is either explicitly challenged or conciliators explain afterwards that their approach and strategies are aimed at causing a father to feel challenged and less powerful. (Cases 5, 8, 9 16, 18, 19, 20 and 24) There is also the fact that whilst mothers may have less experience of negotiating generally in that it is still fathers who usually, for example, buy the house, have official jobs or Trade Union posts, nevertheless it is fathers who do generally lack experience of caretaking. They therefore lack knowledge about the children which, as in the case of Mr. Gale, can be a disadvantage in conciliation. Further, follow-up interviews and McMaster's recent study of family decision-making (1984) show that fathers often lack experience of decision-making regarding the children. Nor is the issue of joint custody necessarily used to the advantage of the father; in Case 14 where the parents were originally still living together but in practice the mother was denying the father access to the son, joint custody was 'given' by the mother in return for an uncontested divorce and acceptance of reduced

access.

Conciliation may therefore disadvantage particular fathers and particular mothers. It has been argued that the linking factor is that conciliation upholds the status quo and therefore reinforces existing inequalities. For example, O'Donovan has written that "There is a strong possibility that informality will stabilise social relations and reinforce existing inequalities" (1985, 195) and, more categorically Garth has argued that "A one-sided emphasis on conciliation - either through alternative institutions or in regular Courts - clearly reinforces the status quo and makes rights ineffective", (in Abel: 1982b, 198). Abel more briefly summarises this as "Compromise between unequals is necessarily biased" (1982a, 9). Such statements however are flawed in the context of conciliation because they entail 3 basic assumptions:

- (a) That it is possible to define a status quo
- (b) That the interests of each partner are homogeneous and
- (c) That it is possible to compute the resources of each partner so that it is possible to state which partner is more powerful than the other.

In the situation of change which separation must entail, it is not necessarily a straight forward task to determine what status quo might be continued and what inequalities might be strengthened by conciliation. Chapter 10 pointed out ways in which the power base of the family could have been changed by separation but within this sample there are examples of both change from (as in Case 8) and reinforcement of, (as perhaps in Case 10) previous inequalities as a result of separation. There is also change over time in the post-separation period (as in Case 2). Feminist arguments are based largely on the assumption that the status quo is one which embodies pre-separation inequalities, whereas the father's rights

lobby may well be arguing on the basis of a post-separation status quo which has strengthened the position of the caretaking mother.

Furthermore, it is not helpful to view inequalities as homogeneous such that each parent is superior or inferior in every possible category of power and resources. It is also difficult to balance power generally within the community and the power which is directly relevant to the conciliation situation. In other words the debate over conciliation, like the debate as to whether or not the law is sexist, has been conducted on the assumption of a rigid division of male and female interest, resources and powers which always align on the same side of this divide. However, this research sample revealed a much more complex situation: parents whose power within the home was not similar to their power outside the home, parents whose power and resources had changed considerably because of the separation, parents whose own interests were internally conflicted, and parents whose powers and possibilities were both limited and restricted by conciliators.

This is not to deny however, that conciliation may lead to a restriction or removal of legal rights or the possibility of legal dispute settlement. Chapter 9 showed how some conciliators do use substantive law to a significant extent with significant effects, but also concluded that such law as is conveyed is largely in line with the interpretation of family law as conveyed by the Courts. However, a significant spin-off from the concept of joint parenting conveyed is that the good parent does not seek settlement via the Courts. Through such strongly normative statements therefore rights may in practice be denied. Abel sees this as characteristic of informal institutions which he diagnoses as having a problem of attracting clients so that they 'must simultaneously reduce access to

formal legal institutions in order to enhance their own relative access ability and attractiveness' (1982b, 8). However, this research has also shown that many cases do not reveal a very clear shadow of the law, either substantively or procedurally. In any case it is a false dichotomy to place conciliation in opposition to the legal system as regards family disputes. O'Donovan has pointed out that there is a present widespread belief "That family law is not really law" (1985, 184) and Bottomley has referred to the "open textured pattern" (1984, 294) of family law arising from its basis of discretion and welfare. Michael King has likewise pointed out that Judges themselves make judgments based on psychology (1981) and Bradney has shown how not all disputes are justiciable especially as regards custody disputes (1985). Additionally, Court personnel are increasingly encouraging informal procedures within the Courts and it is not only conciliators who seek to advise clients not to use Courts. A recent article by Sarratt and Felsteiner (1986) analyses an American lawyer's interview with a client and quite clearly shows lawyer hostility to the idea of using legal adjudication. Davis has also pointed out that, with or without conciliation, "most issues arising out of divorce are settled informally which may mean that an amicable settlement has been reached, but could equally be the result of flight fatigue or domination" (1983b, 140). Such negative results therefore apply to more than conciliation itself. It is therefore unhelpful to assume that, in the absence of informal procedures, formal adjudication necessarily upholds rights and is therefore better. To assume conciliation is bad because it is imperfect is falling into the same mistake as the pro-conciliation lobby which has argued that conciliation is good because formal methods are inadequate. This research has not been intended as a demolition of conciliation. This is a necessary caveat in view of the statement by Twining on the impact of the sociology of knowledge on the study of judicial processes.

There are, however, some dangers. The general sceptical spirit or style of some writings in this vein may at least give the impression that the writer is a philosophical sceptic or a suicidal relativist. (1984, 288)

However, the relationship between conciliation and the law is worth further investigation as regards the extent of the shadow of the law. The problem for conciliation is that the shadow is not of uniform magnitude because of the law's differential ability and desire to enforce its provisions. That is, some agreements, though not necessarily negotiated in the form of a balanced compromise, nevertheless include mixed custody, separation and access elements. For example, for various reasons the mother in Case 20 was happy to allow the father care and control as long as she had sufficient access. If after say, one to two years, she felt access was not sufficient and the harmony between the parents was not adequate to convince the father of this view then the parents could have recourse to the Courts, but the status quo principle could well lead the Courts to leave the children with the father and order more access to the mother. However, if increased access did not occur, it is unlikely that the Courts would either fine or imprison the father or reverse the care and control decision. This supports Raiffa's concentration on the role of timing in negotiations in achieving agreement (1982) but may militate against uniform implementation. The idea of penalising the non-implementation of access agreements may sit uneasily with the welfare principle, yet may be necessary if it is believed that parents should be encouraged to 'gamble' on amicable agreement and joint parenting.

Nevertheless the concept of joint parenting purveyed in conciliation is worrying in that it can reflect and perpetuate sex discrimination more

generally. Case 2 where the father is asked whether he wants to be 'just a Saturday dad' is the only one where there is a normative implication that the non-caretaker should be more involved with the child. Generally conciliators urge that joint parenting is a concept which allows of each parent deciding on the form of his or her contribution to the jointness and may, conceptually, deliberately equalise unequal shares. This may involve a devaluation of caretaking or a legitimisation of inequitable caretaking burdens. Therefore not only may inequitable situations be solidified by conciliation, but post-separation decisions may be made on the basis of no or little reference to the pre-separation situation. As we have seen this can lead to feelings of resentment and anger in the parents involved but it also provides a problem for the feminist critique of conciliation. This is part of what Brophy refers to as the 'ambiguity and indecision' which the issue of custody generally has produced within the woman's movement (1985, 98). This is partly because feminists do not want mothers to be depicted as perpetual child-carers, and yet oppose the demands of groups like Families Need Fathers (who advocate more post-separation fathering). Brophy therefore believes that in the present situation the fact of non-equal child-caring responsibilities should be more clearly acknowledged and taken into account.

In arguing for a framework which acknowledges that structure, I am not arguing for its reinforcement nor am I arguing from a position that posits that division as 'natural' or 'inate'. Rather I am arguing for a legal framework which more clearly reflects that reality. (p98)

She therefore criticises Maidment's concept of the legal equality of parental rights (1985) because it gives no indication of this social and economic reality. Brophy feels that a 'sex neutral code' with no maternal preference can add an advantage to fathers who could on divorce argue

that 'if the father has to support two homes it is probably cheaper and easier to have the children with him and let the mother go out to work' (Grossbard: 1982, 518 in Brophy, 114). Certainly Mrs. Todd appears to have accepted this argument as presented by Mr. Todd before conciliation. Therefore, as applied to conciliation, Brophy's suggestion would entail conciliators acknowledging the reality of unequal responsibility for children, with its implications that one party - the mother - might know best what the child needed and would also entail a more positive stance towards more equal joint parenting post-separation. As Brophy sums up "In the current situation, to argue for a code which effectively dismisses the reality of substantial inequality of responsibility for children within marriage on the basis of a legal principle of formal equality is simply to reproduce and sustain that inequality" (p114). In conciliation inequality is being reproduced on the basis of a concept of joint parental responsibility which does not necessarily entail equality of responsibility or joint care-taking.

Whilst this research has allowed clear statements to be made about the amount and type of parental responsibility relating to parents in conciliation, there is a sense in which the conclusions to this thesis are unsatisfactory: the shedding of light on the process of conciliation has revealed a situation of great complexity and not one which allows of any easy, and therefore attractive, conclusions which can be couched in unequivocal terms. In a sense the illumination has served to reveal yet more dark areas which require research before definitive conclusions can be made. This could have been envisaged in that the initial aims set for this research of testing various assumptions were triggered by feelings of unease at statements which appeared too 'simple'. Such unease has been justified.

