



A COMPREHENSIVE
GUIDE TO

Child Custody Evaluations

Mental Health
and Legal Perspectives

Joanna Bunker Rohrbaugh



A Comprehensive Guide to Child Custody Evaluations: Mental Health and Legal Perspectives

A Comprehensive Guide to Child Custody Evaluations: Mental Health and Legal Perspectives

Joanna Bunker Rohrbaugh, Ph.D.

Department of Psychiatry

Harvard Medical School

Joanna Bunker Rohrbaugh Ph.D
Department of Psychiatry
Harvard Medical School, Boston, MA
jbr@post.harvard.edu

This publication has been prepared in order to provide accurate and authoritative information on child custody evaluations. Neither the publisher nor the author is intending to provide professional legal or psychological services with this publication. If such service is required, assistance should be obtained from a qualified professional.

Library of Congress Control Number: 2007929501

ISBN: 978-0-387-71893-4

e-ISBN: 978-0-387-71894-1

Printed on acid-free paper

© 2008 Springer Science+Business Media, LLC

All rights reserved. This work may not be translated or copied in whole or in part without the written permission of the publisher (Springer Science + Business Media, LLC, 233 Spring Street, New York, NY 10013, USA), except for brief excerpts in connection with reviews or scholarly analysis. Use in connection with any form of information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed is forbidden.

The use in this publication of trade names, trademarks, service marks, and similar terms, even if they are not identified as such, is not to be taken as an expression of opinion as to whether or not they are subject to proprietary rights.

9 8 7 6 5 4 3 2 1

springer.com

PREFACE

In order to assist families embroiled in child custody disputes, the courts order thousands of child custody evaluations each year. Some of these evaluations are brief, problem-focused assessments aimed at quickly resolving a specific area of dispute. Other evaluations are more comprehensive, covering all aspects of family functioning in complex cases. The process of ordering, conducting, or assessing either type of child custody evaluation requires a clear understanding of how legal and psychological issues are intertwined in each case.

This book is designed to meet this need for a comprehensive guide that combines legal information and forensic procedures with the social science research that must be the basis for all custody recommendations and decisions. The book should be helpful to three separate but related groups of experienced professionals: (a) family and probate judges, (b) family practice attorneys, and (c) forensic mental health professionals.

Before they can order a custody evaluation and use the information it provides, judges must have a clear understanding of how to integrate clinical information about each family with the related social science research. This book will also enable judges to assess each custody report in terms of (a) the professional and legal guidelines for conducting custody evaluations, and (b) research-based criteria in each area of family functioning. The text and CD also offer examples of how best to write orders for custody evaluations, and detailed parenting plans that address the issues in each family.

As attorneys think about how to approach each child custody case, they need to consider whether the parents are good candidates for mediation or collaborative law. In cases that require

litigation, attorneys must consider whether to request a court-ordered custody evaluation, and what kind of evaluation that should be. Once the custody evaluation is done, attorneys have to know how to evaluate it before they can decide how best to approach the rest of the litigation. The text and CD contain information needed for all of these processes.

In order to conduct a child custody evaluation, all mental health professionals must have a clear grasp of the relevant social science research, legal issues, and forensic procedures. The interdisciplinary approach of this book is designed to provide this information in a clear, concise format. The accompanying CD also provides examples of materials that can be adapted to each evaluator's practice at every phase of the evaluation.

All professionals who are involved in a child custody dispute – regardless of professional background and role in the dispute – should ensure that the families being evaluated do not become lost in the mechanics of the evaluation and the related litigation. Every custody evaluator must collect and present the information in a way that preserves each family member's dignity and conveys their particular characteristics clearly, without becoming caught up in the custody battle itself. Impartiality is essential to a good evaluation; without this, even sophisticated assessment methods can be ineffective or harmful.

The book is organized into four parts. *Part I* covers the general issues and controversies about the role of the Child Custody Evaluator, including state variations, ethical issues, legal rules in the family court, and relationships among all of the professionals working on a given custody dispute. *Part I* also summarizes the current standards and guidelines for child custody evaluations and discusses the on-going controversy about whether evaluators should make custody recommendations.

Part II summarizes the social science research about the developmental needs of children and families, and then considers what this information suggests about parenting plans, family interventions, and parent/child contact in abusive families.

Part III focuses on how to conduct and how to critique a custody evaluation. Chapter 11 presents the complex issues

surrounding the use of psychological tests in custody evaluations. Then Chapters 12, 13, and 14 provide detailed information about the steps involved in the evaluation, assessment techniques, data-organizing tools, and approaches to writing the report. Chapter 15 discusses how to evaluate a completed report.

Part IV covers the special issues that may arise during child custody evaluations, such as alternative family structures, third-party visitation, relocation, alienation and estrangement, parental abduction, medical problems, mental illness, substance abuse, domestic violence, child abuse and neglect, and child sexual abuse. Each chapter in *Part IV* contains information about: (1) legal issues and standards involved in that area, (2) social science research, and (3) procedures and factors that must be included in the evaluation.

This book aims to provide a thorough, concise summary of the current information available on each topic. Readers who want to explore a topic in more depth should consult the list of *References* and the section on *Resources*. The *Glossary* defines legal and social science terms used in the discussion, and the *Index* allows readers to go directly to any topic. All of the forms and other materials in the CD enclosed with the book are downloadable, making it simple to edit and print the material for individual use. In this way, professionals can increase their efficiency and thoroughness, freeing them to concentrate on the families who should be the true focus of every evaluation.

ACKNOWLEDGMENTS

Many people have helped me with this project. First, I would like to thank the many families I have worked with over the years. They have taught me, over and over, how resilient, thoughtful, warm, and loving many adults can be in the face of great adversity, and how wonderful even the most distressed children are when we listen to their voices and dreams. The struggles of these families in crisis inspired me to write this book, which is dedicated to improving the effectiveness of the mental health and legal professions in providing services for them.

The staff at Harvard have been very generous in sharing their time and resources with me. My colleagues and supervisees at the Medical School were always a source of encouragement and intellectual challenge. Suzanne Spreadbury has provided invaluable assistance through the Faculty Aide Program of the Harvard University Extension School, which gives students the opportunity to work with faculty on ongoing research and writing projects. John Brewton was creative and diligent in finding all manner of scholarly resources, and Ilana Hodsdon spent many hours doing a variety of essential tasks, especially literature reviews and searches for mystery references.

The reference librarians at the Harvard Law Library – especially Elizabeth Lambert – were always there to answer my questions about legal research and help me find elusive references. I was also a frequent caller at the Harvard Medical School's Information Technology help desk. Being rather technologically-challenged, I also relied on the expertise of Brett Greenberg at Green Mountain Consulting to rescue me from occasional computer disasters.

My colleagues on the Massachusetts Board of the Association of Family and Conciliation Courts have been particularly inspiring and supportive. Always loving a lively discussion, they have encouraged me to look at many issues in new and varied ways. I am also indebted to the many colleagues who critiqued various parts of the manuscript, especially psychologists Robert Zibbell and Sharon Gordetsky and attorney Linda Fidnick. Others have permitted me to reprint or incorporate their forms and methodologies in my manuscript, including judges Gail Perlman, Geoffrey Wilson, and Arline Rotman, psychologists Linda Santos Smith and Robert Zibbell, and social worker Joseph Onofrio.

The staff at Springer has been supportive and encouraging at all stages of writing and producing the book. Sharon Panulla, Executive Editor, Psychology, and Anna Tobias, Associate Editor, Psychology, helped clarify dilemmas of focus and scope. Production Editor Felix Portnoy was creative in finding ways to transform the boxes and other unusual layouts into book pages, and kept the production process on schedule. Project Manager Madhurima Biswas and her team of production specialists were efficient, accurate, and unfailingly patient in working through the challenges that arise in producing such a detailed reference work.

Last but most importantly, I would like to thank my family for their patient and humorous support throughout this and many other projects. Without them, I would not know firsthand how crucial family is to all of life.

Joanna Bunker Rohrbaugh
Cambridge, Massachusetts

CONTENTS

PREFACE	v
ACKNOWLEDGMENTS	ix
BOXES IN TEXT	xix
ABOUT THE ACCOMPANYING CD-ROM	xxiii

PART I GENERAL CONSIDERATIONS

1. THE SEARCH FOR TRUTH: SCIENCE AND PSEUDOSCIENCE IN CHILD CUSTODY EVALUATIONS	3
2. ROLES AND ETHICAL ISSUES IN CUSTODY DISPUTES	9
Roles for Legal Professionals.....	10
Roles for Legal or Mental Health Professionals	11
Roles for Mental Health Professionals.....	15
Training and Certification for Child Custody Evaluators ...	22
3. MODELS AND GUIDELINES FOR CHILD CUSTODY EVALUATIONS	29
Themes in Guidelines.....	29
Variations in Child Custody Evaluations	29
Evaluations in Care and Protection Matters.....	33
Forensic Model for Child Custody Evaluations	36
Criticisms of Child Custody Evaluations.....	37

4. STANDARDS FOR RESOLUTION OF CUSTODY DISPUTES	43
Best Interests Standard	43
Psychological Parent Standard	45
Primary Caretaker Standard.....	47
Approximation Standard	47
Parental Deference Standard.....	50
Joint Custody.....	51
Application of Custody Standards in Evaluations	52
Standards for Custody Modification	52
5. GENERAL LEGAL AND PROFESSIONAL ISSUES	57
Collaborative vs. Adversarial Law	57
Evaluator Impartiality	58
Sensitivity to Diversity	59
Gender Bias in Custody Decisions.....	61
Relationships Among Professionals Involved in Custody Disputes	62
Professional Liability Issues	66
Interstate Forensic Consultations.....	69
Confidentiality and Privilege	69
Access to Child Custody Evaluations.....	75
Payment for Evaluation Services	77
6. COMMUNICATION AMONG PROFESSIONALS	85
Evaluations in Process	85
Completed Evaluations.....	88
Testifying in Court	90
The Forensic Curriculum Vitae.....	101
7. THE “ULTIMATE ISSUE” – RECOMMENDATIONS	107
Current Practices and Guidelines.....	107
Arguments <i>Against</i> Recommendations	107
Arguments <i>For</i> Recommendations.....	108
Summary: How to Proceed	111

PART II

SOCIAL SCIENCE RESEARCH AND PARENTING PLANS

8.	DEVELOPMENTAL NEEDS OF CHILDREN AND FAMILIES.....	119
	Changing Family Structure.....	119
	Age and Developmental Needs.....	123
	Children’s Reactions to Separation and Divorce.....	124
	Children of Divorce as Adults.....	139
	Description of High-Conflict Families	139
	Effect of High-Conflict Separation and Divorce on Children	144
 9.	 MANAGING PARENT/CHILD CONTACT IN HIGH-CONFLICT AND ABUSIVE FAMILIES	 155
	General Considerations.....	155
	Levels of Risk.....	156
	Supervised Parenting Time in Visitation Centers.....	158
	Finding a Provider for Supervised Parenting Time.....	167
 10.	 PARENTING PLANS AND INTERVENTIONS	 169
	General Considerations.....	169
	Parental Conflict	170
	Children’s Wishes.....	172
	Sole v. Joint Custody.....	174
	Overnights	177
	Electronically-mediated Parenting Time – “Virtual Visitation”.....	181
	Parent/Child Contact in High-Conflict and Abusive Families	186
	Parenting Coordinators.....	186
	Factors to Address in Parenting Plans.....	188
	Schedules for Living Arrangements and Parenting Time.....	192
	Model Parenting Plans	196
	Education and Intervention Programs.....	196

PART III

ORDERING, CONDUCTING, AND REVIEWING EVALUATIONS

11. USES AND LIMITATIONS OF PSYCHOLOGICAL TESTS	213
Current Testing Practices	213
Rationales for Using Psychological Tests	214
General Critiques of Psychological Testing	216
Process for Choosing Psychological Tests	218
Standard Psychological Tests	221
Custody-specific Assessment Devices.....	229
Guidelines for Using Psychological Tests in Custody Evaluations	237
Presenting Test Results to the Court	239
12. STARTING THE EVALUATION	249
Screening Referrals.....	249
Purpose of the Evaluation	251
Contents of Evaluation	252
Time Needed for Evaluation.....	260
Record Keeping.....	263
Initial Contact with Parents.....	266
Contract and Fee Agreement.....	268
Parent Questionnaire.....	268
Informed Consent/Release of Information.....	270
Non-Compliance	271
13. COLLECTING INFORMATION	275
General Considerations.....	275
Interviewing Parents	279
Interviewing Children	283
Observing Parent/Child Interactions.....	292
Home Visits	309
Psychological Testing.....	313
Information From Collateral Sources.....	314
14. WRITING THE REPORT	323
Functions and General Guidelines for Reports	323
Introductory Information.....	330
Reasons for Referral	331

Informed Consent and Parent Contract	332
Data-Gathering Procedures.....	333
Explanation of Methodology Used in Evaluation.....	333
Background to the Evaluation	337
Parents/Caretakers.....	337
Children	342
Family Dynamics	343
Special Issues	344
Summary and General Conclusions.....	344
Recommendations.....	346
Filing the Report.....	346
Disseminating the Information.....	347
Preliminary v. Final Reports	347
15. REVIEWING CUSTODY EVALUATIONS	349
Roles in Reviewing Evaluations	349
General Issues in Reviewing Evaluations	350
Scientifically-based Methodology	350
Evidentiary Requirements	353

PART IV SPECIAL ISSUES IN EVALUATING CHILDREN AND FAMILIES

16. DIVERSITY IN FAMILY STRUCTURES	361
Current Variety of Family Structures	361
Changes in Family Structure	362
Never-Married Parents	363
Same-Sex Parents	366
Blended Families	371
Extended Families	375
Legal v. Psychological Definitions of Parents and Families	376
Assessment Methods for Diverse Family Structures	377
17. RELOCATION.....	383
Rates of Relocation	383
Psychological Effects of Relocation on Children.....	384
Legal Issues in Relocation	386
Assessment of Relocation Cases.....	387
Elements of a Long-distance Parenting Plan.....	392
Relocation for Victims of Domestic Violence.....	395

18. ESTRANGEMENT AND ALIENATION	399
Description and Rates of Estrangement and Parental Alienation.....	399
Parental Alienation v. Denied Visitation	400
Gender Differences in Parental Alignment/Alienation	401
Estrangement v. Alienation	404
Causes of Parental Alienation.....	404
Effects of Parental Alienation on the Child.....	410
Controversy about Parental Alienation Syndrome	413
Methods for Identifying Estrangement and Alienation.....	416
Remedies for Child Estrangement or Alienation	427
19. ABDUCTION AND PARENTAL KIDNAPPING	439
Definitions and Rates	439
Characteristics of Abducted Children.....	440
Characteristics of Abductors	441
Profiles of Parents at Risk for Abducting Their Children...	444
Risk Factors for Parental Abduction.....	450
Psychological Impact of Abduction.....	452
20. CHILDREN WITH DISABILITIES	457
General Reactions to Special Needs Children.....	457
Types of Childhood Disabilities	459
Strategies for the Court	467
21. MENTAL ILLNESS IN PARENTS	473
General Impact of Parental Mental Illness on Children	473
Variations among Major Mental Illnesses	476
Mood Disorders	479
Anxiety Disorders	482
Post Traumatic Stress Disorder (PTSD)	483
Schizophrenia	485
Autism.....	487
Eating Disorders.....	487
Personality Disorders	489
Attention Deficit Hyperactivity Disorders (ADHD)	491
Mental Retardation	491
Factitious Disorder by Proxy	492
Interventions for Children with Mentally Ill Parents	493

22. SUBSTANCE ABUSE	499
Definitions and Rates of Substance Abuse.....	499
Gender Differences in Substance Abuse	500
Characteristics of Substance-Abusing Parents	505
Effects of Parental Substance Abuse on Children	506
Assessment Methods for Substance Abuse	511
Treatment and Recovery Programs	524
Parenting Plans for Substance-Abusing Parents	525
23. DOMESTIC VIOLENCE	529
Definition and Types of Domestic Violence.....	529
Causes of Domestic Violence	533
Controversy Regarding Female-Initiated Violence.....	536
Domestic Violence in Different Populations	537
Effects of Intimate Partner Violence on Adult Victims.....	537
Children's Perspectives on Domestic Violence	538
Effects of Domestic Violence on Parenting and Family Dynamics	545
Screening for Domestic Violence	545
Assessment Methods for Domestic Violence.....	545
Violence Risk Assessment	555
Effects of Domestic Violence on Custody and Parenting Plans	561
Need for Referral and Expert Consultation	562
24. CHILD ABUSE AND NEGLECT	569
Rates and Types of Child Abuse	569
Physical Abuse and Neglect.....	571
Sexual Abuse	574
Psychological Maltreatment.....	576
Corporal Punishment.....	581
Assessment Methods	582
25. CHILD SEXUAL ABUSE	589
Introduction.....	589
Definition of Sexual Abuse	589
Rates of Child Sexual Abuse	590
Risk Factors for Occurrence of Child Sexual Abuse.....	593
Psychological Impact of Child Sexual Abuse	594
Controversies Regarding Child Sexual Abuse	599
Evaluation Techniques for Alleged Child Victims.....	600

Evaluation Techniques for Alleged Perpetrators..... 603
Parenting Plans for Families with Sexual
Abuse/Boundary Violations604
Court Orders for Sexual Abuse Evaluations 608
Guidelines for Evaluating Sexual Abuse in Children..... 612

RESOURCES 619

REFERENCES 625

GLOSSARY 665

ABOUT THE AUTHOR..... 689

INDEX..... 691

BOXES IN TEXT

1. Purpose of the Child Custody Evaluation	4
2. Common Myths, or Beliefs Discredited by Empirical Evidence	5
3. Frequent Features of Pseudoscience	6
4. Differences Between the Roles of Psychotherapist and Child Custody Evaluator	13
5. Training Requirements for Child Custody Evaluators . . .	23
6. Themes in Guidelines for Child Custody Evaluations . . .	30
7. Areas of Assessment in Comprehensive Child Custody Evaluations	33
8. Common Referral Questions in Care and Protection Evaluations	36
9. Forensic Model for Child Custody Evaluations	38
10. Frequent Criticisms of Child Custody Evaluations	39
11. Uniform Marriage and Divorce Act – Best Interest of Child	44
12. Primary Caretaker Functions	48
13. Research-Based Criteria for Identifying Attachment Figures	50
14. Assessment Information and Custody Standards	53
15. Examples of Conflict of Interest for Evaluators	60
16. Elements in Non-Confidentiality Warning	71
17. Simplified Non-Confidentiality Warning for Children	72
18. Statement re. Informed Consent/Waiver of Confidentiality	73
19. Common Declarations, Motions, and Complaints	89
20. Role of Expert Witness	92

21. Topics Covered During <i>Voir Dire</i> to Qualify an Expert Witness	93
22. <i>Daubert</i> Requirements for Scientific Method.....	97
23. Tips for Testifying as an Expert Witness.....	100
24. Elements of a Forensic Curriculum Vitae	102
25. Levels of Clinical Data and Inferences in Evaluations: Example of Report Writing.....	112
26. Children’s Developmental Stages and Responses to Separation and Divorce	125
27. Typical Parental Functioning in Families with Low, Medium, and High Inter-Parental Conflict.....	141
28. Issues in Inter-Parental Conflict	171
29. Inter-Parental Conflict and Parenting Plans.....	173
30. Factors to Consider in Recommending Joint Custody ..	178
31. Overnights – Factors to Consider	180
32. Types of Electronically-Mediated Parenting Time.....	181
33. Factors to Include in Parenting Plans.....	188
34. Holidays and Family Events to Consider in Parenting Plans.....	190
35. General Guidelines for Parenting Schedules	193
36. Education Programs for Separated and Divorced Parents.....	198
37. Criteria for Test Selection	219
38. Explanation of Methodology – Reliability and Validity ...	240
39. Sample Explanation of Test Relevance – MMPI-2	241
40. Sample Explanation of Psychometric Properties of Test – MMPI-2	242
41. Sample Explanation for <u>Not</u> Using Psychological Tests.	243
42. Screening Referrals	250
43. Translating the Court Order into Behavioral Variables ..	253
44. Components of Child Custody Evaluations	258
45. Time Required for Comprehensive Child Custody Evaluation.....	261
46. Additional Time Required for Complicating Factors	262
47. Types of Records to Maintain	264
48. Contract and Fee Agreement – Factors to Include.....	269
49. Structure of Evaluation.....	278
50. Topics in Parent Interviews.....	281

51. Information to Obtain from Child Interviews.....	285
52. Strategies for Interviewing Pre-Adolescent Children	288
53. Interviewing Techniques for Ages 0-3	292
54. Interviewing Techniques and Questions for Ages 3-5...	293
55. Interviewing Techniques and Questions for Ages 6-9...	295
56. Interviewing Techniques and Questions for Ages 10 and up	297
57. Parenting Strengths and Weaknesses.....	303
58. Tasks and Activities for Parent/Child Observations	306
59. Things to Observe During Home Visits	310
60. Ways to Standardize Home Visits	312
61. Types of Collateral Sources	316
62. Outline for Report of Child Custody Evaluation	324
63. Levels of Inference and Sections of Report.....	327
64. General Issues in Reviewing Evaluations.....	351
65. Assessing Scientific Method in Custody Evaluations....	354
66. Factors to Consider in Relocation Cases	388
67. Risk Factors and Protective Factors for Relocation	393
68. Children's Relationships with Parents after Separation or Divorce	405
69. Risk factors for Alienation	407
70. Children's Reactions to Brainwashing/Alienation.....	412
71. Children's Reactions That May Suggest Brainwashing .	419
72. Examples of Detection Factors for Brainwashing	420
73. Risk Factors for Parental Abduction	451
74. Parenting Plans for Children with Autistic Spectrum Disorders (ASD).....	463
75. Individualized Parenting Plan (IPP) for Families with Special Needs Children	468
76. General Risk and Protective Factors for Effects of Parental Mental Illness on Children.....	474
77. Gender Ratios and Prevalence of Major types of Psychiatric Disorders	477
78. Warning Signs for Adult Substance Abuse	501
79. Warning Signs for Teenage Substance Abuse	502
80. Three Stages of Alcoholism	503
81. Characteristics of Substance-Abusing Parents	507
82. Parenting Behaviors When Abusing Substances	509

83. Characteristics of Children Whose Parent(s) Abuse Substances	510
84. Risk and Protective Factors for Effects of Parental Substance Abuse on Children	512
85. Questions about Alcohol use – Parent Interview	515
86. Questions about Drug use – Parent Interview	517
87. Drug Detection Times for Urine Tests	521
88. Types and Frequency of Domestic Violence Allegations	530
89. Children’s Coping Strategies for Witnessing Domestic Violence	539
90. Effects of Domestic Violence on Children of Various Ages	540
91. Risk and Protective Factors for Children’s Reactions to Domestic Violence	544
92. Questions to Screen New Clients for Domestic Violence	546
93. Decision-Making and Conflict Resolution – Parent Interview	550
94. Potential for Injury in Domestic Violence – a Continuum	551
95. Psychological and Economic Coercion – a Continuum..	552
96. Sources of Collateral Information about Domestic Violence	556
97. Risk Factors for Domestic Violence Re-Offending – Characteristics of Perpetrators	559
98. Types and National Rates of Child Abuse and Neglect .	570
99. Risk Factors for Physical Abuse and Neglect of Children	572
100. Effects of Child Physical Abuse and Neglect	575
101. Examples of Six Types of Psychological Maltreatment..	578
102. Impact of Psychological Maltreatment on Children	580
103. Types and Examples of Child Sexual Abuse	591
104. Risk Factors for Occurrence of Child Sexual Abuse	594
105. Common Effects of Child Sexual Abuse	595
106. Risk factors for Emotional Distress in Victims of Child Sexual Abuse	597
107. Clinically-Derived Risk Factors for Reunification of Children with their Parents Accused of Sexual Abuse.	607
108. Components of a Court Order for Evaluation of Child Sexual Abuse	609

ABOUT THE ACCOMPANYING CD-ROM

The CD includes downloadable copies of the following materials, which are designed to be adapted for mental health and legal practices. Just download the document you want to use and add your own letterhead, address, and any changes you wish. All documents were produced using Word for Windows.

I. Court Appointments

- Short Appointment Form with Checklist of Issues -- #1
- Short Appointment Form with Checklist of Issues -- #2
- Detailed Appointment Form with Checklist of Issues -- #1
- Detailed Appointment Form with Checklist of Issues -- #2
- Appointment Form with Blank Lines for Judge to Define Issues
- Narrative Appointment Form -- #1
- Narrative Appointment Form -- #2
- Appointment Form Regarding Child/Psychotherapist Privilege

II. Record Keeping

- **IIa – Case Management**
 - Case Label
 - Folder Labels
 - Case Cover Sheet
 - Client Information – Consultation
 - Checklist for Child Custody Evaluations
- **IIb – Billing**
 - Time Sheet
 - Itemization of Services for Custody Evaluation
 - Forensic Consultation Ledger
 - Billing Statement - Child Custody Evaluation
 - Billing Statement - Forensic Consultation

III. Introductory Letter to Parent

IV. Authorizations for Release of Information

- Authorization for Release of Information – Child Custody Evaluation
- Authorization for Release of Information – Consultation

V. Contracts and Fee Agreements

- Va – Introduction
- Vb – Contract and Fee Agreement – Child Custody Evaluation
- Vc – Consultation Agreement: Child Expert
- Vd – Contract and Fee Agreement: Consultation

VI. Parent Questionnaire

VII. Parent Interview

VIII. Collateral Information

- **VIIIa – Professionals and Institutions**
 - Letter to Police Department
 - Letter to Department of Social Services
 - Letter to Pediatrician
 - Letter to Couples Therapist
 - Letter to Individual Psychotherapist or Counselor
 - Letter to School
 - Questions for Teachers
 - Interview for Teachers
- **VIIIb – Non-Professionals**
 - Letter to Friends, Relatives, and Community Members
 - Consent Form for Non-Professional Collaterals
 - Questions for Friends, Relatives, and Community Members
 - Interview for Friends, Relatives, and Community Members

IX. Parenting Plans

- IXa – Introduction
- IXb – State of New Hampshire Judicial Branch, 2006 – *Parenting Plan*
- IXc – American Academy of Matrimonial Lawyers, 2005 – *Model for A Parenting Plan*

- IXd – Massachusetts Trial Court, Domestic Violence Visitation Task Force of the Probate and Family Court Department, 1994 – *Supplemental Order: Visitation Issues*

X. Report Form

XI. Declarations, Motions, and Complaints

- XIa – Introduction
- XIb – Declarations for Evaluators to Send to Attorneys
 - Declaration of Non-Participation
 - Declaration of Non-Payment
- XIc – Court Motions for Evaluators
 - Motion for Clarification of Purpose of Evaluation
 - Motion for Expansion of Scope of Evaluation
 - Motion for Contempt for Non-Participation
 - Motion for Copies of Previous Reports
 - Motion for Access to Court Records
 - Motion for Appointment of a GAL to Evaluate Waiver of Patient-Therapist Privilege
 - Motion for Extension of Time for Child Custody Evaluator
 - Motion for More Hours for Child Custody Evaluator
 - Motion for Payment for Court Testimony
 - Motion to Compel Payment
 - Motion to Quash Subpoena
 - Motion for Reappointment of Child Custody Evaluator
- XId – Complaints for Evaluators
 - Complaint for Contempt for Non-Payment

XII. Guidelines for Child Custody Evaluations

- XIIa – Introduction
- XIIb – American Academy of Matrimonial Lawyers, 2000 – *Bounds of Advocacy: Goals for Family Lawyers* (Rev. ed.)
- XIIc – American Psychological Association, 1991 – *Specialty Guidelines for Forensic Psychologists*
- XIId – American Psychological Association, 1994 – *Guidelines for Child Custody Evaluations in Divorce Proceedings*
- XIIe – Association of Family and Conciliation Courts, 2007 – *Model Standards for Child Custody Evaluation*

PART I

GENERAL CONSIDERATIONS

What is the purpose of a child custody evaluation? What makes the custody evaluator's role different from that of a psychotherapist, or from that of other professionals involved in the process of separation/divorce? What legal and ethical dilemmas are involved in custody evaluations? Are there guidelines and standards that custody evaluators should be following?

These questions, and many more like them, face all who request, complete, or review custody evaluations. Chapter 1 will begin to address these issues by considering why it is so important to use evaluation methods based on sound behavioral science research. Then Chapter 2 will discuss the various roles that legal and mental professionals play in custody disputes, and the legal and ethical dilemmas involved in each role. Chapter 3 will describe the models and guidelines for child custody evaluations. Chapter 4 will discuss the legal standards for resolution of custody disputes; all professionals involved in child custody disputes must be familiar with these in order to know what information must be included in custody evaluations. Chapter 5 looks at the unique legal and professional issues facing custody evaluators. Chapter 6 focuses on how evaluators should communicate with attorneys and the court, while Chapter 7 discusses the on-going controversy about whether evaluators should make custody recommendations.

2 • GENERAL CONSIDERATIONS

Before plunging into the how-to information in Parts II and III, I urge you to pause, read, and reflect on the broader issues discussed in Part I. It is impossible to complete or review a custody evaluation effectively without a clear understanding of the theoretical, legal, and ethical issues involved. One cannot benefit from the most sophisticated data collection techniques without knowing how, when, and whether to use them. Excellent writing skills are necessary to produce a report that explains complex issues in a compelling but extremely brief narrative; but such skills cannot clarify issues that are overlooked or misunderstood by the evaluator. This is not to say that reading Part I will protect anyone from making mistakes in their work. Hopefully, however, considering the issues raised in Part I will maximize each professional's effectiveness and thereby benefit the children and families they are trying to serve.

1

THE SEARCH FOR TRUTH: SCIENCE AND PSEUDOSCIENCE IN CHILD CUSTODY EVALUATIONS

The purpose of a Child Custody Evaluation is to conduct a thorough, scientifically sound evaluation of a family in order to help the Court determine what living arrangement and parenting plan would best meet the needs of the children (APA, 1994; see Box 1). This sounds simple enough, but any professional new to custody disputes quickly discovers that this simplicity is an illusion. The family is in extreme distress, so all of the professionals are seeing the family members “at their worst” rather than in their normal mode of functioning. The parents always try to present themselves in the best possible light and hence are guarded with attorneys, evaluators, and judges. The time allowed for the evaluation is extremely limited. And clinical skills in working with children and families do not automatically translate to an ability to evaluate a situation and predict possible outcomes (APA-med, 1988). In addition to these difficulties, there are many complicated legal issues that limit the options available to the family and also determine how the evaluator must conduct the evaluation.

A number of specialized training programs have been developed and many books written in response to these challenges for the new – and even experienced – child custody evaluator.¹ Many

Box 1. Purpose of the Child Custody Evaluation

- ◆ Assess the child's psychological and developmental needs.
- ◆ Assess the parenting capacities of the parents.
- ◆ Determine the best fit between the child's needs and the parenting capacities, in order to serve the best psychological interests of the child. (APA, 1994)

experts have stressed the importance of doing evaluations that use methods and procedures that are based on sound *behavioral science research* (e.g.; Galatzer-Levy & Kraus, 1999; Gould 1998, 1999, 2006), while others have focused on how evaluators can use their *clinical skills* to understand the child's needs (e.g. Skafte, 1985; Stahl 1994, 1999). Some writers have simply instructed evaluators about how to use certain *psychological measures* without focusing on the research related to those measures (e.g. Ackerman, 1995, 2001, 2006; Bricklin, 1995). Gould and Stahl (2000) have recently called for the creation of an "art and science of child custody evaluations" that blends the clinical and scientific models.²

But why is science so important? To answer this question, we only have to consider some of the common beliefs that have been discredited by empirical evidence, included here in *Box 2*. Most of these issues are frequently encountered in child custody disputes. For instance, many parents have childhood histories that include physical abuse by an alcoholic parent. If the attorney, evaluator, or judge is not aware of recent research findings, they may begin with the assumption that such a parent is *also* abusive and/or alcoholic, without exploring this issue in a thorough, unbiased way. Thus accepting common myths can lead to inappropriate conclu-

Box 2. *Common Myths, or Beliefs Discredited by Empirical Evidence*

- ◆ Almost all abused children become abusive parents.
- ◆ Almost all children of alcoholics become alcoholic.
- ◆ Children never lie about sexual abuse.
- ◆ Memory works like a tape recorder, clicking on at the moment of birth.
- ◆ Traumatic experiences are usually repressed.
- ◆ Children who masturbate or “play doctor” have probably been sexually molested.
- ◆ If left unexpressed, anger builds up like steam in a teapot until it explodes.

Adapted from Tavris, 2003, pp. xi-xii.

sions, recommendations, and court orders that could be extremely detrimental to a child’s well-being.

Rather than admit what we don’t know, or cannot predict with certainty, many professionals turn to “pseudoscience.” “Pseudoscience” can be a dismissive and inflammatory word used to cast doubt on unpopular research findings. Lilienfeld and his colleagues (2003) have outlined 10 warning signs of pseudoscience (see Box 3), however, which make it clear that the word is meant to refer to research that fails to follow the rigorous methods of empirical investigation. When relying on research, divorce professionals must make sure that it meets the criteria implied in these warning signs.

Given the obvious weaknesses of pseudoscience, why is its use so common in the United States today? Tavris suggests that ours is a culture that has a low tolerance for uncertainty and “pseudoscience by definition promises certainty, whereas science gives us probability and doubt” (2003, p. xv). Psychotherapists who are

Box 3. *Frequent Features of Pseudoscience*

1. Use of non-testable hypotheses.
2. Absence of self-correcting research.
3. Avoidance of peer review.
4. Emphasis on confirmation rather than refutation.
5. Reversed burden of proof.
In science the burden of proof rests on the individual making a new claim, whereas proponents of pseudoscience frequently demand that skeptics demonstrate that a new claim or technique is false or ineffective.
6. Lack of connection with related areas of scientific research.
7. Over-reliance on testimonial and anecdotal evidence.
8. Use of incomprehensible jargon.
9. Absence of boundary conditions.
Well-supported theories articulate limits under which the predicted phenomena do and do not apply.
10. "Mantra of holism."
In order to explain away negative findings, proponents of pseudoscience typically maintain that such findings should only be evaluated within the context of broader claims. For example, if scores on a new measure of anger management (AM) were not consistent with other measures of anger management, the proponents of the new measure might claim that no one ever interprets the results of AM in isolation anyway. This "heads I win, tails you lose" reasoning places the claims of these proponents outside the boundaries of science.

(Lilienfeld et. al, 2003, pp. 6–10)

dealing with severely distressed patients sometimes need to believe that a new treatment will help. In a child custody dispute, all of the people involved want certainty. The parents want to know for sure that they will get what they want, or at least to know what is going to happen. Attorneys want to make their arguments compelling. The Court wants to be certain that they are getting reliable information and are making the best possible decision. The custody evaluator is under great pressure to express an authoritative professional opinion, especially if they are testifying as an expert witness in court. Given this context, it is hard for evaluators to resist the temptation to present their findings and opinions as more research-based and “certain” than they are. Resisting this temptation is one of the central challenges for custody evaluators. As we will see in later chapters, this resistance is also an ethical requirement for doing custody evaluations.

Notes

1. See Appendix A: Resources.
2. Fishman (2003) and Slobogin (2003) have also proposed the use of *pragmatic psychology* in forensic work. This approach involves developing a database of peer-reviewed evaluation reports, to be published in hardcopy journals and Internet vehicles. Such a database would be useful, especially in training novice evaluators. There are a myriad of legal difficulties with creating such a database, however, and it is doubtful that this approach would meet the challenge of *Daubert* standards for expert opinions based on empirical research.

2

ROLES AND ETHICAL ISSUES IN CUSTODY DISPUTES

High rates of divorce and separation are not new in the United States. What is new, however, is the high rate of custody disputes. Prior to the advent of no-fault divorce, divorcing couples battled in court over issues related to property, sexual infidelity, blame for the break-up, and other things unrelated to the children. On an emotional level, these legal disputes were really over marital conflicts that remained unresolved during the separation. Once no-fault divorce laws removed most of the contested issues from the courtroom, enraged couples who had used the court to continue their marital battles had only child custody to fight about. Thus child custody has become a major focus of legal disputes between divorcing, high-conflict parents (Stahl, 1994) and these high-conflict families use a disproportionate amount of court resources (Pruett, Nangle, & Bailey, 2000).

When marital conflict is severe, families turn to a variety of professionals for assistance. Some of these professionals focus on helping the family improve their relationships and stay together, while others focus on helping the parents separate, divorce, and devise a long-term plan for parenting the children. If separating and divorcing parents cannot agree on a parenting plan, the Court will have to order one. If the circumstances are complicated and unclear

to the Court, the judge may appoint a child custody evaluator to gather information and report back to the Court. Thus only when all other interventions have failed does the Court appoint a legal or mental health professional to do a child custody evaluation. When doing a child custody evaluation, the professional has to fulfill a role that is quite different from the other roles they are used to. It is important, therefore, to consider how the various roles in custody disputes differ from one another and to remember that one can only serve in one role in any given child custody case.¹

ROLES FOR LEGAL PROFESSIONALS

Attorney

When acting as an attorney for one of the separating or divorcing parties, one's responsibility is to serve the interests of that party rather than the entire family. The code of conduct for matrimonial attorneys does require that attorneys consider the welfare of the child, however. Furthermore, attorneys are officers of the Court, which imposes a duty for them to consider what is best for the children and not to mislead the Court. Attorney/client privilege applies to all conversations and work products.²

As discussed in Chapter 5, there is some variation between **collaborative** and **adversarial models of legal practice**. In both approaches, however, the attorney's primary responsibility is to the party/parent who engaged them, not to the children or to the entire family.

In some states, courts appoint attorneys as other types of representatives in custody disputes. In Texas, for instance, an **attorney ad litem** represents and advocates for the interests of a party, including a child,³ while an **amicus attorney** assists the court rather than providing legal services directly to the child (Hazlewood, 2004).

Arbitrator

In arbitration, the parties agree to use a neutral third party, or arbitrator, whose decision is binding. Arbitrators are usually attorneys. The major difference from mediation is the legally binding

nature of the neutral party's decisions. Many jurisdictions do not permit the use of arbitration in child custody disputes.⁴

Judge

The family law judge has the final decision-making responsibility in child custody disputes and other family-law issues. The judge is the trier of fact who hears testimony, reviews evidence, and issues orders regarding child custody, adoption, and other matters in dispute within the family.⁵ The judge must approach each case in an impartial manner and combine an extensive knowledge of law and judicial procedure with an understanding of basic human nature and the requirements for using scientific methodology in family law disputes.⁶ If judges think that more information is needed in order to make a decision in a custody dispute, they may appoint a custody evaluator.⁷

ROLES FOR LEGAL OR MENTAL HEALTH PROFESSIONALS

Mediator

Mediation involves using an impartial, objective third party to reach a nonbinding resolution of a dispute outside of the court system. Some writers maintain that divorce mediation is superior to divorce litigation because it tends to reduce competition between the parents, improve the children's post-divorce adjustment, reduce re-litigation, and increase compliance with agreements.⁸

When acting as a mediator in a child custody dispute, the professional is responsible to the couple or family as a whole. The mediator's goal is to help the couple develop their own plans for the children. The process is often confidential, which prevents the couple from later involving the mediator in the adversarial court process. Many mediators include such confidentiality in their contracts, so that the couple will be able to talk freely in mediation without fear that their comments can be used against them in later litigation.

Either attorneys or mental health professionals may be mediators, and are appointed by the Court or seen in private practice by agreement of the parties. No one should undertake the role of a mediator without being trained in the mediation model, however, because effective mediation requires a unique set of skills and extensive, specialized experience.

Custody Evaluator or Investigator

The major characteristics of this role are outlined in Box 4 and discussed in the section below which compares the role of a psychotherapist with that of a custody evaluator. Although attorneys do serve as custody evaluators in many states, the psychological complexities of many of these evaluations require extensive mental health experience and training. For this reason, the new standards for child custody evaluations call for them to be done by qualified mental health professionals who have a “minimum of a master’s degree . . . in a mental health field that includes formal education and training in the legal, social, familial and cultural issues involved in custody and access decisions” as well as “child development, child and adult psychopathology, interviewing techniques, and family systems” (AFCC, 2007, section 1.2, p. 73).

Some states have dealt with this issue by distinguishing between evaluations that need mental health experts and those that do not. In Massachusetts, for instance, there are (1) Category F Investigators who can be either attorneys or mental health professionals and (2) Category E evaluators who must be mental health professionals (Comm.Mass., 2005b).

Parenting Coordinator⁹

In 8–12% of custody disputes, the severe conflict does not end with the child custody evaluation and subsequent court order regarding a parenting plan. These extremely high-conflict parents continue to fight over the children in repeated court battles, and in the process use a disproportionate amount of the court’s time and resources, deplete their own economic and emotional reserves, and subject the children to toxic conflict.¹⁰ In response to their frustration with the constant re-litigation of these families, judges in some jurisdictions have begun to

Box 4. *Differences Between the Roles of Psychotherapist and Child Custody Evaluator*

	Psychotherapist	Custody Evaluator
◆ Identity of client	patient	court
◆ Disclosure of Information	confidentiality	<u>no</u> confidentiality
◆ Payment	by patient, at time of service	by parents, in advance
◆ Attitude	advocate	impartial
◆ Sources of Information	patient/family only; assume accuracy	family and collaterals; check on accuracy
◆ Decision-making	revision and updates	no revision
◆ Activism	intervention	no intervention
◆ Goal	improve patient mental health	accurate information/ recommendations to Court

delegate limited areas of authority over child custody issues to experienced mental health professionals and attorneys by appointing them as parenting coordinators. The parenting coordinator seeks to settle

parental disputes in an immediate, non-adversarial, court-sanctioned forum that combines assessment, case management, mediation, and arbitration functions (Coates, Deutsch, Starnes, Sullivan, & Sydlik, 2004).

The new professional role of parenting coordinator (PC) has recently been implemented in 13 states, although only Idaho, Oklahoma, and Oregon have statutes specifically authorizing the appointment of a PC (AFCC, 2003).¹¹ The PC is typically appointed by court order (with parental consent) for a term of two years, can be re-appointed, and may also resign, be removed, or substituted through the court. Depending on the jurisdiction, the PC is given varying authority over child-related issues such as parenting time and decisions regarding child education and medical treatment. Usually, however, the PC must work within the existing court-ordered parenting plan and cannot make changes in custody or substantially alter existing access schedules.

The PC process is usually *not* confidential, so the PC can be called to testify as a witness in a court hearing or be asked to make a report to the Court.¹² The PC typically has access to all of the professionals involved with the family, and almost always meets not only with the parents, but also occasionally with the children.

Not all families with intractable long-term conflict can benefit from parenting coordination. A PC cannot serve as a change agent for families where a parent chronically refuses to follow court orders, has a severe personality disorder, or suffers from mental illness or substance abuse (Coates et al., 2004). On-going domestic violence changes the function of the PC to enforcement rather than dispute resolution, and requires specialized expertise (AFCC, 2006).¹³

The Parenting Coordinator's purpose is to facilitate the implementation of the parenting plan, thus helping to safeguard the wellbeing of the children. The PC's legal responsibility is to the appointing Court, however. The PC needs to be impartial and objective, trying not to "take sides" (or even *appear* to take sides) in the continuing conflict between the parents. The costs of parenting coordination are paid by the parents, in proportions determined by the Court. The litigious, conflict-ridden style of the parents makes retainers advisable.¹⁴

Although the Association of Family and Conciliation Courts has proposed national guidelines for the practice of parenting coordination (AFCC, 2006), jurisdictions currently vary in the formality and extent of training required to be appointed as a PC.¹⁵ Because the PC role exists in the interface of law and mental health, both attorneys and mental health professionals serve as PCs.