Nevertheless the debate is still largely conducted within conceptual frameworks relying on too simplistic dichotomies. The discussion of the significance of the public and private divide within the family, though initially helpful, is in danger of becoming tautologous and unproductive. Writings generalising across the whole range of informal institutions provide insight into their common characteristics but tend to underplay the differences which exist and need explanation. Knowledge about how the non-pathological intact family functions is surprisingly still inadequate and yet this is rarely acknowledged in public debate.

At a theoretical level there are indications that there is increasing dissatisfaction with existing frameworks for the debate. For example, Olsen has analysed, three dichotomies which are often elided in discussion of family ideology: the state/civil, male/female, market/family - arguing that these are distinct and tracing the 'deep ties' between them (1983: 1499). She has also tried to disentangle the idea of delegalisation from the concept of informalism so that characteristics and outcomes can be analysed more carefully. It is therefore cheering that the conclusion to the first part of her complex paper is surprisingly short and in line with the conclusions of this research:

Informal dispute settlement mechanisms are sometimes beneficial and sometimes harmful (p1542).

Such a statement would appear to be a necessary requisite for the next round of the debate. It is therefore hoped that the picture of conciliation which this research has provided will lead to more 'realistic' discussion and more fruitful theory.

CASE HISTORIES

Case 1 : Mr & Mrs Adams (1)

The parents have been separated for 3 years, being divorced a year later and have a son Simon (2) of 4½ years. For the first year of separation the parents agreed custody and access matters: the son to live with mother (sole custody) in the matrimonial home and father to have Sunday access when he wanted it. Access stopped 2 years ago and father is now asking for it to be restarted. Conciliation was initiated by the mother; both parents attending the 1st appointment, but Mr Adams was unable to attend the 2nd at short notice, so mother attended alone. Mr Adams, who has a new partner, has since not contacted the Conciliation Service or made any further overtures concerning access. Mrs Adams was interviewed 5 months after conciliation. Access has not restarted. No Court applications are pending.

Case 2 : Mr & Mrs Berry

For both parents the marriage in question was their second. The parents have been separated for 3 years, with a daughter of 11, Angela, and son of 9, David. Father left the matrimonial home without prior notice and did not contest care and control to mother. He now has a new partner. The parents have been divorced for 6 months, mother refusing father joint custody and being granted sole custody. There was no access immediately after the separation but it was set up 4 or 12 months after separation through negotiations between solicitors and has usually been every other Saturday. Mr & Mrs Berry were referred to Out-of-Court conciliation by either the Judge or a D.C.W.O. at the end

of a S41 hearing to talk generally, probably about access difficulties and joint custody. Both parents attended a conciliation appointment at which existing access arrangements were endorsed. Mother later requested a 2nd appointment for herself alone. This was granted (with father's permission) but was later cancelled because inconvenient. Another appointment was not requested. Both parents were interviewed 6 months after the conciliation appointment. Access is continuing regularly. A maintenance application is pending and Mr Berry is seeking further advice concerning joint custody.

Case 3 : Mr & Mrs Cann

The parents have a son of 9, Andrew, and daughters of 6 and 4, Barbara and Diane. Their marriage deteriorated when the family moved to England until shortly before the 1st conciliation appointment Mrs Cann told her husband that she wanted a separation and would go and live with a man who was himself in the process of divorce and moving 70 miles away. Conciliation appointments were requested via Mrs Cann's solicitor and two took place. The parents agreed to an eventual divorce, joint custody, care and control of the 2 older children to their father and of the youngest to their mother and worked out a provisional timetable for the separation and first access visits. Both parents were interviewed 4 months after the second conciliation appointment. The agreement had been implemented though different access arrangements were being negotiated between the parents. Mr Cann is filing the divorce petition on the grounds of Mrs Cann's adultery.

Case 4 : Mr Davis and Mrs Smith

The parents separated 3 years ago, were divorced a year later on "unreasonable behaviour" grounds. They have 4 children: a son of 10 and girls of 9, 6 and 5. Both parents have new partners, Mrs Davis having remarried. The parents agreed flexible access arrangements between themselves when they first separated; this had later been defined by the Court at once per month, but difficulties had arisen resulting in mother denying access. Mr Davis had requested the conciliation appointment and both parents attended it. An agreement was made endorsing access of once per month, allowing extra access at 2 days notice and requiring mother to help with transport. Another appointment was made but Mr Davis cancelled it on the day. No more appointments have been requested. Mrs Smith was interviewed 3 months after the cancelled appointment, when she also had a 2 week old daughter. Access had broken down because of transport. Mr Davis applied to the Court which reinstated monthly access but stated that transport was the father's responsibility.

Case 5 : Mr & Mrs East

At the time of the conciliation appointment and follow-up interviews the parents were still living in the matrimonial home with their 14 year old son, Barry. They also have a 24 year old daughter. The conciliation appointment was requested by Mrs East's solicitor; Mr East would have preferred to use Marriage Guidance. Mrs East wants the marriage to end. Mr East does not, and both want custody of Barry: Mrs East wants the house sold, Mr East does not. No agreement was made at the first appointment. Another one was arranged but cancelled when Mrs East applied for

an ouster injunction which was not granted. Both parents were interviewed 4 months after the conciliation appointment, at which time there was no agreement over the details of the divorce petition. The case was later the subject of a Divorce Court Welfare Report.

Case 6 : Mr & Mrs Field

The parents have been separated for 5 years and divorced for 2 years, on the grounds of Mr Field's adultery. There is a complicated history of involvement of various professionals concerning access difficulties and the behaviour of the middle son James, now aged 13. The 2 other sons, Edward and Neil, are 15 and 11 years old respectively. At present Mrs Field has custody of the 2 younger boys and the father has the eldest. Mr Field has a new partner. Both parents independently requested a conciliation appointment because of difficulties over the agreed weekend access. Both parents attended the 1st appointment, the 3 boys alone attended a 2nd appointment and the whole family attended a 3rd appointment. The agreement made was that the youngest son could have access without James, that both could travel by public transport and that flexible 'returning times' would be allowed if a phone call had notified Mrs Field of any possible lateness. Mr Field was interviewed 4 months later. Mother did not give permission for an interview but did talk freely on the telephone. The agreement as such has broken down though some access has occurred.

Case 7 : Mr & Mrs Gale

Mr & Mrs Gale had been separated for 10 months when access difficulties had led a Divorce Court Welfare Officer to

recommend conciliation. Mrs Gale was in the matrimonial home with their 4 children: Philip (14), Clare (13), Darren (10) and Susanne (9). Agreed access of once per fortnight had been arranged at the time of separation, since which Mr Gale had lived with relatives. Little agreement was reached at the 1st appointment but a 2nd one was arranged for the two older children to be present when some access arrangements were made. Around this time Mrs Gale obtained a divorce on the grounds of Mr Gale's unreasonable behaviour. Four months later Mr Gale requested another appointment, but this meeting was cut short because of conciliator commitments and 2 weeks later another meeting was held at which the parents agreed Christmas access and access to Darren who attends a special school. Mr Gale was interviewed 5 months after this appointment, by which time he was unemployed and had not seen Philip and Clare for over 4 months and Darren for 2 months.

Case 8 : Mr & Mrs Hall

Mr & Mrs Hall had been married for 15 years, having adopted Sara (20) and Matthew (19), the children of Mrs Hall's first marriage. They also have a daughter Katherine (12), had been separated for a year and divorced for 2 months on grounds of Mrs Hall's unreasonable behaviour. For the 1st 4 months Katherine had lived with her father with frequent access but the parents had agreed a change of care (with Joint Custody) to the mother who now has a new partner. The 1st appointment was on Mrs Hall's initiative because of access difficulties over frequency and handovers. Six meetings took place over 8 months including one

attended by Katherine. Holiday access was agreed but there was no agreement on long term access plans. Mr Hall 5 months after the last appointment. Specific arrangements had been implemented but no further agreement had been negotiated via solicitors.

Case 9 : Mr & Mrs Innes

The parents had been married 15 years and have a daughter of 13 and a boy of 15. At the time of the 1st appointment they were still both living in the matrimonial home though there had been a temporary separation some months previously. Mr Innes had obtained a Decree Nisi on the grounds of Mrs Innes' adultery but the Judge had refused a Satisfaction Certificate possibly because of a mistaken belief that Mrs Innes was contesting custody to Mr Innes. The D.C.W.O. had referred them to conciliation. Mr Innes was interviewed 9 months after this appointment, replying only on the 2nd contact, by which time the parents had been separated 6 months and a Decree Absolute obtained with sole custody, care and control to Mr Innes.

Case 10 : Mr & Mrs James

The parents had been living together on and off for 6 years, having been married for 2 years of these years and separated for 4 years since. A divorce was underway. Mr & Mrs James have one child, Richard aged 9. Access had always been a problem and the child's behaviour had entailed extensive involvement with Courts, Social workers and Child Guidance. Mr James requested conciliation. Due to Mrs James' non-attendance Mr James' 1st appointment was a private interview with conciliators. Therefore Mrs James was also seen on her own before 2 further joint

appointments, the 2nd of which was attended by Richard. Short term access arrangements were made but the parents did not attend the next planned appointment and have not since requested any more meetings. Because of this Mrs James was interviewed 8 months after the last appointment to take place when there appeared to have been no contact at all between father and son for at least 5 months.

Case 11 : Mr & Mrs Kay

The parents had been married 18 years and have 2 children, Jane (13) and Elizabeth (10). They had been separated 8 months and access was initially agreed amicably but in practice had been acrimonious. 4 appointments were held over 9 months. Some specific access arrangements were made but no long term agreement achieved. The conciliators therefore offered to refer them to the Institute of Family Therapy and Mr & Mrs Kay agreed. Mr Kay was interviewed 4 months after the last appointment. Access was still causing problems but Mr Kay felt family therapy was gradually improving the situation.

Case 12 : Mr & Mrs Lloyd

The parents had been separated for 5 years and divorced for 3 on the grounds of Mr Lloyd's adultery. They have 2 daughters - Sally (14) and Kara (13). Mrs Lloyd has sole custody, care and control. Mr Lloyd requested the appointment because of access difficulties - particularly staying and holiday arrangements. Two appointments took place, the 2nd attended by Kara and staying access of a long weekend was agreed and took place. Mrs Lloyd

was interviewed 4 months after conciliation and a telephone interview took place with Mr Lloyd a month later. Access had been taking place when requested by Mr Lloyd.

Case 13 : Mr & Mrs Marsh

The parents had been separated 2 years and divorced 6 months. They have two children and conciliation was a referral by either social worker, or Child Guidance clinic after Educational Psychologist had shown concern at one child's lack of progress at school. The parents were not in disagreement. The appointment was short and led to some agreement on practical ways in which the children's situation might be eased. Neither parent agreed to be interviewed.

Case 14 : Mr & Mrs North

Mr & Mrs North had been married 3 years with a 2 year old son, Thomas. Mrs North wanted the marriage to end but they were still living in the matrimonial home. There was some social worker involvement with the family and the referral had originated from that source on account, primarily, of the difficulties Mr North was having in seeing his son. Eight appointments took place over the course of almost a year. Agreements were made at various points regarding the house, Joint Custody, care and control access and the divorce petition. However, between the 7th and 8th appointments Mrs North applied for and was granted sole custody. Both parents were interviewed 3 1/2 months after the last appointment by which time they were divorced with Mrs North having been rehoused by the council and Mr North living with his parents. Mrs North felt access was going well but Mr North was intending to apply for a defined access order.

Case 15 : Mr Owen and Miss Taylor

The parents are a young unmarried couple who had lived together with Miss Taylor's family for 2 years. They have a daughter, Anna, who is almost 1 and Miss Taylor has another daughter, Mary (3) with whose father there is no contact. Mr Owen had recently left Miss Taylor's home after a quarrel with her father and had initiated conciliation in the hope of obtaining access to Anna, and preferably to Mary as well. The appointment was a long one with Miss Taylor's mother being invited in during the last half hour. An agreement was made about weekly access to Anna. Both parents agreed to be interviewed by which time they were both living with Mr Owen's family after a reconciliation following Mr Owen's application for defined access. Mr Owen was interviewed 4 months after the appointment but Miss Taylor did not answer the door and left the house shortly afterwards. There has been no further contact but Mr Owen said that Miss Taylor's mother was planning to apply for custody of Mary and the Court had awarded him access to Anna of once every 3 weeks.

Case 16 : Mr & Mrs Parker

The parents had been married for 9 years and have 2 daughters of 7 and 5 years. Mrs Parker had 3 months previously become very depressed and Mr Parker had encouraged her to leave temporarily. She now had a new partner and wanted a divorce. Mr Parker had requested the appointment which lasted 2½ hours and during which Mrs Parker very rarely spoke. Mr Parker wanted another joint appointment but agreed to allow Mrs Parker to have one on her own first but this did not take place and she has not requested another. Mr Parker was interviewed 6 months after the joint

appointment by which time he had obtained a divorce on the grounds of Mrs Parker's adultery with sole custody, care and control to him. He had allowed access in the home or at his fathers and this had taken place on and off until the divorce but there had since been no contact for over 2 months.

Case 17 : Mr & Mrs Quinn

The parents had been married over 20 years and had been living apart for 6 months since Mr Quinn moved to live with a new partner. They have 3 children, the 2 youngest of whom - Laura (16) and Stuart (9) live in the matrimonial home with Mrs Quinn. Mrs Quinn had contacted the Divorce Court Welfare Service for advice and after an initial interview she had been referred to conciliation service. One appointment took place and discussion was about potential disputes over custody and staying access. Both parents were interviewed 6 months later by which time both parents were considering returning to conciliation about an access dispute.

Case 18 : Mr Reid and Mrs Hayes

The couple have 2 daughters of 7 and 9 and have been separated for 2 years. At the time of the separation Mrs Hayes was very depressed, took no advice and had signed a paper, at Mr Reid's request, giving him custody care and control - until recently she believed this to be legally binding. She had remarried 4 weeks before the 1st conciliation appointment. Mr Reid had given up work at the time of the separation in order to look after the children. Mr Reid requested the appointment when Mrs Hayes told him she was contemplating applying for care and control as the girls were becoming increasingly upset by access visits. Mrs Hayes

was willing to press for more access instead of custody but Mr Reid would not agree but did agree to more involvement of Mrs Hayes in children's school activities. The appointment lasted over 3 hours. Another appointment took place 3 months later. Mrs Hayes did not believe Mr Reid was allowing her to become more involved and no further agreements were made. The Conciliation Service did not allow any contact to be made with these clients as Mrs Hayes' application for Custody had resulted in a Welfare Report, whose recommendation of a change of care and control to the mother had been accepted by the Judge. It was felt that interviews might unsettle an already very difficult situation.

Case 19 : Mr & Mrs Spencer

The parents had been married 10 years and had been separated for only 6 weeks with Mr Spencer living in lodgings near the matrimonial home. They have 2 children, Paul (9) and Nicola (6). They were in dispute about access times, maintenance and possessions and Mr Spencer's solicitor referred them to conciliation. Two appointments were held and agreements were made about access dates and times, including Christmas access. Both parents were interviewed 5 months after the last appointment. Most of the agreements have been kept though both parents still feel aggrieved.

Case 20 : Mr & Mrs Todd

The parents have 2 children - a daughter of 9 years and a son of 11 years. Mrs Todd stayed at home for 7 years as main caretaker but is now in her final year of a degree course. The marriage had been in difficulties for some years and they had agreed to separate. There were no disputes but Mrs Todd was worried about

the proposed agreed arrangement of care and control to Mr Todd who would eventually buy out Mrs Todd's share of the house. The appointment was therefore one of advice which reinforced this arrangement. Both parents were interviewed 4-5 months later by which time they had been living apart for 4 months. All arrangements had been implemented and Mrs Todd was living with a new partner.

Case 21 : Mr Upton and Mrs Baker

The parents had been separated for nearly 6 years during which time there had been continual disputes over access which had necessitated several Court appointments and at least one Welfare Report. A year after the separation the mother had been granted sole custody care and control of the 3 children, a son, Gregory (9) and 2 daughters, Joanne and Pat aged 5 and 7 respectively. Mr Upton had requested staying access during the summer holidays and Mrs Baker had asked for a meeting with a D.C.W.O. who had instead arranged conciliation. Two appointments took place. At neither was any agreement made. Mr Upton therefore went ahead with his application to Court which resulted in a Welfare Report including psychiatric reports on the children. Mr Upton was not therefore interviewed until 8 months after the last appointment by which time the matter was still not resolved.

Case 22 : Mr & Mrs Vaughan

The parents have 3 children, a son of 27 and daughters of 22 and 12 who live with Mrs Vaughan in the matrimonial home. Mr Vaughan left 4 years ago and in a recent S41 hearing misunderstandings arose and the couple were referred to conciliation. At the short appointment

it was confirmed that Mr & Mrs Vaughan were in agreement that no access should take place to the youngest child - Frances. Mrs Vaughan was interviewed 4 months later by which time her husband had obtained a Decree Absolute. The only continuing dispute was finance.

Case 23 : Mr & Mrs Ward

The parents who had been married 16 years had 4 children - a son of 18, Stephen, and daughters of 16, 15 and 11. The parents had been separated for 5 years and divorced on Mrs Ward's petition of unreasonable behaviour. There had been no access immediately after the separation though it had been negotiated by solicitors about a year later. Mrs Ward had originally had care of all 4 children but Stephen had chosen to live with Mr Ward. He had once left home to live with relatives near his job but had given up his job and been returned to his father by his relatives. Mrs Ward had asked for the appointment to talk about her son's future plans. It was agreed he should stay with his father, who would have more contact with the girls. Mrs Ward was interviewed 4 months later at which time Mr Ward was still not seeing the youngest daughter and Stephen was not visiting her.

Case 24 : Mr Young and Mrs West

The couple had been separated for 4 years and divorced for 3. They have 3 children, Robert (12) and two girls of 8 and 4. Mrs West and her mother looked after the children for 6 months after the separation but then agreed care and control, with Joint Custody to Mr Young. Mrs West since remarried but is now living with a new

partner in lodgings. Mr Young has also remarried and has a 1 year old son. Robert had been behaving very badly for some time and has seen a child psychologist. Mr Young had therefore stopped access temporarily and Mrs West had applied for care and control of Robert. Agreements were made at the appointment to continue access until Mrs West's application came to Court and the whole matter would be reviewed. Neither parent would agree to an interview.

Notes

1. All names are fictitious and no inferences can be drawn from the christian or surnames allocated.
2. Children have been given names when they feature, by name in quoted excerpts from taped cases.