Before attempting this new role, professionals must consider the unusually complicated legal, ethical, and professional malpractice risks associated with being a parenting coordinator. The most obvious risk derives from the fact that the parenting coordinator often serves as a “lightning rod for the [parental] conflict” (Coates et al., 2004), raising the possibility that one of the litigious parents will file a spurious complaint against the PC either in court or with a professional licensing board.¹⁶ Additional risks are posed by the hybrid nature of this legal/psychological role, which requires specialized training, experience, and skill and invites review by a myriad of legal and psychological regulatory organizations (Sullivan, 2004).

Special Master

This is the term used in California to refer to a parenting coordinator (AFCC, 2003).

ROLES FOR MENTAL HEALTH PROFESSIONALS

Psychotherapist

This is the role most familiar to mental health professionals. For a mental health professional just starting to do child custody evaluations, it is a challenge to shift to the new forensic role. Important differences in the roles occur in the following areas (also outlined in Box 4):¹⁷

- 1. Identity of the client.** Regardless of who hires a therapist and pays the bills, the *client is the patient*: whether an adult, child, couple, or entire family. Even when an insurance company, governmental body, or parent of a child patient requires that

the therapist provide certain information about the therapy, the therapist's ultimate responsibility remains to the patient.

For the child custody evaluator, on the other hand, *the client is the appointing court*, even though the parents usually pay for the evaluation.¹⁸ Even when the evaluator is hired by an attorney, remember that, "The party being evaluated is the attorney's client, not the evaluator's client. The examiner is ultimately answerable to the court" (Gould, 2006, p. 18). This is one of most difficult shifts for experienced therapists who are new custody evaluators. As therapists, they are accustomed to responding immediately to the needs of individuals and families in crisis. As custody evaluators, they must learn to resist forming therapeutic alliances with those in distress; they must hold back, and conduct their evaluation in a manner that will be useful to the Court [who can then help the family find a custody arrangement that will be best for the children]. Having an impact indirectly, through someone else, is initially foreign to therapists beginning to do custody evaluations.

2. **Disclosure of information.** In therapy, confidentiality exists and is strictly interpreted and enforced by both professional and governmental bodies. This confidentiality belongs to the patient, *not* the therapist. This means that only the patient can give permission for the therapist to provide information about the patient or therapy to a third party, by signing a Release of Information form.¹⁹

In custody evaluations, on the other hand, there is *no* confidentiality; the entire purpose of the evaluation is to collect and report information to the Court.

3. **Payment arrangements.** Most therapy patients (or their insurance companies) pay for services immediately or soon after each session.

Child custody evaluations should be paid for in advance, through the use of retainers, so that everyone is clear that the result of the evaluation is not related to the amount or source of payment.²⁰

4. **Attitude towards the patient/parent.** A therapist listens intently to their patient and offers support, acceptance, and compassion.

At the same time, the therapist is also expected to maintain a professional and objective relationship with the patient. In spite of a therapist's concern and emotional involvement with the patient, they cannot permit their own emotional difficulties to impinge upon the therapy, nor let themselves become so attached to the patient that they cannot perceive the patient and the therapy relationship clearly. Experienced therapists learn to balance these elements of the therapy relationship so that they can offer support without becoming overly emotionally involved. If the therapist manages this task well, the patient will perceive the therapist as their trusted *advocate*.

A custody evaluator approaches parents/litigants with a more detached and impartial demeanor. Here the task is to obtain thorough and accurate information about painful topics from people who are in crisis. To do this, the evaluator must also listen intently but act in a noncommittal yet supportive manner. Each parent needs to feel that their concerns have been heard and that they have been treated fairly, and yet they cannot be led to believe that the evaluator is on their side in the dispute. *Impartiality* is essential for the custody evaluator.²¹

- 5. Sources of Information.** A therapist usually seeks information only from the patient. There is no concerted effort to corroborate that information. Even trauma specialists take the patient's story at face value, without checking on medical records, police reports, or battered women's shelters. The exception here is previous therapy, where good practice requires the therapist (with the patient's written permission) to get previous medical records and speak with previous psychotherapists.

Custody evaluators, on the other hand, should corroborate all of the essential information provided by the parents/litigants, especially information that is contested by any party to the dispute.

- 6. Type of decision-making.** In psychotherapy and psychiatric consultation, a therapist draws conclusions and makes recommendations that can be revised should the need arise. Even when psychotherapy or a consultation is completed, the patient or consulting parent may return for follow-up.

Child custody evaluations call for a more definitive set of conclusions and recommendations that have even more far-reaching implications and yet cannot be refined or revised as more or differing information is collected later on. This difference causes many psychiatrists and other mental health professionals to be reluctant to become involved in child custody evaluations (APA-med, 1988).

- 7. Activism.** The therapist is accustomed to intervening in the patient's life; in fact, therapy itself is really an intervention. The whole purpose of therapy is to change the patient and their circumstances in order to alleviate pain and suffering.

Custody evaluators, on the other hand, are asked to gather information for the Court. Even when the evaluator can see changes that need to be made immediately, or a parent asks them to intervene in a particular situation, they should not do so. Decisions and actions should be left to the Court because it is impossible for the evaluator to maintain their neutrality, or appearance of neutrality, during and after such an intervention.²² This is one of the most difficult shifts for mental health professionals to make because most of their professional training and experience has prepared them to intervene, and because it is emotionally painful not to be able to do so.

- 8. Goal.** The psychotherapist's goal is to help the patient to function in a healthier manner, to improve their happiness and mental health. Although there is always some concern about how the patient affects other people, the therapist's main responsibility is to the patient alone. The tension inherent in this responsibility is most evident in individual psychotherapy, where psychological improvement in the patient may mean that they leave a destructive relationship or make other changes that are in their own best interests but not necessarily in the best interests of their family members, friends, or employer.

The purpose of a child custody evaluation is to provide accurate and helpful information and recommendations to the Court so that the *judge* can make appropriate decisions which will benefit the children. As the evaluator collects information and formulates conclusions, they must always focus on what would be best for the

children, and this is often different from what would be best for the parents or other parties in the custody dispute. Thus the ultimate goal of a custody evaluation is to help the children, but this is done indirectly through the Court.

Mental Health Evaluator

A mental health professional may perform a psychological evaluation for a variety of reasons, including (1) as part of an overall diagnostic assessment prior to beginning psychotherapy or other treatment, (2) as part of an in-patient evaluation, (3) as part of an assessment for disability benefits, or (4) to assess changes in functioning as part of ongoing treatment plans. This evaluation often involves psychological testing, and is usually billed to the patient's health insurance. The client is the individual being evaluated; there is often little focus on the family context.

Psychological evaluations performed for regular psychiatric purposes are *not* the same as those performed as part of child custody evaluations. The clinicians involved in regular psychiatric evaluations are not experienced with the complexities of child custody disputes. The psychological tests involved cannot be applied to parenting issues.²³ The standards for sufficiency of information are lower in clinical evaluations than in forensic evaluations because the information gathered in forensic evaluations is used to formulate opinions that can responsibly be expressed with a reasonable degree of professional certainty. The audience differs: clinical evaluations are done with other psychiatric providers or insurers as the imagined audience, while forensic evaluations must be conducted and the ensuing reports written with the Court's needs in mind (AFCC, 2007). And finally, health insurance is routinely used for clinical evaluations but cannot be used for forensic evaluations.

Consultant to Attorneys

Over time, experienced custody evaluators often come to work closely with a number of family law attorneys. The attorneys call to ask the evaluator to assess the information in a case to determine whether a child custody evaluation is needed, or to review the report of a completed child custody evaluation. Some mental health experts

avoid these situations which involve assisting the attorney on one side of a custody dispute. I have found, however, that it is often possible to help the attorney understand the individual and family dynamics in a way that ultimately helps the family to settle their dispute in a more reasonable fashion. Others have suggested that such reviews of child custody evaluations are important because they provide “a mechanism by means of which [forensic mental health professionals] can police themselves” (Gould, Kirkpatrick, Austin, & Martindale, 2004, p. 39).

In the consultation with an attorney, the mental health professional must make it clear that they cannot offer an opinion about custody without evaluating *all of the parties in the case* (AAPL, 1995; AFCC, 2007; APA, 2002; APA-med, 1988) and conducting a complete child custody evaluation. Therefore, a consulting forensic mental health professional cannot offer a professional opinion about custodial placement.²⁴

In these consulting situations, the mental health professional's client is the attorney; the attorney's client is the parent. The interactions between the consultant and the attorney are usually covered by attorney-client and attorney work-product privilege.

See Chapter 15 for a discussion of methods for reviewing child custody evaluations.

Divorce Coach

The collaborative approach to separation/divorce often requires a divorce coach who meets with a parent to help them cope with the emotional issues involved in their separation or divorce. This role is similar to that of a therapist who does short-term therapy focused on a specific issue. The client is the parent who meets with the divorce coach, and the goal is to help that parent move ahead with the divorce in a more comfortable way. The parent pays the divorce coach directly, and fees are similar to those for psychotherapy.²⁵ Confidentiality applies to divorce coaching, although the parent usually gives permission for the divorce coach to discuss matters with one or both attorneys, and the divorce coach may participate in five-way meetings with both parents and both attorneys.

Child Expert

The collaborative approach to separation/divorce may also require a child expert, or mental health professional who meets with both parents to help them understand the needs of the children. The child expert often meets with the children separately in order to understand their particular personalities and needs in the context of the separation/divorce. This information is then reported to both parents in a joint meeting, and there are often five-way meetings with the attorneys as well.

Although the child expert does meet with the parents together, as a couples therapist would, the child expert is focused on improving the parents' understanding of their children. Family dynamics may be discussed in terms of their impact on the children. Unlike couples therapy, however, the purpose is not to help the parents understand and ultimately to change their own interactions, but rather to help the parents understand and address the needs of the children.

Confidentiality may apply to the child expert's meetings with the parents and the children, but the parents usually give permission for the child expert to meet with both the parents and, on occasion, with the attorneys in the case.

Expert Witness

There are times when a court or the attorneys in a case engage a forensic mental health professional to evaluate and offer an opinion on certain aspects of a case, without doing a child custody evaluation. In this context the mental health professional is acting as an expert witness, whose testimony is allowed on the basis of their training, expertise, and adherence to scientific principles of data collection and inference formation (Fed. R. Evid. 2004).²⁶

A mental health professional may become an expert witness in two basic ways. One way is for the Court to request that the professional provide information about child development, family dynamics in divorce, general psychological principles and research, or other matters related but not limited to a case. Here the mental health professional is offering expert testimony to the Court without direct knowledge of a specific case. This is the most straightforward,

non-controversial type of expert witness because the expert is not seen as favoring one side in the custody dispute.

A second way to become an expert witness is to be hired by an attorney to critique a custody evaluation report. This role is similar to the consultant to attorneys except that here the attorney seeks to have the consultant testify in court as an expert witness. Attorneys are apt to engage such an expert when the report of a child custody evaluation has been unfavorable to their client. When a forensic mental health expert takes on this role, it is crucial to observe the stricture about offering professional opinions *only* about people one has evaluated personally. Thus before beginning to serve as an expert witness the mental health professional must inform the attorney that they cannot offer an opinion about custody *per se* and must limit their testimony to (a) an evaluation of the data-gathering techniques used in the custody evaluator's report, and (b) an explanation of the meaning of various findings or concepts in the custody evaluator's report, in the context of social science research. Even when the expert carefully limits the type of testimony they can offer, it is still very difficult for them to maintain the reality and appearance of impartiality. In fact many judges will not permit an expert hired by one of the parents to testify in court.

TRAINING AND CERTIFICATION FOR CHILD CUSTODY EVALUATORS

By now, it should be clear that a child custody evaluator has to be knowledgeable about a wide variety of techniques and topics, both psychological and legal. Basic clinical expertise is not sufficient, even if one already works with adults, children, and families; a wide variety of other skills must be mastered as well. In the last ten years, the professional associations have developed a list of training requirements for child custody evaluators. These are summarized in Box 5 and include knowledge of relevant behavioral science research, forensic assessment techniques, legal standards and procedures, and special issues such as abuse, relocation, and

Box 5. Training Requirements for Child Custody Evaluators

Prerequisites:

- Minimum of a Master's degree in a relevant mental health field
- Competency in psychological assessment of children, adults, and families

Basic training and expertise:

- Interviewing and assessment techniques
- Techniques to collect relevant data and assess its reliability and validity
- Child development and family dynamics, including diverse family structures
- Child and family psychopathology
- Complexities of divorce and impact on children
- Social, legal, familial, religious, and cultural issues involved in custody and visitation
- Applicable legal standards and procedures, including laws governing divorce and custody
- Preparation and delivery of court testimony

On-going education:

- Current knowledge of relevant scientific and professional developments

Specialized training:

- Child abuse and neglect
- Family violence
- Substance abuse
- Relocation
- Child alienation

Supervision and consultation:

- Supervision essential for first two years
- On-going peer supervision recommended
- Consultation for topics outside areas of expertise, even for experienced evaluators.

child alienation. Supervision and consultation is encouraged for all evaluators and required for anyone just starting out.²⁷

This is a daunting list, but mental health professionals who want to begin doing custody evaluations should not be discouraged. The rest of this book will introduce the essential elements of the required areas of knowledge. To follow-up, evaluators should attend some of the training workshops listed in Appendix A.²⁸ Then ongoing supervision, consultation, and conference attendance can clarify any remaining areas of confusion and provide up-to-date information about changes in the field. These activities will also provide evaluators with invaluable contact with other professionals working in this challenging but rewarding area.

States have just started to develop certification and training requirements for child custody evaluators. California, for instance, has statutes that spell out the training requirements for child custody evaluators (Cal. R. Ct., 2005b, 2005d). By starting to fill any gaps in their knowledge now, evaluators working in other states will not only be able to perform better evaluations, but will also be ready for the more formal certification process that will probably occur in their area eventually.²⁹

Notes

1. There has been extensive discussion of whether a child custody evaluator (CCE) should later serve as a parenting coordinator (PC) in the same case, because the CCE has the advantage of already being familiar with the family. I think that such service as a PC is not advisable because it would prevent the CCE from doing a follow-up evaluation, should the Court later decide that one is necessary. It is never appropriate to serve as a therapist and a child custody evaluator in the same case, even at different points in time, because (a) the CCE must be impartial, whereas a therapist is an advocate for the patient, and (b) the confidentiality which exists in the therapist/patient relationship is not present with the CCE, so that the CCE who has previously been a therapist in the case may have information the parent would not wish a CCE to have. See Box 4 for other differences between the two roles.
2. For a detailed discussion of the practices and obligations of attorneys in divorce cases, see the guidelines written by the American Academy of Matrimonial Lawyers (AAML, 2000), which are included in the CD accompanying this volume.
3. The role of the *attorney ad litem* in Texas is similar to that of the *guardian ad litem/next friend* in Massachusetts.
4. Hon. Arline Rotman (ret.), Personal communication, January 5, 2007.
5. In some jurisdictions the Probate and Family Court is called the Domestic-Relations Court, the Court of Domestic Relations, or simply the Domestic Court.

6. Ackerman (2001) surveyed a nationwide sample of 800 family law judges and reported on the judges' approaches to a variety of issues in custody evaluations and in the resolution of child custody disputes.
7. The parties in a custody dispute may also motion for a custody evaluator to be appointed.
8. These claims have been advanced by some well-known forensic psychologists (e.g. Dillon & Emery, 1996; Gould, 1998, 2006). Others have challenged the advantages of mediation, however, citing contradictory research. This controversy will be discussed in the section comparing collaborative and adversarial law in Chapter 5.
9. Current usage varies between *Parent* Coordinator and *Parenting* Coordinator. Given that the professional involved is attempting to coordinate or facilitate the couple's parenting, rather than to coordinate the parents themselves, the latter form seems more appropriate.
10. Garrity & Baris (1994) have suggested that in approximately 20% of cases involving child custody evaluations, the severe conflict continues for at least two years after the evaluation and subsequent court order. Given the growing demand for Parenting Coordinators, Special Masters, and other professionals who work with post-divorce families in an ongoing manner, the percentage of families who experience continuing severe conflict may be even higher than 20%.
11. In states without statutes specifically authorizing a Parenting Coordinator, the PC concept is authorized by using the authority of an existing, related statutory concept such as that for guardians *ad litem*, mediators, referees, or special masters. In addition to the term "parenting coordinator" (GA, ID, MA, NC, OH, VT), this hybrid role has also been called a "special master" (CA), "med-arbiter" (CO), "wiseperson" (NM), "custody commissioner" (Hawaii), "family court advisor" (AZ), "resolution coordinator" (OK), and "parenting referee" (OR) (AFCC, 2003). In the present volume the term Parenting Coordinator (PC) will be used to apply to all of these similar models.
12. See the AFCC Guidelines for a discussion of the confidentiality issue in parenting coordination (AFCC, 2006, p. 168).
13. The AFCC Task Force on Parenting Coordination states that, "Parenting coordination is a service for high conflict domestic relations cases, which clearly encompasses cases in which there is domestic violence, including not only physical abuse, but also the domineering, intimidating behavior that may accompany it." (AFCC, 2003, p. 549.) However, they go on to note that, "By the time parents become involved with a PC, the presence of violence in their relationship should have been litigated..." Thus the AFCC appears to be referring to a family having a *history* of domestic violence. On-going domestic violence would render the dispute-resolution interventions of a PC ineffective and potentially harmful.

In their later guidelines (AFCC, 2006) the AFCC Task Force clarifies the matter further by stating that, "The alternative dispute resolution process described above as central to the parenting coordinator's role may be inappropriate and potentially exploited by perpetrators of domestic violence... [Here] the role of the PC changes to an almost purely enforcement function [involving a court order]... ADR techniques in such cases may have the effect of maintaining or increasing the imbalance of power and the victim's risk of harm." (p. 165).

14. Most PCs charge hourly rates of \$75 to \$275 for costs that include sessions with the parents; communications with the parents by phone, Email, or letter; interviews with the children; investigation of records and contact with other professionals involved with the family; travel, preparation of agreements and reports; and court appearances. (AFCC, 2003)
15. The AFCC (2003, 2006) lists areas of required expertise that essentially involve those needed to be a child custody evaluator (see Box 5 in this chapter) plus expertise in conflict resolution.
16. Although court-appointed experts are normally given quasi-judicial immunity, most court appointments of parenting coordinators are not based on statutes or clear case law. Therefore it is not yet clear whether a court-appointed PC can be sued for carrying out appropriate PC functions. Furthermore, a disgruntled party can always (1) sue a professional for negligence for violating the standard of care in their profession, or (2) make a complaint to a licensing or other regulatory board (Coates et al., 2004).
17. The differences between the role of a psychotherapist and that of a custody evaluator have been discussed by many writers (e.g. APA-med, 1988; Gould, 1998; Greenberg & Shuman, 1997). Greenberg & Gould (2001) go beyond these distinctions to emphasize the importance of a “hybrid role” where a treating mental health professional is also well-versed in the forensic issues surrounding child custody in separation/divorce cases. Greenberg and Gould are not advocating a combination of the clinical/treating and forensic/evaluating roles, however, but rather emphasize the need for every psychotherapist working with families in separation/divorce cases to be aware of the forensic issues and how these affect the therapy.
18. Philip Stahl has expressed a different opinion, saying that, “Regardless of who appoints the evaluator or who is paying the fee, the client must be the entire family... Certainly evaluators can try to help judges make sound decisions and can try to assist attorneys in directing their clients toward settlement, but in all instances, the primary goal must be to help the parents understand the needs of their children.” (Stahl, 1994, p. 8). This statement appears to involve a different use of the term “client,” for while it is clear that the ultimate purpose of child custody evaluations is to help the children’s needs be met by the parents, the evaluator is legally answerable to the appointing court (as well as to the ethics guidelines of the evaluator’s professional association and licensing board).
19. As noted in the HIPAA Act, one exception is when the therapist provides information about types and dates of service to an insurance company. Another exception to these broad rules for confidentiality occurs when a child is the patient because the parents have a legal right to obtain information about their child’s therapy and can give their permission for information about the therapy to be released to third parties. It is essential to note, however, that *confidentiality* is different from *privilege*, where the information is released to a court. In the latter case, only a court can authorize the release of information about the child’s therapy. This matter is discussed further in Chapter 5.
20. An exception occurs when a child custody evaluation is paid for by the state. In that case, payment usually occurs after the report is submitted to the Court. State payment does not raise the issue of examiner bias, however, nor does the outcome of the evaluation affect the promptness of the payment.

21. The AFCC Task Force on Parenting Coordination has offered the following definition of *impartiality*, which is also applicable to custody evaluators: "Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual" (AFCC, 2006, p. 167).
22. Of course if an evaluator discovers that there is on-going child abuse, they must report it to the authorities in accordance with the professional and state requirements for mandated reporters. Intervention is also required if there is "credible evidence of substantial risk of imminent and significant physical or emotional harm to a litigant, child(ren), or others involved in the evaluative process" (AFCC, 2007, section 8.4, p. 85).
23. The issue of whether psychological tests should be used in child custody evaluations will be addressed in Chapter 11
24. The interdisciplinary guidelines recently issued by the Association of Family and Conciliation Courts is very specific about this issue, stating that a forensic consultant who is hired to review the work of a custody evaluator "Shall avoid multiple roles, and shall not meet with litigants, family members, or allies of litigants (other than counsel" (AFCC, 2007, section 8.5, p. 86).
25. Although I am not aware of any case law regarding insurance payment for the services of a divorce coach, the function is similar to that of short-term issue-focused psychotherapy and therefore may sometimes be billable to the parent's health insurance.
26. The types of witnesses and rules of evidence will be discussed in more detail in Chapter 6
27. The training requirements for child custody evaluators listed in Box 5 are derived from a combination of sources: AFCC, 2007; APA, 1994; Cal. R. Ct., 2005b, 2005d.
28. Gould & Martindale recommend that psychologists obtain at least 21 continuing education credits (three full-day workshops) through the American Academy of Forensic Psychology (Gould & Martindale, in press, p. 113; reprinted in Gould, 2006, p. 252). See the Resources section at the end of this volume for contact information for AAFP.
29. Weinstock & Markar (2006) have argued for the development of formalized training guidelines for child custody evaluators and practitioners in family law psychology. The content they recommend is similar to that listed in Box 5, which is based on previous recommendations by the California Court system (Cal. R. Ct., 2005b, 2005d) and professional associations such as the Association for Family and Conciliation Courts (AFCC, 2007) and the American Psychological Association (APA, 1994).

3

MODELS AND GUIDELINES FOR CHILD CUSTODY EVALUATIONS

THEMES IN GUIDELINES

A number of professional organizations have issued guidelines to ensure that child custody evaluations are done in a thorough, impartial manner that provides the Court with sufficient information to make a decision that is in the best interests of the children involved. The themes in these guidelines are summarized in Box 6 so that you can refer to them as you read about the various aspects of doing child custody evaluations.¹

VARIATIONS IN CHILD CUSTODY EVALUATIONS

The guidelines are the same for all child custody evaluations. Evaluations do vary in their complexity and breadth, however, depending on what information is needed. Here are some common variations, going from focused, brief evaluations to more comprehensive, lengthy ones.²

Fast Track Evaluations

In California, a judge may order a *Fast Track Evaluation* to be done before making a custody/visitation decision. These evaluations

Box 6. Themes in Guidelines for Child Custody Evaluations

- ◆ Place the child's best interests above all else.
- ◆ Be clear that your central responsibility is to assist the Court.
- ◆ Always maintain impartiality.
- ◆ Avoid dual relationships.
- ◆ Avoid contingency fees; quality cannot be linked to fees.
- ◆ Collect data from multiple sources.
- ◆ Consider all the factors in the case.
- ◆ Draw conclusions only about people you have seen.
- ◆ Avoid *ex parte* communications with attorneys or judges.
- ◆ Inform all parties of the absence of confidentiality.
- ◆ Obtain supervision until you have met the requirements for training and experience.
- ◆ Make your personal biases clear to the parties beforehand.
- ◆ Provide a written report as directed by the Court.
- ◆ Avoid becoming an advocate during court testimony, and specify the limitations of your data and expertise.

involve a court-employed evaluator who sits down with the parents and children, then gives the judge an oral report later the same day (Los Angeles Superior Court, 2005).

Brief Focused Evaluations

The Family Court Clinic at the University of Massachusetts Medical Center does a *Brief Focused Evaluation* when a judge states a referral question about urgent issues such as parental substance abuse, mental illness, or domestic violence (Cavallero, 2000). In one day, the evaluator (a) interviews family members, (b) interviews professionals, and (c) writes a short report. The report focuses on the clinician's observations of the family members and their interactions, and may include a recommendation for further assessment. The purpose of the brief evaluation is to provide the judge with enough information to write temporary orders.³

Child Forensic Interview

The Court may specify questions it wants an experienced evaluator to ask a child about issues such as preference for residential household or child sexual abuse.

Child Developmental Evaluation

This evaluation focuses on the child's development (cognitive, social, emotional, physical, behavioral, and academic), in order to assist the parents, attorneys, and Court in making decisions regarding custody and parenting time. These evaluations are appropriate for low-conflict, cooperative parents who are concerned about some aspect of their child's development or adjustment to the divorce.

Dispute Assessment

The purpose of this brief evaluation is to apply legal issues to the case at hand. The data collection is less exhaustive than in a problem-focused evaluation, and usually involves less than 10 face-to-face clinical interview hours plus some document review.

A problem list is often generated, with questions identified but left unanswered.

Problem-Focused Evaluation

This mid-level evaluation is designed to address one or two pressing issues in a more thorough manner than the dispute assessment, but without the broad and intensive investigation required in a comprehensive evaluation. Problem-focused evaluation is appropriate when there are no high-risk factors and the couple agrees on most of the parenting plan. Examples of problems to address include academic placement of a gifted child, the role of a parent's new partner, or the need to revise an existing time-sharing plan for an adolescent child.

Comprehensive Evaluation

A comprehensive evaluation is needed when the court is faced with complex behavioral health issues or high-risk factors such as contentious parents, domestic violence, substance abuse, serious mental illness, or child abuse. These evaluations take longer (usually 2–4 months) than problem-focused evaluations and involve many more components (clinical interviews with parents and children, parent-child observations, home visits, collateral interviews, extensive document review, and sometimes psychological testing).

Markan and Weinstock argue that comprehensive child custody evaluations should be “the exception, not the rule” because “not all family challenges necessitate an exhaustive assessment” (2005, p. 467). Others contend that it is impossible to do an adequate evaluation in a brief time, as crucial pieces of information are bound to be omitted or distorted.

The existing guidelines and standards call for comprehensive evaluations where the evaluator conducts a thorough, impartial assessment of each family member and of the overall family interactions. The psychological health of each child must be assessed, along with the psychological health and parenting abilities of each parent or caretaker. These broad areas of evaluation are outlined in Box 7.⁴

Box 7. *Areas of Assessment in Comprehensive Child Custody Evaluations*

- ◆ *Relationship* between child and parent/caretaker
- ◆ *Relationship* between parents or potential caretakers
- ◆ *Parenting abilities* of each parent/caretaker
- ◆ *Psychological health* of each parent/caretaker
- ◆ *Psychological health* of each child
- ◆ *Family dynamics*, including any patterns of *domestic violence* or *child abuse*

The present volume focuses on comprehensive child custody evaluations because these are currently the norm in child custody disputes. Focusing on comprehensive evaluations also provides the most extensive information about how to conduct an evaluation. Having this information, it is then possible to design more focused, briefer evaluations when these are needed due to emergency situations and the constraints of limited time and financial resources. Thus the method, procedures, and writing style should be the same for all evaluations; only the scope of the investigation should vary.⁵

EVALUATIONS IN CARE AND PROTECTION MATTERS

Occasionally a child custody evaluator will be asked to do an evaluation in a care and protection case. Here the state has assumed temporary or permanent responsibility for a child whose

parents have been found unfit due to abandonment, neglect, acts of physical or sexual abuse, or failure to protect the child from such abuse by others. The situation is different from that of a child custody dispute, where the dispute occurs *between the parents*. In care and protection evaluations the custody dispute is *between the parent(s) and the state*, as represented by the Department of Social Services or the Court.

State interventions for care and protection of a child usually occur in three stages. In the first stage, a report of child abuse or neglect leads to an investigation. If the investigation indicates that the child is at sufficient risk of harm, then in the second stage the state assumes care and/or custody of the child and may make recommendations for rehabilitation of the parents.⁶ If the rehabilitative efforts fail to create a safe environment for the child, or if the child has been returned to the parental home unsuccessfully, then the case may enter the third stage. Here the state usually asks for a final disposition, which may result in involuntary termination of parental rights. Evaluators should be aware that the most extreme disposition – termination of parental rights— requires both due process and a higher standard of proof than that used in other child protection matters (APA, 1998).⁷

A request for a psychological evaluation may occur during any of the three stages of a care and protection case and may come from four different sources: the Juvenile Court, the Department of Social Services (DSS), the parent's attorney, or the attorney for the child. In all four situations, the evaluator should maintain impartiality and follow the usual Guidelines for doing child custody evaluations; more specific guidelines have also been developed for doing psychological evaluations in care and protection matters (APA, 1998).

Regardless of the source of the referral, the evaluator's professional and ethical obligation is to the attorney, social service agency, and by extension to the Court (Condie, 2003). In practice, however, the evaluator's report is often treated differently depending on the source of appointment. When appointed by the Court, the evaluator reports directly to the Court and the written

report belongs to the Court. When hired by DSS, the report is owned by DSS and is sent directly to them. When hired by the attorney for the parent or the child, the attorney owns the report. When either DSS or an attorney hires the evaluator, they may choose whether or not to use the report in the court proceedings. Recently I have found that an increasing number of attorneys contract to receive a verbal report once the data is collected; if the results are not beneficial to their client's case, they then ask that a written report not be submitted. In this way, the attorney can avoid commissioning a written record of their client's deficiencies. Although this practice may constitute a sound legal strategy it can be extremely frustrating for evaluators who want to see their work used to serve the best interests of the child, not the legal strategizing of the parents.

During any stage of a care and protection matter, mental health professionals may be asked to evaluate different parties for different purposes. The evaluators are often asked to address issues such as those listed in Box 8.⁸ In order to answer these questions, evaluators use procedures similar to those in regular child custody evaluations. The focus of care and protection evaluations is different from that in custody disputes between parents, however, because the referral questions are different. For example, when an evaluator is asked to do a **parenting evaluation** the emphasis is on *parental fitness*, or the parent's ability to take care of the child(ren). When an evaluator is asked to do a **bonding evaluation**, on the other hand, the focus of the evaluation is on the *relationship between the parent(s) and the child(ren)* rather than on the parental abilities and deficits. As in child custody disputes, the prevailing standard in care and protections matters is the *best interests of the child* (Condie, 2003).⁹

Legal standards and practices differ between (a) child custody disputes between parents and (b) care and protection cases. For this reason, any child custody evaluator who wants to do parenting evaluations should first familiarize themselves with the legal issues and evaluation procedures for care and protection matters (Condie, 2003).

Box 8. Common Referral Questions in Care and Protection Evaluations

- ◆ *How seriously has the child's psychological well-being been affected by the neglect or abuse?*
- ◆ *What therapeutic interventions would be recommended to assist the child?*
- ◆ *Can the parent(s) be successfully treated to prevent harm to the child in the future? If so, how? If not, why?*
- ◆ *What would be the psychological effect on the child if returned to the parent(s)?*
- ◆ *What would be the psychological effect on the child if separated from the parents? or if parental rights were terminated?*

FORENSIC MODEL FOR CHILD CUSTODY EVALUATIONS

It is important to keep in mind that any child custody evaluation is an inherently *forensic* psychological activity, meaning that the evaluation is part of a legal dispute and that the report of the evaluation usually belongs to the Court. But this is not all there is to forensic psychology, which is defined as the application of *psychological research and techniques* to questions and issues relating to the law. Thus it is not enough to use your clinical skills in a child custody evaluation; knowledge and application of research is also required.

Martindale and Gould (2004) argue that because of the immense impact such evaluations have on the families involved, evaluators should adhere to the highest standards of professional conduct.

“Guidelines” are usually seen as a set of behaviors to which a professional should aspire, whereas “standards” are seen as a set of behaviors that are mandatory. Martindale and Gould are suggesting that all of the guidelines for child custody evaluations (summarized here in Box 6) should be viewed as obligatory for the child custody evaluator. They then go on to outline a “forensic model” for child custody evaluations, whose main components are summarized here in Box 9. This is an important model which restates many of the themes in the guidelines for child custody evaluations and alludes to other issues that we will discuss in Part II of this volume.

CRITICISMS OF CHILD CUSTODY EVALUATIONS

Custody disputes take place in a legal system designed to “do battle” in a verbal manner. Everyone is on one side or another in every court case or dispute; only the judge is supposed to be impartial. In a custody dispute the parents are especially upset, often experiencing intense grief, rage, and confusion. This leads to a situation in which everyone takes sides in a highly contentious and often extremely aggressive manner: the parents, the attorneys, the parents’ relatives and friends, and even some of the professionals involved with the families.

The custody evaluator has to remain impartial in this highly partisan atmosphere, and be prepared to weather criticism from parents and their advocates, for it is virtually inevitable that someone will be unhappy with the evaluator’s conclusions and recommendations. But it is not only parents and their attorneys who criticize custody evaluators. Attacks on the entire process of custody evaluations have also come from professionals outside the mental health field, and from the media. These criticisms, which are summarized in Box 10, concern every aspect of the evaluation process: the role of the evaluator, the assessment methods used, the attention to relevant scientific knowledge, the conclusions and recommendations, and the evaluator’s testimony in court.¹⁰

Box 9. *Forensic Model for Child Custody Evaluations*

1. The Court defines the evaluator's role as well as the purpose and focus of the evaluation.
2. The evaluator should start by obtaining a list of specific psycho-legal issues for which the Court seeks advisory input.
3. The evaluator conducts all professional activities according to the guidelines, regulations, and ethics codes provided by state regulatory boards and by relevant professional organizations.
4. Assessment instruments must be selected with special attention to reliability and validity, as specified by related professional associations.
5. Detailed records of all aspects of the evaluation must be created, preserved, and made available to those with the legal authority to inspect or possess them.
6. The evaluator must recognize that the evaluation is investigative rather than therapeutic, and must not engage in therapeutic endeavors before, during, or after the evaluation.
7. The evaluator must acknowledge the limitations inherent in their evaluation procedures.
8. The evaluator must understand the distinction between psychological issues and the specific psycho-legal questions before the Court.

(Adapted from Martindale & Gould, 2004, pp. 2–3)

Box 10. *Frequent Criticisms of Child Custody Evaluations (unsupported)*

- ◆ Role of evaluator –
 - multiple roles
 - forensic and clinical roles confused
- ◆ Informed consent – lack of confidentiality not addressed with all parties
- ◆ Assessment methods –
 - Narrow and selective use of assessment procedures
 - Over-reliance on psychological testing
 - Inferences from psychological testing are irrelevant, faulty, or invalid
- ◆ Sources of information –
 - Multiple sources not used
 - Collateral sources omitted or inconsistent
- ◆ Conclusions and Recommendations –
 - Don't follow from information gathered
 - Exceed limitations of scientific research on related topics such as child development
- ◆ Writing style –
 - Specifics omitted regarding referral request, measures used, and sources of information
 - Observations and conclusions not distinguished from each other
- ◆ Court testimony –
 - Empirical research not emphasized
 - Clinical experience and even intuition used as basis

Over the past 15 years, researchers have begun to examine the critical factors in custody evaluation, including the impact of law reforms, the psychological effect of various family situations on children, the use and abuse of various assessment measures and psychological tests, and the presentation of information in reports and court testimony. These issues will be discussed in later chapters. For now, it is sufficient to point out that recent research has failed to support the major criticisms of child custody evaluations (Ackerman et al., 2004; Bow & Quinell, 2002; Gould, 1998, 2006). We should also note that if custody evaluators follow the guidelines and suggestions in this book, they should be able to avoid these major errors. This will not protect the evaluator from criticism, however, or even keep disgruntled parents and their attorneys from making spurious complaints to the evaluator's licensing board. These dreaded events, unfortunately, are just part of life for even the most expert and meticulous custody evaluators.

Notes

1. The summary of themes in guidelines for child custody evaluations (presented in Box 6) is based on AAPI, 1993; AFCC, 2007; APA, 1983, 1991, 1993, 1994, 2002; APA-med, 1988.
2. Markan and Weinstock (2005) have proposed this typology of evaluations, progressing from focused, brief evaluations to more comprehensive, lengthy evaluations. They do not discuss *Fast Track Evaluations* done in California (Los Angeles Superior Court, 2005) or the *Focused, Brief Evaluations* done by the U. Mass. Medical Center (Cavallero, 2000).
3. Markan and Weinstock (2005) describe an *Emergency Case Stabilization* that is used in the same circumstances as the *Brief, Focused Evaluation*.
4. The summary of areas of evaluation presented in Box 7 is based on AFCC, 2007; APA-med, 1988.
5. Gould (2006, p. 401) makes a similar point.
6. Once the state assumes physical custody of the child, in most jurisdictions the parents retain the right to visit their child, unless the court makes a finding that visitation is unsafe for the child (Condie, 2003, p. 58).
7. The U.S. Supreme Court (*Santosky v. Kramer*, 1982) has ruled that in order to involuntarily terminate parental rights there must be a "clear and convincing burden of proof" rather than simply a "preponderance of evidence" (APA, 1993, note 5).
8. The referral questions for care and protection evaluations (summarized here in Box 8) are from APA, 1993, pp. 3–4.
9. Condie (2003) reports that in care and protection matters the prevailing legal standard nationwide is the *best interests of the child*. In Massachusetts,

however, I have found that attorneys and social service agencies want evaluations to address issues of *parental fitness*. Therefore mental health professionals who want to do evaluations in care and protection matters should first ascertain the legal standards in their localities.

10. The frequent criticisms of child custody evaluations in Box 10 are based on Ackerman et al, 2004; Bow and Quinnell, 2002; Gould 1998, 2006.

4

STANDARDS FOR RESOLUTION OF CUSTODY DISPUTES

Court battles over custody are a relatively new phenomenon. Before the 19th century, wives and children were viewed as a man's possessions, and the children continued to belong to their father after separation or divorce. Late in the 19th century, United States courts began to view the *child's best interests* as the determining factor in custody decisions. This change was accompanied by a shift to the presumption that the mother was the most appropriate caretaker for children under the age of 7. This *tender years presumption* could be rebutted only if the mother was shown to be unfit (Melton, Petrila, Poythress, & Slobogin, 1997). Later in the 20th century, the courts began to develop a more gender-neutral approach to custody decisions, embodied in the various legal standards discussed below.

BEST INTERESTS STANDARD

In using the "best interests of the child" as the standard for custody decisions, courts are still left with the question of how to define those best interests. In 1979 the US Congress passed the Uniform Marriage and Divorce Act (UMDA), which attempts to provide such

a definition by identifying five factors to be considered in determining the best interests of the child (See Box 11).¹ Although this model standard has now been adopted in most states, courts are free to consider “all relevant factors” that they view as important in any given case, and to weight those factors in any manner they choose.²

Box 11. *Uniform Marriage and Divorce Act – Best Interest of Child*

The court shall determine custody in accordance with the best interest of the child.

The court shall consider all relevant factors including:

- (1) the wishes of the child’s parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child’s best interest;
- (4) the child’s adjustment to his home, school, and community; and
- (5) the mental and physical health of all individuals involved.

The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

(UMDA, Section 402)

Criticism of the Best Interests Standard has focused on the vague nature of its definitions. There is no guidance about exactly what factors to include beyond the five listed in UMDA, nor about the relative importance of different factors. It is not clear whether the guideline should focus on the past, present, or future of the child (Melton et al., 1997). Some critics have pointed out that the standard requires a psycho/legal determination which many judges are ill-equipped to provide because they are not trained in psychological evaluation (Gottlieb, 2003). Others have argued that sometimes the Best Interests Standard has functioned as a “best-parent” standard that encourages parents to engage in protracted battles about the relative merits of their characters (Benjamin & Gollan, 2003; Warshak, 1996).

In response to these difficulties, legal scholars and courts have developed the Psychological Parent, Primary Parent, and Approximation Standards for determining the best interests of the child.

PSYCHOLOGICAL PARENT STANDARD

A psychological parent is an adult who fulfills the functions of a parent and has a parental emotional relationship with a child. The advantage of this concept is that it recognizes that “family ties need not depend upon the technicality of biological or legal relationships [but rather are] based on day-to-day interaction, companionship, and shared experiences” (Goldstein, Solnit, Goldstein & Freud, 1996, pp. 12, 104).³ This is particularly important in current American society, where the shifts in family structure mean that millions of children have significant, long-term emotional ties with nurturing adults who are not their blood or legal relatives.⁴ Today psychological parents are often called “*de facto* parents” and are involved in many custody cases that involve non-traditional family forms (Willemsen, Andrews, Karlin, & Willemsen, 2005).⁵

The psychoanalysts who invented the concept of the psychological parent called this standard the “**least detrimental alternative**.” Unfortunately, they also maintained that one psychological

parent should have sole legal and sole physical custody, and the other parent should have no rights whatsoever. As they put it:

...Children have difficulty profiting from and maintaining contact with two psychological parents who are at odds with each other – especially when the child herself is the focus of the dispute. Loyalty conflicts are common under such conditions and may have devastating consequences by destroying the child's positive relationships to both parents. A parent visiting *against or without regard to the wishes of the custodial parent* has less chance of serving as a constructive force in the life of her child. The noncustodial parent should have no legally enforceable right to visit the child, and the custodial parent should have the right to decide whether it is desirable for the child to have such visits. (Goldstein et al., 1996, p. 23; emphasis in original)

Goldstein et al. (1996) have explained that they are not opposed to the continuation of contact between a child and her non-custodial parent, but do think that such contact should not be legally required and should be arranged at the discretion of the custodial parent.

The all-or-nothing custody decision advocated by Goldstein et al. has been severely criticized. There is the likelihood that it will cause increased litigation by parents who wish to avoid the loss of visitation. It may also cause the custodial parent to withhold visitation in order to manipulate or punish the non-custodial parent. And because this standard presumes that the custodial parent would be the psychological parent, some writers have suggested that the standard could increase the incidence of parental kidnapping (Melton et al., 1997).

Another problem with the standard of the psychological parent is that it implies that a child has one primary attachment figure. There is substantial research evidence that infants form multiple attachments, although they do tend to prefer the primary caretaker in times of stress.⁶ There is usually a hierarchy of attachment figures who each have a distinctive relationship with the child (Bray, 1991).⁷

The multiplicity of children's attachments makes it impossible to base custody decisions on this factor alone. Nevertheless, the concept of a psychological parent still offers a very useful way to conceptualize the child's relationships with adult caregivers. In the

course of their assessment, custody evaluators must be sure to assess the nature and strength of each child's attachment to his or her caregivers.⁸ Then the Court can combine this information with other factors in order to determine what custody arrangement would be in the child's best interest.

PRIMARY CARETAKER STANDARD

This rule shares the basic assumption of the Psychological Parent Standard: that young children do better if their pre-divorce primary attachment is preserved in the post-divorce custody arrangements. Rather than using a direct assessment of the child's emotional attachments, however, this standard uses an accounting of the various functions performed by each parent before the separation/divorce. This rule has been developed most extensively in West Virginia, where the Supreme Court has indicated that the primary caretaker is the parent who has been primarily responsible for the ten parental functions listed in Box 12.

Melton and his colleagues have commented that this standard is "more palatable as a practical matter than either the best-interests or psychological parent standard" because it calls for mental health practitioners to simply gather and corroborate evidence rather than serve as experts who offer opinions (1997, p. 489–490). These writers go on to say that the drawbacks of the Primary Caretaker Standard are that (1) the link between the parental functions and the development of a parent-child relationship is unknown, and that (2) a purely quantitative inquiry offers little insight into how parent-child arrangements would usually develop after divorce. This standard is popular with many mothers, who feel that it recognizes their primary role in parenting and household maintenance pre-divorce.⁹

APPROXIMATION STANDARD

This standard is a modification of the Primary Caretaker Standard because it also assumes that pre-divorce primary attachments should be preserved after the divorce and uses parental caretaking

Box 12. *Primary Caretaker Functions*

The primary caretaker is the parent who is principally responsible for the following parenting tasks:

- (1) Planning and preparing meals
- (2) Bathing, grooming, and dressing
- (3) Purchasing and care of clothes
- (4) Medical care, including nursing and trips to the doctor
- (5) Arranging and transporting children to after-school activities and social engagements
- (6) Arranging alternative childcare such as babysitters and daycare
- (7) Sleeping – bedtime, care during night, waking in morning
- (8) Disciplining, e.g. general manners and toilet training
- (9) Education – religious, cultural, social
- (10) Teaching elementary skills such as reading, writing, and arithmetic

(Adapted from West Virginia Supreme Court 1989, as quoted in Melton et al. 1997, p. 489)

behaviors pre-divorce as a measure of those attachments. The essential difference is that the Approximation Standard assumes that children form *multiple* attachments and seeks to assess the relative amount of pre-divorce caretaking done by each parent. In 2002 the American Law Institute proposed that physical custody

then be based on the proportion of caretaking time done pre-divorce (ALI, 2002).

When Scott (1992) proposed the Approximation Rule, she argued that it would encourage the resolution of custody disputes through cooperative decision-making rather than litigation, encourage both parents to invest in parenting both pre- and post-divorce, and recognize and encourage the role changes that accompany the father's increased investment. Other supporters of the Approximation Standard point out that it recognizes the importance of attachments, acknowledges that the child attaches to multiple caretakers, and seeks to maintain consistency of attachment from pre-divorce to post-divorce periods (Kelly & Ward, 2002).

Critics have argued that by simply counting time or parental activities, the Approximation Standard fails to differentiate between secure and insecure attachment.¹⁰ This means that the rule does not differentiate between good and bad parenting, but simply assumes that "the amount of time devoted by a parent to caretaking responsibilities corresponds directly with parenting ability and the strength of emotional attachment in the parent-child relationship" (Riggs, 2005, p. 487). Riggs adds that the Approximation Rule also fails to differentiate between the *strength* and the *quality* of a child's attachment, ignoring the fact that better child outcomes are associated with how secure the child feels, not with how strongly attached the child feels.¹¹

Research on attachment has suggested six criteria for defining an attachment figure (See Box 13). Riggs (2005) points out that if the courts were to use only the provision of physical care, time spent, and continuity (as the Approximation Rule suggests), they would end up awarding custody of many children in dual-earner families to daycare workers, babysitters, and teachers.

Finally, there is the issue of gender bias in the Approximation Standard. Because the woman is usually the parent who stays home with the children in heterosexual families, the approximation rule may "end up resembling little more than the maternal preference standard of the past" (Riggs, 2005, p. 489).¹²

Box 13. *Research-based Criteria for Identifying Attachment Figures*

- (1) Provision of physical care.
- (2) Provision of emotional care.
- (3) Quality of care provided.
- (4) Time spent with the child.
- (5) Continuity or consistency.
- (6) Emotional investment in the child.

PARENTAL DEFERENCE STANDARD

Sometimes divorcing parents are able to make an agreement about the future custody of their children. The majority of states consider the parental agreement as only one factor in determining what is in the best interests of the child (*Best Interests Standard*), while all but two of the other states presume that the agreement is in the best interests of the child unless the judge finds otherwise (*Presumption Standard*). Only two states defer to the parental agreement unless it would be harmful to the child (*Parental Deference Standard*).¹³

Jellum (2004) argues that the Parental Deference Standard is better than either the Best Interests Standard or the Presumption Standard because it would take decision-making away from judges, thereby improving the child-custody process by (a) not requiring court hearings regarding child custody and (b) respecting the parents' fundamental right to make parenting decisions for their children.

Child custody evaluators do not usually work with the Presumption Standard because high-conflict families are not able to make child custody agreements. The fact that these families cannot agree about child custody is precisely why the court appoints a child custody evaluator for them, as part of the court's

information-gathering prior to making a court-ordered custody decision. As professionals work with high-conflict families, however, it is helpful to remember that the vast majority of divorcing families with minor children experience only low or moderate conflict and are able to reach child custody agreements outside of court. For these families, the Presumption Standard is a very important issue.

JOINT CUSTODY

Over the past 20 years, most states have adopted statutes that specify that joint custody is the presumption. This means that the court will award joint custody unless there is some specific reason why this would not be in the best interests of the child. These statutes refer only to *legal* custody, or the “shared parental authority to make decisions on behalf of the child” (Melton et al., 1997, p. 490). Although many proponents of joint custody wanted it to include joint *physical* custody, this arrangement is far less common.

Even in states with weaker presumptions of joint legal custody, the judicial preference for parental cooperation is expressed in the “**friendly-parent rule.**” This rule specifies that if joint custody is not awarded, sole custody should be awarded to the parent who is more likely to facilitate the non-custodial parent’s relationship with the child (Melton et al., 1997).¹⁴

Some writers describe the turn towards a co-parenting model as a judicial trend (Benjamin & Gollan, 2003), while others present it as an inevitable part of longer-term changes in family life and the cultural view of childhood (van Krieken, 2005). In discussing the long-term implications, van Krieken points out that joint-parenting statutes disparage the mother’s primary caretaker role in the pre-separation period. He also reminds us that some parents are not prepared to meet the demands of joint custody: mothers may have difficulty relinquishing their identity as the primary parent, and fathers who have demanded joint custody may be surprised and angry at the amount of physical and emotional caretaking required. The reality of co-parenting often fails to match the ideal: Gender imbalance is still there because many mothers continue to do most

of the childcare because the fathers have asked for more responsibility than they can actually manage. Finally, it is not clear that joint custody has a more beneficial impact on children than does sole custody, in that children living with the two arrangements look quite similar two years post-divorce (Wallerstein & Blakeslee, 1989).

APPLICATION OF CUSTODY STANDARDS IN EVALUATIONS

Given the variation in custody standards, what information should a custody evaluator collect and present to the court? In actual practice the professional, state, and federal guidelines for comprehensive child custody evaluations use the best interests model. As Box 14 indicates, these guidelines ask for information about issues included in the Best Interests Standard, but this information then covers all of the issues included in the other standards as well. Evaluators need to collect and assess the information while keeping in mind the underlying questions implied in each standard. In formulating conclusions or opinions based on the information collected, evaluators should be sure to touch on the issues included in the standards used in their jurisdiction.

STANDARDS FOR CUSTODY MODIFICATION

Once a court has ruled on child custody, the decision is final.¹⁵ Parents cannot re-litigate unless there is a “substantial change in circumstances” that affects the child, or a new issue concerning the child’s best interests (Seem, 2004). But what constitutes a substantial change in circumstances? The answer to this question can be complicated and unexpected. For instance Seem (2004) has pointed out that under the federal No Child Left Behind Act passed in 2001, local educational authorities are required to allow children in “failing” schools to transfer to a non-failing school in the same school district. If a child’s school is classified as failing and the custodial parent *does not* have the child transferred, the non-custodial parent could re-litigate on the basis of the need for

Box 14. Assessment Information and Custody Standards

<i>Information Collected</i>	<i>Applicable Child Custody Standard</i>			
	<i>BIS</i>	<i>PPS</i>	<i>PCS</i>	<i>AS</i>
◆ <i>Living situation(s)</i>	•	•	•	•
◆ <i>Parenting tasks and abilities of each parent</i>	•	•	•	•
◆ <i>Parent/child and sibling relationships</i>	•	•		
◆ <i>Parent/Parent relationship, including communication, decision-making, and support for other parent's involvement</i>	•			
◆ <i>Mental and physical health of all individuals involved</i>	•			
◆ <i>Child's adjustment to home, school, and community</i>	•			
◆ <i>Family dynamics, including any patterns of domestic violence or child abuse</i>	•			
◆ <i>Custody wishes of child and parents</i>	•			

BIS = Best Interests Standard. This information is required under national professional guidelines (AFCC 2007; APA-med, 1988), state standards (e.g. Comm. Mass., 2005b) and federal statutes (UMDA, 1979).

PPS = Psychological Parent Standard

PCS = Primary Caretaker Standard

AS = Approximation Standard

a better school. If the child's school is classified as failing and the custodial parent *does* have the child transferred to a school farther away from home, the non-custodial parent could re-litigate based on the need for a shorter commute.

By the time a custody evaluator is appointed by the court, the court has usually ruled on the question of whether a substantial change in circumstances has occurred. If there were no substantial change in circumstances, there would be no custody dispute and no need for a child custody evaluation.¹⁶ Nevertheless, it is important for the evaluator to be aware of this legal rule in doing the evaluation, for the dissatisfied parent in a high-conflict family may be exaggerating or distorting information in order to re-litigate.

Notes

1. For a copy of the Uniform Marriage and Divorce Act (UMDA) with commentary, see *Family Law Reporter*, 1974; Section 402 on *Best Interest of Child* is on p. 43.
2. Courts cannot consider factors that are suspect, however, such as race. Custody decisions will usually be reversed on appeal only if a judge fails to consider a factor that the appellate court considers to be a required part of "best interests." (Melton et al., 1997).
3. Goldstein et al. first wrote about the "psychological parent" in their 1973 book, *Beyond the best interests of the child*. All three of their books (*Beyond the best interests of the child*, 1973, 1979; *Before the best interests of the child*, 1979, and *In the best interests of the child*, 1986) are included in the 1996 revised edition, *The best interests of the child*. The quotations here are taken from the 1996 volume.
4. The diversity of family forms in the United States today will be discussed in Chapter 16.
5. In their recent recommendations regarding child custody, the American Law Institute defined three types of parent: a legal parent, a parent by estoppel, and a de facto parent. The ALI stated that, "A *parent by estoppel* is an individual who, though not a legal parent, is obligated to pay child support" or who lived with the child for at least two years and accepted full and permanent responsibilities as parent either due to (a) "reasonable, good faith belief that he was the child's biological father" and "continued to make reasonable, good-faith efforts to accept responsibilities as the child's father" after he found out that he was not the biological father, or else (b) "as part of a prior co-parenting agreement with the child's legal parent (or, if there are two legal parents, both parents) to raise a child together each with full parental rights and responsibilities."

A de facto parent is an individual who has lived with the child for at least two years and either "(a) regularly performed a majority of the caretaking functions for the child, or (b) regularly performed a share of caretaking functions at least as great as that of the parent with whom the child primarily lived," and

- has done this “for reasons primarily other than financial compensation, and with the agreement of a legal parent to form a parent-child relationship, or as a result of a complete failure or inability of any legal parent to perform caretaking functions” (ALI, 2002, § 2.03(1)), pp. 107–108.
6. The early research demonstrated that infants have the capacity to form attachments to multiple caretakers, and that most infants do form more than one attachment (Bowly, 1969/1999). Melton et al (1997) point out that recent research reviews have examined the implications of multiple attachments for child custody policy and decisions (e.g. Clingempeel & Reppucci, 1982).
 7. Bray (1991) also points out that although the terms *attachment* and *bonding* are often used interchangeably, they have unique definitions and implications. *Bonding* refers to the parent’s psychological tie to the infant, which develops during the first few days of the infant’s life and requires no particular response from the child. *Attachment* refers to the *relationship between* a child and the primary caregiver; this relationship emerges during the child’s second six months of life and continues to develop throughout early childhood.
 8. Methods for assessing the child’s attachments will be discussed in Chapter 13.
 9. Most divorcing mothers view themselves as having been the primary parent, despite the fact that most divorcing fathers think that they were at least as involved with the children as were the mothers. This discrepancy is largely due to different perceptions of the centrality of the roles of physical caretaking versus financial caretaking (Melton et al, 1997).
 10. Kelly and Ward (2002) note that the approximation rule does not distinguish between the *degree of attachment* and the *degree of attachment security*, but conclude that it is reasonable to assume that “there is a strong relationship between the amount of direct caretaking functions and the development of secure attachments” (p. 359). Riggs (2005), however, goes on to explain that the attachment research has identified four types of attachment in infants: (1) *secure attachment*, in which infants engage in exploration in the mother’s presence but become distressed at her departure, (2) *insecure-avoidant* infants, who actively explore but show little signs of distress when the mother leaves, (3) *insecure-ambivalent* infants who minimize attachment behaviors in favor of exploration, and (4) *disorganized/disoriented* infants who display a mixture of avoidant and ambivalent behaviors. Riggs notes that a variety of research has found that mothers of secure infants are more sensitive, responsive, accessible, and cooperative than mothers of insecure infants, who tend to respond to their infants in an inconsistent, rejecting manner. Disorganized/disoriented attachment is correlated with infant maltreatment.
 11. Riggs makes a valid point. Consider how abused children may be strongly attached to their abusive parents and still suffer negative outcomes due to their experience of abuse. Riggs also points out that by omitting the emotional criteria for caretakers, the approximation standard is focused on factors (physical care, time spent, and continuity) that would lead courts to award “visitation and custody of many children to childcare workers, babysitters, and teachers” (2005, p. 487).
 12. Women become the family homemakers for a variety of reasons such as traditional gender roles and economic necessity due to women’s lesser earning capacity. If the decision for her to stay home is distasteful to one or both parents, the approximation rule will exacerbate the resentment and conflict already present (Riggs, 2005).

13. The American Law Institute has adopted the parental deference standard for custody agreements made during the divorce process but rejected it for agreements that are made prior to the divorce proceedings, arguing that parents are less likely to have thoroughly explored the impact of their custody choices when they make the agreement prior to the divorce (Jellum, 2004).
14. In order to implement the friendly-parent rule, the court needs to have information about the parents' attitudes towards each other and willingness to encourage each others' access to the child. The methods for assessing these factors will be discussed in Chapter 13.
15. Of course dissatisfied parents can appeal to a higher court if there is reason to believe that the lower court erred in their application of legal principles to the case (Melton et al, 1997).
16. On occasion, a judge may order a custody evaluation in order to determine whether a change in circumstances has indeed occurred. In doing such a focused evaluation, it is essential to understand how this rule works in order to assess the claims and events in the family.

5

GENERAL LEGAL AND PROFESSIONAL ISSUES

COLLABORATIVE VS. ADVERSARIAL LAW

Some legal specialists have called for avoiding litigation in divorce cases by using *alternative dispute resolution (ADR)*, which increases the amount of control and choice which the parties have during the divorce process (Lande & Herman, 2004; Tesler, 2004). There are three basic models of ADR:

- **Mediation** – A problem-solving approach where neutral professionals manage the negotiation process but the parties are responsible for making the important decisions in their case.
- **Collaborative Law** – Each party has an attorney who acts as an advocate and offers legal advice and advocacy. There is a disqualification agreement, however, which requires that the attorneys withdraw from the case if it goes to court.
- **Cooperative Law** – This model is the same as collaborative law, but without the disqualification agreement.

Advocates of alternative dispute resolution report that compared to litigation-involved parents, mediation-involved parents reach resolution of their issues more quickly with less cost, are more satisfied with the process and outcome, and have greater post-divorce communication (Dillon & Emery, 1996; Emery, 1994; Kelly, 1996).¹ Compared to non-custodial parents who went through

litigation, those who went through mediation also tend to have more frequent contact with their children and to be more involved in parental decision-making (Dillon & Emery, 1996). Research also suggests that mediation promotes joint custody more than does litigation (Emery, 1994; Kelly, 1996), and that the divorce mediation process preserves parental civility and communication, which is often destroyed during the custody evaluation process (Fisher, Ury & Patton, 1991; Folberg & Taylor, 1984).

On the other hand, research also indicates that mediation (1) does not consistently produce results superior to litigation, (2) does not necessarily produce better post-divorce child adjustment than does litigation, and (3) may actually be harmful in high-conflict divorces because it has the potential to exacerbate power imbalances (Dillon & Emery, 1996; Kitzman & Emery, 1994; Murphy, 2004).

It is important to note that ***alternative dispute resolution is seldom used by high-conflict families*** because it requires the separating parties to participate in rational and cooperative discussions.² ADR is an appealing choice for low-conflict families who are capable of coming to an agreement about their parenting arrangements. The parents in high-conflict families are usually more distressed, angry, and combative than those in low-conflict families, and have more disturbed personal and marital histories. When these high-conflict families cannot reach an out-of-court agreement, they carry their custody battle into the courtroom. Only in 5% of these disputed cases does the judge appoint a *Guardian Ad Litem* or other professional to do a comprehensive child custody evaluation. Thus mental health professionals are sometimes involved in ADR as *divorce coaches* or *child experts*. Child custody evaluations are rarely needed for low-conflict families who use ADR.

EVALUATOR IMPARTIALITY

All of the guidelines for doing child custody evaluations repeatedly emphasize that the evaluator must be unbiased and not favor one party over another. Many writers have expressed this as a

need for *neutrality*. Others, however, have pointed out that child custody evaluators are not neutral regarding their recommendations because their recommendations are based on their professional opinion as to what is in the best interests of the child. *Impartiality* is a better term because it “means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual” (AFCC, 2006, p. 167).³

In order to remain impartial, a custody evaluator must decline or withdraw from evaluations where a conflict of interest exists, or where the evaluator has information or personal relationships that would bias the process or outcome of the investigation. Box 15 provides examples of the types of direct or indirect relationships that evaluators should avoid with parties, attorneys, witnesses, or others connected with the family being evaluated.⁴ The crucial issue to consider is whether a past or present relationship would bias or interfere with the custody evaluation. If the evaluator is aware of such a conflict of interest, they should immediately inform the court and/or attorneys (or the parties who are representing themselves) in the custody dispute. In most jurisdictions, the evaluator needs to file a motion for instructions from the appointing judge.

Another aspect of impartiality is to be sure not to allow prejudice or bias to influence the evaluation: to treat everyone fairly regardless of their race, ethnicity, gender, religion, disability, age, socioeconomic status, marital status, or sexual orientation (Comm. Mass., 2005b).⁵

SENSITIVITY TO DIVERSITY

Most professionals want to treat everyone fairly, as the guidelines for impartiality require. Before we can do that, however, we have to educate ourselves about the many family forms and other areas of diversity in the United States today. Without understanding what customs are involved in relationships and marriages within different cultural traditions, for instance, we cannot understand what financial, social, and emotional impact separation and divorce will

Box 15. *Examples of Conflicts of Interest for Evaluators*

- ◆ ***Professional relationship*** – *Evaluator or their firm previously worked with one of the parties in the dispute*
 - An attorney-evaluator’s law firm previously advised or acted as counsel for a party, child, or other person closely aligned to a party, including but not limited to a party’s spouse, non-marital partner, or a material witness.
 - A mental health evaluator or their firm provided professional services to any of these people.
- ◆ ***Intimate relationship*** – *between evaluator and a party or professional involved in the custody dispute*
- ◆ ***Financial interest*** – *Evaluator has had a financial involvement with any of the people involved with or close to the custody dispute.*
- ◆ ***Concerns about reprisal*** – *Evaluator’s concerns about adverse personal consequences if the report is unfavorable to a party will impede the evaluator’s candor or ability to be impartial.*

have on parents and children within those groups (Estin, 2004). Some of these issues will be covered in Chapter 16 on Diversity in Family Structures. Most of the issues are beyond the scope of this book, however, and constitute areas where both mental health and legal professionals will have to seek information from the general behavioral science literature.

Parenting practices and norms vary by cultural group as well. Corporal punishment is a case in point. Social science research has shown that even mild corporal punishment has adverse psychological effects on children, and most social service agencies in the United States discourage or condemn spanking as a disciplinary method.⁶ Nevertheless, corporal punishment is widely practiced and approved in many other countries and in some sub-cultural groups in the United States. When an evaluator or court discovers that parents spank their children, it is important to consider (a) how this practice is viewed within the parents' culture and religion, (b) how severe the spankings are, and (c) how the children view the spankings. Are the parents applying mild corporal punishment in a thoughtful, systematic way, or are they hitting the children impulsively, out of rage and frustration? Systematic (even if physical) discipline which is culturally approved has a very different emotional impact than does impulsive hitting.

When mental health and legal professionals are asked to work with a family whose culture is different from theirs, the professionals are obligated to ensure that they have a good working understanding of the family's experience. If the professional does not, they should refuse the case or else seek careful supervision from a colleague knowledgeable and experienced in that area. Thus professionals working on custody disputes should avoid not only conflicts of interest, but also *areas of ignorance*.

GENDER BIAS IN CUSTODY DECISIONS

Despite the fact that the United States now has gender-neutral standards for child custody decisions,⁷ many people still think that the courts are biased in favor of mothers. Male attorneys

are most apt to have this opinion. In a recent survey of 4,579 attorneys and judges from four states, for instance, Dotterweich and McKinney (2000) found that whereas only 15% of judges thought that their colleagues made custody decisions based on the assumption that young children belong with their mothers, 34% of female and 56% of male attorneys thought that judges always or usually make custody awards based on this assumption.

Warshak (1996) has argued that gender bias is embedded in the supposedly-neutral custody standards because the criteria for determining who is the primary parent are based on parental tasks traditionally performed by mothers (e.g. shopping; meal preparation; dressing; bathing; transportation to school, doctors, and recreational activities) as opposed to parental tasks traditionally performed by fathers (e.g. money-earning; participating/coaching in sports; assistance with school work; socialization; and moral guidance).⁸ After reviewing the research that indicates that children fare better when in the custody of *both* parents, Warshak suggests that “gender [should be] removed from the custody equation” by adopting a “rebuttable presumption that divorced parents will maintain the shared responsibility for their children that they enjoyed during the marriage” (1996, p. 406).

RELATIONSHIPS AMONG PROFESSIONALS INVOLVED IN CUSTODY DISPUTES

Attorneys

In an interdisciplinary organization devoted to issues of family law,⁹ everyone is concerned about the welfare of children before, during, and after separation and divorce. Unfortunately, this is not always true in an individual child custody case, where the parents may be more focused on their inter-parental battle than on the children, and the attorneys may feel obligated to get whatever settlement their client wants regardless of what effect it will have on the children.¹⁰ In this adversarial and polarized setting it is usually only the judge and the child custody evaluator who have an obligation to be impartial.¹¹

The legal guidelines for impartiality include a rule against *ex parte communications* between one party's counsel and the court when the other party's counsel is not present.¹² In the context of child custody evaluations, this prohibition is usually interpreted to mean two things. First, the evaluator may not communicate with the judge without both attorneys being aware of that communication. Second, the evaluator may not communicate with only one parent's attorney without the other parent's attorney being involved in the same communication. Such one-sided communication with attorneys could create the appearance, if not the actuality, of bias.

In order to avoid *ex parte communications*, all written communications from an evaluator (whether sent via Email, fax, or regular mail) directed to one party's attorney should be sent to the other party's attorney as well. All written communications from the evaluator to the court should be routinely copied to the attorneys.

The rules against *ex parte communication* are at the heart of an ongoing controversy about the amount and type of contact child custody evaluators should have with counsel for the parents. Some experienced evaluators routinely ask attorneys for both parents to provide an initial, brief summary of the issues involved in the case, arguing that this information is essential in order to assess the complexity and approximate cost of the evaluation. Many evaluators rely on the attorneys to file motions for extensions of time, criminal records, and other matters related to the evaluation, pointing out that the attorneys are more knowledgeable about filing motions and have ready access to the courthouse. And then there is the long-term importance of evaluators developing cordial, cooperative relationships with attorneys, who are the major source of referrals for evaluations.

Other evaluators prefer to have absolutely no contact with the parents' attorneys, feeling that the attorneys are totally biased and often overbearing. These attorney-avoidant evaluators emphasize the risk of appearing to be biased, and also the unpleasant experience of being badgered and bullied by the attorneys.¹³

A more moderate position is to ask each attorney to provide a short written summary, but also to make sure that the attorneys

see each other's summaries so they can see how the case is being presented. During the course of the evaluation, brief contacts with the attorneys may be needed to obtain documents or make various arrangements. Evaluators should always avoid discussing the substance of the evaluation, however, and refuse to discuss conclusions and/or recommendations. If an attorney pressures the evaluator, it is usually sufficient to remind them that the evaluator is not allowed to engage in *ex parte* communications, and also to explain that the evaluator has a policy of not discussing an evaluation before the report is filed. Once the report is filed with the court, the attorneys may want to evaluator to explain or expand on some aspects of the report. This is fine, as long as both attorneys are present (in person or by telephone) in the conversation. The key to this approach is to make sure that both attorneys are included in any communications about the substance of the evaluation.

Although the evaluator should try to maintain cordial, cooperative relationships with both attorneys, do not assume that the information they provide is unbiased. When sending information to an evaluator, occasionally attorneys omit crucial pages that are unfavorable to their clients. For this reason, it is best to obtain information directly from collateral sources.¹⁴

When attorneys are pleased by an evaluation, they may ask the evaluator to work with the family in other ways after the report is filed. This is particularly true for mental health professionals who do custody evaluations; these professionals are frequently asked to suggest psychotherapists, consult about child development, or help the parents to negotiate an agreement. Although the request may be flattering and sincere, the evaluator should not engage in these activities. The purpose and scope of the child custody evaluation is delineated in the original court order appointing the evaluator. Activities beyond that scope are unauthorized and inappropriate. The evaluator should simply thank the attorney for their confidence, explain why it is not permissible to do as they ask, and offer to assist them in a similar manner in other cases in which the mental health professional has not been involved as a custody evaluator.

Judges

In the course of their work on a case, evaluators do not usually have direct contact with judges. Whatever contact does occur should be in written form. For example, when an evaluator first receives the appointment they may need to write a Motion for Clarification if it is not clear exactly what information the judge needs. The counsel for both parties need to receive a copy of any such communications between the evaluator and the court. By careful adherence to this requirement, evaluators can avoid the appearance of bias.

Court Staff

Occasionally, evaluators need to talk with court staff to clarify court procedures. The judge's secretary or judicial assistant can be an invaluable source of information and assistance. In most courts, these professionals are quite protective of child custody evaluators and are very willing to help with procedural issues. Of course, evaluators should not discuss the substance of the evaluation with any other professionals, legal or not.¹⁵

Parents Representing Themselves

In some courts, as many as half of all custody cases involve at least one parent who has no attorney.¹⁶ These parents have often been involved in repeated litigation and cannot afford counsel. *Pro se* cases present special challenges for custody evaluators, because a *pro se* litigant must be treated as both an attorney and a party to the case. This means that they receive all communications that would normally be sent to attorneys, such as court motions. In most jurisdictions *pro se* litigants are also entitled to a copy of the child custody report, which is normally available only to the court and to counsel.

There are two situations where *pro se* litigants are especially problematic. One is where they have a history of stalking, assaulting, or otherwise harming court personnel and other professionals. These dangerous parents have no attorney to help keep them calm and under control. Any child custody evaluator in private practice should refuse such evaluations, referring them to a court clinic or another setting that offers an evaluator more physical protection.¹⁷

The second problematic situation is where both parents are *pro se*. Although this is not necessarily dangerous, it can be quite inconvenient because there is no counsel to assist the evaluator with legal matters such as motions. The court staff sometimes offers assistance in this situation. Of course an experienced evaluator will have a rudimentary knowledge of legal procedures, and will also have legal colleagues to consult with as needed.

Professional Associations

Professionals who work with separating and divorcing families can be a wonderful source of support for each other. Interdisciplinary organizations offer training at all levels as well as a chance to form supportive collegial relationships with professionals in the legal, mental health, and financial management fields. Here professionals can learn about informal legal customs, exchange practice tips, and discuss the formal rules of procedure. The meetings and conferences organized by these groups also offer an opportunity for all professionals who work with separating/divorcing families to consider the broader issues, and to think together about ways in which the legal and social service systems could better serve the children of separation/divorce.

All of the professionals who participate in these groups must remember that the rules of confidentiality and privilege prevent them from discussing the details of specific evaluations. This stricture applies to *all* cases, in the past, present, and future. Custody evaluators will also be interacting with attorneys and judges that they will encounter in future cases. Discussing general issues is appropriate and encouraged; discussing specific cases is not.

A number of professional and interdisciplinary groups are listed in Appendix A. A quick internet search should also provide similar local resources.

PROFESSIONAL LIABILITY ISSUES

Child custody evaluations are very risky endeavors because the fury which parents direct at each other is easily re-directed at the custody evaluator. During the evaluation most parents are

cooperative and friendly. Once the report is filed and the court has made a ruling about custody, however, parents who do not get what they want may see the evaluator and the court as the “enemy.” The risks for evaluators take three forms: physical attacks, civil law suits for damages, and complaints to professional licensing boards.

Physical Attacks

Physical attacks are extremely rare, but they do occur. Occasionally evaluators have to take out restraining orders against parents they have evaluated. Yet this issue is seldom discussed, perhaps because it is so anxiety-provoking. Every evaluator should be aware of the precautions to take when evaluating a parent with strong potential for parental kidnapping or domestic violence; these are discussed in the sections on those topics.

Lawsuits

In our litigious society, every professional has heard horror stories about colleagues who have been sued for damages. Certainly, no one should do child custody evaluations without having comprehensive professional malpractice insurance.¹⁸ There is some legal protection for evaluators who are court-appointed, however, because court-appointed evaluators usually have *quasi-judicial immunity*.¹⁹ This is why professionals should only do evaluations that involve a court appointment.²⁰

Licensing Board Complaints

This is the area of greatest risk for evaluators. Child custody disputes are so acrimonious that disgruntled parents are quick to file a complaint, even when the evaluator has followed all of the guidelines for child custody evaluations.²¹ Between 1990 and 1994, 7–10% of all the ethics violation charges filed with the American Psychological Association concerned child custody evaluations.²² In fact there has been such a rapid increase in board complaints and malpractice actions over the past decade that every child custody evaluator should expect to experience a board complaint eventually. This problem has become so severe that in 1998 the

Colorado legislature passed a law prohibiting child custody evaluations from being the subject of discipline by state licensure boards, lest there be no licensed mental health practitioners willing to perform child custody evaluations (Kirkland & Kirkland, 2001).

What should a custody evaluator do to avoid a licensing board complaint? Previous writers have emphasized the importance of following the professional guidelines for doing child custody evaluations (e.g. Glassman, 1998; Kirkland & Kirkland, 2001; Montgomery, Cupit, & Wimberley, 1999). Of course one should do this, but sometimes it is not enough, and a dissatisfied parent or family member may threaten to sue or file a complaint anyway. It is essential to take such a threat seriously and to analyze the situation thoughtfully to ascertain the basis for the complaint. Provide the dissatisfied party with a careful explanation of your procedures and conclusions, without letting your own emotional reaction get in the way. Consider treating the complaining person as you would an angry and litigious psychotherapy patient (Montgomery et al., 1999). And remember that just as in the evaluation process itself, in handling a threat or complaint it is essential to listen respectfully so that all parties can feel that they have been understood.

Reporting Unethical Professional Conduct

As mentioned in Chapter Two, experienced mental health professionals who do child custody evaluations are sometimes asked to serve as consultants in a case. This work usually involves reviewing the work of another mental health professional who has served as a custody evaluator or psychotherapist in the same case. Occasionally one finds that the previous work was not only incomplete or inadequate, but actually unethical. Should the consultant report that person to their state licensing board? Unfortunately, this is not required or even possible. The American Psychological Association states that psychologists are *not* obligated to report unethical behavior by another psychologist when engaged to review that person's work (APA, 2002; Martindale & Gould, 2004). Furthermore, the consulting psychologist has no legal standing as a party to the case, so they cannot file a complaint with the licensing board or submit a motion for censure to the court.

INTERSTATE FORENSIC CONSULTATIONS

Forensic mental health experts are sometimes asked to do assessments and provide testimony in a state in which they do not practice. Professional licensing is done state by state, and there are no uniform provisions for short-term practice outside one's usual jurisdiction. This means that the traveling forensic expert may be practicing without a license and therefore not be allowed to testify, and may also be subjected to civil or criminal penalties (Simon & Shuman, 1999). This could happen to a child custody evaluator who has only driven a few miles to interview a child's relative in a nearby state.

The Association of State and Provincial Psychology Boards (ASPPB) has responded to this problem by proposing the development of a new Inter-jurisdictional Practice Certificate (IPC) that would permit temporary practice across state lines for consultations and evaluations (DeMers, 2006).²³

Until this type of inter-state arrangement is available, there are three approaches to the problem of interviewing someone who resides in a different state than the one in which a custody evaluator is licensed.

- Ask the person to come to the evaluator's jurisdiction for the interview.

The interview can be conducted at the office of the evaluator or one of the attorneys in the case, at the home of one of the parties in the case, or in a public location such as a library.
- Have the interview conducted by a neutral professional who is licensed in the out-of-state person's jurisdiction.²⁴
- Ask the evaluator's professional licensing board for assistance in arranging a time-limited permit to operate in the out-of-state person's jurisdiction.²⁵

CONFIDENTIALITY AND PRIVILEGE

There is no confidentiality in child custody evaluations; all of the information gathered is available to the court. Within this broad guideline, however, there are several complicating factors.

Court Orders and Informed Consent

Some professionals argue that it is not appropriate to have parents sign an informed consent to participate in a court-ordered evaluation because a parent who refuses to participate has violated a court order and may be subject to legal sanctions. Thus the parents' agreement is not truly voluntary (Gould, 1998, 2006). Despite this controversy, professional guidelines clearly require a waiver of confidentiality from all adult participants or their legal representatives (e.g. AFCC, 2007; APA, 1994).

In discussing confidentiality issues with parents at the beginning of an evaluation, it is important for a court-appointed evaluator to explain that all of the information gathered by the evaluator will be available to the court. None of the participants in the evaluation (parents, children, extended family, friends, professionals, and other collateral sources) can provide information "off the record." The evaluator should tell all interviewees that they can refuse to answer any question; the evaluator will simply note in the report that the interviewee declined to discuss that issue.

Confidentiality Versus Privilege

These terms are often used interchangeably (e.g. Gifis, 1996). It is more useful to differentiate between them, however, as follows:

- **Confidentiality** protects against the disclosure of communications that are made within certain protected relationships to *anyone outside of that relationship*.
- **Privilege** protects against the disclosure of confidential communications *to the court*.

Using these definitions, the parents in child custody evaluations are required to waive both their confidentiality *and* their privilege regarding all information obtained by the evaluator.

Standard Consent Warnings

At the beginning of the evaluation, the evaluator should mail a *Contract and Fee Agreement* to each party. This document (which is also discussed in Chapter 12) should include a description of the cost and process of the evaluation, along with a clear statement of the confidentiality and privilege issues.

At the beginning of every interview, the evaluator should make a short statement regarding the confidentiality/privilege issues, and obtain the participant's renewed consent.²⁶ The elements of the confidentiality waiver are indicated in Box 16. When interviewing young children, the confidentiality waiver should be expressed in

Box 16. *Elements in Non-Confidentiality Warning*

- ◆ Setting and reason for evaluation
 - Parents can't agree about custody
 - Judge to make decision
 - Evaluator to gather information to help judge make decision
- ◆ Lack of confidentiality –
 - All information will be included in report that goes to judge
 - All information may be repeated in court
 - The judge, lawyers, and other parties in the case will read the report
 - I may need to ask you and your partner/spouse about statements you each make to me.
- ◆ Purpose and scope of evaluation
- ◆ Methods and steps in evaluation
- ◆ Ability to refuse to answer any questions
- ◆ Question re. party's understanding and agreement to confidentiality waiver

**Box 17. *Simplified Non-Confidentiality
Warning for Children***

Do you know why I'm here?

[Wait for response, to see what child is expecting or has been instructed to say.]

Sometimes parents can't agree about where their children should live, or when the children should be with each parent. Then the parents go to court. In court, the judge decides what is best for the children.

My job is to help the judge decide by finding out more about your family. I have talked with your parents. Now I want to talk with you. I want to get to know you better so I can tell the judge about you. So everything you tell me, I will tell the judge. Okay?

[Wait for response.]

You don't have to answer all of my questions if you don't want to. Just tell me if you don't want to answer a question, and it will be okay.

simple language the child can understand. An example of such simplified language is provided in Box 17.

A short statement about confidentiality issues should also be included at the beginning of the Report of the Evaluation. A sample statement is included in Box 18.²⁷

Box 18. *Statement re. Informed Consent / Waiver of Confidentiality*

All of the people interviewed (in person or by telephone) as part of this evaluation were informed that the information they offered in the context of this evaluation would be used in the preparation of a report that would go to the court. The parties interviewed indicated that they understood the conditions under which they were participating in this evaluation and gave their informed consent to that effect.

Privilege in Child Psychotherapy

Parents usually have access to all of their minor child's medical records, including psychotherapy progress notes. The parents can sign a Waiver of Confidentiality, or Release of Information Form, on behalf of the child so that this confidential information can be released to a third party.

In a divorce or custody dispute, however, the parents cannot authorize release of the child's psychotherapy records to the custody evaluator. Although the parents can waive the child's *confidentiality* for the records to be released to others, they cannot waive the child's *privilege* for the records to be released to the court. Since all of the information gathered by the evaluator is available to the court, release of information to the evaluator is tantamount to release of information to the court itself.

The child's psychotherapy privilege can only be waived by the court itself. Thus if a custody evaluator feels that it is essential to speak with a child's psychotherapist, they must make a motion for

the court to appoint a special Guardian ad Litem to evaluate and recommend whether the child's privilege should be waived by the court. Only after such a court waiver can the evaluator speak with the child therapist or review child psychotherapy records.

A child's privacy may also be protected from the parents themselves. In a recent case the New Hampshire Supreme Court ruled that (1) Children have a right to privacy for their medical records and communications, (2) The court can seal the therapy records of minor children when one parent demands access to the records for purposes of litigation, and (3) The court can seal the therapy records of minor children if the parents are in conflict about access to the child's records (*Berg v. Berg*, 2005).

Many child therapists are not aware of the privacy issues and are quick to offer information to a court-appointed evaluator.²⁸ It is up to the evaluator to adhere to the strictures of child privilege, however, and motion for a special Guardian Ad Litem to evaluate the waiver of the child therapy privilege. The inclusion of child therapy information obtained without an appropriate waiver of privilege could invalidate the entire report of the custody evaluation.²⁹

Child Abuse Reports

Occasionally an evaluator will discover on-going child abuse in a case. Here the usual requirements for mandatory reporting exist, and supersede the limitations imposed by confidentiality and privilege. Of course if an evaluator reports a parent to the state department of social services, it usually makes that parent more hostile and uncooperative in the child custody evaluation. For this reason, it is often prudent to arrange for the report of abuse to be made by another professional who knows of the abuse, such as the child's school counselor or teacher, pediatrician, or other professional involved with the family on an on-going basis.

General Privacy Issues

The child custody evaluator is subject to the regular ethical requirement that mental health professionals protect the privacy of all clients. Only the court has access to the process and results of the evaluation. The evaluator cannot discuss the substance of

the case with anyone else without the parents' consent.³⁰ For this reason, it is more accurate to say that there is *limited* rather than *no* confidentiality in child custody evaluations.

As part of the obligation to protect the privacy of the parties, the child custody evaluator is instructed to include only relevant information in the report, i.e. information that will "bear directly upon the legal purpose of the evaluation" (APA, 1991, section V, Paragraph C).

ACCESS TO CHILD CUSTODY EVALUATIONS

Access to Written Reports

When an evaluation is court-ordered, the report belongs to the court and is sent directly there; the address is specified in the forms that accompany the court order appointing the evaluator. The court is the holder of the privilege and determines who has access to the report.

In most jurisdictions, the attorneys for the parties can read the report and/or obtain a copy in order to prepare their client's case. Although the parents are seldom permitted to have a copy of the report, the attorneys do show the report to their clients, or at least describe the contents to them. Thus the evaluator must assume that both parents will eventually become aware of the contents of the report. In fact it is good practice to warn all interviewees of this eventuality. Professionals who have an on-going relationship with the family need to know this so that they can be sure to phrase their comments in a non-inflammatory manner.

Concerns about access to the report of the custody evaluation are particularly acute in four areas. First, one or both parents may have an extreme emotional reaction to statements made by the children, which may further disrupt the parent/child relationships. Second, each parent may gain access to previously unknown medical, psychiatric, or legal information about the other, and use this in a manipulative manner. Third, the parents may misuse the report by showing it to friends, extended family, or even the children, which inevitably aggravates the hostility and conflict in the case. Fourth, if one parent is emotionally unbalanced, they may have a

severe reaction to the way they are depicted in the report. This last problem creates considerable risk for the evaluator when the distressed parent has a history of assault and battery, domestic violence, stalking, or other kinds of violence.

The confidentiality issues are particularly complex when parents represent themselves, because *pro se* litigants have the right to see the report in order to prepare their own legal case. If an evaluator is worried about the *pro se* parent's reaction and potential for severe emotional distress, parental abduction, or domestic violence, they should get in touch with the court before filing the report. Although the court cannot withhold the report from the *pro se* litigant, it can arrange for them to read the report in the presence of someone from the probation or family services departments. This will provide an opportunity for the legal and social service systems to respond to any indications of danger.

Remember that the child custody evaluation cannot be used for other purposes.³¹ Occasionally, mental health professionals, school officials, or others will also ask for a copy of the report to assist them in working with the family. Having put a lot of time and thought into an evaluation, it is tempting to share it with these responsible, caring professionals. But the confidentiality/privilege issues preclude this sharing. Only the court can sanction access to the report; refer these professionals to them.

Some experienced child custody evaluators make a practice of providing selected sections of the report to the parents for other purposes. For example, [Stahl \(1994\)](#) thinks that it is a parent's right to have a copy of their own information sent to appropriate professionals, such as their psychotherapist, and he advocates using word processing to do this quickly and easily. I disagree with this practice. Although a parent may have the right to a verbal report of the information collected about them, the report itself belongs to the court and should only be released with the court's written permission.

Access to Evaluator's Notes

Some experienced evaluators have suggested that openness is important to establishing one's credibility as a child custody expert, and therefore it is important to make one's entire file available to

the parties in court (Martindale & Gould, 2004). Other evaluators who favor openness release all of their records to both parties before the court hearing if the records are requested at a deposition (Zibbell, 2006). If an evaluator is concerned about the incendiary nature of some of the case records obtained during the evaluation, it is possible to respond to a subpoena to produce the case records by filing a Motion to Quash so that the court can determine whether the evaluator may protect the records.³² In most cases, however, it is best for the evaluator to be as open as possible with everyone involved in a child custody suit, such as the parties to the suit, their attorneys, and the court. If the evaluator has conducted the evaluation in a professional manner, their case records should help to underscore their impartiality and allegiance to the best interests of the children rather to any other parties or issues in the case.

PAYMENT FOR EVALUATION SERVICES

It is important (and ethically required) for the custody evaluator to clarify the financial arrangements before beginning an evaluation. The following issues are essential to that clarification.

Rates and Methods of Charging for Services

Child custody evaluators charge for their professional time, at a rate that varies by geographical area and the evaluator's training and years of experience.³³ Usually, the hourly rate falls somewhere in-between the local rate for psychotherapy and the local rate for private legal services. When testifying as expert witnesses, many evaluators charge up to twice their non-court hourly rate.

Contingency fees are not permitted in custody evaluations, because they would undercut the evaluator's impartiality (APA, 1991).

Custody evaluations are considered to be legal rather than medical procedures; therefore, medical insurance (including mental health coverage) cannot be used to pay for them (APA-med, 1988).

Retainers and Escrow Accounts

Almost all evaluators collect a retainer before beginning a child custody evaluation because the anger of high-conflict divorcing couples often spills over onto the evaluator, making collection difficult once the evaluation is finished. If the initial retainer is exhausted, the evaluator should ask the parents for another one. This procedure is explained in more detail in the discussion of Fee Agreements in Chapter 12. That chapter also provides a guide to estimating the number of hours needed to do custody evaluations involving various types of issues. Accuracy in estimating hours is important because once an evaluation report is complete, the evaluator must file the report with the court even if the parties have not finished paying for the evaluator's time.