<u>Case Number</u>	<u>Number of appointments attended</u>	<u>Appointments taped?</u>	<u>Attendance of Children</u>	<u>Mother interviewed</u>	<u>Father interviewed</u>
1	2 ⁽¹⁾	Yes	No	Yes	No
2	1	Yes	No	Yes	Yes
3	2	Yes	No	Yes	Yes
4	1	Yes	No	Yes	No
5	1	Yes	No	Yes	Yes
6	3	Yes	Yes	Yes ⁽⁴⁾	Yes
7	2 ⁽²⁾	Yes	Yes	No	Yes
8	6	No	Yes	No	Yes
9	1	No	No	No	Yes
10	3 ⁽³⁾	Yes	Yes	Yes	No
11	4	Yes	No	No	Yes
12	2	Yes	Yes	Yes	Yes ⁽⁵⁾
13	1	No	No	No	No
14	8	Yes	No	Yes	Yes
15	1	Yes	No	No	Yes
16	1	Yes	No	No	Yes
17	1	Yes	No	Yes	Yes
18	2	No	No	No	No
19	2	Yes	No	Yes	Yes
20	1	Yes	No	Yes	Yes
21	2	Yes	No	No	Yes
22	1	Yes	No	Yes	No
23	1	Yes	Yes	Yes	No
24	1	Yes	No	No	No
<u>Totals</u>	50 appointments attended	20 taped cases ⁽⁶⁾	6 cases with child attending	14 30 parents interviewed	16

- Notes:
- (1) Mrs Adams attended one of these appointments on her own.
- (2) 2 more appointments were not observed and taped because they clashed with other appointments.

- (3) A 4th appointment was not observed though it was taped. The first 2 appointments were not joint ones.
- (4) This was a partial interview by telephone.
- (5) This was a telephone interview because the father lives 200 miles from the researcher's home.
- (6) 40 appointments were therefore taped.

Code

A	<u>Reference</u>	Case number and tape references.
B	<u>Function</u>	1a) Reconstituting grievances
		1b) Endorsing the mother's explanation.
		1c) Endorsing the father's explanation.
	(Construction of Problem)	1d) Querying the mother's explanation.
		1e) Querying the father's explanation.
		1f) Suggesting a problem.
		1g) Asking for particular facts or feelings.
		2a) Endorsing the mother's response.
		2b) Endorsing the father's response.
		2c) Querying the mother's response.
	(Construction of Solution)	2d) Querying the father's response.
		2e) Suggesting a response.
		2f) Asking for details about a particular response.
		3a) Statements about past agreement or progress.
		3b) Predictions about future agreement.
	(Constitution of responsible parents)	3c) Statements about the need to agree.
		3d) Statements focussing on the children.
		3e) Assumptions about parental responsibility.
	(Unclassified)	4
C	<u>Images</u>	1 Changing a parent's self-image.
		2 Changing a parent's image, of the other parent.
		3 Changing a parent's image of the child.
D	<u>Stimulus</u>	Description of what the unit of analysis was a response to.

Case Number	<u>Expert Knowledge</u>							Number of	Description
	1	2	3	4	5	6	7		
1	2	0	3	4	2	1	1	1 Substantive Law	
2	0	1	0	1	0	0	20	2 Procedural law and practice	
3	0	0	0	2	2	0	7	3 Psychology re separating parents	
4	0	0	1	3	0	0	4	4 Psychology re children	
5	0	0	0	2	0	2	2	5 Practical management of separation	
6	2	0	0	0	0	0	1	6 The Conciliation Process	
7	1	0	1	1	0	0	1	7 Nil	
10	0	1	1	1	2	4	1	8 Other	
11	0	1	1	1	0	0	1		
12	4	0	0	0	0	0	1		
14	0	0	0	0	0	0	1		
15	0	0	0	0	0	0	1		
16	0	0	2	0	1	0	1		
17	0	0	0	0	0	0	1		
19	0	0	0	0	0	0	1		
20	0	0	0	0	0	0	1		
21	0	0	0	0	0	0	1		
22	1	0	0	0	0	0	1		
23	2	0	0	0	0	0	1		
24	1	0	0	0	0	0	1		
Totals	10	2	5	11	4	2	11		

Notes:

(1) ...

(2) ...

(3) ...

Results of Coding of Category E
(functions of each unit of analysis)

Numbers of interventions per taped case

<u>Case Number.</u>	<u>1 (Problem)</u>							<u>2 (Solution)</u>							<u>3 (Parents)</u>						
	<u>a</u>	<u>b</u>	<u>c</u>	<u>d</u>	<u>e</u>	<u>f</u>	<u>g</u>	<u>Total</u>	<u>a</u>	<u>b</u>	<u>c</u>	<u>d</u>	<u>e</u>	<u>f</u>	<u>Total</u>	<u>a</u>	<u>b</u>	<u>c</u>	<u>d</u>	<u>e</u>	<u>Total</u>
1	2	0	3	4	2	1	6	18	0	0	5	0	2	1	18	0	0	0	0	3	3
2	0	1	0	1	0	5	10	17	0	0	1	0	8	2	11	1	0	0	0	2	3
3	0	0	0	2	2	5	7	16	0	1	5	6	9	3	24	2	2	4	1	1	10
4	0	0	1	3	0	3	4	11	1	0	5	3	7	2	18	3	1	0	4	2	10
5	0	0	0	2	5	2	2	11	0	0	3	5	10	2	20	1	0	1	0	0	2
6	2	0	0	4	2	2	4	14	3	0	8	3	3	4	21	3	0	0	3	1	7
7	1	0	1	1	3	0	4	10	1	0	0	7	5	6	19	0	0	0	3	4	7
10	0	1	3	3	5	4	8	24	2	4	8	5	3	4	26	3	0	0	0	2	5
11(1)	0	1	3	3	0	5	10	22	0	0	4	4	7	3	18	1	1	0	3	1	6
12(1)	4	3	2	12	1	10	12	44	0	1	3	1	2	3	10	0	0	0	4	4	8
14(1)	6	1	1	1	6	3	2	20	0	0	3	5	2	5	15	1	1	0	2	1	5
15	0	2	1	0	3	1	6	13	0	2	5	0	2	5	14	0	0	1	1	0	2
16	0	4	2	0	5	2	6	19	1	0	1	4	4	0	10	1	0	3	2	2	8
17	0	1	0	5	0	3	5	14	0	0	0	2	4	4	10	0	0	0	0	1	1
19	6	4	2	7	2	10	6	37	4	4	4	4	6	4	26	2	0	6	3	0	11
20	0	0	0	2	0	0	4	6	4	2	10	4	11	0	31	2	0	0	1	0	3
21	3	2	2	11	10	9	11	48	0	2	9	7	7	5	30	1	0	4	5	0	10
22	1	2	1	1	2	2	6	15	0	0	1	0	5	1	7	1	0	0	0	0	1
23	2	1	0	2	2	5	11	23	0	0	0	1	4	2	7	1	1	0	1	4	7
24	3	6	2	0	7	11	11	40	0	1	1	7	7	4	20	1	1	0	0	2	4
<u>Totals</u>	30	29	24	64	57	83	135	<u>442</u>	16	17	76	68	108	60	<u>345</u>	24	7	19	33	30	<u>113</u>

Notes:

- (1) Analysis of 1st appointment only.
- (2) The total of parental endorsement in Category B1 is therefore 53 and querying 121.
- (3) The total of parental endorsement in Category B2 is therefore 33 and querying 144.

(Images and specialist knowledge in each unit of analysis).

Instances per taped case

Case Number	C (Images)						E (Knowledges)								
	(3) 1M	(4) 1D	(5) 1M/D	(6) 2M	(6) 2D	(6) 2M/D	3 as 3	% of Total	Total	1/2	3	4	5	4 as % of Total of 1-5	1-4 as % of 1-8
1	5	1	3	7	1	0	4	20	21	0	3	5	0	33	53
2	5	0	2	2	0	0	7	44	16	0	6	6	4	30	60
3 (1)	2	2	4	0	1	1	5	37	15	6	4	7	4	29	69
4	5	4	5	1	3	2	4	17	24	0	6	4	5	17	42
5	2	3	3	0	3	1	5	29	17	7	6	5	2	22	70
6	5	1	5	2	2	1	7	30	23	1	8	7	5	28	64
7 (1)	1	3	0	1	0	1	6	50	12	0	3	5	2	44	68
10 (1)	3	2	3	1	1	0	6	40	16	1	3	6	1	40	63
11 (2)	3	0	5	1	0	1	10	50	20	2	10	4	3	15	59
12 (1)	4	0	1	4	1	1	11	52	22	2	5	8	3	40	77
14 (2)	4	5	1	1	4	0	3	16	18	3	6	2	4	12	65
15	9	4	1	8	4	0	4	13	30	8	3	1	0	4	48
16	3	9	4	1	8	0	4	14	29	7	3	7	2	22	47
17 (1)	4	2	0	2	1	0	6	40	15	1	7	6	1	32	74
19	3	2	2	5	4	1	8	29	25	2	10	8	3	30	76
20	5	1	1	4	1	0	7	37	19	16	8	9	11	22	68
21 (1)	5	4	3	7	4	1	5	17	29	6	10	6	1	20	69
22	3	0	0	0	0	0	5	62	8	4	3	6	0	43	86
23	3	1	0	0	0	1	9	64	14	0	4	9	1	50	72
24	1	6	2	0	6	4	16	46	35	6	6	16	7	38	64

- Notes: (1) Figures are the average for the 2 joint appointments.
- (2) Based on the 1st appointment only.
- (3) Refers to the mother's self image.
- (4) Refers to the father's self image.
- (5) Refers to the mother's image of the father.
- (6) Refers to the father's image of the mother.