When the evaluator receives the initial retainer, they should put it into an Escrow Account. Once the evaluator has done the work,³⁴ they can transfer the funds from the escrow account to their professional checking account.³⁵

The court order appointing a custody evaluator usually specifies which parties are to pay for the evaluation, and in what proportions. This information should be used in preparing the Fee Agreement.

State Payments

When state funds are paying for a child custody evaluation, the court appointment states this and indicates how many hours are allowed. If the evaluation takes longer, the evaluator can usually motion for more hours (using the motion procedure discussed in Chapter 6). Before starting on a state-pay evaluation, the evaluator should let the court know if they think the evaluation will require more hours than are specified in the court appointment, and find out what procedure is required for obtaining court approval for additional hours.

Collection Procedures

As the evaluator is coming to the end of an evaluation, they should try to collect all of the unpaid fees. Although it is possible to collect unpaid fees after the report is filed with the court, there is little leverage to get the parents to pay up.

In cases where one party wants to depose the evaluator or have them testify in court, there is another opportunity to collect unpaid fees before the deposition or testimony. In the Fee Agreement, evaluators should be sure to specify the need for all fees to be paid before such testimony. The parents' attorneys may be helpful in this collection process.

If all else fails, the evaluator can try to collect unpaid fees by filing a Declaration of Nonpayment and later a Motion to Compel payment, as explained in Chapter 6. Evaluators must be cautious, however, because an attempt to collect past-due fees from a disgruntled parent may inspire the parent to file a licensing board complaint against the evaluator.

Notes

1. There may be gender differences in satisfaction with mediation. In two small studies examining the responses of 35 mediation families and 36 litigation families, Emery found that fathers consistently preferred mediation whereas mothers were mixed in their satisfaction with these types of dispute resolution (Emery, Matthews, & Wyer, 1991).
2. Some writers have suggested that mediation can work well with high-conflict couples if the sessions are more structured (e.g. Parkinson, 2000). Others have pointed out that mediation is not appropriate when there are great disparities in power between the parties, such as occurs with domestic violence (Maxwell, 1999). Kelly (1996) suggests that a close reading of the research suggests that whereas mediation is not appropriate for families with a history of classic, severe domestic violence, mediation is particularly beneficial for families with a history of infrequent, mutual, and less severe physical aggression (now usually called Common Couple Aggression; Zibbell, 2005). A number of states now require that all divorcing couples participate in mediation before the matter can be heard in court (e.g. California: Ricci Depner & Cannato, 1992).
3. This definition of impartiality is taken from the Guidelines for Parenting Coordination prepared by the Association of Family and Conciliation Courts, but is equally applicable to conducting or assessing custody evaluations (AFCC, 2006, p. 167).
4. The examples of conflict of interest for evaluators in Box 15 are adapted from Comm. Mass., 2005b, pp. 3–4. These conflicts of interest for evaluators are similar to those for attorneys in divorce cases, which include personal interests and interests of third persons (AAMI, 2000, section 3.1–3.4, pp. 9–10).
5. The American Law Institute (ALI) is a national non-profit group of attorneys and legal scholars that makes recommendations for state legislation. In their recent recommendations regarding child custody (ALI, 2002), they provided a list of “prohibited factors” that courts should not consider in custody orders, including (1) race or ethnicity, (2) gender of parent or child, (3) religious practices, except to prevent severe harm to the child or to protect the child’s

right to practice a religion that is important to them, (4) sexual orientation of a parent, (5) parent's extramarital sexual conduct, unless it has been shown to harm the child, and (6) parent's relative financial circumstances, except where their combined financial resources provide practical limits to custodial arrangements (ALI, 2002, § 2.12, p. 272).

In a discussion of the issue of judicial authority to examine religious beliefs and practices, Goldstein (2005) points out that "the courts have generally refused to examine a parent's religion except when presented with clear evidence that particular religious practices pose a threat to the life of the child" and also notes that courts have also "held that religious upbringing agreements are unenforceable because it is constitutionally impermissible for courts to determine what practices are consistent or inconsistent with religious faiths" (pp. 521, 522). A recent Pennsylvania Supreme Court decision clarified the issue further when it reversed a trial court order prohibiting a father from discussing, with his daughter, his views favoring polygamy (Fines, 2006). The Supreme Court concluded "that a court may prohibit a parent from advocating religious beliefs which, if acted upon, would constitute a crime... only where it is established that advocating the prohibited conduct would jeopardize the physical or mental health or safety of the child, or have a potential for significant social burdens" (*Shepp v. Shepp*, Penn, 2006, p. 16). Zibbell (2006) also reviews the judicial guidelines for determining whether a parent's religious practices expose a child to harm, citing critical Massachusetts appeals cases which also refer to cases in other jurisdictions.

6. The research on corporal punishment will be described in Chapter 24 as part of a discussion of physical abuse and neglect of children.
7. For the history of gender-neutrality in standards for child custody decisions, see Chapter 4 on *Standards for Resolution of Custody Disputes*.
8. Warshak (1996) also notes that the legal bias in favor of maternal custody is consistent with a general societal preference for mother custody, as reflected by the fact that in the 90% of divorce cases settled out of court, the families agree that the mother will be the primary parent post-divorce.
9. See the section on Resources at the end of this volume for a list of such interdisciplinary organizations.
10. The Academy of Matrimonial Lawyers (AAML) points out that although "the traditional view of the matrimonial lawyer (a view still held by many practitioners) is of the 'zealous advocate' whose only job is to win," more recent guidelines and practices emphasize that "an attorney should refuse to assist in vindictive conduct and should strive to lower the emotional level of a family dispute..." Consequently, "many matrimonial lawyers believe themselves obligated to consider the best interests of children, regardless of which family member they represent" (AAML, 2000, Preliminary Statement and Section 1.3, pp. 2, 4).
11. Various expert witnesses may also have an ethical obligation to be impartial, such as psychologists who are called as expert witnesses but must still focus on the best interests of the children involved in the case.
12. Common legal usage often differentiates between an attorney (a person who practices law) and a counsel (one or more lawyers who represent a client in a given case).
13. An extreme example of this approach is provided by Benjamin and Gollan (2003), who recommend that custody evaluators call attorneys before or after business hours so that they can leave a voicemail without having to

speak with the attorneys, or else send a posted or faxed letter that will convey the same message to both attorneys simultaneously.

14. Occasionally, it is not possible to obtain information directly from collateral sources. In this case, the evaluator must be sure to include a note in the report explaining that the material was provided by the attorney, or by the parent. In this way, the court will be able to evaluate the issue more clearly if discrepant information is obtained later on in the case.
15. Exceptions do occur, especially if one of the parties in a case has a history of violent behavior. Talking with court staff about safety concerns can be helpful in determining what safeguards are possible. As noted in Chapters 12 and 23, evaluators in private practice should refer such dangerous cases to a Court Clinic or other facility where there are greater protections for both the evaluator and the people the evaluator needs to interview.
16. Schwartz (2004) has reviewed research which suggests that at least *one* party appears *pro se* in 88% of divorce cases and *both* parties appear *pro se* in over half of divorce cases. For custody disputes and abuse the percentage of cases with at least one *pro se* litigant is 60–90% nationwide.
17. As I have said elsewhere, child custody evaluators in private practice should generally avoid these dangerous parents, whether or not they have counsel. *Pro se* litigants are especially problematic, however, because it is impossible for the court to impound the custody report, which may contain information that the *pro se* parent would find inflammatory. Emotionally unstable, assaultive *pro se* parents may therefore end up with have a copy of such a report in their possession.
18. Malpractice insurance can be obtained through professional and interdisciplinary organizations. Many of these are listed in the Resources section of this volume. Make sure that doing child custody evaluations is considered to be within the normal scope of professional activities covered by the malpractice insurance.
19. *Judicial immunity* means that judges are immune from civil liability arising from the performance of their judicial duties. In most states, court-appointed custody evaluators are similarly immune as long as they have followed the professional guidelines for doing custody evaluations. Some writers have called for “a more consistent and reasoned system of statutory immunities,” arguing that “the expanded role of courts in response to the public health threat of high-conflict families calls for a commensurate expansion in the scope of immunities available to those who assist courts in the reduction of conflict” (Stern & Oehmd, 2003–2004, p. 375).

In a recent case, the Connecticut Supreme Court pointed out that almost all courts have granted custody evaluators appointed as Guardians *ad litem* (GALs) absolute immunity because the evaluator’s duty “to secure the best interests of the minor children places the guardian ‘squarely within the judicial process to accomplish that goal’ ” and because the grant of absolute immunity is necessary to “function without the worry of possible later harassment and intimidation from dissatisfied parents.’ ” In their unanimous opinion, the justices also said that the granting of absolute immunity to GALs follows the U.S. Supreme Court’s three-pronged test for who should be accorded absolute judicial immunity (*Carruba v. Moskowitz*, 2005).

There is some indication that the *functions* rather than the *label* of a court-appointed custody evaluator are central to the issue of judicial immunity. Thus

- in a recent case (*Sarkisian v. Benjamin*, 2005; discussed in Zibbell, 2006) the Massachusetts Appeals court ruled that attorney Benjamin was entitled to absolute immunity in a case where she was appointed as the child's guardian but was also ordered to perform evaluative and reporting functions usually reserved for custody evaluators appointed as Guardians *ad litem*. In its decision the Appeals court referred to similar decisions in other states regarding the role of the GAL.
20. Evaluations performed in Care and Protection cases and for Departments of Social Services do not always involve court appointments. For discussion of these types of evaluations, see Condie, 2003.
 21. Kirkland and Kirkland (2001) did a nationwide survey of psychology boards and found that there were 2,413 complaints about child custody evaluations among the 34 responding states from 1990–1999, and that only 27 (or 1%) resulted in findings of fault or probable cause against licensees. Thus most of the complaints were presumably frivolous, based on parental anger and disappointment rather than any inappropriate acts or omissions by the evaluators.
 22. Glassmar (1998) reported these rates of APA ethics complaints from 1990–1994. Other researchers have found that the rates of complaints for child custody evaluations were second only to the rates from sexual misconduct cases (Montgomery, Cupit, & Wimberley, 1999).
 23. For updated information about the Inter-Jurisdictional Practice Certificate, contact the Association of State and Provincial Psychology Boards (ASPPB) at <http://www.asppb.org/> or P.O. Box 241245, Montgomery, AL 36117.
 24. Some states have made official provisions for the problem of out-of-state parties. For instance, California states that, "When one party resides in another jurisdiction, the custody evaluator may rely on another qualified neutral professional for assistance in gathering information" and specifies a procedure for arranging this (Cal. R. Ct., 2005a, section (f) [Cooperation with professionals in another jurisdiction]).
 25. Shuman and his colleagues (2003) have suggested that the problem of operating across state lines could be solved if state licensing boards adopted a *Model Rule Regarding the Temporary Forensic Practice of Psychology* which allows psychologists to give written notice of intent, pay a \$100 fee, and then have 30 days (consecutive or dispersed) in any calendar year to work on a given case in a state in which they are not licensed.
 26. This statement is sometimes called the "Lamb Warning" because it is outlined in a Massachusetts case by that name (*Comm. Mass. v. Lamb*, 1974).
 27. The statement regarding the parents' waiver of confidentiality in Box 18 is adapted from one developed by Robert Zibbell, Ph.D., and is available on the CD that accompanies this volume. A similar waiver is available as part of the model report of a child custody evaluation provided to members of the Massachusetts Association of Guardians *ad Litem*. MAGAL can be reached at <http://www.magalinc.org>.
 28. This is particularly apt to happen if the parents have signed Release of Information forms for the child therapy. Obtaining such forms from the parents is a good idea because it gives the parents official notification of the evaluator's intention to obtain child therapy information. The legal ability to waive the child's privilege rests with the court, however.
 29. If the report of a child custody evaluation contains information about child therapy that was obtained without the appropriate waiver of child

patient/therapist privilege, some judges simply delete the information about the child therapy. Other judges I have spoken with disqualify the entire report in this situation.

30. The *Specialty Guidelines for Forensic Psychologists* (APA, 1991) make this explicit when they say that “[Forensic psychologists] only release information pursuant to statutory requirements, court order, or the consent of the client” (Section V, Paragraph A2). State regulations contain similar strictures (e.g. Cal. R. Ci., 2005a, 5.220.h2).

The *Specialty Guidelines* also prohibit out-of-court statements about cases: “Ordinarily, forensic psychologists avoid making detailed public (out-of-court) statements about particular legal proceedings in which they have been involved” (Section VII, paragraph C). State standards for custody evaluators make similar points (e.g. Comm. Mass., 2005h, 4.6). Of course the usual exceptions for professional consultation and supervision apply to custody evaluation, just as they do to psychotherapy and other mental health services.

31. The Federal Rules of Procedure (12.2[c]) make this explicit regarding criminal issues by stating that “no statements made by a defendant, in the course of any (forensic) examination, no testimony by the expert based upon such statements, nor any other fruits of the statements can be admitted into evidence against the defendant in any criminal proceeding, except on an issue respecting mental condition on which the defendant has introduced testimony” (APA, 1991, section VIG).
32. The function of a Motion to Quash is discussed in Chapter 6, and a sample motion is included in the CD that accompanies this volume.
33. Studies done about ten years ago found that mental health professionals charged anywhere from \$40 to \$250/hour for evaluations and psychological testing, while they charged up to \$500/hour for court testimony (Ackerman and Ackerman, 1997).
34. In some jurisdictions, evaluators cannot remove money from the escrow account to pay for their services until that payment is approved by the appointing court.
35. Attorneys have always been required to keep their client’s payments in an escrow account until the services are rendered and a billing statement is provided to the client. Most states have specific requirements for these legal escrow accounts, including a requirement for paying the client any interest received on their escrow monies. Mental health professionals can simply set up a savings account and designate it as a special account for forensic retainers; if a significant amount of interest is accrued it can be passed on to the forensic clients.

6

COMMUNICATION AMONG PROFESSIONALS

EVALUATIONS IN PROCESS

During the course of an assessment, an evaluator may need to seek guidance from the court or ask the attorneys to help with some aspect of the evaluation. This must be done in a way that elicits cooperation from the parties and their attorneys, while maintaining and reinforcing their understanding of the evaluator's impartiality. Here are a few common types of communications that evaluators can use.

Declarations for the Attorneys

If a party does not cooperate with a court-ordered evaluation, the evaluator should notify the attorney involved. A notarized declaration, similar to an affidavit, is a good form to use.

- **Declaration of Non-Participation** – When one of the parents or another party does not show up for appointments or comply with other aspects of the evaluation such as drug testing, send a notarized, sworn Declaration of Non-Participation to the attorneys. If this does not rectify the situation, then send a Motion for Contempt to the court.
- **Declaration of Non-Payment** – When one of the parents or another party refuses to pay the initial retainer as specified in

the court order, send a notarized, sworn Declaration of Non-Payment to the attorneys. If this does not rectify the situation, then send a Motion for Contempt to the court.

Once the evaluation is completed and the report filed, one or more parties may not pay the balance of the evaluator's bill. This calls for a Complaint for Contempt, as outlined below.

Motions for the Court

During a court-ordered evaluation, the evaluator may need to ask questions of the court or inform the court of certain developments. Although many courts permit the evaluator to write letters to the judge, it is generally preferable to use a formal motion. Some of the motions need to be preceded by written declarations sent to the attorneys.

- **Motion for Additional Instructions** or **Motion for Clarification** – One of these motions should be used to clarify the scope of the evaluation when the court appointment was not sufficiently specific.
- **Motion for Expansion of Scope of Evaluation** – This should be used when new issues have arisen in the course of the evaluation, and the evaluator thinks that it is essential that they be addressed in the report.
- **Motion for Contempt for Non-Participation** – When a party continues to refuse to comply with a court order to participate in an evaluation by coming to interviews, providing records, paying the initial retainer, etc. file a Motion for Contempt with the court. If the motion is accepted, the court will impose sanctions for non-compliance. Before filing this motion, send a Declaration of Non-Participation to the attorneys in the case.
- **Motion for Access to Previous Reports** – When there have been previous custody evaluations or psychological reports in a case, it is wise to obtain copies of them to provide further background for the current evaluation of the family.
- **Motion for Access to Court Records** – If it seems likely that any of the parties in a case has a criminal record, obtain the party's permission and then ask to obtain copies of their CARI

(Court Activity Record Information).¹ If this is done for one party, it must be done for all of the parties in the case.

- **Motion for Appointment of GAL to Evaluate Waiver of Patient-Therapist Privilege** – If one or more of the children have ever seen a psychotherapist, the evaluator may want to interview the therapist or review their records. In most jurisdictions the custody evaluator can only do this if a special Guardian Ad Litem recommends waiver of the patient-therapist privilege, and the court orders such a waiver.²
- **Motion for Extension of Time** – Most court appointments contain a deadline for submitting the report to the court. If a custody evaluator experiences delays, they should submit a motion to the judge explaining the situation and requesting an extension of time.
- **Motion for More Hours** – When public funds are being used for an evaluation, the evaluator can only bill for the number of hours specified in the court appointment. If the evaluation takes longer, the evaluator needs to request more hours from the court. The method for doing this varies from court to court, but a court motion is frequently required.
- **Motion for Payment** – In a state-pay case, the hours originally approved apply only to the evaluation and the subsequent child custody report. If the evaluator is called to testify in court or perform some other additional task, they will need to motion for more hours for payment.
- **Motion to Compel Payment** – When a parent or other party does not pay their part of the cost of the custody evaluation, the evaluator should send a Declaration of Non-Payment to the attorneys. If the party still does not pay, the evaluator can send this motion to the court.
- **Motion to Quash a Subpoena** – When a party (via their attorney) sends a subpoena that the evaluator thinks will interfere with the evaluation process in a manner harmful to the child, the evaluator can file a Motion to Quash with the court. If the court agrees that the action requested by the subpoena should be prevented, they will issue an order

nullifying the subpoena. This problem usually arises when a party orders an evaluator to release all of their records or to testify at a deposition, and the particular circumstances of the case suggest that doing so would be detrimental to the child's best interests.

All of these motions and declarations refer to the process of the custody *evaluation*, not to the issues in the *custody dispute*. The custody evaluator is not a party to the custody dispute and cannot file motions in the dispute. Examples of the motions and declarations that can be filed by an evaluator are listed in Box 19, and downloadable copies are included in section XI of the CD that accompanies this volume.

There is some disagreement about how long an evaluator's court appointment lasts. Some attorneys and evaluators maintain that such an appointment remains in effect until a case settles or a final court order is issued. Others suggest that a custody evaluator needs to be re-appointed if they are asked to do an updated evaluation or other task in a case after their report is filed. The Motion for Re-Appointment of the child custody evaluator needs to be filed by one of the parties in the case (via their attorney), rather than by the evaluator directly. For this reason, a sample motion for re-appointment is included in the CD but not in Box 19, which only lists motions to be filed by the evaluator.

COMPLETED EVALUATIONS

Written Discovery

Once a custody evaluator has completed an evaluation and filed the report, at least one party is often dissatisfied with the evaluator's findings, conclusion, and recommendations. In preparation for objecting to the report at the subsequent court hearing, the attorney for the dissatisfied party may initiate a formal discovery process by sending a subpoena asking for copies of all the notes and other materials the evaluator used in preparing the written report. Providing this information is cumbersome and time-consuming, but the cost is billed to the requesting attorney at the evaluator's usual hourly rate.³

Box 19. *Common Declarations, Motions, and Complaints*

- ◆ **Declarations to send to attorneys**
 - Declaration of Non-participation
 - Declaration of Non-payment

- ◆ **Motions to send to court**
 - Motion for Additional Instructions
 - Motion for Expansion of Scope of Evaluation
 - Motion for Contempt for Non-Participation
 - Motion for Access to Previous Reports
 - Motion for Access to Court Records
 - Motion for Appointment of GAL to Evaluate Waiver of Patient-Therapist Privilege
 - Motion for Extension of Time
 - Motion for More Hours
 - Motion for Payment for GAL Court Testimony
 - Motion to Compel Payment
 - Motion to Quash Subpoena

- ◆ **Complaints**
 - Complaint for Contempt for Non-Payment

These communications are all sent by the evaluator and concern the process of the evaluation, not the substance of the custody dispute itself.

Depositions

Other attorneys will initiate discovery by sending a *subpoena duces tecum* that orders the evaluator to appear at a deposition and bring all of the materials used in the evaluation. The deposition is usually held

in the attorney's office, where the evaluator answers questions about the evaluation under oath. The attorneys for both parties are usually present, along with a court reporter who records the evaluator's sworn statement. The attorney's questions are designed to:

1. Obtain more information about the methods of the evaluation
2. Assess the credibility and vulnerabilities of the evaluator
3. Probe for ways to criticize and discredit the evaluation during cross-examination
4. Create a written record that can be used to impeach (uncover contradictions and discredit) the evaluator during cross-examination.⁴

The evaluator should prepare for the deposition as they would for court testimony: review the report, the case files, and any social science research that is relevant. The evaluator's demeanor during the deposition should follow the recommendations for court testimony outlined in Box 23.

Complaints

Once an evaluator has completed their assessment, filed the report, and testified in court if needed, the custody case is normally closed via settlement or court order. If the evaluator has still not been fully paid for their services and the parents are responsible for the costs of the evaluation, then the evaluator can initiate a new court action for collection. This is done via a Complaint for Contempt for Non-Payment, such as the one included in section XI d of the CD. Complaints initiate a new court action or case, whereas motions ask the court to take some action within an on-going case.

Unfortunately, attempts to collect overdue bills for custody evaluations often inspire litigious parents to initiate licensing board complaints against evaluators. Thus no matter how egregious the non-payment may be, caution is essential in pursuing payment.

TESTIFYING IN COURT

About half of high-conflict cases that have a child custody evaluation eventually have a trial in Family Court.⁵ When this happens, the custody evaluator is usually called to the stand to talk about their report. A basic knowledge of court procedures and rules is essential for effective testimony.

Types of Evidence

Black's Law Dictionary (Garner, 2005) describes over 70 kinds of evidence, but the following types are most often encountered by custody evaluators.

- **Admissible evidence** is relevant and appropriate for the court to receive (e.g. not privileged, based on hearsay, or unfairly prejudicial).
- **Corroborating evidence** supplements and strengthens inferences based on other, separate evidence.
- **Expert evidence** is provided by an expert witness about a scientific, technical, professional, or other specialized issue. Testimony by a child custody evaluator is usually included here.
- **Hearsay** is information or testimony based on what others have said rather than on what a witness has observed or knows personally. Hearsay is not admissible in court but an exception is made for expert witnesses, who can reach their conclusions using information that is commonly relied upon in their field. For instance, custody evaluators can quote someone such as a psychiatrist or teacher; evaluators may also include *double hearsay* or *totem pole hearsay*, where such a source reports what someone else said to them.
- **Probative evidence** tends to prove or disprove something.
- **Substantive evidence** is offered to prove a factual issue.

Types of Witnesses

Of over 20 types of witnesses who provide testimony or information to the court, the distinction between the following two is crucial for the evaluator to understand.

- **Fact witnesses** testify to things they have observed or have direct knowledge of; they are not allowed to express opinions.
- **Expert witnesses** provide testimony based on specialized, scientifically-based knowledge; they may express professional opinions as long as these are based on data that has been collected in a scientifically sound manner.

The judge in each case determines who is an expert, using the criteria from Federal Rule 702 (See Box 20), which requires the following elements in order to sanction the use of expert testimony:

- (1) The subject must involve specialized knowledge that is
 - connected to some science, profession, business, or occupation
 - beyond the understanding of the average person.
- (2) The witness must have knowledge, experience, and expertise in that area.
- (3) The judge must believe that the expert's testimony will aid in the court's decision.

Box 20. *Role of Expert Witness*

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if

- (1) the testimony is based upon sufficient facts or data,
- (2) the testimony is the product of reliable principles and methods, and
- (3) the witness has applied the principles and methods reliably to the facts of the case.

(Fed. R. Evid, 2004, Article VII, Rule 702)

After being sworn in, the evaluator must go through a process called *voir dire*, where the attorney who has called them asks a series of questions to elicit the evaluator's education, training, and professional experience. The areas covered are outlined in Box 21.

Box 21. *Topics Covered during Voir Dire to Qualify an Expert Witness*

- ◆ **Formal education**
 - Dates and places of degrees
 - Major area of study
 - Title of dissertation

- ◆ **Post-graduate training**
 - Internship and/or residency
 - Post-doctoral fellowships

- ◆ **Work experience**
 - Professional positions held
 - Type of work (teaching; research; administration; direct service)
 - Clients served (age; inpatient or outpatient; special populations)
 - Specialties (e.g. adolescents; families; substance abuse)

- ◆ **Professional certification or licensure**
 - State licensure
 - Board certification, if applicable
 - National Register of Health Service Providers in Psychology, and other forms of national certification

- ◆ **Hospital appointments**

Box 21

- ◆ **Membership and positions in professional organizations**
 - State and national professional organizations
 - Custody-related professional organizations
- ◆ **Professional publications**
- ◆ **Prior experience in custody evaluations and litigation**
 - Percentage of practice devoted to custody evaluations
 - Number of times testified as expert
 - Issues covered in previous custody evaluations

(Extrapolated from Melton et al 1997)

Following the description of credentials, the opposing attorney has the opportunity to question the evaluator further and may focus on what the witness is not, what they could not do, and their limited contact with particular populations. Questions like these are common:

Doctor, as a psychologist you are not trained in administering and evaluating the effects of medications, are you?

Doctor, as your training is in psychiatry and medicine, you are not qualified to administer and interpret neuropsychological tests, are you? (Melton et al, 1997, p. 530)

After asking about professional expertise, the attorney wishing to discredit an expert may go on to attack the trustworthiness of the witness. They may imply that the clinician is a “hired gun” by inquiring about fees or asking how often the witness has testified for a particular side (Melton et al, 1997).

Although these challenges are common, remember that most custody evaluators are appointed by the court. For this reason attorneys may not attempt to discredit the expert during the *voir dire*, preferring to wait until the cross-examination to bring up issues of methodology or bias in the custody evaluation.

Legal Standards for Scientific Testimony

Over the past century the following three legal standards have developed in the United States.

- ***Frye Standard – general acceptance*** – This standard arose from a 1923 federal case which addressed the inadmissibility of a systolic blood pressure deception test. The court ruled that expert testimony can only be admitted when the scientific principles or techniques on which it is based “have gained general acceptance in the particular field in which it belongs.”⁶

When a court uses the Frye standard, it will consider peer-reviewed journal articles, scholarly books on related subjects, and surveys of common techniques or practices used by professionals in the field.

- ***Federal Rules of Evidence – helpfulness*** – The FRE were signed into law in 1975 and have since been adopted in many similar state codes of evidence. As Box 20 shows, Article VII, Rule 702 of the FRE states that expert testimony may be admitted when it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” Rule 703 goes on to state that if the facts or data that the expert used to arrive at their opinion are “of a type reasonably relied upon by experts in the particular field” then they do not have to be admissible. This means that the expert can rely on hearsay (e.g. medical records and reports by teachers and psychotherapists) or other material that would usually not be admissible in court, as long as using such data meets the professional standards in the expert’s field.

Rule 705 says that experts do not have to disclose the facts they relied on to reach their opinion unless the court specifically requires them to do so, although this information may be required during cross-examination. In custody evaluations,

this usually refers to things like research studies and raw data from psychological testing or clinical examinations, which do not have to be discussed in the written report but need to be available for court testimony.

Rule 704 goes on to state that experts may offer opinions on the “ultimate issue” before the court, except for the issue of the mental state of a person charged with a criminal offense in a federal court. We will consider this matter further in Chapter 7 on the Ultimate Issue.

- **Daubert Standard – scientific method** – This standard developed from a federal case in which a pharmaceutical company was sued for damages related to birth defects that the plaintiffs alleged were caused when pregnant women took an anti-nausea drug. The court ruled that the expert testimony was not admissible, and outlined four major factors that judges may use in determining the admissibility of expert testimony:⁷
 1. Scientific theory or technique must be *testable*.
 2. Scientific theory or technique has been subjected to *peer review*.
 3. There is a known or potential *rate of error*.
 4. Scientific theory or technique has *general acceptance* in the field.

Although general acceptance is still important, under *Daubert* the criteria for admissibility are more stringent, now requiring the demonstration of an appropriate scientific method in the data-gathering and interpretation of results.

- **Post-Daubert elaborations – excluding junk science** – Since the *Daubert* ruling in 1993, other Supreme Court cases have addressed the issue of how to exclude junk science while still permitting relevant expert opinions that are based on acceptable methodologies.⁸ In Box 22, the *Daubert* and post-*Daubert* criteria are combined.
- **Use of legal standards** – A nation-wide survey of state court judges has found that although they support the active gate-keeping role defined by *Daubert*, many lack the scientific literacy required to assess the falsifiability and error

Box 22. *Daubert Requirements for Scientific Method*

- ◆ **Selection of scientific theory or technique**
 - Testability/falsifiability
 - Publication and peer review
 - Reliability and validity specified – error rate
 - General acceptance in field

- ◆ **Written Report**
 - Describe how data was collected and observed
 - State derivation of opinions from data
 - Differentiate between data and inferences

- ◆ **Court Testimony**

Be prepared to support scientific method by explaining:

 - Selection of methodologies – scientific criteria for each
(e.g. interviews, collateral interviews, home visits, record review, psychological testing, drug testing)
 - Scientific theories
 - Scientific terminology and diagnostic concepts

rate of the methods used by expert witnesses (Gatowski et al., 2001). In actual practice, most state judges continue to use pre-*Daubert* standards emphasizing the qualifications of the expert and the relevance and general acceptance of the methodology in the expert's scientific field (Dahir et al., 2005).

The variability in the application of the legal standards means that it is hard to predict how the judge in a specific case will deal with the issue of scientific methodology. The best approach for evaluators is to follow the methods for doing a scientifically rigorous custody

evaluation and then be prepared to explain all of the *Daubert*-related issues when they get to court. Chapters 11 and 12 discuss the specific *Daubert* issues for each type of information-gathering technique.

Methods and Approaches for Expert Witness Testimony

Once the evaluator has been qualified as an expert, the attorney who has called them conducts a *direct examination* to establish the broad outlines of the evaluation: what the evaluator did, when they did it, what conclusions they reached, and what recommendations they may have made. This process is usually brief because the attorney who calls the evaluator to testify agrees with the conclusions and recommendations in the report. The direct examination simply allows the attorney to submit the report as evidence.⁹

After the direct examination, the attorney for the other party begins the *cross examination*. This attorney's job is to advocate for their client by challenging and discrediting the evaluation. They want to convince the judge that the evaluator made an error by using an inappropriate methodology, overlooking or misinterpreting an essential piece of information, or being biased and/or inconsistent. Most expert witnesses dread the cross examination, and most of the advice in the field is aimed at improving their performance during this phase of testimony.

- **General Strategy** – The greatest challenge for child custody evaluators in court is to remain impartial and focused on the methods and results of the evaluation. It is essential to avoid being drawn into the battle between the parties and their attorneys. For evaluators there is no winning or losing, there is only the satisfaction of explaining the evaluation and conclusions in a clear, competent manner that will assist the judge in making *his or her* decision.
- **Demeanor** – The evaluator must not only *be* impartial, they must also *appear* impartial. To do this, evaluators should avoid the impulse to socialize with the attorneys or parties to the case, and should not even sit beside them while waiting for the case to start lest others perceive the evaluator as biased or fraternizing.

Formality is also required for all professionals in court. Even if an evaluator knows an attorney well enough to call them by their first name in private, in court and in writing they must be called by their surname: “Mr. Smith” not “Jane” or “John.”

- **Scheduling** – When an attorney asks an evaluator to testify in court, they usually defer to the evaluator’s preference in scheduling the appearance. Being the first witness in the morning avoids the wait while another witness or entire case is finished. Waiting wastes time and also tends to make evaluators feel anxious. Of course there are many techniques for minimizing the anxiety of waiting outside the courtroom such as reviewing documents in the case, doing other work-related reading, simply reading the newspaper, or listening to previous witnesses in the same case if this is permitted.¹⁰
- **Meetings with Attorneys** – Some experienced evaluators recommend meeting with the attorneys to prepare for testifying in court. This is an ill-advised approach because court-appointed evaluators are responsible to the court and to the children in the case, not to the parents or their attorneys, so it is unclear why the attorneys should be involved in preparing your testimony.¹¹ Furthermore, the rule against *ex parte* communications prohibits the evaluator from meeting with one attorney at a time.¹²
- **Materials to Bring to Court** – Before going to court, the evaluator should make sure that both attorneys have a copy of their CV. It is also a good idea to bring an extra copy for the court records, as well as a copy to refer to while answering questions during the *voir dire*.

The evaluator should also bring the entire case file to the court hearing. This enhances credibility by showing that the evaluator is open to whatever inquiries the court or attorneys may make.¹³

In preparing to testify, the evaluator will need to review the case records and also the relevant social science research. Many evaluators find it helpful to prepare a brief outline of research and methodological issues to refresh their memories while testifying.

- ***On the Witness Stand*** – There are many books about how to testify as an expert witness.¹⁴ It is important to study several of them before testifying for the first time. The examples of questions and answers are instructive, as are the explanations of strategies the attorneys may use during cross examination. Box 23 shows several tips for testifying.

No amount of reading can replace actual experience in testifying, however. Testifying is a learned skill, just like teaching or public speaking. After each case, the forensic specialist should think about how they could have improved

Box 23. *Tips for Testifying as an Expert Witness*

◆ **Manner and appearance**

- Dress conservatively
Pants are acceptable for women in most jurisdictions now, but a lot of makeup, jewelry, or flashy clothes will detract from a professional image. Both women and men should avoid bright colors.
- Maintain composure
- Remain impartial
Avoid aligning with one party.
- Be respectful
Avoid humor and sarcasm.
- Educate with clear explanations
Don't get too technical.

◆ **Language**

- Be brief
- Use plain language; avoid technical terms
- Use psychological terms if needed, but define them clearly
- Avoid legal terms

Box 23

◆ **Social Science basis for evaluation**

- Provide clear explanations for choice of methodology
- Provide error rate and other indications of validity and reliability
- Separate observations from inferences
- Avoid overstatement
Acknowledge the limitations of your data and inferences

◆ **Consistency**

- Maintain your position and opinion
- Avoid changing your opinion based on cross-examination
Be cautious with hypotheticals – a comprehensive evaluation is required before a professional opinion can be expressed.

their testimony. It is also useful to engage other professionals in mutual observation and critiques of court testimony.

THE FORENSIC CURRICULUM VITAE

The evaluator's first contact with an attorney or judge is often their curriculum vitae, so it should display their unique qualities and experience as a forensic evaluator. If the evaluator has another specialty, they should prepare a separate CV for their forensic work. For example, being a very accomplished and skilled psychotherapist or professor is not relevant to the attorney looking for a custody evaluator. Box 24 shows the types of information included

in effective forensic CVs, which is similar to the information covered in the *voir dire* (Box 21).

Each forensic mental health specialist should also write a brief (150–200 word) narrative description of their practice and

Box 24. *Elements of a Forensic Curriculum Vitae*

- ◆ **Address and contact information**
 - Include fax and email as well as telephone
- ◆ **Education, training, and licensure**
 - Dates and places of degrees
 - Major area of study
 - Title of dissertation, if applicable
 - Internship, residency, fellowship, or clerkship
 - Professional certification or licensure
- ◆ **Professional appointments**
 - Academic appointments
 - Hospital appointments
- ◆ **Forensic work experience**
 - Issues addressed in family forensic experience
 - Jurisdictions where admitted as an expert witness
- ◆ **Other clinical or legal work experience**
 - Professional positions held
 - Type of work (teaching; research; administration; direct service)
 - Clients served (age; inpatient or outpatient; special populations)
 - Specialties (e.g. adolescents; families; substance abuse)

Box 24

- ◆ **Training conducted in family forensics**
 - Presentations for court-certified training programs
 - Presentations for custody-related professional conferences
- ◆ **Training attended in family forensics**
 - Recent attendance at specialized forensic workshops, seminars, and continuing education meetings – for each workshop include title, date, location, sponsoring organization, and presenters
- ◆ **Membership and positions in professional organizations**
 - State and national professional organizations
 - Custody-related professional organizations
- ◆ **Professional publications**
 - Selected publications in areas related to family forensics – journal articles, book chapters, books

experience which contains the essential information on the CV. This “bio” provides a quick way to present one’s credentials, and should be printed on professional letterhead and placed on top whenever sending out the CV.

Notes

1. Both CARI (Court Activity Record Information) and CORI (Criminal Offender Record Information) reports contain information about criminal records. The CARI may more complete because it includes any matters heard in court, regardless of the outcome of the case. With an appropriate court order, the custody evaluator can usually obtain the CARI directly from the Probation Department, whereas only parties and their attorneys have ready access to

the CORI reports. Some evaluators have the litigant obtain their own CORI by filling out a form available on-line at the state's government web site. The litigant can then submit the certified copy of the CORI that they receive. This method does not work well for litigants who are reluctant to disclose the information in their CORI.

2. In practice, some courts treat the special Guardian Ad Litem's recommendation as sufficient for the custody evaluator to obtain the child therapy records. Technically, however, the court has to order such a waiver of patient-therapist privilege before the custody evaluator can access this information.
3. Remember that all information must be provided to both parties to the dispute; be sure to discuss this issue with the attorney requesting the information.
4. After outlining the purpose of the deposition, Benjamin and Gollan recommend that the evaluator prepare for the deposition by talking with the "employing lawyer [who is] usually the attorney representing the party who would obtain the greatest number of days of residential placement during the year (2003, p. 98)." This suggestion is misguided because it assumes that the evaluator is aligned with one side in the case rather than functioning as an impartial professional whose responsibility is to the court.
5. According to a longitudinal study of 1,100 families in one California county, 80% of divorcing families were able to reach agreement by themselves or with the help of private attorneys or mediators. Another 11% who filed in family court were able to settle their dispute, while 9% reached a negotiated agreement by following the recommendations of a custody evaluation or using counseling services. Four per cent of all the families had a custody trial (Maccoby & Mnookin, 1992).
6. United States v. Frye, 1923, p. 1014. As quoted in McCann et al., 2003, p. 79.
7. These four major factors in expert testimony are quoted from McCann et al., 2003, p. 81. The McCann article also contains a clear, more detailed discussion of the *Daubert* case and related issues. See also Shuman & Sales, 1998, 1999.
8. The major case is *General Electric Co. v. Joiner* (1997) which supported the discretion of trial courts to reject expert opinions that are not adequately supported by the data. In *Kumho Tire Co., Ltd v. Carmichael* (1999) the Supreme Court ruled that the *Daubert* criteria should be applied to expert testimony that is characterized as "technical" rather than scientific. See McCann et al., 2003 for a clear summary of these post-*Daubert* cases and issues.
9. When an evaluator is court-appointed, the report will have been sent directly to the court. Therefore the judge should have already read the report before the court hearing.
10. Because witnesses are not usually permitted to listen to each other's testimony, the child custody evaluator usually has to wait outside the courtroom until they are called. This requirement is sometimes waived, however, and the evaluator can then prepare for their testimony by watching how the attorneys handle other witnesses.

Some evaluators prefer to testify after the lunch break so that they do not have to be on the witness stand for more than four hours at a time (e.g. Benjamin & Gollan, 2003). This approach can be problematic, however, because (1) It can lead to a lot of wait-time, and (2) The evaluator may have less energy in the afternoon than they do first thing in the morning.

11. It may be appropriate for the custody evaluator to meet with both attorneys and the parents to discuss a settlement of the case rather than to prepare for court testimony. This activity is similar to the role of a mediator, however, and is therefore outside the functions for which most custody evaluators are appointed. Remember, evaluators must stick to the tasks requested in the court order of appointment.

If a forensic mental health specialist is working as a consultant or expert witness for an attorney, of course they need to meet with the attorney before testifying in court. The role of a consultant is very different from the role of a child custody evaluator, however, and even as a consultant for one side it is essential to “remember that the court is your client – no matter who hires you and who pays you – and that your fundamental concern is the best psychological interests of the child... (Gould, 2006, p. 48).”

12. In advising custody evaluators to meet with the attorneys before the court hearing, Benjamin and Gollan do note that, “If one or both attorneys refuse to attend the attorney meeting, under no circumstances should the evaluator have contact with either of them until the case has been settled or discovery and trial are to occur” (2003, p. 95).
13. Martindale and Gould (2004) point out that this general rule does not apply when you are serving as a consultant to an attorney, because then portions of your file may be protected by the attorney work-product privilege.
14. The books most relevant to child custody evaluators are by Brodsky (1991, 1999, 2004). Other books and articles are aimed at consultants in a variety of fields but contain information that is especially useful for psychologists working as forensic consultants (e.g. Ewing, 2003; Poynter, 1997).

7

THE “ULTIMATE ISSUE” – RECOMMENDATIONS

CURRENT PRACTICES AND GUIDELINES

Recent research (Bow & Quinnell, 2002) indicates that most child custody reports include recommendations regarding physical custody (92%), legal custody (85%), and visitation (81%), and many others also recommend psychotherapy for parents (64%) or children (40%). Both judges and attorneys want the input of these recommendations, which they see as one of the most valuable parts of the reports (Bow & Quinnell, 2004; Poythress, 1981; Stahl, 2005).

Professional guidelines support the provision of recommendations as long as they are based on verified information that is carefully incorporated into clinical inferences and impressions (AAPL, 1995; APA-med, 1988) and custody evaluators explain the version of the best interests standard that they are using (APA, 1994).

Despite these accepted practices, recommendations have recently been the subject of heated controversy among forensic psychology scholars. Let's examine the central elements of this controversy and then consider how to write reports that are sensitive to these issues.

ARGUMENTS AGAINST RECOMMENDATIONS

Insufficient Scientific Information

Several renowned forensic psychologists have argued that there is not enough sound behavioral science research that is relevant

to custody evaluations and decisions (e.g. Melton et al., 1997; Schepard, 2005; Tippins & Wittmann, 2005a). That is, the evaluator cannot point to research that indicates how the children in a given custody case would fare under a specific parenting plan. These writers argue that without such research as a basis, the evaluator should not offer any recommendations about custody arrangements or other aspects of the ultimate legal issue.

Behavioral Science Information is not Applicable

Other psychologists have argued that even though there is now a substantial body of research related to child development and divorce, this research is not directly applicable to child custody disputes. These writers point out that “best interests” is a social, legal, and moral construct rather than a psychological one. Thus a custody evaluator cannot offer a professional or expert opinion about a child’s best interests because this is outside the realm of the evaluator’s area of psychological expertise (Gould & Martindale, 2005; Melton et al., 1997; Tippins & Wittmann, 2005a).

Recommendations Usurp Judicial Authority

A number of writers have also argued that when evaluators offer opinions about custody they are acting as defacto judges and hence invading judicial responsibility (Rotman, 2005; Schepard, 2005; Tippins & Wittmann, 2005a). According to this argument, evaluators should provide information about the parents and children that has a clear bearing on custody, but respond to any direct questions about their recommendations by saying that only the judge can make those decisions (Melton et al., 1997).

ARGUMENTS FOR RECOMMENDATIONS

Sufficient Research Information

Other equally renowned forensic psychologists maintain that there is plenty of solid behavioral science research that is relevant and crucial to making child custody decisions (e.g. Kelly & Johnston, 2005; Stahl, 2005). Most of the research was designed

to assess the impact of separation and divorce on children's adjustment rather than to test predictive statements about custody and access plans. Despite its original purpose, however, the research has also provided a lot of information about specific factors associated with risk and resiliency in children following divorce, including the impact of:

- Parental mental health problems such as depression, anxiety, substance abuse, and personality disorders
- Characteristics of parenting such as warmth, emotional support, adequate supervision, authoritative discipline, and age-appropriate expectations
- Emotional attachment processes, loss of relationships, and the quality of long-term parent-child relationships
- Educational encouragement, academic functioning, and educational attainment of the parents
- Characteristics of parenting plans such as access frequency, shared physical custody, and overnight visits for young children
- Children's resistance to visitation, children's views of visitation, and parental encouragement of estrangement and alienation from the non-residential parent.
- Parental conflict, common couple violence, and domestic violence
- Re-marriage and re-partnering

The research on these issues will be discussed in the appropriate chapters of this volume.

Group Data vs. Individual Predictions

We must also keep in mind that social science research always involves comparing one group against another. Simply knowing what group a person belongs to does not predict to their individual characteristics. For instance, it is well-established that smoking causes lung cancer. Knowing this does not permit us to predict whether a given smoker will develop lung cancer, however, although it does allow us to say that the smoker probably has a greater chance of developing lung cancer than does his or her non-smoking sibling when matched for other variables.

Grisso (2005) is referring to the group nature of empirical data when he notes that no research will ever provide prediction in individual cases. He goes on to say that custody recommendations should always be based on scientific theories that are supported by research because “ethical practice does not require empirical proof that a particular child will not thrive if left in the custody of a particular parent. It requires a sound, empirically validated theory to explain the logic on which one’s opinion is based (p. 227).”

Psychological and Forensic Training

The complexity of the issues surrounding recommendations has lead others (e.g. Stahl, 2005) to emphasize the need for custody evaluators to have extensive training in order to:

- Understand the psychological needs of all family members,
- Think abstractly and conceptually, and then apply those concepts to the individual family,
- Apply the literature on how to conduct a comprehensive child custody evaluation.

Kelly and Johnston (2005) make a related point when they note that it would be dangerous to the child and the family to leave judges to “make the final decision without any input from custody evaluators or others about what is considered to be ‘in the best interests of the child.’ In the face of this vague legal mandate, judges are even less qualified in training and experience than are mental health professionals to address this question without undue influence of their personal biases. (p. 237).”

Impartiality vs. Advocacy

In considering the controversy surrounding the “ultimate issue,” it is important to remember that court-appointed child custody evaluators have a different role than do other expert witnesses because these custody evaluators are not chosen by, nor do they advocate for, one party in a custody suit (Bala, 2005). For this reason, child custody evaluators are best able to understand the family dynamics from a neutral, impartial position that helps everyone stay focused on the psychological needs of the child (Stahl, 2005).

Recommendations vs. Decisions

When a child custody evaluator offers a recommendation or conclusion about a psychological issue related to custody, they are expressing a professional opinion or *recommendation*; they are not seeking to make a *decision*. The judge must make the decision, and should only use the evaluator's recommendation as a starting point (Stahl, 2005). This view is similar to the Australian model where the evaluator can express an opinion on an ultimate issue but the judge's decision is based on a combination of expert opinion and judicial fact-finding (Dessau, 2005).

Another way to look at the difference between recommendations and decisions is to distinguish between (a) an "ultimate factual issue" and (b) an "ultimate legal issue" about which the trier of fact must reach a decision. Custody evaluators are charged with reporting psychological "facts" related to the "*best psychological interests of the child*" and not to the best interests of the child. The latter concept includes psychological factors, but also includes factors not within a psychologist's sphere of expertise and therefore not to be considered in a psychologist's evaluation" (Gould & Martindale, 2005, p. 255).

SUMMARY: HOW TO PROCEED

In arguing against offering recommendations, Tippins and Wittmann (2005a, p. 194) delineate the following four levels of clinical data and inferences in custody evaluations (See examples in Box 25).¹

Level I. What the clinician observes.

Level II. What the clinician concludes about the psychology of a parent, child, or family.

Level III. What the psychologist concludes about the implications of Level II conclusions for custody-specific variables.

*Level IV. The psychologist's conclusions about the custody-related "shoulds" in the matter*²

Box 25. *Levels of Clinical Data and Inferences in Evaluations – Example of Report-Writing*

◆ ***Level I – Observations***

- Although Susan clung to her father throughout this evaluator's father/child observation, the preschool teacher reported that Susan asks for her father but then cries when her father lifts her into his arms at pick-up in the afternoon. During her separate interview with this evaluator Susan omitted the father from a drawing of the family and when asked directly about him said he was "nice" but "kinda mean." The child psychotherapist reported that Susan yearns for more contact with her father but is afraid of him.
- Mr. Smith set clear limits with Susan during the observation session, but told her what toy to use and how to play with each one. When Susan touched a paperweight on the evaluator's desk, Mr. Smith yelled, "Get offa there!" Susan began to cry, and Mr. Smith pulled her away.
- Ms. Smith acted nervous initially during this evaluator's mother/child observation, adjusting Susan's clothing and telling her not to touch anything without asking first. Ms. Smith allowed Susan to choose toys, however, and played with Susan in a warm, non-intrusive, cooperative manner.

◆ ***Level II – Inferences about the psychology of family members***

- Susan's attachment to her father appears quite ambivalent because she clings to him in strange situations and yearns for more contact with him, but is afraid of him and rejects him in familiar situations, describes him in contradictory terms, and does not seem to perceive him as part of her central family.
- Mr. Smith's style of parenting is very authoritarian: overly controlling with a lack of warmth, affection, and sensitivity. Mr. Smith is harsh in his discipline and rigid in his limit-setting. This impression was corroborated by consultations with Susan's teacher and child psychotherapist.
- Ms. Smith's style of parenting is authoritative: balancing warmth and control through affection, sensitivity to the child's feelings, and adequate limit-setting. This impression was corroborated by consultations with Susan's teacher and child psychotherapist.

Box 25

◆ **Level III – Implications of psychology inferences for custody-specific variables**

- Mr. Smith's parenting style is a risk factor for paternal custody. Research has shown that the authoritarian style of parenting displayed by Mr. Smith is often associated with anger, excessive anxiety, and bullying behavior in the child.* This is a matter of some concern because Susan has a history of hitting and biting the other children in preschool.
- Ms. Smith's parenting style is an advantage for maternal custody. Research has shown that the authoritative style of parenting displayed by Ms. Smith fosters mutual trust and provides reassuring consistency. Children of authoritative parents have been found to be the most socially responsible, least troubled and highest-achieving children of divorced parents.*

◆ **Level IV – Recommendations about custody and related matters**

- Neither parent is willing to share either legal or physical custody, and the information on the marital relationship suggests that the parents are not capable of cooperative parenting. Given this limitation, Susan should live with her mother because (a) Susan has an ambivalent attachment to her father and (b) the mother's parenting style is more conducive to positive emotional, social, and academic adjustment in the child than is the father's parenting style.

*Include a brief reference such as, "This research is summarized and critiqued in Rohrbaugh, J. B. (2008). *A comprehensive guide to child custody evaluations: Mental health and legal perspectives*. NY: Springer."

Child custody evaluators are appointed to gather and present information to the court. For maximum benefit, that information should be presented in a clear, concise manner that is easily understood by professionals whose training is outside the area of mental health. This means that most of the report should focus on Level I observations. Experienced clinical evaluators in psychiatric emergency rooms report Level I observations before going on to state Level II diagnostic conclusions. Consider the following two statements in a psychiatric intake report:

Level I:

Over the past month Mr. Jones has lost interest in most daily activities, experienced decreased appetite, lost ten pounds, had difficulty waking up after a full night's sleep, and experienced intrusive thoughts of harming himself by driving off the road or jumping in front of a subway train.

Level II:

Mr. Jones has become increasingly depressed over the past month and is experiencing passive suicidal ideation.

Although both of these statements are clear, Level I provides more detailed information for clinicians reading the record later on. These details enable the reader to assess the accuracy of the diagnosis derived from this information and form their own conclusions about the diagnosis. This is similar to the situation of a judge or other person reading the report of a child custody evaluation: the observable facts (Level I) need to be described clearly enough for the reader to evaluate the clinical inferences (Level II) which are then used to derive conclusions about custody-specific variables (Level III).

As Chapter 14 will explain, the report of a child custody evaluation should be written with an ascending level of detail and abstract analysis.³ The Level I observations should be reported in the subsections on each person in the report, the Level II clinical inferences should be reported in the Summary section about each person, and the Level III analyses should be reported in the Conclusions section at the end of the report. If custody recommendations are offered, they should be put in a separate section following the Conclusions section. Empirical research and theories should be described and referenced *briefly*, with perhaps one footnote to direct the reader to further discussion of that issue.⁴

Notes

1. Although the levels in Box 25 are based on the concepts presented in Tippins and Wittmann, (2005a), the examples themselves are drawn from my own clinical and forensic experience. In an actual evaluation, much more information would be needed to draw a custody-related conclusion. The information in Box 25 is limited for illustrative purposes.

2. The four levels of inference suggested by [Tippins and Wittmann \(2005a](#), p. 194) are similar to the “increments in opinion formation” proposed by Melton and his colleagues as applied to assessing whether a defendant meets the legal test of insanity. Melton et al describe these as, “ 1. Application of meaning... to a behavioral image (e.g. ‘wringing... hands’); 2. Perception of general mental state (e.g. ‘... appeared anxious’); 3. Formulation of... general mental state [in theoretical terms] (e.g., ‘His anxiety during the interview was consistent with a general obsession with pleasing others’); 4. Diagnosis (e.g. ‘His behavior and his reported history are consistent with a generalized anxiety disorder’); 5. Relationship of formulation or diagnosis to legally relevant behavior (e.g. ‘At the time of the offense, his anxiety was so overwhelming that he failed to consider the consequences of his behavior’); 6. Elements of the ultimate legal issue (e.g. ‘Although he was too anxious at the time of the offense to *reflect*... he *knew* the nature and consequences...’); 7. Ultimate legal issue (e.g. ‘He was sane at the time of the offense’)” ([Melton et al, 1997](#), p. 17).
3. This approach is similar to that of Heilbrun, who recommends that the evaluator focus on describing “the data, reasoning, and conclusions about an individual’s relevant capacities.” (2001, p. 225). Heilbrun points out that even if the evaluator goes on to express the conclusion in terms of the ultimate issue, the detailed information will be available to the court.
4. In the child custody report, it is sufficient to cite an overview of the research such as that offered in the present volume. For an example of such a citation, see the bottom of Box 25. The evaluator should be prepared to discuss some of the central research studies during cross examination, however.

PART II

SOCIAL SCIENCE RESEARCH AND PARENTING PLANS

What are the emotional needs and typical behaviors of children at different ages? Are parenting styles related to child adjustment? How do children and adults respond to separation and divorce? How do different custody arrangements affect these responses?

In order to answer these questions, we need to consider social science research on both children and adults, in three different areas:

- (1) General psychological functioning,
- (2) Response to separation and divorce,
- (3) Response to specific custody arrangements.

When taken together, the information from these three areas of research offers considerable insight into the situations and responses of families engaged in custody battles.

Chapter 8 will begin by looking at how family structure is changing in the United States today. Then it will examine children's psychological functioning at different ages, and how their age-related

needs determine their responses to their parents' separation and divorce. Research on children of divorce as adults will be discussed, as well as the characteristics of high-conflict families. The chapter will end with a discussion of the effects of high-conflict divorce on children.

Chapter 9 is devoted to ways to manage parent/child contact in high-conflict and abusive families.

Chapter 10 examines parenting plans in the context of the research on the psychological functioning of children and adults. Parental conflict is a central issue because it determines what kind and amount of parent/child contact can occur, what type of custody arrangement is safe and workable, and whether a family needs or can benefit from a Parenting Coordinator. There is also valuable research on the effects of sole v. joint custody and on the effectiveness of various parenting education programs.

8

DEVELOPMENTAL NEEDS OF CHILDREN AND FAMILIES

Changes in the structure of the family interact with the developmental needs of children to influence how children experience separation and divorce. The issues present in all divorces are intensified in high-conflict families, and this intensity is then reflected in the poorer adjustment of the children after separation.

CHANGING FAMILY STRUCTURE

Rates of Divorce

The divorce rate in the U.S. is 47%, with 1.1 million divorces a year causing well over a million children to experience the separation/divorce of their married or unmarried parents.¹ Over three-quarters of these parents manage to agree on a new arrangement for taking care of the children. In 10% of cases the parents take their custody dispute to court, where the judge often appoints a professional to conduct a child custody evaluation. These numbers suggest that child custody evaluations are being done in 5–10% of all parental separations and divorces.²

This 5–10% of separating parents represents the most *high-conflict families* who are unable to reach a settlement regarding

their children, even with the help of family therapists, mediators, attorneys, and other professionals. About one fourth of such families have children under six years old; in this group, parents have the most difficulty settling their cases when there are allegations of parental substance abuse, domestic violence, and child abuse (Pruett, et al., 2000).

Role of Fathers During Marriage and Relationships

As more mothers work outside the home and our culture begins to emphasize the value of fathers as nurturers, many married and coupled fathers have started to assume a number of the childrearing tasks traditionally performed by mothers. 90% of these “modern fathers” are present when their children are born and the fathers are changing diapers, taking paternity leave, preparing the children’s meals, taking the children to the doctor, and attending parent-teacher conferences, school activities, and sporting events (Maldonadd, 2005).

As men have become more involved in childrearing, our view and definition of fatherhood has changed.³ Rather than being based simply on biology, this new definition of fatherhood is also based on childrearing functions and the relationship between the nurturing man and the child because “biology alone does not make a good father” (Townsend, 2003, p. 354). This new emphasis on childrearing functions is accompanied by a gender-neutral approach that (a) does not assume that maternal custody would be in the best interests of every child and (b) is sensitive to the many types of fathering roles that come before the court, such as:⁴

- ***Father seeks parenting time (majority of cases)***
- ***Father is primary caregiver or co-caregiver during marriage or relationship***
- ***Father is filling in for unfit mother***
- ***Father has substance abuse problem***
- ***Father has history of domestic violence***
- ***Incarcerated fathers***

- ***Father with different children by different mothers (blended families)***
- ***Unmarried fathers***
- ***Stepfathers***

The increasing variety of fathering roles is linked to the changes in family structure found in all racial, ethnic, and socioeconomic groups in the United States today. For instance, the most recent census statistics indicate that one third of children are now born to unmarried mothers.⁵ In the family court, judges encounter a variety of relationship histories that lead to children born out of wedlock, such as:⁶

- ***Parents never had an on-going relationship.***
Casual sex /“one-night stand.”
- ***Parents had a sexual relationship but never lived together.***
- ***Parents lived together briefly before and after child was born.***
Often younger parents live with their parents (the child’s grand parents).
- ***Parents had a committed (but un-married) relationship and lived together for many years.***
These parents may have had several children together. This category includes same-gender relationships.
- ***Parents had a series of relationships with multiple partners.***
Several sets of biological siblings may have been conceived, but this may not necessarily have resulted in the parents living together as a family.
- ***Mother had child out of wedlock and raised it with her subse- quent boyfriend or husband.***

These relationship histories occur in all racial, ethnic, and socio-economic groups and point to the changing lifestyles in American society. The implications of this increasing diversity in family structure will be discussed further in Chapter 16.

Involvement of Fathers after Separation and Divorce

Financial Involvement

It has been widely reported that the after-divorce income of mothers falls by 27–73% while the after-divorce income of fathers increases by 10–42%.⁷ In their study of about 450 Virginia families, for instance, Hetherington and Kelly (2002) found that one year after divorce the divorced mothers and children were living on less than half the income of non-divorced families.⁸

The precipitous drop in income for mothers and children is partially due to the fact that most fathers do not pay the full amount of child support ordered by the court. Hetherington & Kelly (2002) reported that 25% of the fathers in their study paid no support at all, 50% paid partial or inconsistent support, and only 25% regularly paid the amount ordered by the court.⁹ This finding is of particular concern because many studies have found that paternal economic support is associated with good child adjustment after divorce (Amato & Gilbreth, 1999; Dunn, 2004; Maldonadd, 2005).

Parenting Time

A number of studies done in the 1980s and 1990s reported that fathers disengage quickly following separation and divorce, so that in the first few years after divorce slightly more than a third of the children see their father weekly, and after three years only half of them see their father regularly. By ten years post-separation, less than half the children had any contact with their fathers, and only 20% saw their nonresident fathers weekly. More recent studies suggest that children and their nonresident fathers may now be seeing one another more frequently, however, which is consistent with recent trends towards fathers being more involved in parenting during marriage and relationships (Dunn, 2004; Maldonadd, 2005). This shift in paternal behavior is consistent with a shift in maternal attitudes, where mothers are more satisfied with higher levels of paternal involvement than they were 20 years ago (Kelly & Emery, 2003).¹⁰

Even when nonresidential fathers do spend regular time with their children, they often tend to entertain them rather than parent them, taking them to dinner, movies, and the mall rather than

helping them with homework or doing routine chores with them. Maldonadd (2005) suggests that, paradoxically, fathers who were very involved with the children before the separation may be even more apt to disengage because it is too painful to see the children in such a limited, contrived way.

Some of the fathers who are not involved with their children after divorce were only minimally involved with them during the marriage, or they become distracted by new partners after the divorce, are unclear about what their role should be as a non-residential father, or find that the mother discourages father/child contact through a “gatekeeping” function. Other fathers report that their housing circumstances are not appropriate for visits and overnights (Dunn, 2004; Kelly & Emery, 2003).

Regardless of how and why the father/child contact diminishes, many children (especially boys) wish they had more time with their nonresidential fathers (Kelly & Emery, 2003). And as we will see below, the amount of father/child involvement post-separation is usually positively associated with the emotional and social adjustment of children of all ages.

AGE AND DEVELOPMENTAL NEEDS

Custody evaluations require a basic knowledge of the social science research on child development. This research provides essential information about topics such as the child’s age-related capacity for:

- emotional attachment to parents and other caretakers,
- development of language and other nonverbal communication methods,
- expression of emotions,
- ability to self-comfort,
- growing cognitive abilities that permit understanding of social cues and the development of empathy,
- understanding the concepts of time and routine,
- perception of parents and the separation,

- developing sense of self and healthy separation from parents and caregivers.

These issues are outlined in Box 26 as they interact with the child's response to the separation. The broad implications for parenting plans are also listed, and will be discussed in Chapter 10.¹¹

CHILDREN'S REACTIONS TO SEPARATION AND DIVORCE

There is an on-going controversy about how devastating divorce is for children. Some researchers see divorce as always detrimental, with young adults still showing negative effects 25 years later (e.g. Wallerstein, Lewis, & Blakeslee, 2000). Other researchers have criticized Wallerstein's study for using only clinical interviews and having no comparison group.¹² It is important to use (a) multiple assessment devices and (b) divorced and married samples that are non-clinical and preferably nation-wide. Using these more sophisticated methodologies, which often include longitudinal designs, researchers have found that divorced parents eventually become as competent as still-married parents and that most children of divorce are as well adjusted as children of non-divorced families (Hetherington, Bridges, & Insabella, 1998; Hetherington & Kelly, 2002; Kelly & Emery, 2003).

Despite these relatively positive outcomes, when children of divorce are compared with children from intact families the following negative effects have been observed:¹³

- **Academic achievement.** Children of divorce have lower grades, lower scores on achievement tests, and are 2–3 times more likely to drop out of school than are children from intact families.
- **Conduct.** Children of divorce are more apt to be poorly behaved, as measured by things such as rates of aggression, delinquency, violence, smoking, and school suspensions.
- **Psychological adjustment.** Children of divorce have more symptoms of emotional distress including higher rates of

Box 26. Children's Developmental Stages and Responses to Separation and Divorce

Age	Developmental Tasks and Abilities	Response to Separation	Implications for Parenting Plan
◆ Infant— Birth to 9 months	<ul style="list-style-type: none"> ● Form multiple attachments ● Develop basic trust 	<ul style="list-style-type: none"> ● Anxiety and Fear ● Eating and Sleeping Disturbed 	<ul style="list-style-type: none"> ● Frequent contact with both parents – at least 3–4 times/week, including caretaking: feeding, bathing, playing, soothing, holding, napping ● Predictable schedule and routine ● Communication between parents – written daily log about baby to create same routines in each home
◆ Baby – 9 to 18 months	<ul style="list-style-type: none"> ● Crawling, standing, walking ● Communication – simple sounds, smiles, words ● Simple expression of emotions – hugs, kisses, anger, fear, anxiety 	<ul style="list-style-type: none"> ● Anxiety and Fear ● Eating and Sleeping Disturbed 	<ul style="list-style-type: none"> ● Same as for infant

Box 26			
<i>Age</i>	<i>Developmental Tasks and Abilities</i>	<i>Response to Separation</i>	<i>Implications for Parenting Plan</i>
◆ Toddler – 18 to 36 months	<ul style="list-style-type: none"> ● Attachments to many caregivers ● Respond to different parenting styles ● Growing independence – age of “no!” ● Ability to self-comfort – favorite blanket or toy ● Complex language 	<ul style="list-style-type: none"> ● Fearful of separations ● Resistant to exchanges ● Sensitive to tension, anger, and violence between parents 	<ul style="list-style-type: none"> ● Predictable schedule and routine ● Frequent contacts with parents, – but can be away from either parent for 2 or 3 days at a time ● Daily telephone contact may be reassuring to child and absent parent ● Keep picture of absent parent with child, in child’s room
◆ Preschool – 3 to 5 years	<ul style="list-style-type: none"> ● Feel they are center of universe ● Impulsive ● Concrete in thinking ● Nightmares – can imagine frightening things but can’t cope with the resulting fear ● Changing sleep schedule 	<ul style="list-style-type: none"> ● Feel responsible for separation/divorce ● Say what they think parent wants to hear ● Fear abandonment ● Fearful and anxious when not with regular caretakers ● Upset by transition from parent to parent ● Regressive behavior 	<ul style="list-style-type: none"> ● Consistency and predictability ● Structured time with age-peers, without parents ● Communicate and adapt to changes in sleep schedule

Box 26			
<i>Age</i>	<i>Developmental Tasks and Abilities</i>	<i>Response to Separation</i>	<i>Implications for Parenting Plan</i>
◆ Early School – 6 to 9 years	<ul style="list-style-type: none"> ● Develop peer relationships ● Personal and social skills build self-esteem ● Empathy and sense of right and wrong ● Understand concepts of time and routine 	<ul style="list-style-type: none"> ● Used to multiple separations, different parenting styles, and two residences ● Loyalty conflict ● Intense longing and worry about absent parent 	<ul style="list-style-type: none"> ● Frequent contact with both parents ● Minimize transitions ● Weekday and weekend overnights ● Child calls parent in privacy ● Support child's social activities and relationships outside the family ● Time with each parent on same days each week
◆ Middle School/ Pre-teen – 10 to 12 years	<ul style="list-style-type: none"> ● Better understanding of time and planning ● Understand different parental values and rules ● See people as all good or all bad 	<ul style="list-style-type: none"> ● Good vs. bad parent ● Rule-bound 	<ul style="list-style-type: none"> ● Variety of parenting plans work well if have frequent contact with both parents – same elements as for age 6-9 ● Support increased independence ● Respect child's preferences (but parents make final decision)

Box 26

Age	Developmental Tasks and Abilities	Response to Separation	Implications for Parenting Plan
♦ Early Adolescence – 13 to 15 years	<ul style="list-style-type: none"> ● Increase independence from family ● Develop separate self-identity ● Developing but inconsistent decision-making abilities ● See others in terms of complex, abstract, stable characteristics ● Understand causes of others' emotional reactions 	<ul style="list-style-type: none"> ● Loyalty conflicts ● Ambivalence about parental control 	<ul style="list-style-type: none"> ● Support growing independence while maintaining basic structure and close contact with both parents ● Encourage activities and relationships outside family even when they interfere with parenting plan ● Begin to negotiate time directly with child ● Consider one home base to accommodate increasing importance of child's own activities
♦ Late Adolescence – 16 to 18 years	<ul style="list-style-type: none"> ● Gradual separation from parents ● Develop individual identity ● Self-regulation re. pressure from peers, school, and society ● Understand feelings and sexuality in relationships 	<ul style="list-style-type: none"> ● Fear having to take care of parent(s) ● Confusion and fear about love relationships 	<ul style="list-style-type: none"> ● Be flexible while maintaining age-appropriate controls ● Consult and inform child of plans but maintain adult/child relationship ● Continue communication between parents, especially re. curfews, driving, dating, and overnights away from both homes

depression, thoughts of suicide, suicide attempts, and participation in psychotherapy.

- **Self-concept and self-esteem.** Children of divorce are more apt to have poor self-concepts and lower self-esteem.
- **Social relationships.** Children of divorce have poorer social skills and more difficulties in interpersonal relationships, including both friendships and love relationships.

The effect sizes are quite small, however, and there are many complicating factors that make it difficult to predict how any particular divorce will affect the children.¹⁴ For the custody evaluator, the most useful approach is to look at the following risk and resilience factors that either protect children from the negative effects of divorce or make them more susceptible to those negative effects.¹⁵

Gender

Hetherington and Kelly (2002) reported that boys had more difficulty adjusting after divorce than did girls, and described a pattern in which young boys became socially “incompetent bullies” caught in “coercive cycles” with their custodial mothers where the boy’s “whiny, aggressive, and defiant” behavior interacted with “parental irritability, punitiveness, and unpredictable, erratic discipline.” (p. 115)

Meta-analyses of recent studies have also found that boys have more angry exchanges with their mothers than do girls and tend to be involved in a coercive mother/son relationship, perhaps because boys have more contact with their father pre-divorce than do girls. On the other hand, these meta-analyses have also found that there are no significant relationships between the child’s gender and (a) level of father’s visitation or (b) the child adjustment variables studied. This seems to be due to the interaction of gender with age, adjustment before separation, gender of the custodial parent, quality of the child’s relationship with both parents, and level of the parental conflict.

Age

Divorce has negative effects for children of all ages. Although greater vulnerability for young children was reported in some early studies, this finding has not been replicated.

Race

There is little data on how separation and divorce affect children of different racial, ethnic, and cultural backgrounds. What research has been done suggests that race and culture need to be considered, however, in that (a) the academic deficits in single-mother families are less pronounced for black than for white children, and (b) stepfathers are more beneficial for black children (especially girls) than they are for white children.

Parental Conflict

High levels of inter-parental hostility both before and after separation are detrimental to child adjustment. Goodman, Bonds, Sandler, & Braver, (2004) have identified three types of inter-parental conflict:

- **Legal inter-parental conflict** involves continued litigation, requests for changes in decrees, and enforcement actions for noncompliance with decrees. It is logical to expect that prolonged litigation is associated with poor child adjustment, but there is actually little empirical evidence related to this issue.
- **Attitudinal inter-parental conflict** involves the parents' anger, hostility, and negative views of each other. The few studies that have examined the effects of positive views of the ex-spouse (low attitudinal conflict) have not found it to be a significant predictor of child adjustment.
- **Interpersonal inter-parental conflict** includes verbal disputes, physical violence, and badmouthing. This is the type of conflict usually studied, and there is a large body of research which indicates that severe conflict of this type is associated with poor emotional, social, and cognitive adjustment in children.

In examining the chain of events associated with severe interpersonal inter-parental conflict, Goodman et al. (2004) found that it is associated with both (a) a deterioration of effective parenting practices and (b) parental psychopathology and substance abuse. Both of these factors, in turn, are associated with poor child adjustment in high-conflict families.

The effect of marital conflict is also complicated by how the parents handle the conflict and separation. High conflict after separation is especially destructive if parents put the children in the middle by fighting in front of them and asking them to carry messages back and forth; if the parents do not do this, the children's adjustment is similar to that of children from low-conflict families. The impact of the marital conflict is also mediated by the child's understanding of the conflict; this finding is especially important given that parents seldom provide their children with much information about the separation and divorce. Unfortunately, putting the children in the middle and offering them little clear information are typical of high-conflict families, as we will see below.

It is not the separation and divorce per se that are detrimental to children, in that children in on-going, high-conflict households show many of the same problems as do all children with separated and divorced parents. Nor can one assume that couples with high conflict will still have high conflict after separation and divorce. In many families the conflict resolves after a year or two, so that the children actually experience some relief from the separation and divorce.

In other families, the conflict may actually increase after separation and divorce. This is consistent with the finding that low-conflict marriages that end in divorce are particularly distressing to children and detrimental to their adjustment and well being for years afterward. The children in these families are angry, confused, anxious, and totally unprepared for the separation, which exposes them to more rather than less parental conflict. Most separations and divorces fall in this low-conflict category.

Circumstances of Initial Separation

The events that precipitate the separation are usually distressing for children, especially if they involve an extra-marital affair, financial

failure, or general sense of betrayal by one or both parents. The children's distress is intensified when one parent suddenly leaves the household, and the children do not see them until the parents work out an arrangement for parenting time. Once parenting time is arranged, the children have to cope with the logistics of these transitions: transporting their homework and possessions from one parental home to the other, adapting to new schedules, finding new ways and times to connect with friends. The children also have to adjust to the atmosphere and rules in two different parental households.

Finances

I have already discussed the dramatic drop in family income following separation and divorce. This financial stress affects the children by limiting the custodial parent's ability to meet the children's basic needs for food, clothes, and shelter. Even in more affluent groups, the decrease in financial resources causes emotional distress in the custodial parent that is often transmitted to the children. Decreased financial resources may also curtail the children's access to recreational activities such as (a) participating in sports, birthday parties (where presents are required), travel, and art and music lessons, and (b) attending movies, concerts, museum exhibits, and sporting events. These recreational activities offer important opportunities for children to develop behaviors, characteristics, and abilities that will enhance their well-being and adjustment later in life, and are also central to children's present quality of life.

Parenting

In their nationwide study, [Hetherington and Kelly \(2002\)](#) identified four common parenting styles in both divorced and non-divorced families.¹⁶

- ***Authoritative parents*** are warm, consistent, and emotionally supportive. These skilled communicators are firm disciplinarians who rely on verbal controls such as time-outs, deprivation of privileges, and explanation and reasoning. They also treat their children in a respectful manner by

not interrupting their conversations, criticizing them in front of friends, or unwittingly inflicting some other petty humiliation. These parents know when to demand more from their children and when to reassure and soothe them.

The protective effects of authoritative parenting include (1) keeping the home environment reassuringly predictable, (2) fostering mutual respect that makes it easier to control the child, and (3) fostering a sense of maturity and responsibility by assigning age-appropriate chores.

Hetherington and Kelly found that the children of authoritative parents weathered the separation and divorce the best, becoming the most socially responsible, least emotionally distressed, and highest-achieving children in their studies.¹⁷

- **Permissive parents** are affectionate and caring but impose few rules, guidelines, or restrictions. These exhausted parents tend to feel guilty about imposing the pain of divorce on their children, and after a long day at work find themselves ignoring or giving in to disobedient children because it is easier.

Hetherington and Kelly found that the children of permissive parents tended to be impulsive and sometimes aggressive, and needed to learn emotional self-regulation.

- **Authoritarian parents** often lack warmth, affection, and sensitivity when interacting with their children. They use harsh, punitive, rigid discipline, often barking out orders and criticisms but not following through on their threats.

Hetherington and Kelly found that the children of authoritarian parents became rebellious and increasingly defiant as they got older. These children would be fearful and conforming in the presence of authority figures but act mean and bullying with peers.

- **Disengaged/neglectful parents** are focused on their own needs and respond with irritation or withdrawal when a child makes demands on them. Some of these parents are self-involved, immature people while others are impaired by

alcoholism, depression, or substance abuse. These parents are seldom aware that they are neglectful, however.

Hetherington and Kelly found that the children of the disengaged/neglectful parents were the most troubled—wild, defiant, and unhappy, with few social skills.

In their meta-analyses of recent research studies, other writers have identified specific parental behaviors which create risk or resilience in children of separation and divorce, namely:

- **Protective factors:**
 - warmth
 - emotional support
 - adequate monitoring
 - authoritative discipline
 - age-appropriate expectations
- **Risk factors:**
 - inattentive
 - less supportive
 - coercive discipline

These factors are similar to the issues addressed in Hetherington and Kelly's analysis of the four types of parenting, and hence support that parenting typology.¹⁸

Another dimension of parenting is the degree to which parents can work together in a cooperative manner. Hetherington and Kelly (2002) identified three types of co-parenting, which have been corroborated by meta-analyses of other research studies.

- **Conflicted co-parenting** usually involves angry, hostile verbal exchanges in front of the children, with constant nasty comments about each other and wrangling about the parenting schedule. This pattern was very common right after separation, but six years later only 20–25% of the couples were still caught up in this level of conflict.

Conflicted co-parenting causes distress in both parents and children, but the parents are too preoccupied with their own anger and lingering resentment to focus on finding a more fulfilling life for themselves or to acknowledge the pain

they are inflicting on the children. Children did the worst with this style of co-parenting.

- ***Cooperative co-parenting*** involves putting the children's needs first by talking over the children's problems, coordinating household rules, and adapting parental schedules to meet the children's needs.

Children did best with cooperative parenting, but only 25% of the couples were able to achieve this parenting style.

- ***Parallel co-parenting*** was the most common (50%) and easiest to implement. Here the parents simply ignored each other. They did not try to coordinate their parenting, but they did not interfere with each other, either.

Although children did not do as well with parallel co-parenting as they did with cooperative co-parenting, most were able to adapt easily. The main drawback is the lack of parental communication, which can lead to difficulties with medication in younger children and with monitoring activities in older children.

Loss of Important Relationships

When parents separate or divorce, their children may lose contact with close friends, classmates, neighbors, relatives, and even the non-residential parent. These losses can be devastating. In fact, interview studies have shown that losing contact with fathers is one of the most painful outcomes of divorce (Amato, 2005) and is associated with poor psychological adjustment in children up to 6 years of age (Pruett, Williams, Insabella, & Little, 2003).

Simply having frequent contact with the non-residential father is not necessarily beneficial, however. For the child to benefit psychologically it is important that the father engage in daily activities, such as homework, and also provide financial support. The context of the father-child contact is also important: conflict between the parents can diminish or negate the positive effect of father-child contact. And finally, time with the father is only associated with good child adjustment if the father/child relationship is positive.

Of course not all non-residential parents are fathers. Given that 12–30% of fathers have physical custody, a comparable percentage

of mothers are non-residential, and the number of non-custodial mothers appears to be rising as increasing numbers of fathers are awarded primary physical custody (Gunnoe & Hetherington, 2004; Hetherington et al., 1998; Hetherington & Kelly, 2002; Seltzer, 1991). Among non-custodial parents, mothers maintain more contact with their children than do fathers by phone calls, mail, meeting face-to-face, and overnights. The mothers also express more interest in the children's activities and communicate with the children more than do fathers. The greater social support provided by non-custodial mothers means that they also exert a more positive influence on children's adjustment than do non-custodial fathers.¹⁹

Adult Mentors

Hetherington and Kelly (2002) found that by age 15, one-third of boys and one-fourth of girls had disengaged from their divorced family, spending as little time as possible in the family home or in family activities.²⁰ If these disengaged adolescents were involved in an antisocial peer group they were at risk for delinquency, substance abuse, early sexual activity, and problems in school. Some of these disengaged youths had a close, sustained relationship with a competent adult such as a teacher, guidance counselor, coach, neighbor, grandparent, or friend's parent. In fact Hetherington and Kelly found that *all* the successful children in their studies had at least one such adult mentor who buffered the effect of the dysfunctional family situation. This buffering effect has also been observed in other groups of at-risk children, often enabling the at-risk child to mature into a competent, functional adult.²¹

Adult mentoring helps the child by making them feel valued and cared for, and by providing a role model that is an alternative to the peer group. Often the mentor offers a more neutral way for the child to accept authoritative parenting that fosters social skills. Thus the mentor may serve as an ally for the parent by reinforcing values, attitudes, and behaviors that the parent is having difficulty teaching at home.

Peers

Close friendships usually enhance a child's social and emotional adjustment. Unpopular children with poor social skills are often shunned by their peers, and separation and divorce worsens this dynamic. Hetherington and Kelly (2002) found that having even *one* close friend, however, helps to protect children from the effects of stress and rejection by other children.

Siblings

When separated and divorced parents are stressed, erratic, and emotionally withdrawn, their children begin to compete for what little attention is available. The sibling rivalry and fighting that result are most marked for brothers: six years after the divorce male siblings in divorced and remarried families are still more involved in arguing, teasing, insults, name-calling, and physical fighting than are male siblings in non-divorced families (Hetherington & Kelly, 2002).

Only 10% of siblings – mostly sisters – form relationships supportive enough to buffer the stresses of divorce. Once the siblings move out of the home as adults and contact becomes optional, disengagement replaces the ongoing hostility. Among siblings who maintain contact as young adults, 80% of the telephone calls are initiated by sisters (Hetherington & Kelly, 2002).²²

Stepfamilies

Most parents establish new love relationships after divorce: 50% of them live with that person while 3/4 of men and 2/3 of women re-marry. This re-coupling has led some scholars to suggest that 1/3 of children will live in a re-married or cohabiting family before the age of 18 (Kelly & Emery, 2003), while others estimate that 2/3 of children get a stepfather after divorce (Dunn, 2004).

These new “blended” families are usually viewed as a risk factor or source of stress for children of divorce, due to the necessity for moving, the initially tense relationship with the stepparent, the child's loss of some of the autonomy they had with the single parent, loyalty conflicts, increased sibling rivalry, jealousy of the

parent's attachment and time with the stepparent, and the end of the child's hope and fantasy that the parents will get back together. If the child's relationship with the stepparent survives the crisis of transition, however, it can be an important source of emotional and social support. Thus during child custody evaluations it is important to assess the quality of each child's relationship with the parent's new partner (and the partner's children, especially if they will be living at least part-time in the new home).²³

School

Children's experiences with school depend on a variety of factors: the school's resources; the teachers' experience, skills, and emotional involvement with their students; the characteristics of the students in the classroom and school as a whole; and the child's own social, cognitive, and emotional functioning. [Hetherington and Kelly \(2002\)](#) found that in the best-case scenario the school is "the institutional equivalent of an authoritarian parent," with teachers who are emotionally available and willing to listen, discipline that is loving but firm, and a generally supportive atmosphere. In this situation, the school functions as a buffer for the post-divorce stress because it provides "structure, support, and emotional regulation" (p. 145).

Child's Own Temperament

Children who are easygoing, intelligent, physically attractive, and have good social skills are always more popular with children and adults than are their less well-endowed peers. The period after separation and divorce is no exception: many studies have found that children with these characteristics are better able to cope with their parents' marital transitions. Children who feel helpless and are cranky, demanding, impulsive, antisocial, or extremely anxious and insecure before the divorce tend to get worse afterward, leading to a "snowballing of risks" for these children. On the other hand, children with "islands of attainment in academics, sports, or positive peer relations" fare better after divorce ([Hetherington & Kelly, 2002](#), p. 146).²⁴

Psychological Functioning of Parents

The stress of marital transitions puts all parents at risk of developing psychological disorders, especially depression and substance abuse. These disorders then have a negative impact on the children, as we will see in Chapters 21 and 22. In fact the psychological functioning of custodial parents is one of the best predictors of the psychological functioning of their children, both during marriage and after divorce.²⁵

CHILDREN OF DIVORCE AS ADULTS

When children of divorce grow up, they continue to fare worse than children of intact families.²⁶ The effects are similar to those they experienced as children: more financial stress, poor social and emotional adjustment, and difficulties in interpersonal relationships of all kinds. Compared to child of non-divorce, children of divorce tend to have a lower socioeconomic status and a dramatically increased risk of teenage and non-marital births. Despite being determined to avoid their parents' pattern of high conflict and divorce, they experience more marital instability than do children of non-divorce: they marry earlier, report more dissatisfaction with their marriages, and are more likely to divorce.

Hetherington and her colleagues have pointed out that this does *not* mean that "children are permanently blighted by their parents' marital transitions" (1998, pp. 170) because "80 percent of children from divorced homes eventually are able to adapt to their new life and become reasonably well adjusted" (2002, p. 228). Only 20% of these children continue to be troubled, compared to 10% of children of intact families.

DESCRIPTION OF HIGH-CONFLICT FAMILIES

Which families are among the 10% who continue to have ongoing conflict about child custody years after their separation and divorce?²⁷ How do these differ from the families who manage to

resolve their child custody disputes? What effect does the on-going conflict have on the children? These questions are crucial for professionals who order, conduct, and examine child custody evaluations, for this is the population that requires these services.

High-conflict families are characterized by:

- High rates of litigation and re-litigation regarding parenting time and access to children.
- Mutual anger and distrust between the parents, which frequently includes allegations and cross-allegations of abuse, mistrust, and poor judgment.
- Frequent incidents of verbal abuse and disparagement, so that one (or both) parents become convinced that the other parent is brainwashing the children.
- Intermittent physical aggression
- Inability to communicate about the children or cooperate in their care
- Difficulty focusing on the children's needs as separate from their own
- Inability to protect the children from the parents' emotional distress, mutual hostility, and on-going disputes
- Blaming each other for the behavior problems displayed by the children
- Involvement of family, friends, and professionals in a "tribal war."²⁸

It is also helpful to compare low-, medium-, and high-conflict families along the major dimensions of family functioning, as seen in Box 27.

Johnston and Roseby (1997) discuss some of the social and emotional reasons why a high-conflict "divorce impasse" may occur. First, there are cases where the divorce dispute is simply a continuation of the marital feud. Second, there are marriages where the spouses have idealized images of each other and the divorce dispute serves as a way to hold onto their shattered dreams and self-perceptions. Third, there are divorces where the separation is traumatic, such as following a sudden desertion, the humiliating discovery of a lover, uncharacteristic violence, or secret plotting and planning.

Box 27. Typical Parental Functioning in Families with Low, Medium, and High Inter-parental Conflict

LOW-CONFLICT FAMILIES

Emotional Functioning	Social Skills	Behavior & Relationships in Family	Behavior in Separation/Divorce
<ul style="list-style-type: none"> ● Put child's needs first ● Recognize child as separate person with own needs ● Able to tolerate feelings of anger, loss, and disappointment from separation 	<ul style="list-style-type: none"> ● Good communication skills ● Good conflict-resolution skills ● Good parenting skills 	<ul style="list-style-type: none"> ● Warm, supportive parent/child relationship ● Previously warm, non-conflicted inter-parental relationship ● Conflict-resolution techniques still effective 	<ul style="list-style-type: none"> ● Avoid extensive litigation ● Protect child from parental conflict ● Support other parent/child relationship ● Agree on major decisions regarding child ● Try to maintain positive relationships with extended family

Box 27

MEDIUM-CONFLICT FAMILIES

Emotional Functioning	Social Skills	Behavior & Relationships in Family	Behavior in Separation/Divorce
<ul style="list-style-type: none"> • Tend to confuse own needs with those of child • Feel angry, betrayed, and abandoned by ex-partner 	<ul style="list-style-type: none"> • Some difficulties with communication • Tend to avoid rather than resolve conflict • Parenting skills adequate with support of second parent and/or extended family 	<ul style="list-style-type: none"> • Generally supportive parent/child relationship • Inter-parental relationship always conflicted and somewhat dissatisfying • Conflict-resolution techniques non-existent or now ineffective 	<ul style="list-style-type: none"> • Extensive litigation • Involve child in parental conflict • Pressure family and friends to take sides in conflict

Box 27			
HIGH-CONFLICT FAMILIES			
Emotional Functioning	Social Skills	Behavior & Relationships in Family	Behavior in Separation/Divorce
<ul style="list-style-type: none"> ● Focused on own needs ● Unable to focus on child as separate person with different needs ● Overwhelmed by feelings of loss, anger, betrayal and abandonment ● Angry and distrustful of others 	<ul style="list-style-type: none"> ● Poor communication skills ● Poor conflict-resolution skills ● Poor parenting skills 	<ul style="list-style-type: none"> ● Verbal disparagement of other parent ● Verbal or physical abuse ● Ambivalent parent/child relationship ● No ability to resolve conflict ● No ability to cooperate about children 	<ul style="list-style-type: none"> ● Legally manipulative <ul style="list-style-type: none"> ▪ Constant re-litigation ▪ Many attorneys ▪ Pro se despite adequate finances ● Ignore court orders ● Involve family and friends in "tribal war" ● Cross-allegations of domestic violence, physical or sexual abuse ● Attempt to block access to child

Other divorce impasses develop because the ordinary emotional pain of divorce is magnified by the particular histories or personalities of the divorcing parties. Loss of a marriage usually arouses feelings of anxiety, sadness, and fear of being abandoned and alone. People who have experienced emotional trauma or deprivation in their childhood may not be able to manage these feelings and instead experience a sense of inadequacy, shame, failure, and humiliation. Unable to acknowledge their own intense reaction, they may fight and argue as a way of maintaining contact with the ex-partner.