Appendix 6 Coding Frame for large (one year) sample

<u>Columns</u>	<u>Variable</u>	<u>Codes</u>
1-3	Case Number	
4-5	Geographical location of mother	(26 towns or areas)
6-7	Geographical location of father	(26 towns or areas)
8-9	Referral agent	01 Mother 02 Father 03 Solicitor 04 CAB 05 Marriage Guidance 06 Health Visitor 07 Non-civil unit Probation Officer 08 Social Services 09 Child Guidance 10 Relative or friend 11 Conciliator 12 Women's Refuge 13 Step Family 14 Court - unspecified 15 S41 Hearing 16 Judge (other than S41) 17 In-Court Conciliation 18 Magistrates Court 19 Divorce Court Welfare Officer 20 Both Parents
10	Parent for whom referrer was agent	1 Both Parents 2 Mother 3 Father
11-12	Geographical location of referral agent	(26 towns or areas)
13	Legal Custody	1 Mother with sole custody. 2 Father with sole custody. 3 Parents known to have Joint Custody. 4 The father or mother each have custody of at least one child. 5 Parents separated but known to be no order. 6 Parents not separated and therefore inapplicable.

ColumnsVariableCodes

<u>Columns</u>	<u>Variable</u>	<u>Codes</u>
14	Care and Control	1 Mother has care of all children. 2 Father has care of all children. 3 Each parent has care of at least 1 child. 4 Relative has care of at least 1 child. 5 Parents not separated. 6 Children over 18.
20-21	Conciliator 1	
15-16	Time since separation	01 Nil 02 1 month or less 03 5 weeks to 2 months 04 3-6 months 05 6-11 months 06 1 year 07 2 years 08 3-5 years 09 6-10 years 10 More than 10 years
24-25	Location of 1st (and all) appointments	
26	Number of children in family	
17	Marital status	1 Married not separated. 2 Married - decree nisi. 3 Divorced - decree absolute. 4 Married, separated. 5 Single, separated. 6 Single, never lived together.
27	Age of youngest child	
28	Age of eldest child	
18-19	Issue brought to conciliation	01 Principle of access. 02 Details of access. 03 Unspecified access difficulty. 04 Combined access and separation difficulty. 05 Custody/care and control. 06 Combined custody and separation. 07 Combined custody and access. 08 Non-disputed custody and access. 09 Custody, access and separation. 10 Disputed separation. 11 Separation queries. 12 Counselling re separation. 13 Dispute over accommodation. 14 Physical separation - no dispute.
30	Investment of assets	

ColumnsVariableCodes

<u>Columns</u>	<u>Variable</u>	<u>Codes</u>
		15 Financial issues
		16 Child-rearing dispute
		17 Concern for child's behaviour or health.
		18 Dispute over child's education.
		19 Access advice and counselling.
20-21	Conciliator 1	(28 names)
22-23	Conciliator 2	(28 names)
24-25	Location of 1st (or all) appointments	(9 towns)
26	Number of children in family.	1 No children 2 1 child 3 2 children 4 3 children 5 4 children 6 5 children 7 6 or more children.
27	Age of youngest child	1 4 or under 2 5-10 years 3 11-17 years 4 18 or over
28	Age of oldest child	(as above)
29	Result	1 Agreement 2 Partial agreement 3 No agreement 4 No appointment took place. 5 No dispute : no agreement. 6 Incorrect referral
30	Involvement of others	1 Marriage Guidance 2 Child Guidance 3 Social Services 4 Personal counselling 5 Probation Officer 6 Housing Officer 7 Institute of Family Therapy. 8 Health Visitor 9 Other
31	Confirmation of 1st appointment	1 Mother only confirmed. 2 Father only confirmed. 3 Both confirmed. 4 Neither confirmed. 5 No appointment offered.

<u>Columns</u>	<u>Variable</u>	<u>Codes</u>
32	1st conciliation appointment	1 Neither attended 2 Mother only attended 3 Father only attended 4 Both attended 5 Children only attended 6 Both attended separately.
33	2nd conciliation appointment	(as above)
34	3rd conciliation appointment	(as above)
35	4th conciliation appointment	(as above)
36	5th conciliation appointment	(as above)
37	6th conciliation appointment	(as above)
38	7th conciliation appointment	(as above)
39	8th conciliation appointment	(as above)
40	Period from 1st to last appointment.	1 Nil or not applicable. 2 2 weeks or under. 3 3-4 weeks 4 6-7 weeks 5 8-10 weeks 6 3-5 months 7 6-9 months 8 10-12 months 9 Over 1 year
41	Attendance of children	1 No child at any/part of any appointment. 2. At least 1 child at one or part of one appointment. 3 At least 1 child at 2 or part of 2 appointments. 4 At least 1 child at 3 or part of 3 appointments.
42	Court Involvement	1 Court case known to be pending or threatened. 2 Known that no Court case pending. 3 Known that Court had referred.
43	D.C.W.O. Involvement	1 Only previous to conciliation. 2 Only since conciliation. 3 Before and since conciliation.



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QUESTIONNAIRE FOR CLIENT INTERVIEWS

SECTION 'A' (Responsibility in the intact family)

1. When you were living with your ex-husband/wife which of the following decisions gave you any difficulties? e.g. if you disagreed or were dissatisfied with the decision?
 - (a) where to live (the area or the particular house) - if necessary only the first and last moves.
 - (b) buying a large item of furniture or leisure equipment.
 - (c) the housekeeping budget.
 - (d) who should do any particular housekeeping job, e.g. washing up, decorating, repairs, tidying up.
 - (e) visiting or entertaining relatives and friends.
 - (f) holidays.
 - (g) leisure activities, e.g. sport, hobbies, evening classes.
 - (h) whether to have children.
 - (i) how children should be brought up. (9 items)

2. You say you had difficulty deciding about.....(refer to items in A1)
 - (a) Can you tell me about these difficulties?
Cues: Did you disagree? Did you discuss it?
How did you come to a decision?/who usually won?
 - (b) Did you mind whether the decision eventually made was your idea/choice or not?

3. You didn't have difficulties deciding about.....(refer to items in A1)
 - (a) Why was that?
Cues: Did you discuss it and agree? Did one of you give in?
Did you have some (unspoken) agreement about who decides what? Did you each assume the other would agree with you?

3. (cont)

(b) Do you think the things you agreed about were more important/less important/on the whole as important as the items you disagreed about?

4. In the following list of decisions you may have had to make about your child(ren) could you tell me whether the decision was yours/the other partners/a joint decision? I will ask you about each child separately.

(a) Where the children were to be born?

(b) When potty training should begin.

(c) Did you ever go anywhere without the children when they were under 10 years old? Who looked after them? Who decided about this?

(d) Whether they should be looked after by a childminder, nanny etc. or whether one of the parents should be a full time carer.

(e) Whether they should go to a nursery/playgroup and which one.

(f) When/where they should go to their first school - (Were subsequent decisions about schools made in the same way?).

(g) Whether the children's friends could come to the home and, if so, which ones?

(h) Whether the child should be involved in any religious instruction or activity.

(i) Whether they should have any particular fashionable or expensive item of clothing, toy, sports equipment etc.

(j) Whether they can have any private instruction, e.g. ballet or judo lessons, instrumental teaching, coaching in a particular school subject

and, if relevant, (i.e. if there are older children)

(k) when they could travel to and from school themselves.

(l) whether they could join a uniformed organisation, youth club etc.

(m) what time they should be in by.

5. Can you think back to the time before you decided to separate, and tell me who did the following things concerning the children. Try to remember what happened in a normal week, e.g. not when one of the parents was ill or on holiday. (Please tell me if there are different answers for different children).

5. cont

- (a) Got the child(ren) up?
- (b) Decided what they should wear?
- (c) Prepared the child's meals?
- (d) Transported or escorted the child to and from school/
nursery etc?
- (e) Filled in forms sent by the school, clubs etc?
- (f) Attended meetings at the child's school, playgroup etc.
- (g) Mended any of the child's games, toys, sports equipment
bikes etc if required?
- (h) Took the child to outside activities?
- (i) Who put the children to bed when young? (under 3 years).
- (j) Who took the children to the clinic, doctors etc.
- (k) Who helped the children with their interests and hobbies.
- (l) Who did the organisation for family outings?

(12 items)

SECTION 'B' (Between breakdown of marriage and conciliation)

1. The Separation:

- (a) Are you both still living in the same house?
- (b) How long have you been separated?
- (c) Are you divorced?

If No either -

- (d) Is there a divorce case underway?
- (e) What are the grounds in the petition?

If Yes -

- (f) When did you get your Decree Absolute?
- (g) When did you get your Decree Nisi? (if relevant)
- (h) What were the grounds in your divorce petition?

For both -

- (i) Who do you think wants/wanted the separation (most)?

2. Custody and Access:

When you first separated:

- (a) Who had care of the children?
- (b) How were access arrangements made? (Details of how decisions made), amicable agreement/Court order/no settled arrangements/other).
- (c) Has custody changed? Is there a Custody Order?
What is it?
- (d) Is there now an access order? When was it made?
What are the terms of it?

3. Advice:

Did you talk to any of the following about your worries and questions about custody and access arrangements? (i.e. after separating or deciding to separate and before going to conciliation).

- (a) Solicitors
- (b) Divorce Court Welfare Officers
- (c) In Court Conciliators
- (d) Other Probation Officers
- (e) Social Workers
- (f) Marriage Guidance Counsellors

3. cont.