Vulnerability to shame and humiliation is central to many high-conflict custody disputes, where people with wounded self-esteem seek total validation by proving that the other parent is totally inadequate, irresponsible, and bad for the child. These same vulnerable spouses will often experience their partner's departure as a deliberate, devastating attack and may develop paranoid ideas of betrayal and exploitation.

Johnston and Roseby decry the tendency for professionals to exacerbate the couple conflict by challenging or wounding the vulnerable divorcing spouses. They remind us that the adversarial system often leads attorneys to advocate for their clients in an over-zealous manner that escalates the divisiveness between the parents. They also point out that mental health professionals need to avoid inflammatory psychodiagnostic terms such as "*paranoid, alcoholic, narcissistic, sociopathic, violent, or battered woman's syndrome*" because these technical terms can become pejorative labels strategically employed to degrade one parent in order to win custody for the other parent (1997, p. 10).

EFFECT OF HIGH-CONFLICT SEPARATION AND DIVORCE ON CHILDREN

The effects of the risk factors in separation and divorce are cumulative, so that children in high-conflict families have more extreme reactions than do children in all separating and divorcing families. The children in high-conflict families are more apt to witness

and experience domestic violence and child maltreatment, and also to have parents who suffer from mental illness and substance abuse. As a result, these children experience extreme emotional distress leading to a variety of poor outcomes: in academic performance, emotional functioning, behavioral functioning, and self-esteem (Ayoub, Deutsch, & Maraganore, 1999).

Children's Concerns

When their parents separate or divorce, children have four major worries:²⁹

- ***What is true and what false?***
This worry leads children to be distrusting, hyper-vigilant, and to avoid seeking comfort and help from adults as other children would.
- ***How can I keep myself and my parents safe?***
Children feel that they must take care of their extremely needy parents. The children also fear for their own safety and worry that they will be abandoned, ignored, or even destroyed in the parental battle.
- ***Who is responsible for the conflict?***
Children feel responsible for the parental conflict and also helpless to stop it, so they feel both powerful and overwhelmingly inadequate.
- ***Am I like the good parent or the bad parent?***
In their struggle, the parents tend to denigrate each other and leave the children feeling that one parent is “bad” and the other “good,” causing the children to experience confusion and intense conflicts about loyalty and identity.

These central concerns then combine with the developmental tasks and challenges of each age period to produce reactions like the following:

Infants and Toddlers: Years 0–3

During this period the child’s major psychological task is to develop basic trust in other people by forming strong emotional attachments to those who perform face-to-face care-giving tasks. Basic trust lays

the foundation for self-esteem and positive interpersonal relationships. Without strong attachments to primary caregivers during the first 18 months of life, the child develops *basic mistrust*, or a fundamental distrust of his or her environment. Such a child develops poor self-esteem and has great difficulty forming normal intimate relationships later in life.³⁰

There are three phases of attachment:³¹

◦ **Indiscriminate social responsiveness: 0–2 months**

The infant indiscriminately accepts care from any caregiver, and uses innate signals (crying, smiling) to bring caregivers closer. The child shows a growing response to adult vocalizations & facial expressions. The child has only primitive memories & cognitive processes, so s/he has no mental images of the caregiver in the caregiver's absence.

• **Discriminating sociability: 2–7 months**

The infant begins to recognize parents and regular caregivers, and to prefer interaction with them. The child begins to anticipate the caregiver's responses to his/her signals, but still doesn't understand that caregivers exist when they are not present.

Infants this age initiate and enjoy social interactions, and show signs of developing attachments, but they do not usually protest separation from their parents.

• **Attachment: 7–24 months**

The child shows increasing signs of attachment: wants to be near preferred caregivers and is more easily comforted by them. Infants begin to protest separation from primary attachment figures at about 7 months, react warily to strangers ("stranger anxiety"), and start to recognize that caregivers exist when they are not present.

Using the Strange Situation protocol, researchers have found three basic types of attachments in infants, with most showing the secure type:³²

1. **Secure** – Infant misses attachment figure (cries during their absence), greets attachment figure actively on their return, and then resumes play.

2. **Avoidant.** – Infant does not cry on separation, attends to toys or environment while the parent is absent, actively avoids and ignores parent on reunion. Infant is unemotional; expressions of anger are absent.
3. **Resistant-ambivalent** – Infant is preoccupied with parent throughout procedure, may seem actively angry, alternately seeking and resisting parent, or may be passive. Fails to return to toys or exploration after reunion and continues to focus on parent and cry.

In the first three years the child must also develop expressive abilities, both verbal and nonverbal, so they can communicate with others. Physically, the child progresses from crawling through walking, and slowly develops a sense of independence which allows them to make brief forays into the world from their strong base with the parent.

In high-conflict families where the separation typically arouses intense anxiety and fear of abandonment in one or both parents, the parents often respond by clinging desperately to the child. When the parent is upset they may comfort themselves by rocking the child in their lap, thereby giving the child a sense of role-reversal and need to take care of the parent. The distressed parent cannot permit or encourage the child to begin the complex process of separation and individuation. The result is often regression for the child: clinging; disturbances in eating, sleeping, and toileting behavior; anxiety and fear of separation; and resistance to parental exchanges.

Preschool: Years 3–5

By this time the child has developed a sense of a separate self and begins to develop peer relationships, but is seldom able to imagine the viewpoints or feelings of others. The child remains impulsive and still needs a predictable, highly structured environment.

The preschool child often feels that the separation happened because the child was “bad,” feels overwhelmed and frightened by the parental conflict, and is fearful and anxious when not with regular caretakers. Children of this age are capable of saying what they think parents want to hear, are afraid of being abandoned

by one or both parents, and are often upset by the transition from parent to parent. The preschool child may try to comfort an emotionally fragile parent and may begin to struggle with loyalty conflicts and the issue of which parent to identify with.

Early School: Ages 6–9

At this age the developmental tasks focus on social skills and interactions with peers. Most children begin to develop friendships; to understand the concepts of time, routine, and right and wrong; and to be able to understand the perspectives and feelings of others.

At this age children can easily become accustomed to multiple separations from parents, different parenting styles, and having two residences. Although all children of separation and divorce experience some loyalty conflicts, these are severe for children in high-conflict families. These children experience an intense longing for the absent parent and worry about them when they're not there. Emotionally fragile high-conflict parents continue to treat these children as caretakers and to demand total, unconditional loyalty. The children are apt to express their distress in all realms of life, feeling unlovable and showing poor social skills, social isolation, academic failure, behavior problems, and low self-esteem.

Middle School/Pre-teen: Ages 10–12

Although children this age develop a better understanding of time and begin to grasp the relativity of rules and moral values, they still tend to be rule-bound and to see people as all good or all bad. This tendency interacts with the severe conflict in the family, reinforcing each parent's pressure for the child to see the other parent as all bad. Sometimes the result is anger and distancing from one parent that causes intense emotional pain for both estranged parent and child.

At this age many children in high-conflict families begin to resist the role reversals and manipulations of their emotionally fragile parents. The children start to disengage from the family, spending as little time there as possible; this is premature developmentally because they do not have the social skills and emotional resources to function independently. If they are lucky, these children have an

adult mentor (teacher, neighbor, family friend, minister, etc) who can provide some of the firm, emotionally supportive parenting that the children so desperately need.

Early Adolescence: Ages 13–15

The central developmental task for early adolescents is to increase their independence from the family, develop a separate sense of self-identity, and begin to make decisions on their own. Most children this age develop the cognitive ability to see other people in terms of complex, abstract, stable characteristics rather than the absolutes of “good” or “bad.” This growing awareness of human complexity is accompanied by an increased understanding of the causes of the emotional reactions of other people.

Growing up in a high-conflict family interferes with children’s essential cognitive and emotional growth. As they struggle to become independent from their emotionally fragile and needy parents, adolescent children in high-conflict families develop increasing ambivalence about parental control. These adolescents lack the firm but warm parental supervision that they need, and often rebel in self-destructive and anti-social ways, with an increased risk of substance abuse and sexual acting-out.

Late Adolescence: Ages 16–18

Ideally, at this age adolescents develop an individual identity by continuing their gradual separation from their parents. They are able to self-regulate and resist external pressure to engage in behaviors that violate the values they have learned from their parents. They are sexually active in a responsible manner and begin to explore and understand their own feelings and sexuality within relationships.

Adolescents from high-conflict families are often angry, bitter, and display considerable confusion and fear about love relationships. They are determined to avoid their parent’s high-conflict patterns but lack the social skills and emotional resilience to do so. These adolescents show deficits in many areas of functioning: emotional, academic, and behavioral. Essentially, many of them

have grown into younger versions of their emotionally fragile, hostile, and explosive parents.

Notes

1. [Maldonadd \(2005\)](#) reports that 1.1 million divorces occur in the U.S. each year, and half of these couples have children. Melton and his colleagues point out that, "When *de facto* divorces are added to those that are formalized, two-thirds of all first marriages end in dissolution" ([Melton et al. \(1997\)](#), p. 764). The rate of dissolution for non-marital parenting relationships is not included here, but would presumably be at least as high.
2. In a longitudinal study of 1,100 families in one California county, Maccoby and Mnookin ([1992](#), p. 137) found that 50.4% of the cases were uncontested, 29.3% were initially contested but settled out of court, 11.1% were settled through mediation, 5.2% settled after a child custody evaluation, 2.2% settled during trial, and in 1.5% the judge decided. In other words, 9% of the high-conflict custody cases reached agreement via a custody evaluation whose recommendations became the basis for a negotiated settlement or court decision.
On the other hand, [Melton et al. \(1997\)](#) note that studies have indicated that 55% of judges report that expert opinions of mental health professionals are presented in less than 10% of the contested custody cases they hear, while 25% report that such information is presented in the majority of cases and none report receiving such information in more than 3/4 of cases.
3. The shift in the "cultural construction" of fatherhood has been accompanied by an increase in research on the effect that "father love" has on the social, emotional, and cognitive development and functioning of children through young adulthood. After summarizing the results of numerous empirical studies, Rohner and Veneziano (2001, pp. 382, 395) conclude that "the influence of father love on offspring's development is as great as and occasionally greater than the influence of mother love," and that this paternal influence is particularly evident in the areas of personality and psychological adjustment, problems with conduct and delinquency, and substance abuse.
4. Most of these types of fathers have been described by Hon. James Menno ([Menno, 2003](#)) who encounters them in his role as the Associate Justice of the Plymouth Probate and Family Court in Brockton, MA. Stepfathers do not appear as parties in most custody disputes because they lack legal standing in these cases, although it is possible that an argument could be made for a stepfather being a *de facto* parent or parent by estoppel (See the Glossary and Chapter 16 for a discussion of these terms.)
5. According to the [National Center for Health Statistics \(Hamilton, Ventura, Martin, & Sutton, 2005\)](#), 35.7% of all U.S. births in 2004 were to unmarried women. From 1970 to 2004 the rates for teenage mothers declined from 50% to 24% of all births; the increase in births to single mothers is due to an increase for mothers 25–29 years old.
6. The Hon. [Sharon Townsend \(2003\)](#) discusses most of these relationship types in her recent article on how the increase in unmarried fathers is changing the role of the family court.
7. The classic study was done by [Weitzmar \(1985\)](#), who found that the after-divorce income of mothers fell by 73% while the after-divorce income of

fathers increased by 42%. Weitzman's findings have been challenged by some researchers who say that more accurate analyses suggest that mothers' incomes drop by 27% while fathers' increase by 10% post-divorce. Braver, and his colleagues have summarized these later studies and challenge Weitzman's report as being biased because (a) it relied on the self-report of mothers only and (b) it did not take into account the visitation costs of nonresidential fathers (Braver and O'Connell 1998; Fabricus & Braver, 2003). Braver and O'Connell (1998) also maintain that non-payment is due to fathers being unable rather than unwilling to pay the child support ordered by the court. Other researchers, however, have challenged the methods Fabricus and Braver used to assess whether fathers incur "appreciable" expenses during visitation (Garfinkel, McLanahan, & Wallerstein, 2004). Even using the lower post-divorce figures of a 27% loss for mothers and a 10% gain for fathers, however, it is clear that there are severe financial difficulties for divorced and separated parents.

8. Researchers have also found that there is an *increasing* gap between the economic resources of children with single parents and children with married parents (White & Rogers, 2000). Since this analysis includes children of both never married parents and children of divorced parents, the difference is presumably due to a combination of (a) the lesser economic resources of women vs. men and (b) the financial difficulties of divorce per se.
9. Braver and O'Connell (1998) analyzed census data and came up with different but still alarming statistics: 25% no support, 25% some support, 50% full child support.
10. Fathers' increased involvement in parenting is also associated with the rise of the father-custody movement, which seeks to increase the weight of paternal rights in custody laws (Dominus, 2005).
11. Box 26 draws on information from a variety of sources, including AFCC-MA, 2005; Brav, 1991; Folberg and Taylor, 1984; Kelly and Lamb, 2000; La Greca, 1990; Lamb and Kelly, 2001; Wallerstein and Kelly, 1976, 1980.
12. Wallerstein, Lewis and Blakeslee, (2000) did a 25-year interview study of 60 families. Although this is a large sample that yielded fascinating data, Kelly and Emery (2003) point out that many of the participants had a lot of pre-divorce pathology, there was no comparison group of married families, and no assessments were done besides clinical interviews.
13. These results are based on reviews of the research literature (Hetherington et al., 1998; Whiteside, 1998), meta-analyses combining the results of a number of studies (Amato, 2001, 2005; Amato & Keith, 1991; Dunn, 2004; Grych & Fincham, 1990; Kelly & Emery, 2003), and longitudinal studies using nationwide samples in the United States (Hetherington & Kelly, 2002), Israel (Winstock, Sherer, & Enosh, 2004), and Britain (Dunn, Davies, O'Connor, & Sturgess 2001). Other sources are noted in the text.
14. "Effect sizes" refers to the difference in scores between sample groups or variables. Most readers know that the larger the sample being studied, the smaller the difference between groups that is required for statistically significant results. This means that although using large nationwide samples ensures that the results will be more representative of the general population, it also makes relatively small differences in scores become statistically significant. Therefore, children of divorce may actually score close to children of intact families on a particular variable, but that small difference in raw scores may be statistically significant.

15. These risk and resilience factors have been reported by the sources in note 13 and by additional meta-analyses (Whiteside & Becker, 2000). Other sources are noted in the text.
16. The parenting typology presented by Hetherington and Kelly (2002) is similar to that developed by Baumrind (Baumrind 1971, as discussed in Teti & Candelaria, 2002). Baumrind described *authoritarian*, *permissive*, and *authoritative* parenting styles; Hetherington and Kelly have added the dimension of *disengaged/neglectful* parenting. Research using Baumrind's typology has found that authoritative parenting is correlated with instrumental competence in children (Teti & Candelaria, 2002).
17. This finding has been corroborated by many studies indicating that authoritative parenting is associated with positive child adjustment after divorce (Dunn, 2004).
18. In their review of research on parenting, Patterson and Fisher (2002) point out that the effects of parenting are "bidirectional" (p. 69), by which they mean that both parent and child contribute to the process and outcome of the parent/child interaction. Their review does focus on dimensions of parenting that are similar to the types of parenting identified by Hetherington (2002), and also summarizes studies that "consistently support the idea that changes in positive parenting (skill encouragement, involvement, and monitoring) covary with increases in positive child outcomes. Similarly, reductions in negative parenting (negative reinforcement and inconsistent discipline) covary with increases in positive child outcomes" (p. 79).
19. This comparison of non-custodial mothers and fathers is based on Gunnoe and Hetherington's (2004) analysis of data from the Nonshared Environmental Adolescent Development (NEAD) project, a study of non-divorced and stepfamilies from 47 states.
20. Disengagement from the family is a natural part of adolescent development. Hetherington and Kelly found that "divorce accelerates disengagement from the family," however, so that some of the children of divorce they studied began to disengage by age ten, placing themselves in "developmental danger" (2002, p. 144).
21. Hetherington and Kelly (2002) found that grandparents had a special buffering effect beyond that of other adult mentors, in that a close relationship with a grandparent was associated with a grandchild's greater social and academic success, especially in boys. This buffering was most effective when the grandparent lived with the grandchildren, however, and if there was on-going conflict between the residential grandparent and the residential parent the child often responded with anxiety and oppositional and antisocial behavior.
22. This is similar to many other studies which indicate that women are more invested in social relationships than are men, and that women are primarily responsible for maintaining social relationships, both within and outside the family. For a recent summary of this area of research, see Etaugh and Bridges, 2006.
23. Research indicates that parenting styles are just as important in stepfamilies as they are in pre-divorce families. Thus Nicholson, Phillips, Peterson, and Battistutta (2002) found that the adjustment of adult stepchildren was positively associated with (a) the warmth of both biological parents and stepparents, and (b) the use of authoritative parenting practices by at least one parent in the blended family.

24. This is similar to [Patterson and Fisher](#) finding that the effects of parenting are “bidirectional” (2002 p. 69), by which they mean that both parent and child contribute to the process and outcome of the parent/child interaction.

The protective function of various personality characteristics has also been explored in adults. For example, [Bonanno](#) (2004) challenges the assumption that most adults exposed to loss or trauma develop PTSD or other debilitating symptoms. He reviews the research literature to support his argument that adult resilience is common, and is enhanced by personality characteristics such as “hardiness,” “self-enhancement,” “repressive coping,” and the use of “positive emotion and laughter” (pp. 25–26).

25. The negative effects of parental depression after divorce should not necessarily be used as an argument against couples getting divorced, however, since the rates of depression are lower for divorced mothers than they are for non-divorced mothers in high-conflict marriages ([Hetherington et al.](#), 1998).
26. This information about children of divorce as adults is based on 17-year longitudinal data ([Amato & Sobolewski](#), 2001) as well as on meta-analyses of many studies ([Amato](#) 2001, 2005; [Amato & Keith](#), 1991; [Hetherington et al.](#), 1998; [Kelly & Emery](#), 2003). Other sources are noted in the text.
27. It is unclear exactly what percentage of families continues their custody disputes long after the divorce is final. In their study of 1,100 California families who were in the process of making post-separation arrangements for their children, [Maccoby and Mnookin](#) (1992) found that almost three-quarters “experienced little, if any, conflict over the custody and visitation terms . . . less than 2 percent of our sample required formal adjudication” [where the judge made the final custody decision] (pp. 271, 272). Earlier in their book they note that 9% of the cases required a custody evaluation and 4% went to trial (p. 137; see note 2 supra). [Maccoby and Mnookin](#) note that the rate of adjudicated cases had dropped from the estimated 10–20% of cases that required adjudication before California introduced mandatory mediation for custody cases in 1981. They also point out that empirical studies rely on information from court records “and therefore have no measure of the degree of legal conflict resulting from bargaining that left no traces in the formal legal record” (p. 134).

On the other hand, in their three interview studies using approximately 450 families, [Hetherington and Kelly](#) (2002) found that 20–25% of families were still engaged in conflict 6 years post-divorce.

28. The term “tribal warfare” is used by [Johnston and Roseby](#), 1997, p. 6. Johnston and Roseby’s description of high-conflict families is similar to that provided by others, e.g. [Hetherington and Kelly](#), 2002; [Johnston](#), 2000; [Stern and Oehme](#), 2003.
29. These core concerns are defined by [Johnston and Roseby](#) (1997, pp. 54–56). In their book based on clinical work with high-conflict families in California, they then apply these core concerns to the reactions of children of different ages. In the rest of this section, I have combined Johnston and Roseby’s analysis of core concerns with (a) the findings of the studies on children’s reactions to separation and divorce, reported earlier in this chapter, and (b) information from the child development literature regarding normal child development. This combined analysis is summarized in Box 26. I have not relied on Johnston and Roseby’s analyses that utilize psychoanalytic concepts of child development, however, because an extensive body of research on child development has failed to support these concepts (See [Rohrbaugh](#), 1979, for a discussion of this issue).

30. The concept of basic trust represents the first stage of [Erik H. Erikson's \(1968, 1993\)](#) theory of development, in which he proposed that each person develops a self-identity by attaining positive goals and overcoming negative risks during eight stages of development across the lifespan: (1) *Infancy*: trust v. mistrust; (2) *Toddler*: autonomy v. shame & doubt, (3) *Preschooler*: initiative v. guilt; (4) *School age*: industry v. inferiority; (5) *Adolescence*: identity v. role confusion; (6) *Young adulthood*: intimacy v. isolation; (7) *Middle age*: generativity v. stagnation; (8) *Older adulthood*: integrity v. despair.
31. For good summaries of the research on attachment, see [Bowby, \(1969/1999; Kelly and Lamb, 2003\)](#).
32. Most of the research on attachment in infancy has used the Strange Situation (SS), which involves 8 three-minute episodes designed to observe the one-year-old child's reaction to two brief separations from the mother and subsequent reunion with her ([Ainsworth, Blehar, Waters, & Wall, 1978; Bell, 1970; Main, 1996](#)). Recently, however, the Strange Situation has been criticized as inappropriate for children who experience routine non-maternal child care, because the SS protocol is assumed to activate the child's attachment behavior by creating a stressful situation, and the absence of the mother is not necessarily stressful for these children. [Clarke-Stewart, Goosens, and Allhusen \(2001\)](#) have introduced the California Attachment Procedure (CAP) which substitutes three potentially stressful stimuli for the absence of the mother in the SS: a mysterious loud noise, an adult dressed as a wizard, and a mechanical robot with flashing red lights. Using children 17–18 months old, the researchers found that children experienced with non-maternal care scored as more secure on the CAP than on the SS because the stressful stimuli in the CAP were more effective in activating their attachment responses (i.e. seeking mother for comfort).

9

MANAGING PARENT/CHILD CONTACT IN HIGH-CONFLICT AND ABUSIVE FAMILIES

GENERAL CONSIDERATIONS¹

Children in high-conflict and abusive families are often attached to both parents, despite the verbal and physical aggression the child has witnessed or experienced. In these families the dilemma is how to foster the child's relationship with the non-custodial parent while protecting both the child and the parental victim. In other cases the child may be terrified of the abuser and show little positive attachment to him or her. In this latter situation the child will almost certainly be re-traumatized by having face-to-face contact with the abuser. Thus before recommending or implementing any parenting plan that involves direct contact between a child and their abusive parent, it is essential to thoroughly assess the child's attachment to the abusive parent. It is dangerous to a child's psychological health to simply assume that all children should have direct contact with their parents, no matter how abusive the parents may have been.

LEVELS OF RISK

Supervision of Parenting Time

The most protective setting for parental contact is a Visitation Center, where a supervisor watches the parent/child meeting in a playroom where other families are present. There are strict rules about drop-off and pick-up that prevent parent-to-parent contact. There are also rules about parental conduct during the parent-child meeting that protect the privacy of the child and the victimized parent; this prevents the abusive parent from using the meeting to obtain information that enables them to stalk, harass, or otherwise re-victimize them. This kind of *closed setting* is appropriate for abusive parents who have a history of major mental illness, substance abuse, severe domestic violence, child molestation, child physical abuse, or child abduction.

The next most protective setting is supervision in an *open setting* such as a public park or the non-custodial parent's home. The supervision should be done by a *trained professional* when any of the issues listed above are present, even in a mild form. In this situation the professional can observe the non-custodial parent and admonish them about any inappropriate behavior. The professional has little ability to enforce limits or rules of conduct, however, which can be a serious problem with abusers who are angry, defiant, blame their ex-partner or spouse for all problems, and have little insight into their own behavior.

If there appears to be little real threat of the abuser acting in an inappropriate manner, the open-setting parenting time can be supervised by a *family member* who is relatively neutral and agreeable to both parents. This is useful for situations where one parent has made allegations of parental misconduct with little direct evidence to support their claim. The family supervision can offer some degree of reassurance for the accusing parent and protection for the child while the custody dispute is adjudicated and a child custody evaluation is being done.

Supervision of Exchange Only

When there is a risk of verbal or physical violence between the parents, or there are current Restraining Orders, the exchange of

the child can be supervised in a variety of ways. First, the exchange can occur at a Visitation Center. This is certainly safe but the centers often have limited hours of operation and there is a cost for the exchange service.

Another possibility is to have the exchange occur in a safe public place familiar to both parents and children. The most protective is the lobby of a police station; the police officers offer physical protection, the station is open 24 hours a day, and there is no cost. However, the setting is sterile and can be frightening to the child. Restaurants and public parks offer less protective but neutral settings where the presence of strangers often prevents an outbreak of violence, if not verbal abuse. Finally, the exchange can be done at the home of a relative. Here the relative's presence offers some restraint for the parents and the child is in a familiar, warm setting.

No-contact Exchange

Instead of using a supervised exchange, it is often preferable to arrange the parenting plan so that the parents do not have face-to-face contact at drop-off and pick-up. The most common arrangement is to have drop-off and pick-up occur at the child's school or daycare center. When these facilities are not open, the exchange can occur at the home of a relative or friend, where one parent drops off half an hour before the other parent picks up.

No-contact exchange is appropriate for many high-conflict families, even those with no history of domestic violence. This arrangement prevents the parents from arguing in the child's presence and hence prevents the exchanges from exacerbating the parental conflict. The parents can share information through a notebook that goes back and forth with the child, or by telephone, Email, or regular mail when the child is not present.

No-contact exchange does not provide adequate protection for victims of severe domestic violence, especially in situations where there is a risk of harassment or stalking.

Importance of Assessing Level of Risk

The child's best interests should be paramount in making arrangements for parental contact in abusive and extremely dysfunctional

families; the non-custodial parent's wants, needs, and even rights cannot be the central concern. In the process of arranging parent/child contact, one must not forget the tremendous impact that parental conflict and abuse has upon every child. Be sure to assess the level of parental conflict and abuse and evaluate the child's relationship with both parents. Think about how the custodial parent will respond to having contact with the abusive or severely dysfunctional parent. Then consider how it will affect the child to have continuing contact with the non-custodial parent. If parent-child contact is advisable, use the criteria outlined here to arrange a level of supervision that will provide adequate protection for the child and the custodial parent.

Before recommending that the family use a Visitation Center, it is important to understand just what services a Visitation Center can provide and how these may affect the child in question. For this we need to turn to the research that has been done on Visitation Centers and the children they serve.

SUPERVISED PARENTING TIME IN VISITATION CENTERS

When there are concerns for a child's safety, the courts often order the non-custodial parent to see the child in a protected setting or Visitation Center. This is called *supervised access*, *supervised visitation and exchange services*, or as I prefer, *supervised parenting time*. Visitation Centers have been used for child protective cases for many years, and in the last 15 years have become widely used for child custody cases. At this point, 92% of the families who use Visitation Centers are referred by the courts (Pearson & Thoennes, 2000).

Reasons for Supervised Parenting Time

Supervised parenting time is used to provide both physical and psychological safety for the child: to provide a protected setting where the child will not be abused or fear being abused by the non-custodial parent.² Studies have shown that families are referred to Visitation Centers for the following reasons:

- Parents feel unfairly prevented from seeing child
- Parent/child contact interrupted – to re-establish relationship
- Physical abuse or domestic violence in the parents' relationship in the past³
- Parent has a current abusive partner
- Parental substance abuse
- Parental mental health problems
- Child physically abused or neglected by parent
- Child sexually abused by parent, or allegations of such abuse
- Parent abducted child or threatened abduction

Characteristics of Children Using Visitation Centers

The children who receive supervised parenting services come from the most dysfunctional, chaotic, high-conflict families in the judicial and social service systems. What are these children like, and how can Visitation Centers meet their needs? Johnston and Straus (1999) addressed these questions by reviewing clinical studies of children who use Visitation Centers and then comparing the children's characteristics to those found in research on traumatized children in general. Both groups of children had adopted the following survival strategies that provided short-term safety but caused later personality dysfunction.⁴

Distrust and Poor Appraisal of Reality

Some children using Visitation Centers had developed a "double image" of their abusive fathers, consciously defending the good father and sneaking out to see him while also having recurrent nightmares and fears reflecting the bad father's violence. For instance, "A 10-year-old boy had a recurring dream of identical twin fathers ('men who looked like my dad, but didn't...') in which one of the fathers tried desperately to protect him from the sadistic, terrorizing violence of the other." A 5-year-old girl with a battering father "set up a sand tray in which a docile father doll watched television with his family while a 'scary devil-monster' banged at the door demanding admittance."

Many of these children struggled with their parents' differing views of reality, saying things like,

- 5 year-old girl: “Did Daddy throw Mommy out of the house, or did another man steal Mommy from Daddy?”
- 4 year-old girl: “Is Daddy’s new girlfriend really a witch?”
- 11 year-old girl: “My Dad told me that when my Mom was pregnant with me, she was sleeping with a dirty crack cocaine dealer – so is he or my dad my father?”
- 5 year-old boy: “My dad broke ... no, no, my mother *made* my dad break her wrist.”

Sometimes the child’s perceptions about a parent’s dangerousness reflected the child’s own destructive wishes rather than the reality of their situation. For example, one 8-year-old boy reported that he “prayed and prayed to God to stop mom killing my dad,” when it was actually the father who had been abusive to the children and the mother who had tried to protect them by throwing herself at the father. This boy was angry at both parents and terrified of his own unconscious fear/wish that his mother would murder his father.

These children all tended to be hyper-vigilant and distrusting of other people, and increasingly withdrawn, distant, and unable to accept social support as they got older. Their need for predictability and control lead them to develop rigid and simplistic ideas and perceptions. Thus older school-age children would say things like, “Dad is right, perfect; Mom is wrong, bad!” or insist that friends who gave them something were “nice and good” whereas anyone who withheld what they wanted was “mean and bad.”⁵

Preoccupation with Control and Safety

The children using Visitation Centers were also preoccupied with the physical and psychological well-being of their distressed and emotionally needy parents. The children would express their concern by saying things like the following:

- 4–5 year-olds: “Mom will be sad and cry if she [is] on her own” while I visit my father.
- 10-year-old boy: “I know how to get him [his depressed, alcoholic father] out of his sad moods. I just do something wrong, and then he gets mad and he yells. Then he’s not sad any more.”

The children also felt responsible for the parental disputes, and became emotionally inhibited in their attempt to constantly monitor their parent's well-being. Of course the children were not able to maintain their caretaking demeanor and became overwhelmed by their own unmet emotional needs; at those times, they usually regressed or became irritable, explosive, and demanding.

Finally, Johnston and Straus noted that the children using Visitation Centers were often preoccupied with being bad, damaged, and inadequate.

Comparison with Children of Divorce

Many of the child characteristics and behaviors described by Johnston and Straus are found in the general population of children whose parents have recently separated or divorced. Box 26 in Chapter 8 summarizes the way that a child's age and developmental stage shape their reaction to the parental separation. The characteristics and behaviors of the children using Visitation Centers are more extreme, however, and resemble those of children in high-conflict separating families.

Implications for Services

How can Visitation Centers meet the needs of the children who use their services? Johnston and Straus (1999) suggest four areas where their findings can be applied.

- 1. Respond to child's distrust and need for predictability and control.** There are a number of ways to reassure children about their safety.
 - ***Involve the child in the intake process*** by having them tour the facility and meet the staff before the first visit.
 - ***Tell the child about the arrangements*** before each visit – how long the visit will be, where each parent will be, etc.
 - ***Develop rituals around the visit*** by establishing a familiar greeting, familiar questions about how the child is doing, a routine way to prepare the child for the end of the visit, and a signal for saying goodbye and leaving.

- **Have consistent staffing** – The same staff member should supervise all the visits for one family.
- **Discuss changes in visits with the child**, explaining the reasons for the change, and be sure to prepare them for termination of visits.

2. Support the child's accurate appraisal of reality. Before the first visit, explain the need for supervised parenting time. If this is not done, the child may interpret the supervisor's matter-of-fact demeanor as approving of the non-custodial parent's previous abusive behavior. The supervisor should help each parent explain the necessity to the child. The explanation should reflect the different parent realities, and should convey to the child that they do not have to choose between the parents. For example, a parent can be coached to say: "Sometimes moms and dads argue a lot, and get angry and upset almost every time they meet. This can be hard for kids, and confusing, too. So you are going to see your mom (dad) at a place where we won't argue or fight. It is not your fault!"

The supervisor can then give a similar explanation when they meet alone with the child during the intake interview. If the child indicates specific knowledge about the content of the parental disputes, the supervisor can simply reflect the child's experience by saying, "So your mom says X and your dad says Y," and then continue with the explanation above (Johnston & Straus, 1999, p. 149).

- 3. Alleviate the child's preoccupation with safety and control** by doing the following:
- **Create a "buffer space"** separate from both parents where the child can play before and after each visit, and review or anticipate the visit with the supervisor.
 - **Reassure the child before each visit** that the custodial parent will be okay during the visit, that they won't blame the child for spending time with the non-custodial parent, and will be happy to see the child at the end of the visit.
 - **Stop the child's inappropriate behavior during the visit.** Permitting hitting, swearing, and spitting at the non-custodial parent makes the child think this aggressive behavior is

acceptable, and leaves the child scared by their own unrestrained aggression.

- 4. Intervene when the child is emotionally overwhelmed.** The supervisor should take a time-out from the visit if a child cries inconsolably, engages in extremely agitated, aggressive, or oppositional behavior, or else becomes immobilized and rigid. If the child displays more sustained distress, the Visitation Center should suspend visits and make a referral for the child and family to be evaluated. Some symptoms of sustained distress are:
- **Child repeatedly refuses to come to the Visitation Center,** or to see the non-custodial parent once at the site. Visits should be suspended if this behavior continues over several weeks and is not provoked by the custodial parent.
 - **Child is chronically distressed during visits,** showing signs of fear of the non-custodial parent such as
 - clinging to the supervisor,
 - trembling
 - talking about how scared they are
 - continuous crying
 - becoming withdrawn, rigid, or trancelike
 - **Child's functioning declines at home and school,** as reported by custodial parent and confirmed by others (caseworkers, teachers), and the decline coincides with the beginning of supervised parenting time.
 - **Younger children show sustained loss of functioning** that coincides with the beginning of supervised parenting time—such as loss of bladder or bowel control, use of “baby talk,” sleeping difficulties, changes in appetite, withdrawal, or increased aggression.

Length of Services

Families usually use Visitation Centers for about half a year (Pearson & Thoennes, 2000). This is consistent with the fact that many courts view use of a Visitation Center as inappropriate if there is no expectation that the non-custodial parent will be able to progress to unsupervised parenting time in the future. In contrast to this judicial viewpoint, most service providers feel that long-term supervised access is appropriate when unsupervised access is not a viable option. These providers advocate continuing with the

supervised parenting time indefinitely; the only exception is that the providers all agree that no child should be *forced* to see the non-custodial parent (Bailey, 1999).

Methods of Supervision

The Supervised Visitation Network (SVN, 2003–2004) has adopted Standards and Guidelines that are consistent with the recommendations made by Johnston and Straus (1999), and also reflect the current practices of most Visitation Centers. Here I will combine the SVN standards with my own experience so that attorneys, evaluators, and court personnel will have a clearer idea of what families will encounter when they use a Visitation Center.

Screening Referrals

Staff screen cases and turn away families that present too great a risk. Most centers require a court order to initiate services.

Intake

The staff have a separate face-to-face meeting with each parent and have them sign an agreement about the payment system and other Visitation Center rules. The child is not present for these meetings, but meets with the supervisor later and has a tour of the facility before the first parent-child visit. The supervisor tells the child about the reasons and safety arrangements for the supervised parenting time, in the presence of each parent.

No Contact Between Parents

The Visitation Center ensures that there will be no face-to-face contact between the parents by taking the following precautions.

- **Layout of premises.** The drop-off and pick-up areas are separated; different parking lots for custodial and non-custodial parents are sometimes used as well. There is a reception area where the waiting parent cannot be seen by the parent entering the facility.
- **Procedures for arrival and departure.** For *on-site visits*, the non-custodial parent arrives 15 minutes before the visit and waits in a separate waiting area. The custodial parent arrives with the child at the time of the visit. At the end of the visit the custodial parent leaves first with the child, and the non-custodial parent remains on site for at least 15 minutes.

Alternatively, the custodial parent and child arrive at least 15 minutes before the visit and the custodial parent waits in a designated area or leaves immediately. The non-custodial parent arrives at the time of the visit, so that the child has a 15-minute tension-free period between the parents. The non-custodial parent leaves the premises immediately on completion of the parenting time.

For *supervised exchanges* the custodial parent stays on the premises 15 minutes after the non-custodial parent has picked up the child. Sometimes the child and non-custodial parent return 15 minutes before the end of the visit; this lowers the risk of parent-to-parent contact because the non-custodial parent can leave before the custodial parent returns for pick-up.

Security Measures

Centers usually use metal detectors and have a close relationship with the local police department so they can receive rapid assistance for incidents. There are also emergency procedures for critical incidents that occur during visits.

Supervisor-to-Child Ratio

Sometimes a supervisor will work with more than one family at a time, so the supervisor-to-child ratio will depend on the nature of the supervision required, the number of children and/or families being supervised at a time, the duration and location of the visit, and the expertise and experience of the supervisor.

Function of Supervisor

The supervisor stays in the room with the child and the non-custodial parent and takes notes on their conversations and activities. The supervisor intervenes if the parent makes negative comments about the child or the other parent, denies comments the child makes about the parent's previous abuse, or introduces unacceptable topics containing personal information about the child or the other parent. If the child becomes upset, the supervisor takes them out of the room until they have calmed down. If necessary, the supervisor stops the session if the child is at risk for emotional

or physical harm, if the child is inconsolably upset, or if the parent acts in an inappropriate manner towards the child, staff, or other families present.

At the beginning and end of the parenting time the supervisor will relay information between the parents regarding the child's welfare (e.g. medication, diet, health) in both oral and written form. The supervisor will also provide feedback or correction to the relevant parent.

Lack of Confidentiality

The Visitation Center's records are not confidential. Any parent can require the Center staff to bring the records to court. Parent releases are required for the records to be released to court-ordered evaluators, child psychotherapists, and the referring agency.

Effects of Supervised Parenting Time

A number of recent studies have consistently found that using a Visitation Center had the following effects:⁶

- Non-custodial parenting time increased after 6 months.
- Verbal hostility and aggression between the parents decreased.
- No reports of physical aggression between the parents were received during the use of the Visitation Centers.
- Parental support for corporal punishment declined.
- Parents were satisfied with the supervised parenting program.

Although child adjustment remained stable over 6 months, there was no demonstrated improvement in the children's overall emotional and behavioral adjustment, and no change in the parent/child relationships.

Birnbaum and Alaggia (2006) note that these studies did not involve comparison groups, however, and conclude that although the effectiveness of supervised parenting time in a Visitation Center is promising, it still lacks much scientific support. More research needs to be done on what intended and unintended consequences these programs may have, and specifically on how they affect child adjustment.

FINDING A PROVIDER FOR SUPERVISED PARENTING TIME

Having decided what level of supervision a family needs, sometimes an evaluator only needs to put this conclusion and/or recommendation in the report. At other times, however, the evaluator or other divorce professional needs to refer a family to a specific provider of supervision. A list of providers can be obtained from the Supervised Visitation Network (SVN) at <http://www.svnetwork.net/ServiceProviders.html>. The SVN directory lists SVN members throughout the United States and in Canada, Australia, and Scotland.

Notes

1. The sections on *General Considerations and Levels of Risk* in this chapter are adapted from Rohrbaugh, 2004a.
2. Johnston and Straus (1999) introduced the concept of “psychological safety.” They recommended uses for Visitation Centers, and research has found that existing centers provide these functions (Birnbaum & Alaggia, 2006; Dunn, Cheng, O’Connor, & Bridges, 2004; Thoennes & Pearson, 1999).
3. Some state laws preclude the use of unsupervised visitation in cases involving child physical or sexual abuse, and all forms of family violence (e.g. Young, 2004–2005) while others simply suggest supervised visitation as one of several measures the court may order (e.g. Comm. Mass., 2005a). The issues related to domestic violence, physical abuse and neglect of children, and sexual abuse of children will be discussed further in Chapters 23, 24, and 25, respectively.
4. The examples of child survival strategies given here are taken from Johnston and Straus, 1999, pp. 140–143.
5. Box 26 on *Children’s Developmental Stages and Responses to Separation and Divorce* in Chapter 8 shows that children up to age 12 are similarly simplistic in their thinking. Presumably, Johnston and Straus were referring to a more extreme version of this polarized, simplistic thinking in middle childhood.
6. Birnbaum and Alaggia (2006) reviewed 11 studies and 3 government documents, including recent individual studies (Dunn et al., 2004, reporting on the same study of 45 adults as Flory, Dunn, Berg-Weger, & Milstead, 2001; Pearson & Thoennes, 2000, reporting on a study of 676 families; Thoennes & Pearson, 1999, reporting on a nationwide survey of providers).

10

PARENTING PLANS AND INTERVENTIONS

GENERAL CONSIDERATIONS

In constructing parenting plans, it is important to consider the following issues.

Empirical Research

There is extensive research in many areas relevant to child custody, summarized in the various chapters of this volume. The guidelines for child custody evaluations require that this research be considered in doing all evaluations. As explained in Chapters 3 and 4, only empirically-based evaluations will meet the criteria for custody evaluations and resolution of custody disputes.

Changes over Time

Children and their families are not static; they change dramatically over time, in areas such as:

- Child's age-related activities, needs, and understanding of the separation,
- Health of parents and child,
- Residential location – neighborhood, school district, distance between parental homes,
- Re-coupling and re-marriage of parents – introducing step-parents, step-siblings, and other issues related to blended families.

The parenting plan may include provisions for anticipated changes. It is also advisable to include provisions for assessing the changing situation and implementing unanticipated changes. The more conflict there is in a family, the more professional assistance will be needed at these times of transition.

PARENTAL CONFLICT

As discussed in Chapter 8, high levels of inter-parental hostility are detrimental to child adjustment. In order to assess the levels and types of parental conflict, it is helpful to consider the issues in Box 28 in order to ascertain:

- **Type** of conflict : legal, attitudinal, or interpersonal¹
- **Areas** where conflict is focused, and interaction among areas²
- **Level** or severity of conflict
- **Timing** of conflict: date of beginning, duration
- **Function** of conflict in family: who initiates, and why
- **Understanding of conflict** displayed by each party

All of these issues should be addressed as a natural part of the interviews and observations done during the evaluation. Usually the level of inter-parental conflict is obvious to the evaluator and other professionals involved with the family. If you have any uncertainty, simply review the issues in Box 28 to clarify the level of conflict.

The characteristics of each family's inter-parental conflict are important in developing an effective parenting plan. If the inter-parental conflict began well before the separation, for instance, it is more apt to continue and even increase post-separation because it indicates that the couple has poor communication and conflict-resolution skills. Who initiates the conflict is also crucial, for the conflict may be part of an attempt to control the partner, or it may be due to severe anxiety aroused by the separation, or it may even be inspired by overly zealous professionals involved in the adversarial legal process.³

If couples have low conflict and adequate conflict-resolution skills, they are good candidates for parenting plans that require direct inter-parental contact, joint decision-making, and coordination of parenting activities. Couples with moderate conflict should have

only indirect contact in a parenting plan that does not require inter-parental cooperation. Couples with high conflict should have no contact in a parenting plan that emphasizes safety for both parents and children. The relationships between inter-parental conflict and various aspects of parenting plans are outlined in Box 29.⁴

Box 28. *Issues in Inter-parental Conflict*

◆ Type of conflict

- **Legal** – chronic re-litigation; many different attorneys; pro se despite adequate financial resources for legal representation; noncompliance with court orders
- **Attitudinal** – parents angry, hostile, have negative views of each other.
- **Interpersonal** – verbal disputes, physical violence, badmouthing

◆ Areas of conflict

- One discrete area, such as child's education, religious affiliation, or medical treatment?
- All areas pertaining to child custody?
- Financial, task-sharing, socializing, relationship with extended family, sexual activities in parental relationship?

◆ Timing and function of conflict

- When did the conflict begin?
- What issue did the conflict first focus on?
- Who initiated the conflict?
- How does each parent contribute to the on-going conflict?
- What function does the conflict serve?
(Maintain contact with disengaging partner? Exert control over partner? Express anger and humiliation?)
- What external factors are contributing to the conflict?

Box 28

◆ **Understanding of conflict**

- How does each parent understand the conflict?
- What and/or who do they see as the cause of the conflict?
- Does either parent think the conflict can be resolved? How?

◆ **Level or severity of conflict**

- **Low** – Parents able to cooperate within structured settings.
 - Parents supportive of each other’s relationship with child.
 - Conflict-resolution techniques effective.
 - Parents agree on major decisions regarding child.
- **Medium** – Parents unable to cooperate even in structured settings.
 - Parents involve child in conflict.
 - Parents undermine each other’s relationship with child.
 - Parents pressure family and friends to take sides in conflict.
- **High** – Parents engage in verbal or physical abuse.
 - Conflict ignites whenever parents are in contact with each other.
 - Parent(s) try to block access to child.
 - Cross-allegations of domestic violence, physical or sexual abuse.
 - Parents involve family, friends, and professionals in “tribal war.”

CHILDREN’S WISHES

Should evaluators and judges take the children’s wishes into account in developing a parenting plan? This is a tricky question, because it is important not to heighten the child’s sense of being caught in the middle of the parental conflict. As [Ackerman](#) (2001,

Box 29. Inter-Parental Conflict and Parenting Plans			
AREAS OF PLAN	LEVEL OF CONFLICT		
	LOW	MEDIUM	HIGH
◆ Contact	<ul style="list-style-type: none"> ● Direct contact ● Communicate in person 	<ul style="list-style-type: none"> ● Indirect contact ● Telephone, Email, Fax 	<ul style="list-style-type: none"> ● No direct contact ● Email, fax, parent notebook
◆ Cooperation	<ul style="list-style-type: none"> ● Joint decisions ● Cooperative co-parenting 	<ul style="list-style-type: none"> ● Limited cooperation ● Parallel co-parenting 	<ul style="list-style-type: none"> ● No cooperation ● Conflicted co-parenting
◆ School	<ul style="list-style-type: none"> ● Joint meetings 	<ul style="list-style-type: none"> ● Separate meetings 	<ul style="list-style-type: none"> ● Separate meetings
◆ Child Exchange	<ul style="list-style-type: none"> ● At parental homes 	<ul style="list-style-type: none"> ● Curbside at parental homes 	<ul style="list-style-type: none"> ● Safety issues ● Public place ● By third party
◆ Holidays	<ul style="list-style-type: none"> ● Shared or split 	<ul style="list-style-type: none"> ● Split or alternating 	<ul style="list-style-type: none"> ● Alternating

(2006) points out, direct questions give the young child an inappropriate sense of power, which can turn to distrust of authority figures if the eventual living arrangement is different from the one the child requested. Giving the child the sense that they can choose where to live may also give them the impression that they don't need to follow other parental decisions and rules. Therefore, with children under 12, the evaluator needs to obtain their view of the family and the potential living situations without asking them directly, "Where do you want to live?" Some strategies for this indirect assessment are discussed in Chapter 13 on Collecting Information.

On the other hand, research has shown that the more input adolescents have in the post-separation arrangements, the more fair they perceive those arrangements to be (Parkinson, Dashmore, & Single, 2005). By the time they are young adults, children of divorce wish they had spent more time with their father, and feel that the best arrangement would be equal time with each parent (Fabricus & Hall, 2000). Custody evaluators recognize the importance of choice in adolescence, and generally feel that a child should be allowed to choose which parent to live with at a mean age of 15 years (Ackerman and Ackerman, 1997).

SOLE V. JOINT CUSTODY

Given that many jurisdictions now have a preference or even presumption for joint legal custody, it is important to assess the effects of joint custody. Are joint-custody children better adjusted or happier than sole-custody children? How about the parents? Do they like joint custody better, form a closer relationship with the children, and have better emotional adjustment than sole custody parents? Are the effects different for the residential and the non-residential parents in sole custody when compared with those in joint custody arrangements?

Legal and physical custody are often discussed and researched together. Arguments in favor of joint custody usually focus on the benefits the child will derive from maintaining a close relationship with both parents. Arguments against joint custody focus on how it

harms the child because it (a) exposes them to ongoing parental conflict, and (b) disrupts the stability of the child's life by requiring too many transitions.⁵ Other concerns about joint custody are that it is more costly to maintain two households equipped as child residences, and that having two parents providing financial support and parental care may make the parents ineligible for public assistance. Seeking joint custody may also become a weapon in a custody dispute, or be used as a way to avoid paying child support. Concerns about the interactions among socioeconomic status, race, and joint custody cannot be answered by the research currently available because it has been done with affluent white families who display relatively low inter-parental conflict.⁶

Research on Legal and Physical Custody Combined

Bauserman (2002) did a meta-analysis of 33 studies that compared sole maternal custody (legal and physical) with joint legal and/or physical custody. He found that child adjustment was better in joint than in sole custody, and this result was the same across all child ages, types of sample (court, school, or convenience), and source of ratings (mothers, fathers, children, teachers, and clinicians). Joint-custody children also had the same levels of adjustment as did children in intact families.

On the other hand, the better adjustment of joint-custody children was not necessarily due to joint *physical* custody. Bauserman concluded that the research indicated that substantial time with the father was the crucial element, regardless of where the children lived.

Bauserman also found that sole-custody parents reported higher levels of conflict than did joint-custody parents. Given the fact that these results are correlational, it is impossible to know whether (a) joint custody decreased parental conflict or (b) there was a selection bias wherein low-conflict parents were more apt to choose joint custody.

Research on Legal Custody

There are no meta-analyses or detailed literature reviews of studies comparing the outcomes of sole and joint legal custody. One study did compare 52 sole maternal and 26 joint legal custody families two

years post-divorce and found that families with joint custody were characterized by better child adjustment, more frequent father/child contact, more rapid maternal re-partnering, and lower maternal satisfaction with the custody arrangement (Gunnoe & Braver, 2001)

Research on *Physical Custody*

There is quite a bit of research comparing the effects of sole and joint physical custody in the following areas.

- **Effects on children.** Numerous research studies have found no overall difference in adjustment between children who live with one parent and children who live part of the time with each parent. There is some indication that joint physical custody is helpful to the children's psychosocial adjustment *if* the parental conflict is low, but otherwise the custody arrangement has no negative or positive effects.⁷
- **Children of divorce as adults.** Individual studies have shown that once they are adults, both affluent and poor children of divorce express less pain and distress about their parents' divorce if they grew up in a joint custody rather than a sole custody situation (Laumann-Billings & Emery, 2000). College students also report that they wish they had spent more time with their fathers when they were growing up, and believe that children should live equal time with each parent (Fabricus & Hall, 2000).
- **Effects on parents.** Mothers and fathers tend to have opposing views of joint custody, whether the custody is legal or physical. While joint custody increases the satisfaction of fathers, it decreases the satisfaction of mothers.⁸ This pattern makes sense when we consider that since mothers have been awarded sole custody in 90% of divorce cases in the past, studies of sole vs. joint custody have actually been studies of *sole maternal custody vs. joint maternallpaternal custody*. In these circumstances joint custody reflects an increase in both the control and the involvement of fathers, which may be objectionable to divorced and separated mothers. It is also important to note that current mothers are

more satisfied with higher levels of paternal involvement than were mothers 20 years (and hence a generation) ago (Kelly & Emery, 2003).

Criteria for Joint Custody

The research indicates that taken alone, neither joint legal nor joint physical custody has a significant effect on child adjustment. The two crucial conclusions that we can draw from this body of research are:

- Extensive parenting time with the father (or non-residential parent) is beneficial to the child.
- Low parental conflict is essential to the success of both legal and physical joint custody.

In considering the benefit of joint custody for any family, the custody evaluator should consider these two factors, combined with the other issues outlined in Box 30⁹. The central criteria for joint *legal* custody are low inter-parental conflict and the ability to make joint decisions. For joint *physical* custody to be effective, the other factors must be considered as well.

In many jurisdictions, it is possible for the parents to have joint legal custody while one parent has sole physical custody and the other parent has extensive parenting time with the children. This joint legal/sole physical custody arrangement has the advantages of requiring less parental interaction and cooperation than joint physical custody, while still empowering both parents and providing the child with extensive time with the non-residential parent.

OVERNIGHTS

Should children under age six stay overnight with the non-residential parent? Until the past five years, most professionals would have answered with a resounding “no,” arguing that (1) Infants suffer when separated from their primary caretaker during the night, (2) Infants prefer the primary caretaker in times of stress, and (3) There are major differences between infant attachments to mothers and to fathers (e.g. Solomon & Biringen, 2001). These arguments all assume that the mother is the primary

**Box 30. *Factors to Consider in
Recommending Joint Custody***

- ◆ **Inter-parental relationship**
 - low conflict
 - capable of cooperation
 - good communication
- ◆ **Parent-child relationships**
 - warm, supportive
 - both parents previously involved in basic parenting tasks
 - both parents have adequate parenting skills
- ◆ **Continuity of care**
 - regular parenting schedules
 - transitions minimized
- ◆ **Characteristics of children**
 - age: cognitive and emotional development
 - temperament
 - gender
- ◆ **Characteristics of home environments**
 - proximity of parental homes
 - childrearing and discipline compatible
 - daily routines similar
 - available peers
 - physical and economic characteristics
- ◆ **Social/demographic variables**
 - family composition – age and spacing of children; stepfamily members
 - effects of SES, race, ethnicity, sub-cultural norms
- ◆ **Work settings**
 - schedules flexible, part-time available, possible to work from home
 - requirements for travel and geographic mobility

caretaker, that the father has not been a central parent before the separation, and that infants form attachments primarily to one adult.

Others have argued that overnights are good even for very young children. They point out that the early research on attachment examined infant responses to being separated from the mother and left with a stranger, not left with another adult to whom the infant was already attached (Warshak, 2000a, 2002). More recent research has demonstrated that infants form attachments to *all* of their regular caretakers and that the process of attachment formation is similar for mothers and for fathers (Lamb & Kelly, 2001). Research also indicates that infants do best when they have daily contact with their attachment figures, which suggests that both parents should continue to have regular, daily contact with young children after separation. In order to accomplish this, until age two the child would need to have daily transitions from one parent to the other. After that age, children can tolerate increasingly long periods without seeing one of their parents (Kelly & Lamb, 2000).

This controversy has continued, with writers disagreeing about interpretations of the research on attachment and urging caution in recommending overnights (e.g. Birigen et al., 2002). The debate has involved extrapolating from research on attachment in young children, in order to apply it to parenting plans after separation and divorce. Now, however, there is finally some research that looks directly at the effect of overnights. First, in their 20-year study of post-divorce adjustment, Hetherington & Kelly (2002) found that fathers were more apt to stay involved with their children if they had overnights, and also that paternal involvement was associated with better child adjustment. Second, Pruett and her colleagues (2003) found that father involvement is associated with children having better social skills that are adaptive in the external world. Third, Pruett later studied 132 separating/divorcing families with children under six years of age and found that the quality of the caregiver/child relationship and consistency in the schedule were more salient to child adjustment than were overnights *per se*. In addition, parental reports indicated that having overnights and more caretakers was associated with children having fewer social problems (Pruett, Ebling, & Insabella, 2004).¹⁰

Given the increase in father/child involvement and the recent research supporting the positive impact of overnights, it makes perfect sense that the Association of Family and Conciliation Courts encourages custody evaluators to consider including overnights in their parenting plans (AFCC-MA, 2005). It is important to take a case-by-case approach (Gould & Stahl, 2001), evaluating factors such as the history of parenting and attachment in the family, and the strengths and weaknesses of each parent. For mid-week overnights, will the non-residential parent be able to provide structure for homework, meals, bedtime, and prompt arrival at school or daycare in the morning? Can the parents communicate adequately, either by telephone, in person, or else via Email or a parental notebook that goes back and forth with the child? Is the child's temperament suitable for frequent transitions between caregivers? Does the child have experience with non-parental caregivers, and hence have a developed capacity for on-going multiple attachments? When these factors (which are summarized in Box 31) are considered together, it is possible to make a reasonable prediction about whether a specific child will benefit from overnights at a particular age.

Box 31. *Overnights – Factors to Consider*

- (1) Parenting history**
- (2) Attachment history**
- (3) Personality and parenting skills of each parent**
- (4) Communication between parents**
- (5) Temperament of child**
- (6) Child's experience with non-parental caregivers**

ELECTRONICALLY-MEDIATED PARENTING TIME – “VIRTUAL VISITATION”

Each year in the United States, one in five people change their residence. Divorced and separated families are even more likely to

Box 32. *Types of Electronically-mediated Parenting Time*

- ◆ **Telephone**
- ◆ **Facsimile (Fax)**
- ◆ **Email**
 - Attachments can include photographs, videotapes, and text
 - Text-to-speech capability (with special equipment)
 - Pay-phone Email capability (with special equipment)
 - Message forwarding – to cell phone or wireless pager
 - Ecards
 - Money can be sent via PayPal
- ◆ **Video Email**
 - Sender must have microphone and webcam; receiver needs no special equipment
- ◆ **Instant Messaging (IM)**
 - Two users logged on at the same time send messages back and forth, like a written phone conversation.
 - Parents can limit child’s access, so that only parental IM is available.

Box 32◆ **Video Conferencing**

- Two users logged on at the same time converse, with simultaneous audio and visual contact
- Free software can be downloaded
- Web cam, microphone, speakers, and sound card required for each person – minimum cost \$500 each¹²

◆ **Website**

- Child web page – post messages, schedules, drawings, and photos or videos of activities
- Family web page – all family members can post comments and materials

move than are intact families. This high rate of mobility has resulted in almost 9 million children whose two parents live in different cities.¹¹

For years families have maintained parent/child relationships across geographic distances by using the telephone and fax machine. Now the families are turning to the internet as well. This internet use has been called *Teleconferencing*, *Videoconferencing*, *Cybervisits*, and most commonly *Virtual Visitation*.¹³ All of the types of electronically-mediated parenting time are described in Box 32.

Activities in Videoconferencing

When parents use a webcam, they can talk and see their child simultaneously. The contact has a sense of immediacy that lends itself to a variety of parent/child activities, such as:

- Discussing the highs and lows of each day
- Offering advice on social relationships, sports, and other activities
- Playing games together, such as checkers, chess, or virtual reality games on the internet.

- Helping the child with homework.
- Showing the parent art projects, awards, and report cards.
- Watching a video of a child performance, or an activity they attended.

Advantages¹⁴

- **Emotional impact.** The main advantage of using the a webcam for parent/child contact is the immediacy and greater emotional impact of visual images. This advantage has led some people to recommend its use as a supplement to physical parenting time in every child custody case.
- **Less disruptive.** Others have commented that webcam contact is less disruptive and easier to arrange than physical contact in the middle of the week, when schedules are complicated.
- **Less travel risk.** Internet contact also avoids the risk of the child traveling alone to see the non-custodial parent.
- **Monitoring.** Internet contact makes it possible to monitor and document the parent/child communications. This may be particularly helpful in cases requiring supervised parenting time.¹⁵ Internet contact is also useful for foster or adoptive parents who want the child to have monitored contact with the biological parent.
- **Additional uses.** Internet contact is not only helpful when parents are divorced, but also when a parent is incarcerated, or when custodial parents travel for work.

Risks and Disadvantages¹⁶

- **Loss of physical contact.** The most common fear is that internet-mediated contact will be seen as a substitute for physical contact. However, Shefts (2002) reports a study indicating that the increase in internet-mediated parenting time has not been accompanied by a decrease in physical parenting time.
- **Greater ease of relocation by custodial parent.** Some fear that the ease and effectiveness of videoconferencing will encourage judges to permit custodial parents to relocate far

away from the noncustodial parent. In response, others have noted that state legislation specifies that videoconferencing cannot be used to justify relocation.

- **Loss of privacy.** Critics fear that the *custodial parent* could be subjected to surveillance by the noncustodial parent who is using videoconferencing, because the webcam can be aimed at many areas of the home. Others have pointed out that the webcam is usually located in the child's bedroom, with a separate phone line for the child to use for internet contact with the absent parent.

Another fear is that the *noncustodial parent's* privacy will be invaded because "...the degree of privacy invaded in the context of the Internet camera is more severe [than telephone calls because] it is an invasion of sights, sounds, tone, expressions, demeanor and surroundings. Essentially, the Internet camera can open the door to a surveillance of parenting time" (Marzano-Lesnevich & Laterra, 2001, p. 27). This difficulty is compounded by the fact that all interactions on the Internet can be recorded.

- **Accessibility and Cost.** A number of writers have expressed concern that not all families have access to the Internet, and many cannot afford the advanced technology required for videoconferencing. Yet current information about Internet use in the U.S. indicates that 136 million adults use the Internet, and 87% of children aged 12–17 are online. The Internet is also available on computers at public libraries all across the country, and some cities are in the process of installing city-wide, free Internet access.¹⁷ The minimum equipment required for videoconferencing costs less than \$500, and the on-going cost is less than that for long distance telephone calls.
- **Creativity limited** by equipment tied to one location.

Legislation

As of June 2006, seven states had enacted laws making videoconferencing available in child custody cases. Some maintain that the statutes are unnecessary because the current best interests

standard already permits judges to order videoconferencing (e.g. [Herman, 2005](#)). On the other hand, most writers enthusiastically welcome the new legislation as an appropriate and desirable application of technology to child custody issues.

Factors to Consider

When arranging videoconferencing, one should consider a variety of factors.¹⁸

- **Age of child.** The child should be a pre-teen or teenager, so that they are old enough to be technologically savvy, and won't be as frustrated by wanting a hug rather than a conversation.
- **Level of parental conflict.** Low-conflict families should be able to benefit most from videoconferencing because the parents have to cooperate enough to set up and maintain the equipment. On the other hand, Internet contact can be used to minimize contact and tensions in high-conflict families.
- **Time zones.** Videoconferencing can be difficult to arrange if there is a large time difference between the two parental households.
- **Noncustodial parent/child relationship.** The additional contact of videoconferencing can be very helpful when there is a close parent/child relationship. Very involved parents are certain to oppose videoconferencing as a substitute for physical contact, however.

Videconferencing can be particularly useful if the noncustodial parent has withdrawn to avoid conflict with the custodial parent, because parent/child contact can be maintained without physical contact between the parents.

Language for Parenting Agreement

[Shefts, \(2002\)](#), pp. 323 ff) has provided sample language for including videoconferencing in a parenting plan.

Resources for Parents and Professionals

The following websites can provide up-to-date information about the fast-developing area of videoconferencing:

- <http://www.InternetVisitation.org> – Guide for parents seeking information.
- <http://www.Distanceparent.org> – Instructions, discussions, tips
- <http://www.virtualfamiliesandfriends.com/> – To share experiences of virtual family contact.

PARENT/CHILD CONTACT IN HIGH-CONFLICT AND ABUSIVE FAMILIES

Joint custody and overnights are appropriate for low-conflict families. How can parenting time be arranged in high-conflict and abusive families? In these situations it is essential to protect the child and the victimized parent, while still permitting the child access to the abusive parent. This is a very complicated problem, as explained in Chapter 9 on *Managing Parent/Child Contact in High-Conflict and Abusive Families*. Before developing a parenting plan for a family with a history of abuse and high inter-parental conflict, be sure to consider the issues discussed in Chapter 9.

PARENTING COORDINATORS

In the past few years, many custody evaluators have recommended that courts appoint a parenting coordinator (PC) to assist high-conflict parents in making decisions regarding the everyday activities of their children. Chapter 2 examines the general issues related to this new role, such as the legal definition and scope of the PC's responsibilities, the training and experience required to be a PC, and the professional risks involved.

When selecting a PC, one must consider the personalities of the parents and the practice style of the attorneys in the case, in order to choose a PC whose characteristics are appropriate along the following dimensions:¹⁹

Approach of PC

Some PCs use an ***educational approach*** which seeks to inform the parents about the interaction between divorce and the developmental needs of children. This approach is effective with parents who are generally well-adjusted, logical, highly moral, and motivated to do the best for their children, despite having developed a highly adversarial relationship with the ex-partner.

Other PCs use ***behavior modification techniques*** which use negative consequences for destructive or uncooperative behavior. This approach is appropriate for parents who are emotionally unstable and insecure.

Gender of PC

Some parents (and their attorneys) respond better to men, or to women.

Need for authority figure

Since attorneys are often perceived as authority figures, some parents may follow the suggestions of an attorney/PC more quickly than the suggestions of a mental health/PC, whom they perceive as softer.

Experience with Psychopathology

When parents suffer from severe mental illness, they usually cannot benefit from parenting coordination. Other parents who have character disorders may be amenable to working with a PC but require the special expertise of a mental health professional who is skilled and experienced in working with people with these behaviors and characteristics.

Fear of Mental Health Professionals

On the other hand, some parents may be threatened by mental health professionals because they fear that those professionals will be able to read their minds or perceive their hidden craziness. These parents may be able to tolerate working with a PC who is an attorney.

FACTORS TO ADDRESS IN PARENTING PLANS

In developing a parenting plan, it is essential to consider the general issues discussed above: the relevant empirical research, the potential changes the family will experience over time, the level of inter-parental conflict, the wishes of any older children, whether overnights are appropriate, and whether supervised parenting time or a parenting coordinator are needed. You must consider how to maintain and improve the relationships that both parents have with the children, and what residential arrangement and parenting schedule is appropriate. As you develop a parenting plan, you will need to organize the information into a format that addresses the topics listed in Box 33.

Responsibility and Process for Decision-making

As indicated above, the parents' ability to make joint decisions is crucial to an assessment of whether they should have sole or joint legal custody. Custody evaluators need to address this issue clearly in the conclusion section of their report, so that the court can decide

Box 33. *Factors to Include in Parenting Plans*

- ◆ **Decision-making – responsibility and process**
- ◆ **Living arrangements for children**
- ◆ **Parenting time – schedule and arrangements**
- ◆ **Child Exchange**
- ◆ **Holidays**
- ◆ **Vacations**
- ◆ **School**
- ◆ **Camp**
- ◆ **Child activities after school and on weekends**

which type of legal custody is appropriate for the family. It is also important to consider whether the family will need the services of a Parenting Coordinator.

Child Exchange

The more severe the inter-parental conflict, the more structured the child exchange needs to be, with gradual decreases in parental contact. As indicated in Box 29, low conflict parents can do pick-up and drop-off in their homes, with rules to prevent the parents arguing in front of the child. If the conflict is moderate, curbside pick-up and drop-off will decrease the opportunity for a clash to occur between the parents. Once the child is school-age, the transporting parent usually stays in their car and the other parent waits beside the door. If the inter-parental conflict is high, the exchange can take place in a public place and may need to be done by a third party.

Holidays

There are a tremendous variety of religious, cultural, and family traditions in the United States today. Find out which holidays a family celebrates so that these can be taken into account in developing a parenting plan. In low-conflict families, the holidays can sometimes be shared, or else the day can be split between the two households. In medium-conflict families, the parents may be able to split a holiday without a rancorous disagreement. The best way to avoid conflict is to alternate holidays, however, with each holiday spent with one parent in alternate years; this is advisable for high-conflict families. For high-conflict families, be sure that the parenting plan refers to all of the specific holidays relevant to the family. Specify when the parenting time over the holiday begins and ends, taking into account the long weekends created by some holidays. Box 34 lists some typical holidays and family events to consider.

Vacations

Parenting plans usually include a provision for each parent to have a week or two alone with the children in the summer. As indicated in Box 26 in Chapter 8, the length of parental separations needs to

Box 34. Holidays and Family Events to Consider in Parenting Plans	
Legal Holidays	Other Events
<ul style="list-style-type: none"> • New Year's Day • Martin Luther King Day • Presidents' Day • Memorial Day • Fourth of July • Labor Day • Columbus Day • Veterans' Day • Thanksgiving • Christmas • State Holidays 	<ul style="list-style-type: none"> • Religious Holidays • School Vacations • Mother's Day • Father's Day • Halloween • Family Birthdays • Family Reunions and special events • Family vacations (extended family)

be adjusted to the child's developmental age. For this reason, it is sometimes advisable to include a gradual increase in the length of parental vacations over several years in order to accommodate the child's increasing tolerance for being away from the non-vacationing parent.

School

Children do better in school when their parents are active in attending school meetings and supervising homework. It is important for parents to have access to the child's school, including parent-teacher meetings, consultations with the classroom teacher, attending student performances, and voluntary activities for parents such as chaperoning field trips and helping out at bake sales and other school events. If the parental conflict is low, the parents may be able to attend and participate in some of these activities together. If the conflict is moderate to high, the parents should participate separately, and the school should be asked to send separate notices to each parental home.

Camps

Both day camps and sleep-away camps are a standard way for parents to arrange childcare in the summer. Find out what camps the children have attended in the past and how the decisions have been reached about camp attendance. If the children usually attend a sleep-away camp that would affect the parenting time in the summer, the camp arrangements should be mentioned in the parenting plan.

Child Activities

Both parents usually want their child to participate in extra-curricular activities that offer the chance to form friendships, develop cognitive, social, and athletic skills, and experience a sense of physical and mental competency. Parents may fight about the child's schedule, however, because the same activity often occurs during both parents' time. For example, a child may have sports practice during the week when with parent #1, and a game on a

weekend when with parent #2. In such a situation, parent #2 may refuse to take the child to the game on their weekend, insisting that the time belongs to them not to the sports team or to parent #1.

There are a variety of ways for the parenting plan to address conflicts about child activities. In low-conflict families it may be sufficient to explain the importance of such activities and state that each parent should take the child to whatever extracurricular activities are scheduled during that parent's time with the child. In moderate- and high-conflict families the parents may have to schedule only activities that occur during their own parenting time. When the family has a Parenting Coordinator, disputes about the child activities should be referred to the PC.

SCHEDULES FOR LIVING ARRANGEMENTS AND PARENTING TIME

First you must determine whether there is a need for supervised parent-child contact, following the guidelines in Chapter 9. If there is, then the children will need to live with one parent and have supervised parenting time with the other parent.

In situations where both parents are competent and close to the children, there are many ways to arrange the children's residence and time with each parent. Traditionally, parenting plans have assumed that the children would live with the mother and have parenting time with the father. More recently, it has become more common for the children to live with both parents in a joint custody arrangement that approximates equal time with each parent. General guidelines for designing a parenting schedule are listed in Box 35.²⁰

Alternating 5/2 Split

This joint custody arrangement has the children live with both parents in separate residences, and provides equal time with each parent by having the children be with parent #1 on Tuesday and Wednesday, with parent #2 on Thursday and Friday, and have Monday go with alternating weekends.²¹ This provides equal time with each parent, with a stable weekday schedule for schoolwork

Box 35. *General Guidelines for Parenting Schedules*

- ◆ Consider the most even division of parenting time that is appropriate for each family.
- ◆ If possible, each parent should participate in the child's daily activities: meals, homework, bathing, bedtime, etc.
- ◆ Consider the parents' relationships with the children, parenting skills, level of conflict, and ability to cooperate with each other.
- ◆ Maximize consistency, regularity, and firm structure.
- ◆ Holidays and special events take precedence over the regular parenting schedule.
- ◆ Whoever has the children at mealtimes (e.g. 7:00 a.m., noon, or 6:00 p.m.) is responsible for feeding them breakfast, lunch, or dinner.

and after-school activities. Another advantage is that the parents can arrange their work so that travel or longer workdays occur on their off-parent days and weekends, without disrupting the children's schedule. This schedule is appropriate for low- and medium-conflict families where both parents have been intimately involved with the children previously, have good parenting and communication skills, and the potential for at least limited inter-parental cooperation.

Alternating Weeks

This joint custody arrangement also has the children live with both parents in separate residences, and be with each parent during alternating weeks. The advantage over the alternating 5/2 split is

that alternating weeks provides equal time with each parent plus fewer transitions for the children and less potential parent-to-parent contact. The disadvantage is that a week is too long for young children (under 12) to go without face-to-face contact with each parent. Although this difficulty could be addressed by a mid-week overnight, such an arrangement would then be quite similar to the 5/2 alternating split without providing the regularity of that schedule.

A serious disadvantage of the alternating week schedule is that it makes it difficult for the parent to arrange a regular work schedule, and for the children to have a regular after-school activity schedule. On the other hand, parents with moderate to high conflict can manage this schedule without having to have direct contact and frequent child exchanges.

Ackerman Plan: 9/5 Split Alternating with 10/4 Split

This joint custody arrangement has the children live primarily with each parent part of the year. During the school year (September 1 to June 1) the 9/5 split calls for the children to live with Parent A and spend time with Parent B on alternating weekends from Thursday after school until Monday morning at school drop-off. Parent B also has the children on one mid-week overnight on the off-weeks.

During non-school-time (June 1 to September 1, plus one week at Thanksgiving, two weeks at winter break, and a week at spring break), the 10/4 split calls for the children to live with Parent B and spend time with Parent A on alternating weekends from Friday until Monday morning, with a mid-week overnight on the off-week.

Ackerman (2001, 2006) says that the 9/5 parent has the children approximately 20 more days per year than the 10/4 parent, but the 10/4 parent has the children for all the holidays, except for four days during holiday times when the 9/5 parent can celebrate with the children. Ackerman maintains that his plan provides the children with both a sense of having a secure home base and equal time with each parent over the course of the year.²²

Nesting

In this joint custody arrangement, the children remain in the marital home and the parents move in and out according to the schedule

of parenting time. During the early stages of a child custody dispute in a family where both parents were actively involved in parenting before the separation, this arrangement can provide some stability for the children. It is costly, however, because three residences are required. Also, it does not accommodate changes in the parent's lives, such as new partners or marriages. For these reasons, this arrangement is not a good long-term solution.²³

10/4 Split

This common sole custody arrangement calls for the children to live with one parent and spend time with the non-residential parent on alternate weekends and one mid-week overnight each week. This is similar to Ackerman's non-school-time schedule, but without the provision that the 10/4 residential parent has the children for all the holidays. This schedule provides stability and consistency for the child but not equal access to the non-residential parent.

11/3 Split

This sole custody arrangement has the children live with one parent and see the non-residential parent on alternate weekends and one mid-week overnight on off-weeks. This is similar to the 10/4 split but with even less time with the non-residential parent.

12/2 Split

This sole custody arrangement has the children live with one parent and see the non-residential parent only on alternate weekends. Although this has been the customary pattern in the past, a number of researchers report that children have expressed a desire for more contact with their fathers (Fabricus & Hall, 2000; Parkinson et al., 2005; Wallerstein & Kelly, 1980).

Splitting Children

Occasionally parents will propose a settlement that involves each parent having primary custody of some of the children. This arrangement deprives the children of their sibling relationships, and requires complicated arrangements to allow each child to see their

non-residential parent with and without the other child(ren). Split custody is not recommended by any of the professional associations involved in child custody issues (Ackerman, 2001, 2006; Ackerman and Ackerman, 1997).

MODEL PARENTING PLANS

After considering all of the factors involved in developing an appropriate parenting plan, it is helpful to use a standard format to write the plan. This will ensure that all of the essential issues are addressed. Section IX of the CD contains two parenting plans that can be adapted for each family (AAML, 2005; NH, 2006), plus a visitation plan designed to accommodate a family in which domestic violence is an issue (MA Trial Court, 1994).

EDUCATION AND INTERVENTION PROGRAMS

Is there some way to limit the negative effects that divorce has on children? Given that parental training programs have been effective in preventing a wide range of child behavior problems in the general population, is there a way to develop specialized parental training programs that are focused on the risk factors and protective processes associated with child adjustment post-separation? Several writers have proposed just such an approach, resulting in programs that are designed to enhance the quality of the parent/child relationship, improve parenting skills, and decrease inter-parental conflict (e.g. Grych & Fincham, 1992; Haine, Sandler, Wolchik, Tein, & Dawson-McClure, 2003; Wolchik, Sandler, Winslow, & Smith-Daniels, 2005).

Parent-focused Training

There are many approaches to achieving these results with separated parents.²⁴ I have summarized the most common methods in Box 36, and will describe their methods and results in more detail here.²⁵ The four levels of education programs differ in terms of:

- the amount of time involved in sessions,
- the passive or active nature of the learning process,
- the parental self-disclosure required.

Level I – Basic Information

Most parent education programs use a mixture of lectures, handouts, videotapes, and group discussion to impart basic information to large groups of unrelated adults.²⁶ These programs usually have only one 2–4 hour session and focus on the following topics:

- The impact of inter-parental conflict on children
- Child adjustment issues
- Parenting strategies and parent/child relationships
- Legal options and court processes.

The videotapes contain vignettes of children in destructive situations that are common in separated families, such as:

- watching their parents arguing and bad-mouthing each other,
- carrying upsetting messages between parents,
- being involved in financial disagreements between the parents,
- telling one parent about the other parent's life.

Other video vignettes feature parents:²⁷

- talking about why they avoid contact with their children,
- using productive approaches to parenting such as firm limit-setting and clear communication,
- practicing positive ways to talk about the other parent to friends and family members,
- developing self-statements to help manage their anger.

The teaching methods in Basic Information programs require a minimum of parental participation: parents only have to attend one session where they are expected to listen, read the handouts, and discuss the vignettes. No self-disclosure is required. This model also involves the least investment of institutional resources: limited time, meeting space, materials, and training for the session leaders, who only have to be skilled in communicating information in a class-like format.

Basic Information training is the most common form of parent education. Its use in court-run programs has tripled since 1994, and over 95% of counties report interest in expanding these services (Cookston, Braver, Sandler, & Genald, 2002). Basic Information

Box 36. Education Programs for Separated and Divorced Parents

LEVEL I – BASIC INFORMATION

Teaching Methods	Parent Involvement	Intended Outcome	Research Results
<ul style="list-style-type: none"> • One 2-4 hour session • Large group of unrelated adults • Lectures • Handouts • Videotapes • Topics: <ul style="list-style-type: none"> ▪ Impact of conflict on children ▪ Child adjustment ▪ Parenting strategies and relationships ▪ Legal process 	<ul style="list-style-type: none"> • Attend one session • Ask questions • No self-disclosure 	<ul style="list-style-type: none"> • Communicate research- based information • Promote contact between child and non-custodial parent • Motivate parents to seek further help 	<ul style="list-style-type: none"> • Popular with parents and court personnel • Decreases inter-parental conflict

Box 36

LEVEL II – SHORT-TERM SKILL-BUILDING

Teaching Methods	Parent Involvement	Intended Outcome	Research Results
<ul style="list-style-type: none"> ● One 4-hour session, or multiple sessions ● Small group of unrelated adults ● Videotapes ● Experiential learning: <ul style="list-style-type: none"> ▪ Small group discussion ▪ Workbooks & exercises ▪ Self-assessment tools ▪ Role plays ● Topics: Same as Level 1, with focus on behaviors that reduce or increase conflict 	<ul style="list-style-type: none"> ● More attendance time ● Participate in learning exercises ● Limited self-disclosure ● Do homework 	<ul style="list-style-type: none"> ● Enhance inter-parental communication ● Enhance conflict-resolution skills ● Improve parenting skills ● Indirect effects: <ul style="list-style-type: none"> ▪ Reduce rates of litigation ▪ Improve child adjustment 	<ul style="list-style-type: none"> ● Greater decrease in conflict than Level I ● Increases cooperative parenting

Box 36

LEVEL III – INTENSIVE, LONG-TERM SKILL-BUILDING

Teaching Methods	Parent Involvement	Intended Outcome	Research Results
<ul style="list-style-type: none"> • Multiple sessions • Small group of unrelated adults • Experiential learning, similar to Level II • Topics: Same as Levels I & II, with focus on personal experience, behaviors and emotions 	<ul style="list-style-type: none"> • Extensive attendance time • Share problems • Participate in learning exercises • Practice co-parenting skills, in and out of class 	<ul style="list-style-type: none"> • Reduce inter-parental conflict • Improve parenting skills • Facilitate behavior change and insight into personal problems • Indirect effects: <ul style="list-style-type: none"> ▪ Reduce rates of litigation ▪ Improve child adjustment 	<ul style="list-style-type: none"> • Improves parent mental health • Mixed results re. child adjustment and parenting skills • No reduction in conflict

LEVEL IV – FAMILY THERAPY			
Box 36			
Teaching Methods	Parent Involvement	Intended Outcome	Research Results
<ul style="list-style-type: none"> • Numerous 1½ -2 hour psychotherapy sessions • One family, including both parents and children, seen separately or together • Topics: Similar to Level III, with psycho-education as needed • Discussion of issues in this particular family 	<ul style="list-style-type: none"> • Attend multiple sessions • Share feelings, thoughts, and problems • Practice skills at home 	<ul style="list-style-type: none"> • Reduce inter-parental conflict • Create respectful disengagement between the parents • Remove child from middle of parental conflict 	<ul style="list-style-type: none"> • No systematic research

training is now available in about half of the counties in the U.S., and is mandated in many jurisdictions (Geasler & Blaisure, 1998; Wolchik et al., 2005). Both parents and court personnel report a high level of satisfaction with the training (Bacon & McKenzie, 2004; Grych, 2005; Kelly & Emery, 2003), despite mixed reports on the effectiveness of the programs (Goodman et al., 2004; Grych, 2005).

Recent analyses of research studies do suggest that Basic Information training decreases inter-parental conflict, especially regarding conflictual styles of communication, putting the child in the middle, and fighting over time-sharing and financial issues. The training may also encourage parents to seek more comprehensive services. There is no demonstrated effect on child outcomes, however (Bacon & McKenzie, 2004; Wolchik et al., 2005).

Level II: Short-term Skill-Building

The topics and materials for Short-term Skill-Building groups are the same as for Basic Information groups, but there is more focus on behaviors that reduce or increase inter-parental conflict. Smaller groups of parents participate in each session, and each Skill-Building group meets for one longer session or, more commonly, for multiple sessions over several weeks or months. Active, experiential learning is introduced through the use of workbooks, self-assessment exercises, role plays, and small group discussions.²⁸

Greater parental participation and commitment are required in Skill-Building groups: parents must attend multiple sessions, participate actively in learning exercises, engage in very limited self-disclosure about their own difficulties with parenting and inter-parental conflict, and do homework between sessions.

Short-term Skill-building also requires more institutional resources: space over several sessions and funding for personnel who are skilled in group dynamics, recognizing psychological dysfunction, and making referrals.

Studies of Short-term Skill-Building using control groups and a variety of outcome measures indicate that this type of training is more effective than Basic Information training in that Skill-Building (a) increases cooperative parenting, and (b) shows a greater decrease in inter-parental conflict than does Information

training (Bacon & McKenzie, 2004; Kelly & Emery, 2003). On the other hand, there is no evidence that Short-term Skill-Building (a) improves parenting, (b) improves child adjustment, or (c) reduces re-litigation rates, except perhaps for high-conflict families (Goodman et al., 2004).

Level III: Intensive, Long-term Skill-Building

These groups are more intensive versions of the Short-term Skill-Building groups, with small groups using similar exercises and materials. The groups meet over a longer period of time, however, and participants are expected to share their personal problems and practice co-parenting skills both in and out of class. Thus, the participants have to invest both more time and more emotional involvement than for Short-term Skill-Building.

Long-term Skill-Building requires an even higher level of institutional resources: meeting space over an extended period of time, and the funds for highly skilled and experienced staff who can facilitate intense self-disclosure and behavior change, and psychological referrals as needed.

Programs for Mothers

Most of the Long-term Skill-Building programs are designed for custodial mothers. One of the most comprehensive and extensively-researched programs is the New Beginnings Program (NBP). This 11-session program emphasizes the interaction between (a) the multiple stressful changes and disruptions the family experiences after separation, such as inter-parental conflict, parental depression, reduced contact with the non-custodial parent, and financial stress, and (b) personal coping strategies, parent/child relationships, and effective discipline. The custodial parent is viewed as being able to enhance child adjustment by influencing several of the family stressors (Wolchik et al., 2005).²⁹

Programs for Fathers

There are just beginning to be Long-term Skill-Building programs for non-residential fathers, such as the Dads For Life (DFL) program

(Braver, Griffin, & Cookston, 2005).³⁰ This program is focused on four factors which research has found to have a long-term impact on child adjustment:

- frequency of father-child contact,
- quality of father-child relationship,
- father's financial support, and
- quality of parental relationship after separation.

In eight 1³/₄-hour weekly group sessions, a pair of male and female counselors uses ten-minute videotapes to initiate discussion of parenting skills, conflict management, and child adjustment. Each participant also has two ³/₄-hour individual sessions.

Research on Long-term Skill-Building

Research on the effectiveness of Long-term Skill-Building programs for custodial mothers has shown mixed results. After summarizing the results of several studies, reviewers have concluded that these programs have a positive effect on maternal mental health (Haine et al., 2003; Wolchik et al., 2005), but the conclusions regarding parenting skills and child adjustment are mixed (Haine et al., 2003; Kumpfer and Alvarado, 2003; Wolchik et al., 2005). There is no research support for the programs reducing inter-parental conflict (Haine et al., 2003).

There are not enough Long-term Skill-Building programs for fathers to yield substantial research results. In a study of the efficacy of Dads For Life using a control group, Braver and his colleagues did find that the fathers and their ex-wives described the children as better-adjusted up to 12 months after the DFL program ended; there was no significant benefit according to the reports of the children or their teachers, however (Braver, Griffin, & Cookston, 2005). This is a promising initial result, but it needs to be replicated by other studies before definitive conclusions can be drawn.

The mixed and contradictory results of studies of Level III: Long-term Skill-Building programs may be due to variations in the design and implementation of these programs. As Heilmann (2000) has argued, even if the programs don't succeed in educating parents,

the involvement of professionals may help to modify the parents' behavior by repeatedly reminding them of the needs of their children.

Level IV: Family Therapy

I have included this type of intervention because some professionals have advocated its use for working with post-separation couples, and it is helpful to compare the method with parent education classes and workshops. The participants in Family Therapy are a single family rather than a group of unrelated adults. Although the same topics are usually covered as in Long-term Skill-Building, the methodology focuses on discussion of problems specific to that particular family, with some exploration of family-of-origin issues as well.

Johnston has proposed ways to use counseling and mediation “with families in seriously entrenched custody disputes” (Johnston & Roseby, 1997, p. 249). Johnston’s approach is based on object-relations theory and self-psychology rather than on the results of empirical research.

More recently, Lebow (2003) has used the results of the research on family dissolution to develop Integrative Family Therapy for use specifically with high-conflict families involved in custody disputes. Lebow’s method is focused on problem-resolution rather than analysis of individual or family dynamics, and includes psycho-education about the same topics covered in Skills Training. The family therapist also works on anger management and any significant child difficulties, as needed. Each session includes whichever individuals are involved in a given issue: individual parents, parents and children together, or parents together. The main goals of Integrative Family Therapy are to reduce the inter-parental conflict, create a “respectful disengagement between the parents,” and remove the child from the middle of the parental conflict so that the family can “carry out ordinary life functions such as visitation without controversy” (pp. 187, 186).

The institutional investment of resources is extremely high for Family Therapy, requiring a family therapist trained and experienced in working with separating and divorcing couples, and

space and funding for many sessions for each family. The parents usually need extensive financial resources and must be willing to engage in many therapy sessions over an extended period of time.

There is no systematic research on the efficacy of Family Therapy as a treatment modality for either the general population of separating/divorcing families, or for high-conflict families embroiled in custody disputes (Goodman et al., 2004; Grych, 2005; Kumpfer and Alvarado, 2003). Family Therapy also has the risk of being used as a further weapon in the on-going custody battle, since parents often quote therapists (however inaccurately) in their court motions and other legal processes. Blaisure & Geasler (2000) comment that Family Therapy is not an efficient way to address the widespread problems of post-separation families.