(g) Child Guidance and Educational Psychologists

(h) Relatives (specify)

(i) Friends

(j) C.A.B.

(k) others? (specify)

4. What advice did you get?

5. Was this advice what you expected?

6. At this time what was upsetting and difficult?

7. At this time was there anything that was better than before?

8. Why did you go to conciliation - i.e. why did you ask for or agree to an appointment?

9. What did you expect conciliation would be about? (i.e. how 'prepared').

SECTION 4 (Conciliation Appointments)

1a) Did you make a second appointment?

If yes

b) Why did you ask or agree to make a 2nd appointment?

c) How many appointments did you attend?

d) Why was another appointment unnecessary or impossible?

If no

e) Why was a second appointment unnecessary or impossible?

2. (a) Had you agreed anything by the end of the first appointment?

Can you give me details of it?

(b) If you had more than one appointment had you agreed anything by the end of your last appointment? If so can you give me details of it?

3. If any agreements were made do you think they were nearer what you originally wanted / nearer what your ex-partner originally wanted / a bit of what both of you wanted / the conciliators' idea / can't say ?

4. Do you think you changed your mind on anything during conciliation? If so, what was it and why do you think you changed your mind?

5. Do you think your ex-partner changed his/her mind on something? If so, what was it and why do you think he/she did?

6. Did you feel your side of the argument had been put satisfactorily in the conciliation session? If not, did you mind?

7. Did you say anything you wished afterwards you had not said? If so, what was it?

8. Was anything not said that you wished afterwards had been said? If so, what was it about?

9. Do you think the conciliators were fair to each of you? If no, can you tell me what you thought was unfair? or fair?

10. (Only for clients who came to an agreement)

At conciliation you agreed that (give details) .

Do you think a Court would have given you more or less than you agreed to?

11. Either What could you not agree on?

or Was there anything you could not agree on? Why not?

12. (a) What do you think of conciliation generally?

(b) Do you think your conciliation appointments could have been better in any ways?

Note.

Specific questions relevant to the clients own conciliation experince should be prepared to use as prompts where necessary to encourage answers to questions 4 - 12.

SECTION D (The results of conciliation)

1. (a) Did you discuss the conciliation session with any of these people and agencies? (List as in question B3)

If yes

- (b) Why did you discuss it with them?

Cues: Were you worried, upset or pleased?

Did you want a second opinion?

Did they want to talk to you?

- (c) What comments or advice did they give you?

2. If you made any agreements were you happy about them after the conciliation appointments? Why or why not?
3. If you made any agreements do you think your ex-partner was happy with them?
4. If you made any agreements have they been kept? Why or why not do you think?
5. If you did not agree on the main areas of dispute what has happened about your dispute since conciliation ?
6. Would you consider returning to the conciliation service?
7. Would you like your ex-partner to have more or less responsibility for your children than he/she has now?

APPENDIX 8: Questionnaire for Conciliator Interviews

1. Do you think the initial information given by the clients as to the area of dispute was the 'real' dispute? If not, what do you think it was?
2. Did the agreement, if any, cover the main areas of dispute?
3. Do you think this agreement will be kept/implemented?
4. Do you think any one partner was more of a block to agreement than the other? If so, which one? (Give reasons as to why this partner was seen as a block).
5. Did you feel you had to put more pressure on one party than the other? If so, which one? If not, did you at times concentrate on one partner and at other times on the other partner?
6. Was there any 'movement' during the session on the part of the mother/father? If so, give details.
Do you think this movement was the result of any of the following:
trading off/bargaining between the partners
more knowledge of the needs of the child (obtained in the session)
clarification of the views or position of the other parent
more knowledge of the likely outcome if the dispute were referred to the Courts for adjudication
awareness of a totally different solution
any other reasons?
7. Did the partners communicate directly with each other during the session - most of the time/some of the time/on one or two occasions/not at all?
8. Was this the first conciliation appointment for this couple? Is another one planned? Why?
9. Did either partner appear totally/partially ignorant of their legal position?

10. Do you think a Court would have ordered different arrangements for the child(ren) than those embodied in the agreement made?
11. Do you think the pre-conciliation situation is in any way(s) detrimental to the child's welfare?
12. Do you think the agreement (if any) is in the best interests of the child, given the parents' circumstances? Why/why not?
13. Were there any topics/factors raised by the parent(s) which you felt the need to forbid discussion on?
14. What do you think your main roles were in this session?
Umpire/chairperson
Task setter/provider of possible solutions
Educator/provider of information, e.g. about children's needs
Counsellor
Other - please specify.
15. What professional skills and knowledges were most valuable to you in this session?
16. Would any other resources have helped in the settlement of this dispute? (e.g. practical help re: housing, transport, money and access venues)
17. Was a child present for all/part of the session? If so, why was he/she present and what influence did his/her presence have? If not, why not?

APPENDIX 9 : METHODOLOGY

Chapter 1 outlined the broad aims of this research project and the various methods chosen as most likely to lead to the acquiring of the required data within the constraints of time and funding. This appendix will therefore explain the details of these methods and seek to explain why various detailed decisions were made. The writer will throughout seek implicitly to refute the claim of Schwartz & Jacobs that the use of a methodological appendix, where the author relates "in an autobiographical fashion" how the research was conducted, is really employed as "a confession to seek absolution"!(1979:58-9)

1. Choice of and contact with a conciliation service.

Knowledge of the existence of conciliation had originally been acquired from a solicitor husband in professional involvement with in-and out-of-court conciliation. This was a major influence on the choice of an M.A. dissertation which had entailed contact with two probation-based out-of-court services, one of which was already being researched. As the other was within easy reach of home, and the organiser was favourable to the idea of a research project, this was an obvious choice for further research. It was also an apt choice as research had so far been largely concentrated on in-court and independently run out-of-court schemes(1). There was however a need to 'win over' the conciliators themselves and part of the resulting agreement negotiated between researcher and conciliators was anonymity for client and conciliator. Names and locations have therefore been changed. Also, whilst the gatekeeper - the organiser of the Civil Unit - had given permission for research and allowed my presence at meetings to explain the project, he felt a need to hasten slowly in convincing his colleagues of the value of research. Therefore despite 'entry' to the

service in the autumn of 1983 it was not until February, 1984 that agreement on the format was reached. The implementation of the research then depended greatly on a key informant - a newly appointed Honorary Secretary to the conciliation service. Without the organisational changes she instituted and without her personal goodwill the project would have been very difficult. It was not therefore until March, 1984 that the first appointments were observed - the delay making it impossible to include a pilot project though work for the M.A. had been a partial substitute.

Social Science researchers have traditionally been concerned not to influence their sample. The circumstances surrounding this project made that an impossibility as regards the conciliators. The current concern within the conciliation movement for publicity to attract funds has made it welcome research. This puts enormous pressure on the researcher to look favourably on the researched, it also puts pressure on the researched to 'be good'. One could anticipate that the conciliators would consciously defend actions. However such consciousness-raising does lead to positive research benefits and in any case contact with the conciliators (over almost 2 years in some cases) did lead to a relaxation of this tension.

In the course of the project, contact with the Service entailed attendance at 12 meetings of conciliators in the period from February 1984 to June 1985 at which reports were given of 3 conferences and 4 training days and discussions took place on particular cases and working methods. Many informal contacts, including numerous telephone calls were maintained with individual conciliators and the secretaries to the Unit. In addition I attended with conciliators two national conferences and a workshop led by Lisa Parkinson.

2. The small sample.

The aim was to acquire a sample of 24 referrals leading to at least one joint appointment which would be observed and taped and followed up by immediate conciliator interviews and client interviews three months later.

(a) Appointments

The immediate problem was permission to observe from both client and conciliator. The conciliator difficulties were solved by allowing three conciliators to be exempt from the research programme. The negotiated arrangement for obtaining client permission was that conciliators would request permission from the clients when they arrived for their appointment (and before I could be introduced to them) because it was felt that seeking prior permission might be an added factor to the reluctance of some clients to attend. Conciliators therefore explained the research and asked first if a researcher could observe and secondly whether the appointment could be taped. In the event this led to at least 7 abortive cross country journeys, though it almost certainly led to a higher acceptance rate than a system of prior written requests would have done. Taping itself led to less opposition than anticipated. The decision to request facilities to tape had been made for a number of reasons. Firstly, conciliators had made it clear that they would on no account accept note-taking through the appointment. As the main object of the research was to look at the process of conciliation it was felt that a detailed record would be necessary and that tape recording would therefore be the least obtrusive way of acquiring this detail. It would also allow analysis after all tapes had been completed so that the whole sample could be analysed with the hindsight of observation over the year. Conciliators accepted these reasons as did clients once they had been assured that the tape was only for research purposes.

There were also logistical problems - appointments were sometimes given at different Centres up to 30 miles apart at the same time, making it impossible to observe a 'random' sample of the first 24 appointments and some choice was in practice necessary. In addition administrative and communication problems at a relatively young conciliation service led to some appointments - or their cancellations - not being passed on to me. However the difficulties meant that I gained a knowledge of far more cases than those I observed. Because of all these factors the acquisition of 24 cases took considerably longer than anticipated. The first appointment was observed at the end of March 1984, the 24th case was not acquired until the end of November 1984 and some of the cases were still entailing appointments until the summer of 1985. The 24 cases(2) entailed observation of 50 appointments and in 20 of these cases taping of appointments was allowed, amounting to over 50 hours of tape(3).

(b) Interviews

Numerous criticisms can be made of the use of interviews to collect data. They have been viewed as artificial settings incapable of producing data about a natural situation: for example Webb et al stated that, "Interviews and questionnaires intrude as a foreign element into the social setting they would describe, they create as well as measure attitude"(4). Interviews are seen to introduce bias which entails elaborate, but not necessarily corrective, standardisation techniques(5) and to depend upon human memory which has limitations stemming from a complex range of interferences(6). However such criticisms construct a clear cut division between the natural and artificial research setting which is not so in practice. The presence of a researcher or recording equipment, however discreet, must alter the setting - a setting which in the case of conciliation research is in itself in a sense artificial. There is also a sense in which

interviewing parents and conciliators about conciliation or their separation and family history is not artificial: all participants had talked to others on these matters, some were quite used to doing so, others welcomed the chance to do so. In this research there was no attempt deliberately to eliminate bias - the issues around separation and divorce are permeated by different values and expectations, it would be impossible to estimate what 'socially acceptable' answers parents or conciliators might be pressured to give to impress the researcher, or to estimate how much personal bitterness coloured responses. Indeed such concerns are irrelevant in this research. As Diana Gittins argues, "Memory is thus a highly selective process but the very process of selection and recollection provides in itself important historical data."(7). Similarly whilst the initial questions in the parents' questionnaires were carefully worded, neither those nor subsequent probing questions could be value free. As Shipman states, "It is not that leading questions are deliberately used but that it is very difficult not to use them".(1972:80). For example to find out parents' perceptions of conciliation was sometimes possible with a very open ended, 'Tell me what you think about conciliation?' but parents often asked for more guidance and any explanatory questions introduced a possible factor about conciliation even if no preferred response in indicated.

(i) Conciliator interviews

The aim was to interview all conciliators jointly for 20-30 minutes after each appointment observed. Interviews were not taped but responses noted and later written up. However whilst all 18 conciliators involved were interviewed at least once and whilst there was an interview after at least one appointment of each case it proved impossible to conduct full interviews after each appointment. The reasons were purely logistical: conciliators did not object to interviews, indeed several expressed positive

benefits to them of the discussion. However many of the appointments were held in offices borrowed from other Probation Officers throughout the county and had to be vacated immediately if an appointment had lasted longer than anticipated. Also the conciliators, especially Divorce Court Welfare Officers, often had other commitments or transport difficulties - professional or family - soon after the close of appointments. On a couple of occasions after excessively long evening appointments this also applied to the researcher. Therefore the length of interviews varied considerably so that they of necessity became less structured to concentrate on a few core questions(8) and conciliators' unprompted thoughts. In a few cases therefore the interview was as short as 10 minutes, usually it was 20-30 minutes and sometimes much longer. Indeed, if time was short individual conciliators often phoned later to talk to me about the case.

The main problem in obtaining data from conciliators was not however, the constraints imposed by time and place but that of language. There is an accepted division between the ethnographer and the more traditional social science researcher in the language chosen for translation of a research experience into the researcher's notes: that between using the language of informants or social science language. The problem of 'making strange' the informant's language is easier if such language is different from the researcher's own. However, conciliators are by their training and experience often professional communicators - they deliberately set out to make their language and concepts acceptable and not strange. They are also often social scientists themselves, they use the researcher's language either naturally or specifically to converse with the researcher. Spradley had warned of the dangers of researching such subjects:

In general the beginning ethnographer will do well to locate informants who do not always analyse their own culture from an

outsider's perspective(1979:54).

In this case the danger lay therefore in the overlap between the conciliators' and researchers' discourse and ideologies. There is also potential confusion within conciliators own discourse in that they too use words which have both everyday and professional meanings and use them in both ways without specification, the most obvious example of which was the use of phantasy and fantasy and often used in similar contexts. Interviewing could not therefore be purely ethnographic - there had to be some 'why?' and 'what do you mean?' forms of questions for clarification and demarcation of meanings.

(ii) Client interviews

The aims of this research led to a need for information about clients' perceptions of conciliation and their previous past history, but also some data of the subsequent history of the dispute. Therefore there were conflicting needs: to gain perceptions of conciliation as soon as possible and to leave time for the dispute to have a post-conciliation history. In the event the problem was resolved by the decision by the conciliation service not to allow any contact with clients before three months had elapsed from the last appointment on the grounds that an interview might upset a fragile agreement or intensify any hostility. Contact also had to be via the conciliation service: the secretary of the Civil Unit sending a letter drafted jointly with the researcher (see appendix 10) to request the client's permission and giving them the opportunity to object. If no objection was received the Unit allowed access to the client's file and direct contact with the client by the researcher. However, the Civil Unit secretarial resources were severely stretched and this led to long delays at this stage, compounded by clients' unnotified changes of name and/or address. After 18 cases the system was changed to include a stamped addressed envelope

for a reply of yes or no to the request for follow-up. Two parents, Mrs. West and Mrs. Baker, had moved without leaving an address and the Civil Unit would allow no contact with case 18 because conciliation had been followed by Court proceedings, including a Divorce Court welfare report, resulting in a change of custody, care and control and the Unit felt the situation was too volatile. Two further cases had a very long interval between appointment and follow-up because other appointments had been planned and replanned but never took place.

Therefore altogether 30 parents were interviewed (16 fathers and 14 mothers: see appendix 2) covering 21 cases, in the period from September, 1984 to October, 1985. 15 of these parents were interviewed 3-4 months after their last appointments, 12 5-6 months later with 3 parents interviewed 8-9 months later. All but one were interviewed in their own homes, all were most helpful and hospitable. Interviews lasted on average 1½ hours but ranged from ¾ hour to 2½ hours. They were all taped and written up fully as soon as possible.

There was no difficulty in asking parents what were often very personal and potentially distressing questions. The difficulty was more that most of those interviewed wanted to talk at length and were often in need of some emotional support. Ann Oakley had expressed how, in her research, she rejected "slavish adherence to the rules of interviewing"(9) in order to give support as a feminist to women. In this research the need was simply as another human being. Carol Smart had also found the problem of a presumption that the interviewer and the interviewee shared the same values. This was not so in this research - many parents were very defensive about their views and actions which produced its own problems for the researcher's response. As Smart points out "a lack of response

based on the desire to finish an interview can become complicity" (1985: 155). It was impossible to formulate even a rule of thumb to deal with this problem, a balance had to be struck in each particular case, depending on its circumstances.

My age and sex did however have significance for carrying out this research, though both factors proved an advantage, contrary to the experience of Smart:

But one major problem that kept recurring was the assumption that I was a student or equivalent working on someone else's research project. It seemed that regardless of my age, no matter how I dressed, as far as a significant minority were concerned my gender dictated my status" (1985:153)

However, my age and sex proved useful in gaining permission to observe appointments. Conciliators said that the parents' initial reaction to the request for a research student to observe was negative but explanations that I was a mature student with children of my own usually led to their agreement. Both mothers and fathers appeared to assume there would be a more sympathetic and less critical approach from such a researcher and were less embarrassed to discuss intimate factors about their marriage. As regards interviews with parents the 'employee' status was one I never refuted, but rather encouraged! Parents gained satisfaction from helping someone to get their 'work' completed satisfactorily and such a status avoided the other possible image of a middle class woman doing 'for fun' research in a distinctly unfunny situation.

What was more of a problem was dress. The need to be invisible at appointments and also to contribute to the serious air of the proceedings led to the adoption of 'semi-legal' dress as worn by some conciliators or a

brighter form of clothes as worn by other conciliators. However this led to the greater tendency of parents to equate the researcher with the conciliation service or the Courts. Interviews with parents were therefore usually deliberately conducted in very informal dress to reinforce explanations of the independent confidential nature of the research project.

(iii) The large sample

Permission was granted to look at all files of the conciliation service in order to compile statistics about referral and agreement rates and details about problems and clients referred. I am grateful for such access as many researchers have been unable to obtain access without written permission of each individual client (10). Using the coding frame detailed at Appendix 6, details of 154 cases (numbers 86-239 in the Conciliation Service files) whose proposed or actual first appointment took place between 26th March, 1984 and 25th March, 1985 were entered on a computer and, using SPSS, frequencies were tabulated for the whole sample, the small sample of 24 cases and a sample consisting of those referrals which led to at least one joint appointment. Some recoding of variables was done and crosstabulations made of original and recoded variables on the whole sample and the joint interview sample. An interim report was written, outlining some of these results, for the purposes of the Conciliation Service only, in the summer of 1985 as a token appreciation of their co-operation.

There were considerable difficulties however in coding the data (discussed in Chapter 2). One was fundamental. As H. M. Blalock (1974) points out: "If every variable were perfectly measured by a single indicator there would be few difficulties". Difficulties arose, not only from gaps on the Conciliation Service forms, but by comments capable of dual

interpretation. A very common one concerned the referral agent -who was responsible if a parent rang on the initiative of their solicitor or vice versa? What constituted an agreement or a partial agreement? Did the writer of the file hold the same meaning of custody and care and control as the researcher? Was the time since separation written in at the end of appointments or before the first appointment? Some of these problems had been anticipated and conciliators circularised about the need to fill in forms adequately but difficulties stemming from administrative and geographic factors persisted. Gaps were filled in as far as possible as a result of individual memos to conciliators but this was not always effective. Nevertheless, apart from data regarding separation (with 13.6% missing) and divorce status (with 31% missing) and the difficulties of coding data regarding Court and Divorce Court Welfare Officer involvement, other variables had sufficient valid cases.

4. Data Analysis.

The research produced tapes of the appointments of 20 cases (see Appendix 2). Notes made on the observation of appointments had led to various hypotheses concerning the significance of factors which included the shadow of the law, specialist knowledge and power differentials. Backett's work had provided a possible framework for analysis. In order therefore to further this process of theory evolution three tapes (cases 4, 5 and 12) were transcribed fully to maximise analytic induction. Various frameworks for analysing the tapes were constructed and tested. The final framework (see Appendix 3) was one which analysed the tapes on the basis of categorising conciliator interventions, firstly from the standpoint of their function in conciliation process (the construction of the problem, the solution and the encouragement of parental motivation) and secondly from the standpoint of whether this was done by endorsing or querying parents or by conciliator

suggestions. The analysis was done for each 'unit' of conciliation - a part of the appointment which could be delineated in content from its neighbours.

Pilot analysis had also led to categorisation of image work and expert knowledges conveyed. Coding of categories D, F, G and H were purely, though briefly, descriptive and designed to allow for further inductive theory as analysis of the whole sample of tapes progressed. The three transcribed cases and the remaining tapes were then analysed on this basis in the period from August, 1985 to March, 1986. Two cases presented particular difficulties because of their length: case 11 had four long appointments and case 14 had eight appointments. The constraints of time therefore led to the decision to analyse fully only the first appointments of each and to analyse the remaining appointments solely from the point of view of whether or not they confirmed the results of analysis of the remaining 18 cases where all appointments had been taped. For this reason these cases were left till the end of analysis and Chapters 4 and 5 detailing the stage of problem definition were written on the basis of the 18 fully analysed cases only. The rest of the thesis is based on all 20 cases. The 4 untaped cases had led to more copious notes than the other cases and were referred to at all stages of writing up for verification of hypotheses and for further examples. Those appointments where children attended for all or part of appointments had to be analysed separately and different analytic frameworks constructed which are dealt with in Chapter 7.

This research is therefore primarily concerned with meanings and processes within conciliation. It is not primarily concerned with the 'typicality' of the Service researched. The methodology has therefore been selected in order to facilitate the best understanding of the process of conciliation observed.

NOTES

1. For example see Davis & Bader (1985 a) and b)) re: In-Court Conciliation and Yates (1983, 1985) re independent out-of-court schemes.
2. See Appendix 1.
3. See Appendix 2.
4. From Unobtrusive Measures (1966:1), discussed in M. Bulmer (ed), (1977:111).
5. See D. L. Philips (1973): Abandoning Method, which discusses empirical studies designed to investigate bias and invalidity in social research.
6. See A. Baddeley: The Limitations of Human Memory in Moss & Goldstein (1979: 16-25).
7. Oral History, Reliability and Recollection in Moss & Goldstein (1979:92).
8. See Appendix 8 for the interview schedule. Questions 1, 5 and 6 became the most used ones to open up discussion between conciliators.
9. In H. Roberts (Ed), Doing Feminist Research (1981: R.K.P.) and discussed in Smart (1985:155).
10. For example the researchers at Teesside Polytechnic had only 9 case papers made available to them in the period from September 1982 to December 1983 (see Bowen et al; 1984) and Bristol C.F.C.S. had not allowed the Robinson Report Study Group access to any files.
11. With the exceptions noted in Appendix 2.

Case/ Parent	A	B	C	D	E	F	G	H	I	J	K	L	M
1M	J	-	M	J	-	-	-	-	-	-	-	-	-
2M	J	N	M	J	J	J	N	-	J	N	-	J	-
2D	J	N	J	D	J	J	J	J	J	J	J	J	-
3M	H	H	H	H	H	H	H	H	H	H	H	H	-

Dear

CONCILIATION SERVICE

Some time ago you attended a conciliation appointment and very kindly allowed Mrs. Christine Piper, a research student, to observe the appointment. As she stressed then her research, which is supervised by Brunel University, is confidential. She is not a member of the Conciliation Service and her research report, for both the University and the Conciliation Service will not include people's names.

We have agreed in principle that Mrs. Piper may see all our clients with their permission. She has already talked to the conciliators involved in your appointment(s) and would like an opportunity to talk to you. She is concerned to find out what the practical consequences of the conciliation appointment have been as well as to ask you for your comments about conciliation in general and your appointment(s) in particular. She hopes to contact all clients about three months after their last conciliation appointment. Unless you inform us to the contrary, we will release your address and telephone number to her and she will contact you directly. It would obviously be very helpful if you could inform us of any change of address.

It is important that research is done to find the best methods of resolving disputes between separated and separating parents and the ideas and experience of the parents themselves are most needed for this. We do thank you again for the help you have given so far.

Yours sincerely,

APPENDIX 11: Results of Clients' Question A4

<u>+</u>	<u>a</u>	<u>b</u>	<u>c</u>	<u>d</u>	<u>e</u>	<u>f</u>	<u>g</u>	<u>h</u>	<u>i</u>	<u>j</u>	<u>k</u>	<u>l</u>	<u>m</u>
Case/ Parent													
1M	J	-	M	J	-	-	-	-	J	-	-	-	-
2M	J	M	M	J	J	J	M	J	J	M	-	J	-
2D	J	M	J	D	J	J	J	J	M/D	J	J	J	-
3M	M	M	M	M	M	M	M	D	M	M	J	M	-
3D	M	M	M	J	J	J	M	J	J	J	-	J	-
4M	M	J	J	J	J	J	J	J	J	J	-	-	-
5M	J	M	M	J	M	M	M	M	M	M	M	M	M
5D	J	M	M	J	M	M	J	J	J	M	J	J	J
6M	-	-	-	D	-	M/D	-	-	-	-	-	-	-
6D	M	M	M	J	M	M	M	M	M	M	M	M	M
7D	J	M	-	M	M	J	-	-	M	M	M	-	-
8D	J	M	M	M	J	M	M	J	J	J	M	J	J
9D	J	M	J	J	J	D	J	J	M	M/D	J	J	M
10M	J	M	M	M	M	D	M	J	D	-	-	-	-
11D	J	M	J	M	M	J	M	-	J	M	J	J	-
12M	J	M	J	J	J	J	J	J	J	J	-	J	-
12D	J	M	M	?	J	J	-	-	?	?	-	-	-
14M	J	M	M	J	M	J	-	J	M	-	-	-	-
14D	J	J	J	J	M	J	-	J	M	-	-	-	-
15D	J	-	J	-	M	-	-	-	J	-	-	-	-
16D	J	M	J	?	M	M	M	J	J	D	-	-	-
17M	J	M	M	J	J	J	M	J	J	-	J	J	J
17D	J	M	J	J	M	J	M	J	J	J	J	M	J
19M	J	M	M	M	M	M	M	J	J	M	M	-	-
19D	J	D	M	J	M	J	M	J	M	M	J	-	-
20M	J	M	M	J	J	J	M	J	D	M	D	M	-
20D	J	J	M	J	J	J	M	J	J	M/D	J	J	-

	<u>a</u>	<u>b</u>	<u>c</u>	<u>d</u>	<u>e</u>	<u>f</u>	<u>g</u>	<u>h</u>	<u>i</u>	<u>j</u>	<u>k</u>	<u>l</u>	<u>m</u>
21D	J	M	M	M	M	J	M	M	M	-	-	-	-
22M	M	M	M	M	M	M	M	-	J	M	M	M/D	J
23M	M	M	M	M	M	M	M	M	M	M	M	M	M

Totals

30	0D	1D	0D	2D	0D	2D*	0D	1D	2D*	1D*	1D	0D*	0D
	6M	23M	19M	9M	17M	8M	18M	4M	10M	12M	7M	6M	4M
	23J	3J	9J	16J	11J	16J	5J	18J	15J	6J	9J	10J	5J

% of 'Joint'
responses
(to nearest
integer)

79 12 32 57 39 57 22 78 54 29 53 59 56

Therefore: 4.5% of responses are 'father only' decisions, 53.8% are 'mother only' decisions and 39.8% are 'joint' decisions, (out of 266 valid responses).

Abbreviations

M = mother only

D = father only

J = jointly decided

? = parents could not say

- = not applicable

* = these figures excluded 1-2 responses in
which the decision area included both
'mother only' and 'father only' items

+ = Decision areas a to m.

APPENDIX 12: Results of Clients' Question A5

Number of items of caretaking

<u>Case/Parent</u>	<u>Mother</u>	<u>Father</u>	<u>Jointly</u>	<u>Not Applicable/ Don't know</u>
1M	5	0	1	6
2M	7	1	4	0
2D	6	1	4	1
3M	8	1	3	0
3D	7	2	3	0
4M	4	1	5	2
5M	10	0	2	0
5D	7	2	3	2
6D	7	2	3	0
7D	5	0	5	1
8D	5	4	3	0
9D	3	6	4	0
10M	9	1	1	1
11D	4	3	5	0
12M	3	0	9	0
12D	4	1	2	5
14M	7	1	1	3
14D	3	0	6	3
15D	6	2	2	4
16D	8	2	2	0
17D	1	4	7	0
19M	9	0	3	0
19D	5	1	6	0
20M	11	0	1	0
20D	5	0	7	0
21D	2	1	5	4

22M	8	1	3	0
23M	11	1	0	0

26

(6M and 17M omitted this question through shortage of time, Section A normally being administered last)

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