Summary re. Parent-focused Training

Given the generally positive results of the initial outcome studies for Level I and II programs, and the lower cost of these kinds of approaches, Basic Information and Short-term Skill-Building programs appear to be the most appropriate, broad-based educational interventions to use with high-conflict families at this time.

Child-focused Training

Programs for children of separation and divorce resemble Level II: Short-term Skill-Building programs for adults, with an added emphasis on child feelings and coping skills.³¹ These programs average 5½ hours and involve about 15 children in viewing presentations, videotapes, handouts, and participating in activities such as discussion, storytelling, drawing, and games (Geelhoed et al., 2001).

There is less research about these programs than about the programs for adults. Although Haine et al. (2003) have concluded that the programs are associated with significant improvements in child adjustment, Grych (2005) reviewed the same body of research and concluded that “at this point, no definitive conclusions can be drawn about the efficacy of brief child-oriented prevention programs” (p. 106).

Family Programs for Mothers and Children

A few programs combine parent skill-building with child-focused sessions. Although Kumpfer and Alvarado (2003) describe positive results for one such program,³² reviews of the research literature have concluded that these combined programs show no improvement over mother-focused or child-focused programs alone (Grych, 2005; Haine et al., 2003; Wolchik et al., 2005)

Notes

1. These types of conflict, which are explained in Chapter 8 were identified by Goodman and his colleagues (2004).
2. Johnston (1994) refers to this dimension as the “domain” of conflict.
3. Inter-parental conflict is closely related to common couple aggression and other aspects of relationship violence, which is discussed in Chapter 23. Because all inter-parental conflict and relationship violence exists on a continuum, it is essential for all custody evaluators to be familiar with the research and analysis of couple aggression and violence even if they do not specialize in evaluations involving these issues.
4. Of course the comments in Box 29 should only serve as a general guide. Each family presents a unique combination of the issues, and hence needs a parenting plan developed for their particular circumstances.
5. A number of writers have summarized the arguments for and against joint custody (e.g. Bauserman, 2002; Krauss & Sales, 2001; Lowenstein, 2002). Others have argued that joint legal custody is a way of enfranchising the father (Braver & O’Connell, 1998) and should be seen as a paternal duty (Maldonado, 2005).
6. Concerns about race, SES, and joint custody are expressed by a variety of writers, including Hagen, 1987, and Clingempeel and Reppucci 1982.
7. Studies and reviews showing no significant effects of joint physical custody include Hetherington and Kelly, 2002; Kelly and Ward, 2002; Kline, Tschann, Johnston, and Wallerstein, 1989; Krauss and Sales, 2001.
8. The decrease in maternal satisfaction has been found for both legal custody (Gunnoe & Braver, 2001) and physical custody (Hetherington & Kelly, 2002).
9. Although several writers have suggested criteria for recommending joint custody (e.g. Ackerman and Ackerman 1997; Clingempeel & Reppucci, 1982; Gould, 1998; Johnston, 1995), these recommendations were formulated before most of the research on joint custody was available. The available research simply underscores the importance of these variables, however. In the 2nd edition of his book, Gould reports briefly on the research on joint custody, but does not extrapolate from the research to suggest criteria for recommending joint custody (Gould, 2006).
10. In a puzzling twist, Pruet and her colleagues (2004) also found that boys benefited less from overnights than did girls. The researchers suggest that other contact with the father may have been sufficiently beneficial for the boys, without overnight contact.
11. This information on general mobility is from Gottfried, 2002. The rates of parent/child separation are from InternetVisitation.org (2004); Brunts (2001)

- attributes these same statistics to David Levy, President of the Children's Rights Council in Washington, D.C.
12. For detailed information on the hardware and software required for video conferencing, see Buie, 2004a, 2004b; Ellis 2006; Shefts, 2002.
 13. I try to avoid using the term "visitation" because parents are justifiably offended by the implication that they would "visit" their own children. The term "parenting time" is preferable for this reason. New Jersey has replaced the term "visitation" with the term "parenting time" because the former "likens the activity to that performed by an outsider, for a temporary period of time" (Marzano-Lesnevich & Laterra, 2001, p. 27).
 14. The advantages of Internet-mediated parent/child contact are discussed by many writers, including Buie, 2004a, 2004b; InternetVisitation.org, 2006; LeVasseur, 2004; Maryland Legal Assistance Network, 2005; and Shefts, 2002.
 15. Many new laws stipulate that if physical parenting time is supervised, then videoconferencing must also be supervised (Paulson, 2006).
 16. The risks and disadvantages of internet-mediated parenting time are taken from Marzano-Lesnevich and Laterra, 2001; Smith, 2006; and Thomas, 2002. The reassurances are discussed by Ellis, 2006; Herman, 2005; LeVasseur, 2004; Ogg, 2006; and Shefts, 2002. Copies of sample legislation can be found at Missouri, 2006; and Ohid, 2006.
 17. On July 31, 2006, Boston Mayor Thomas Menino announced a new project to blanket the city with "open access" wireless Internet connections, or WiFi. Other cities are also in the process of developing free WiFi (Weisman, 2006).
 18. These factors are discussed in Buie, 2004b; LeVasseur, 2004; and Shefts, 2002.
 19. Coates et al (2004) discuss the following issues related to selection of an appropriate Parenting Coordinator: educational v. behavioral modification approach, gender, and attorneys perceived as authority figures.
 20. Ackerman (2006, p. 251) has written similar "Rules of Thumb" regarding holidays and meals. Ackerman disagrees with my recommendation regarding equal parenting time, however, maintaining that whenever there is a custody dispute the conflict is too high to support an even division of parenting time. I would argue that the recent research on the impact of joint custody and parenting time (summarized earlier in this chapter) indicates that more equal sharing of parenting time is beneficial to the children and is possible even in families engaged in custody disputes.
 21. The same time division could be accomplished by having Friday go with the weekend and the parents have Monday/Tuesday and Wednesday/Thursday. This alternate arrangement would have the disadvantage or not having the long holiday weekends go with the regular weekend time, however.
 22. Ackerman (2006, p. 252) also says that a nationwide survey (Ackerman et al., 2004) showed that the Ackerman Plan is the favorite of family law attorneys, and second only to the 10/4 plan with judges. This author was unable to verify this claim by reviewing the referenced article.
 23. Ackerman (2006) calls this concept "Bird Nesting" and states that despite the fact that this parenting arrangement has been used in a variety of settings in recent years, the drawbacks indicate that it should "not . . . be used any longer than is absolutely necessary" in any given family (p. 246).
 24. Most of the theory and research in this area uses the term "divorced parents" to refer to both legally divorced and never-married parents who are now separated. The methods of parental education are the same for both groups,

however, and approximately half of the parent education programs nationwide include both divorced and never-married parents (Blaisure & Geasler, 2000).

25. Box 36 is based on the classification system introduced by Blaisure and Geasler (2000), modified here by the reviews of existing parent education programs cited in the text above. The discussion in the present text also draws on Blaisure and Geasler's (2000) analysis of resource requirements.

It is rather difficult to assess the results of research designed to measure the effectiveness of these parental training programs because the exact nature of the programs being evaluated is not always clear. I have applied my 4-level typology to each research report in order to arrive at the assessments I have reported in the text. I do need to note that some researchers have concluded that the findings on training effectiveness are too mixed to draw any conclusions at the present time (e.g. Goodman et al., 2004), while others point out that positive results are only beginning to be noted, and even then parent-report is too often the only measure used (e.g. Grych, 2005).

26. Ex-spouses and ex-partners are never assigned to the same parenting education groups in Level I, II, or III. This only happens in Family Therapy, which I have categorized as Level IV.
27. These examples of video vignettes are taken from Goodman et al. (2004), but similar vignettes are mentioned in other descriptions of parenting education programs. A detailed description of a Basic Information training program is contained in Pedro-Carroll, Nakhnikian, and Montes, (2001).
28. A good example of a Short-term Skill-Building training program is the Parental Conflict Resolution Program (PCR) in Arizona, described in detail in Neff & Cooper, (2004).
29. The New Beginnings Program (NBP) is a good example of a Level III: Extensive, Long-term Basic Skills training program. A detailed description of the program is contained in Wolchik et al., (2005). Please note that the NBP has been developed with Caucasian mothers, but is in the process of being adapted for other cultural groups.
30. Programs for non-residential fathers are being developed with the support of The Fatherhood Initiative funded by the US Department of Health and Human Services (2004). As of 5/18/06 ten programs for low-income, non-custodial fathers were listed by The National Center on Fathers and Families (<http://www.ncff.gse.upenn.edu/>); the list of father programs is available by searching the NCFE database under the key words "noncustodial fathers."
31. One example of such a child program is the Children of Divorce Intervention Program (CODIP), which is described in detail in Pedro-Carroll, (2005). CODIP focuses on research-established risk and resilience factors, and an initial study with matched controls found an increase in child adjustment after participation.
32. The Strengthening Families Program is described in detail in Kumpfer and Alvarado, (2003).

PART III

ORDERING CONDUCTING AND REVIEWING EVALUATIONS

This section focuses on the specific procedures in custody evaluations, viewed first from the perspective of someone conducting an evaluation, and then from the perspective of someone reviewing an evaluation.

Before conducting *or* assessing any custody evaluation, it is imperative to address the issues covered in Parts I and II of this volume. Be sure that you have a thorough understanding of the general legal and professional issues, the standards for custody evaluations, the legal standards for resolving custody disputes, *and* the social science research relevant to separating and divorcing families. These issues form the context and basis for all competent, scientifically-based evaluations and court decisions regarding custody.

Chapters 11–14 are addressed to the custody evaluator, and discuss the specific procedures involved in conducting evaluations. Chapter 11 covers the uses and limitations of psychological testing in custody evaluations. First it describes the rationales for using psychological tests, followed by the general critiques of psychological testing. Then the chapter presents a process for choosing psychological tests and describes the usage rate and psychometric properties of the psychological tests most commonly used in custody evaluations.

Chapter 12 describes the initial steps in the evaluation, from the first contact between the evaluator and the court and/or attorneys, through the evaluator's initial contact with the parties in the custody dispute. The actions in this period define the scope and focus of the evaluation, the evaluator's impartial role, and the parent's involvement and financial responsibility.

Chapter 13 covers the procedures involved in collecting information. This includes specific techniques for interviewing and observing the parties and their children, methods of obtaining collateral information, and approaches to interpreting the resulting data.

Chapter 14 focuses on the process of writing the evaluation report. First it covers the overall format, length, and essential information to be included. Then it considers methods for presenting the information about each of the parties in a concise, clear manner. And finally, it discusses the issues surrounding recommendations, disseminating the information, and filing preliminary as well as final reports.

Chapter 15 presents issues to consider when reviewing evaluations, which is something that judges, attorneys, and mental health professionals all have occasion to do. In order to make decisions in child custody cases, judges have to assess reports of evaluations and determine how much weight to give to the information (and sometimes recommendations) contained in them. Attorneys need to ascertain how compelling a custody evaluator's conclusions will be in court; to do this, it is necessary to critique the evaluation, the report, and the evaluator. Experienced forensic mental health professionals are sometimes hired as consultants to critique the evaluations and reports done by others. And evaluators themselves need to be aware of how an evaluation they are conducting would look to a later reviewer.

In all these situations, it is essential to be familiar with the information covered in Chapters 11–14, as well as in previous Chapters of this book. In fact, all of this information can be applied to critiquing reports just as easily as it can be to writing reports. It may facilitate your critique to organize the information differently, however, by focusing on specific questions to ask about the various aspects of the evaluation.

11

USES AND LIMITATIONS OF PSYCHOLOGICAL TESTS

CURRENT TESTING PRACTICES

About ten years ago, several experienced forensic psychologists expressed concern that custody evaluators were using psychological tests too often and in an inappropriate manner (e.g. Brodzinsky, 1993; Melton et al., 1997).¹ Researchers responded to this concern by studying actual test usage. Initial reports indicated that in 1996 psychologists routinely used standard psychological tests, and were relying on them more than they had a decade earlier (Ackerman and Ackerman, 1997; Ackerman et al., 2004). Hagen and Castagna's (2001) re-analyzed Ackerman's data, however, and reported that a quarter of evaluators never used such tests and only the MMPI was used frequently (in 84% of evaluations); no other test was used in more than one quarter of evaluations.² They then concluded that:

In fact, it would be highly misleading to represent to the public on the basis of existing data that there exists at the present time anything approaching a usual and customary practice much less an actual standard of practice for the use of psychological tests in custody evaluations beyond the nearly routine use of the MMPI in the assessment of adults. (Hagen and Castagna's, 2001, p. 271)

Other researchers have examined current testing practices and concluded that psychological testing is not over-used, and that custody evaluators are choosing tests that are relevant to the issues in each case and are basing their opinions on a variety of findings rather than on the results of the testing alone (Bow & Quinnell, 2002; LaFortune and Carpenter, 1998; Quinnell and Bow, 2001).³ There has also been a shift towards using the newly-developed custody-specific assessment instruments in addition or instead of standard psychological tests (LaFortune and Carpenter, 1998; Otto, Edens, & Barcus, 2000).

The controversy about using psychological tests in child custody evaluations continues, and encompasses a variety of issues that are central to how custody evaluations are done and how they are perceived and used by the courts. Every professional who conducts or reviews custody evaluations needs to be familiar with these issues.

RATIONALES FOR USING PSYCHOLOGICAL TESTS

Custody evaluators who support the use of psychological testing maintain that it has the following advantages:⁴

Standardized Administration and Scoring Procedures

- **Objective.** The standardization of procedures minimizes the bias that may inadvertently contaminate a clinical interview. Although structured interviews help to eliminate some interviewer bias, they do not prevent variations in procedure from interviewer to interviewer and from person to person when administered by the same interviewer.
- **Precise measurement.** The scoring systems yield a far more precise assessment than the general clinical impressions of an interviewer. The lack of precision in clinical memory and recording has been well-documented. (AFCC, 2007; Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000).
- **Information about response style and bias.** The controlled conditions make it possible to gather information about

how the respondent is approaching the evaluation. This is especially important in a forensic setting, where people are highly motivated to present themselves in a favorable light. Although many clinicians pride themselves on being able to discern who is telling the truth, research has repeatedly shown that clinicians are not very successful in making this judgment.

Data Grounded in Research

Psychological tests are linked to a large body of empirical research that specifies the scores of others who have taken each test.

- **Norms for comparison.** Well-established tests have been given to a variety of groups, and each individual's score can then be compared with the scores of these comparison groups. Without norms one can only note that one parent's score is higher or lower than the other parent's score. With norms one can say something like, "Mr. Smith's score is ten points higher than the scores of other 40-year-old fathers in custody disputes. Elevated scores on this subtest are associated with . . ."
- **Reliability and validity.** The psychometric properties of well-established tests specify the basis and rate of reliability and validity. Reliable tests yield the same results across time, situation, and evaluator. Tests that are valid are highly correlated with independent measures of the same construct. Neither of these dimensions have been established for other types of data collected in custody evaluations.⁵

Use of Multiple Tests Within a Test Battery

- **Cross-checking of hypotheses.** By using several different psychological tests, the evaluator can easily cross-check hypotheses about the respondent. Of course, such cross-checking is also accomplished by comparing the test data with information obtained through other avenues such as interviews, observations, and record review. Proponents of psychological testing argue that multiple tests offer a quicker and sometimes richer source of cross-checking, however.

- **Many dimensions assessed simultaneously.** A test battery can provide data about numerous aspects of the respondent's functioning in the areas of personality characteristics, cognition, and emotion.

Community Standard

Proponents maintain that the frequent use of psychological tests in previous child custody evaluations constitutes an accepted professional standard for such evaluations.

GENERAL CRITIQUES OF PSYCHOLOGICAL TESTING

The critiques of psychological tests focus on their psychometric inadequacies: the lack of standardization, norms, and established reliability and validity.⁶ A central dilemma for custody evaluators is that the standard psychological tests have good psychometric properties, but are not necessarily relevant to parenting issues, whereas the custody-specific tests are relevant, but have poor psychometric properties. These issues will be explored further in the sections below on general and custody-specific assessment devices.

Even a measure of validity that is acceptable in clinical settings may be inappropriate in forensic settings. For instance, the Beck Depression Inventory (BDI-II) has high face validity because it obviously measures self-reported symptoms of depression that have been experienced in the previous two weeks. Although the BDI-II may be useful in a psychiatric evaluation, in a child custody evaluation it would be highly susceptible to a parent's desire to appear as healthy as possible (Medoff, 2003).

The clinical setting is also more flexible and tolerant of ambiguity than is the forensic setting. Experienced psychotherapists use the information obtained during intake and psychological testing to form hypotheses that guide the treatment. As treatment progresses, medication protocols and psychotherapy interventions are gradually revised to meet the needs of the individual patient. There is rarely a time-limited need for the kind of definitive diagnosis or conclusion

that is required in forensic evaluations and court testimony, where the law requires a speedy and final resolution of disputes (APA-med, 1988; Medoff, 2003).

If psychological tests have such serious limitations when used in custody evaluations, why do many attorneys and judges continue to ask for them and custody evaluators continue to use them?

The Legal Profession

- **Limited knowledge about psychological testing.** About three-quarters of attorneys and judges expect child custody evaluations to include psychological testing of both adults and children. Despite these expectations, however, neither attorneys nor judges know much about psychological tests (Ackerman et al., 2004). Only a third of each group can identify the Minnesota Multiphasic Personality Inventory (MMPI-2; the most commonly used, standard psychological test), and only one-quarter to one-third can identify the Bricklin Perceptual Scales and the ASPECT (the most commonly used custody-specific tests.)⁷ Few legal professionals understand the requirements for reliability and validity (Brodzinsky, 1993).
- **Numbers.** Attorneys understand numbers, which allow them to “quantify the sometimes unquantifiable” and to “compare people and aspects of people in ways which mere personal observation can not always do” (Gould-Saltman, 2005, p. 72).
- **Sense of objectivity.** Even an unreliable or invalid test appears objective to an attorney because “it somehow allows us to compare apples to oranges” and thereby gives a “sense of objectivity to counterbalance the much more subjective clinical portion of a custody evaluation” (Gould-Saltman, 2005, p. 72; cf. Brodzinsky, 1993).
- **Short cut.** Attorneys appreciate a short summary of a battery of tests that serves to highlight the ways in which the testing supports the conclusions the evaluator based on other measures such as interviews and observations. The testing summary is often more succinct and intelligible than the rest of the report, and hence is accepted without questioning

whether the tests have acceptable psychometric properties and were properly administered, interpreted, or summarized (Gould-Saltman, 2004).

- **Hidden truths.** The legal profession often believes that psychological testing can measure aspects of the person that cannot be uncovered by other procedures (Brodzinsky, 1993).
- **Legal strategy.** If the other side's mental health expert has used psychological testing, an attorney is apt to pressure the evaluator to include testing in their evaluation as well (Brodzinsky, 1993).

The Mental Health Profession

Brodzinsky's (1993) provocative critique suggests that the following assumptions, motives, and misunderstandings of psychologists cause the mis-use and over-use of psychological testing in child custody evaluations.

- **Limited training.** Most psychologists lack adequate training in conducting child custody evaluations, so they do not understand legal issues and the legal and professional requirements for custody evaluations.
- **Role confusion.** Psychologists do not distinguish between clinical and forensic roles, and therefore when doing a child custody evaluation they use the clinical procedures that are most familiar to them.
- **Professional identity.** Testing is a core component of the identity of many psychologists because it differentiates them from social workers and psychiatrists.
- **Financial incentives.** The 3–6 extra hours required to give each person a test battery increases the psychologist's total fee for the evaluation.

PROCESS FOR CHOOSING PSYCHOLOGICAL TESTS

A number of experienced evaluators have proposed stringent criteria for choosing psychological tests to use in child custody

evaluations; these criteria are summarized in Box 37.⁸ The selection process calls for four basic steps:

1. Define the behavior or characteristic that reflects the legal issue or parenting characteristic,
2. Examine the assessment instrument to make sure that it actually measures the target behavior or characteristic and also meets the professional standards,

Box 37. *Criteria for Test Selection*

1. Psycho-legal construct – Identify the issue or characteristic to be assessed, and exactly how the test results will be related to it.

2. Relevance

- Select methods of assessment that measure the construct.
- Relevance is even more crucial than test accuracy.

3. Standards

- Commercially published (to ensure peer review, availability, and uniform test materials)
- Comprehensive test manual containing information about:
 - test development and standardization
 - administration
 - scoring
 - psychometric properties

4. Reliability – at least .80

- Internal consistency
- Inter-rater reliability
- Test-retest reliability
- Correlation between parallel forms

Box 37**5. Validity**

- Construct validity – convergent and discriminant
- Content validity – correspondence between test items and behavior
- Criterion validity – concurrent or predictive
- Internal validity – correlations between sub-tests
- External validity – results generalize to other circumstances
- Face validity – obviousness
- Valid for child custody use
- Valid for specific individual – race, ethnicity, age, SES, sexual orientation

6. Variance – (standard error of measurement, or margin of error in a given test score)

7. Measure of Response Style

8. Peer review of instrument – in peer-reviewed journals

9. Specialized training – evaluator must be trained to administer the test.

3. Examine the psychometric properties of the test, and
4. Make sure that the evaluator has the specialized training required to administer, score, and interpret the test.

The next section will describe the characteristics of the psychological tests most commonly used in child custody evaluations. Most published tests of all types are also reviewed in general sources (e.g. Murphy, Plake, Impara, & Spies, 2002; Spies & Plake, 2005).

STANDARD PSYCHOLOGICAL TESTS

Minnesota Multiphasic Personality Inventory, Revised (MMPI-2)

The MMPI-2 is the most widely used test in child custody evaluations (84% of evaluations for adults, 10% of evaluations for child form).⁹ This 567-item questionnaire has a true/false, forced-choice format and requires an eighth-grade reading level. It is an empirically-derived test that is based on the assumption that people who answer the questions in a manner similar to a normative group will also behave like that normative group in other ways. The MMPI was developed to screen for severe psychopathology such as depression, paranoia, and schizophrenia, and contains eight clinical scales that address psychopathology, two clinical scales that address personality style, and three validity scales designed to assess the respondent's approach to the testing process.¹⁰

There have been over 10,000 published studies about the MMPI, and its reliability and validity are well-established. The MMPI-2 manual (Butcher et al., 2001) describes the administration, scoring and interpretation of the test, which can be administered in a paper-and-pencil format or by computer. There are two approved computer-scoring services available, one of which offers either an interpretive report or a child custody report (Bow, Flens, Gould, & Greenhut, 2005).

Although the MMPI was developed to assess psychopathology, Caldwell (2005) maintains that MMPI-2 scores can also be used to assess the following parenting-relevant variables: capacity for emotional attachment, potential for antisocial behavior, anger management problems, tendency to alienate the child from the other parent's affection, and long-term disposition towards substance abuse. Caldwell also notes that "Roger Greene has accumulated a sample of over 1,100 MMPI-2 response protocols from custody litigants" (2005, p. 108).¹¹ In a large volume devoted to the forensic use of the MMPI-2, Pope, Butcher, and Seelen, (2000) argue that the reasons for using the MMPI in court include (a) well-established psychometric properties, (b) ease of administration,

scoring, and interpretation, (c) widespread use in forensic settings, and (d) ease of explaining the results in court.

All of the information about the MMPI-2 suggests that it has considerable potential for providing relevant information in child custody evaluations. As [Gould \(2005\)](#) has pointed out, however, any psychological test should only be used to generate hypotheses that can then be tested against other data gathered in the custody evaluation. Furthermore, the custody-relevant use of the MMPI-2 proposed by [Caldwell \(2005\)](#) requires a non-standard interpretation. Therefore, if the MMPI-2 is needed, the custody evaluator should have it administered, scored, and interpreted by a forensic psychologist who specializes in doing psychological testing in custody cases.

Millon Clinical Multiaxial Inventory (MCMI-III)

The MCMI-III is the second most widely used test in child custody evaluations (25% of evaluations for adults, 10% for adolescents).¹² This test consists of 175 true/false questions derived from Theodore Millon's theory of personality, which posits three polarities that cause behavior: pain-pleasure, self-other, and active-passive ([Shuman, 2002](#), p. 146; [Millon, Davis, & Millon, 1997](#)). An eighth-grade reading level is recommended for respondents. Rather than comparing a person's score to that of a comparison group, the MCMI-III assesses psychopathology by calculating the probability that a person has a particular trait, syndrome, or disorder ([Bow et al., 2005](#)). The syndromes assessed correspond to those listed in the current version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV: [APA-med, 2000](#)).

The MCMI-III can be taken on a computer or by paper-and-pencil, and 62% of custody evaluators use computer-generated interpretative reports. Using computer-generated reports raises serious issues because the evaluator does not know the precise decision rules for generating interpretative statements, the level of significance used, or other technical information required by the courts. The limited amount of time required to administer the MCMI-III may cause evaluators to use it in combination with computer-generated

reports, without having the required knowledge and skills (Bow et al., 2005).¹³

Wechsler Adult Intelligence Scale (WAIS III)

The WAIS is the third most commonly used test in child custody evaluations (21% of evaluations use the WAIS for adults, 26% of evaluations use the WAIS or another intelligence test for children).¹⁴ It is one of the most widely accepted measures of cognitive functioning in adults because it is well-standardized, has extensive norms, uses clearly defined rules for administration, scoring, and interpretation, and has been the subject of extensive research. The WAIS assesses both verbal and nonverbal reasoning skills, problem-solving abilities, verbal comprehension, freedom from distractibility, and perceptual organization, as well as yielding a global intelligence score.¹⁵

The difficulty with the WAIS is not its psychometric properties, but rather its lack of relevance. Only in rare cases are there parental fitness issues that require the assessment of cognitive functioning.

Rorschach Inkblot Method (RIM)

This is the projective test used most frequently in child custody evaluations (31% of evaluations for adults, 13% for children).¹⁶ The RIM consists of 10 cards with symmetrical inkblots, some in black and white and some in color. The respondent is asked to describe what they see in each ambiguous picture, and responses are scored for themes, specific features of the inkblot used, and approach to the task. The assumption is that the respondent will perceive the ambiguous stimuli in terms of their own (often unconscious) feelings and personality characteristics, thereby revealing more than they are aware of.

The RIM is both very popular and very controversial. Rorschach enthusiasts point out that since the introduction of Exner's Comprehensive System of scoring in 1974 (CS: Exner, 2001, 2003), "...the RIM has been standardized, normed, made reliable, and validated in ways that exemplify sound scientific principles for the development of an assessment instrument" (Weiner, 2001,

p. 431). Medoff concurs, noting that “There is an abundance of peer-reviewed published research demonstrating levels of criterion-related validity of the Rorschach that is equal to or exceeds many routinely relied upon and state-of-the-art medical tests and techniques. These include... Pap smears... dental X-rays... CT scans... and home pregnancy tests” (Medoff, 2003, p. 209).

In order to evaluate these claims, we need to examine the various characteristics of the Rorschach.

Multiple Behaviors Sampled

Proponents point out that the Rorschach assesses many different behaviors in an objective manner that reduces the impact of social cues.

Subjective aspects to Rorschach administration, such as facial gestures, turns of phrase, or gestures, for example, are potentially interesting behaviors that do not enter into the scoring or structural interpretation of the subject’s responses. These latter may, however, provide rich data in thinking about the individual comprehensively. (Calloway, 2005, p. 147).

Inter-rater reliability

Proponents of the Rorschach argue that the Comprehensive System of scoring provides standardization that is lacking in interviewing or behavioral observations. When scored with the CS, the Rorschach has demonstrated high levels of inter-rater reliability and incremental validity (Calloway, 2005; Erard, 2005; Medoff, 2003).

Other writers have pointed out that the inter-scorer reliability using the CS has a median slightly above .80 and a range from .20 to 1.0; this suggests that many CS scores fall below the .80 level commonly regarded as acceptable (Hunsley, Lee, & Wood, 2003). Furthermore, Rorschach users have traditionally tended to borrow scores from different scoring systems in a personalized approach to scoring. This practice has not necessarily diminished since the introduction of the CS scoring system, and many graduate courses on the Rorschach continue to include information on multiple scoring systems (Hunsley et al., 2003). The likelihood that

scoring methods continue to vary is also raised by Calloway's encouragement of "routine participation in continuing education programs [that inform evaluators about updates in scoring methods and empirical data and] expose the evaluator to other experts and their methods of scoring and interpretation" (2005, p. 146).

Even if Rorschach *scoring* has been standardized, the *interpretation* of those scores remains variable. Erard points out that it is a common error to assume that there is a "fixed, universal meaning for certain Rorschach determinants and indexes The meaning of Rorschach scores and indexes in a particular case must be determined contextually – both by comparing them to and integrating them with convergent and contrasting data elsewhere in the Structural Summary and by considering their particular meaning in the life history and recent experiences of the test taker" (Erard, 2005, p. 136).

Comparison Groups

Since introducing the CS scoring system, Exner has published numerous norms for different age groups. Unfortunately, there are no separate norms and interpretive guidelines for minority groups (Hunsley et al., 2003) or for custody litigants.

The issue of norms is related to the charge that the Rorschach over-pathologizes respondents. Calloway tries to refute this charge by arguing that when the CS scoring system is used, the Rorschach yields "personality description and not personality diagnosis [using] common sense categories of emotion, thinking, coping styles, interpersonal information, data about self-perception, impulse control, and situational stress" (2005, pp. 153, 154).

Calloway's opinion stands in contrast to that of many other scholars, who maintain that the Rorschach does over-pathologize both children and adults, and that over 80% of the variables do not differentiate between non-patient and patient groups (Hunsley et al., 2003). Others have argued that the Rorschach sometimes over-pathologizes because the original Exner normative sample was too well-adjusted. Erard (2005) suggests that this difficulty will be rectified when Exner publishes the new norms he is in the process of developing (Exner, 2002).

Minimizes Evaluator Bias

Calloway says that although the Rorschach is “often described as a projective test, [it] is better characterized as performance based when contrasted to self-report tests [because] it requires the respondent to complete a task, and the manner in which the subject does so is then scored or coded into quantitative variables, thus reducing examiner subjectivity.”(2005, p. 147; citing Medoff, 2003).

Minimizes Response Bias

Rorschach supporters maintain that it has less face validity than self-report measures (such as interviews and the MMPI-2) and hence is less subject to conscious distortion or manipulation (Calloway, 2005; Erard, 2005; Medoff, 2003).

Accepted in Court

Debate about the Rorschach has raged over the past decade, with numerous articles attacking its use in forensic settings. Consequently, many evaluators are now hesitant to use it for fear that their Rorschach testimony will be ruled inadmissible under the *Daubert* standards. On the other hand, Erard (2005) points out that this concern is not reflected in case law, since the Rorschach’s use has seldom been challenged in either lower or appellate courts.¹⁷

In considering legal challenges to the Rorschach, one should keep in mind that attorneys and judges know little about the test. Ackerman and his colleagues (2004) have found that family law attorneys and judges are not familiar with any tests other than the MMPI-2. Legal professionals are unlikely to be aware of the intense controversy surrounding the Rorschach, and evaluators who use the test are not motivated to present this information in their reports or court testimony. If cross-examined by a well-informed attorney, however, any evaluator who has used the Rorschach must be prepared for searching questions about the psychometric properties of the test, as well as its relevance in the custody proceeding.

Rorschach proponents have suggested the following ways to use the Rorschach in child custody evaluations.

- **Source of hypotheses** – The Rorschach should be used to generate hypotheses that can then be evaluated by looking at other data (Calloway, 2005; Erard, 2005; Medoff, 2003).
- **Detailed descriptions** – The Rorschach “adds richness and nuanced understanding” to descriptions of people and interactions within the family, and also “allows for description of individuals in uniquely personal ways” (Calloway, 2005, p. 151).¹⁸
- **Integrate data** – The Rorschach can be used to integrate the disparate data collected in other parts of the custody evaluation (Calloway, 2005).
- **Test hypotheses** – Calloway maintains that “when used appropriately and sensibly, the Rorschach is an anchor against which to test hypotheses about information gathered from other sources” (2005, pp. 154–155). At the same time, she notes that “Rorschach and MMPI-2 findings... can often be congruent and can just as often be disparate” and argues that this is an example of how “the Rorschach adds incremental value to a battery of tests” (2005, pp. 152, 153).¹⁹ Erard makes a similar point when he says that, “[The Rorschach’s] lack of routine correlation with self-report data is in fact one of its most important virtues in forensic work.... The two tests often complement each other, and the use of both together can provide incremental validity...” (2005, p. 128). Erard attributes the discrepancy between tests to the MMPI-2’s greater susceptibility to impression management.
- **Answer specific questions** – In general, it is best to limit use of the Rorschach to evaluations where questions of mental health have been raised. As Erard points out, “the Rorschach should not be used for fishing expeditions into every conceivable area of psychopathology. Rather... examiners should begin with an understanding of the unresolved issues from the ‘story’ of the case and come to the Rorschach with meaningful questions that it may be well suited to answer” (2005, p. 135).

Thematic Apperception Test (TAT)

The TAT is the 2nd most widely used projective test in custody evaluations (16% of evaluations for adults; not used with children).²⁰ The test involves 31 cards containing black-and-white drawings of people in ambiguous situations. The respondent is instructed to tell a story about what is happening in each drawing, thereby inadvertently revealing the respondent's own predominant emotions, drives, and conflicts (Murray, 1943).²¹

The TAT is a clinically-derived test that has no standard methods of administration and scoring, and is both unreliable and invalid (Hunsley et al., 2003; Medoff, 2003; Shuman, 2002). Therefore it does not meet the professional and scientific standards for use in child custody evaluations.

Drawings

Ten years ago, projective drawings were used in approximately 17% of child custody evaluations (Ackerman and Ackerman, 1997; Hagen and Castagna's, 2001). These measures ask children and sometimes adults to draw pictures of a person, a house, a tree, themselves, or their families. The drawings are then scored according to their size, complexity, inclusion of various features, heaviness of the lines, and relative distance between figures. The underlying assumption is that drawings provide access to unconscious material that the person would be unwilling or unable to communicate directly. The difficulty is that this assumption makes it impossible to validate or "falsify" the measure because there is no other way to assess the unconscious material being measured (Hunsley et al., 2003).

There has been an intense and acrimonious debate about the validity of drawings. Proponents emphasize the rich clinical material that the measures provide and suggest using drawings as a springboard for discussion. Critics note the lack of standardization, norms, reliability, and evidence for the validity of drawings.

Anatomically-Detailed Dolls (ADD)

Critics of ADD assessments have noted that there are no standardized stimuli or procedures, so it has been impossible to

collect normative data (e.g. Hunsley et al., 2003). There are many other difficulties with ADD assessments, which are primarily used to evaluate allegations of sexual abuse. The controversy regarding ADD assessment will be discussed in Chapter 25 on Child Sexual Abuse.

CUSTODY-SPECIFIC ASSESSMENT DEVICES

Most of the tests that have been developed specifically for use in custody evaluations measure various aspects of parenting. Although their intended results are very relevant, their psychometric properties are poor: there is little normative data, so adequate reliability and validity cannot be established. The most prudent decision is not to use any of these measures. If an evaluator does use them, they must be cautious and only use the results to generate hypotheses to be tested by other data collected in the evaluation. No conclusions should be drawn directly from these custody-specific assessment devices until they are properly standardized (Gould, 2005, p. 57).

Bricklin Scales

Bricklin Perceptual Scales (BPS)

This self-report scale is the most commonly used custody-specific assessment device for children (26% of evaluations).²² Children are asked 32 questions related to each parent's competence, supportiveness, follow-up consistency, and possession of admirable traits. Using a card and stylus, the child punctures a line along a continuum from "not so well" to "very well" to indicate how each parent completes a particular behavior or task (e.g. being patient, or helping with homework). The underlying assumption is that non-verbal behavior (puncturing the continuum) will be less distorted than verbal reports. The parent of choice is the one who gets more positive ratings on a greater number of items (Otto et al., 2000, p. 325).

Reviewers have reported many problems with the BPS, including a manual that has confusing instructions for scoring, does not report

rates of inter-rater reliability, and reports a .89 correlation between the BPS and judicial custody decisions. [Shuman \(2002\)](#) notes that if court decisions were a valid norm, expert evaluations and opinions about the best interest of the child would not be needed. There is no normative data and no published studies of reliability and validity ([Otto et al., 2000](#)). Others have reported that boys and girls score differently on the BPS, and the test seems biased towards mothers ([Heinze and Grissd, 1996](#)). Finally, there is some concern that the language is too complicated for children to understand. After reviewing the multiple shortcomings of the BPS, [Otto et al. \(2000\)](#) conclude that “use of the BPS is inappropriate at this time” (p. 327).

Perception of Relationships Test (PORT)

This projective measure is used occasionally in custody evaluations (10% of evaluations for children).²³ Children age 3 and older are asked to make drawings of themselves, their parents, and their families; the drawings are then scored for the child’s psychological closeness to each parent.

[Bricklin \(1989\)](#) has minimized the importance of reliability on the PORT by stating that, “There are no real reasons to expect the measurements reported here to exhibit any particular degree of stability, since they should vary in accordance with changes in the child’s perceptions” (p. 64).

The PORT shares the limitations of the BPL plus others “relating to (a) a poorly articulated theoretical foundation, (b) a non-standardized administration manual, (c) the absence of normative data, (d) subjective scoring procedures, (e) the absence of reliability data, (f) minimal validity data, and (g) failure to assess parents’ functional abilities in the process of making custody determinations and recommendations” ([Otto et al., 2000](#), p. 323).

Parent Awareness Skills Survey (PASS)

This self-report measure is also used occasionally in child custody evaluations (8% of evaluations for adults).²⁴ Eighteen childcare situations are presented to assess a parent’s reaction to typical childrearing dilemmas. After the parent indicates what they would do in each situation, the interviewer asks follow-up questions.

This test has multiple problems that make it inappropriate for forensic settings. (Otto et al., 2000). First, there are no clear scoring guidelines; in fact the manual suggests that the evaluator “can apply his or her own standards in assigning the suggested scores” (Bricklin, 1990b, p. 11). Second, there are no norms and no reports of reliability or validity. Third, (Bricklin (1990b)) suggests that the PASS can be used in a psycho-educational manner by allowing parents to read the manual in order to learn from the sample responses. Although such psycho-education may have some benefit in a therapeutic setting, it cannot yield useful test results in a forensic evaluation.

Parent Perception of Child Profile (PPCP)

The frequency of usage for this self-report measure is unknown.²⁵ The PPCP explores the parent’s understanding of their child’s development in eight areas: daily routine, health, hygiene, school, developmental history, fears, interpersonal relations, and communication style. The PPCP can be used as a self-report questionnaire, or as a structured interview where the evaluator uses follow-up questioning after each response. The rationale is that a well-informed parent will be more effective.

This measure also has “multiple limitations [that] preclude its recommendation for use at present” (Otto et al., 2000, p. 328). There is no basic data about the PPCP’s psychometric properties, the manual encourages examiners to include or omit items on a case-by-case basis, and the measure can be self-administered or evaluator-administered.

Both the PASS and the PPCP appear to be face-valid instruments that could justifiably be used as semi-structured interviews but not as psychological tests.

Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT)

The ASPECT is used in a small proportion (10%) of custody evaluations.²⁶ It is essentially a method for evaluators to quantify the information they have gathered about parenting abilities by assigning ratings to parents based on the results of interviews,

observations of each parent and child, the parents' responses to parenting questionnaires, and various psychological tests including the MMPI/MMPI-2, Rorschach, WAIS-R, (a test of intelligence and academic achievement for children), the draw-a-person test, and the TAT. The evaluator answers 56 yes/no questions about each parent, and the responses are totaled into the following three subscales:

- (1) observational scale – the self-presentation and appearance of each parent
- (2) social scale – each parent's social and familial relationships
- (3) cognitive-emotional scale – psychological health and maturity of each parent.

The scores on the three scales are summed to yield a Parental Custody Index (PCI) which is interpreted as “an indication of overall parenting effectiveness” (Ackerman & Schoendorf, 1992, p. 1). The ASPECT manual instructs the evaluator to use differences in the parents' PCI scores to make a child custody recommendation.²⁷ In fact Ackerman specifies that “The ASPECT is specifically designed to help the psychologist answer the ultimate issue for the court...” (2005a, p. 188).

There are a number of conceptual problems with the ASPECT, including:²⁸

- Some items (such as IQ) have no clear relationship to parenting effectiveness.
- The reduction of complex measures of characteristics and behavior (such as IQ, psychopathology, substance abuse history, and inter-parental conflict) to single yes/no items is simplistic. Equating the sum of these yes/no scores with particular types of parenting is even more problematic.
- There is no provision for weighting the various scores.
- The evaluator must average parental scores across the children in a family.
- Collateral information (such as third party interviews) is omitted.
- There is no recognition of the temporary problems parents may experience due to the stress of the divorce itself.

- There is no way to allow for missing data (such as measurements or interviews that were not conducted).
- Global PCI scores encourage the evaluator to answer the “ultimate question” regarding custody. In fact, this is the purpose of the ASPECT.
- The ASPECT is oriented towards sole physical custody rather than the joint physical custody and shared parenting that is currently favored in courts across the country.
- The ASPECT is focused on issues of parental fitness rather than the best interests of the child.

The last three criticisms are the most devastating. For example, Connell states that the ASPECT’s “winner take all” orientation renders the measure “utterly obsolete” (2005, p. 196). Ackerman (2005b) has responded to these three main criticisms by arguing that

- In the “vast majority of cases” ASPECT scores suggest that joint physical custody is appropriate.²⁹
- 70–75% of attorneys and judges want evaluators to make custody recommendations, so this represents the current standard of practice.

The ASPECT also has poor psychometric properties, there has been no research published in peer-reviewed journals, and Ackerman’s own writings suggest the following problems:³⁰

- **Reliability** – The initial (and only) inter-rater reliability report was based on only two raters.
- **Validity** – several problems are reported, including:
 - The original (and only) normative sample was limited to 200 parents (100 couples) who were 97% white and more educated than the general population.
 - There are no predictive studies other than two reported in the ASPECT manual comparing ASPECT results with the judge’s decision in the same cases.

The extensive limitations in the conceptualization and psychometric properties of the ASPECT suggest that it is not appropriate for use in child custody evaluations.

Parent-Child Relationship Inventory (PCRI)

This 78-item, parental self-report questionnaire was already being used in a small proportion (8%) of child custody evaluations in 1996, two years after its development.³¹ The PCRI assesses seven aspects of parenting: parental support, satisfaction with parenting, involvement, communication, limit setting, autonomy, and role orientation. Two validity scales also measure social desirability and consistency of responses.

Initial reports of the PCRI's psychometric properties are promising.³² The PCRI test-retest reliability has been found to be 0.68 to 0.93 after one week and 0.44 to 0.79 after five months. The normative sample of 1,139 parents was racially and ethnically diverse, but more affluent and educated than the general population. Older, white, and more highly educated parents tend to score higher on the PCRI, but the test requires only a 4th grade reading level. Although PCRI scores are not related to social desirability or ASPECT scores, [Gerard \(1994\)](#) has reported that lower PCRI scores are associated with harsher punishment styles and the perception of children as more difficult.

There has been little peer-reviewed research on the PCRI in the past decade. Without this, the PCRI should only be used in custody evaluations with great caution.

Parenting Stress Index (PSI)

The PSI was developed to screen for people experiencing stress in parenting their children under 12 years old ([Abidin, 1990](#)). This parental self-report test is used in approximately 4% of child custody evaluations.³³

The PSI is written at a 5th grade reading level and contains 101 questions, most of which were written in response to specific research findings. The underlying assumption of the PSI is that stress develops in a variety of contexts in a cumulative manner. The PSI measures stress in three domains:

- **Child Domain** – child characteristics that influence the difficulty of parenting a particular child, including child adaptability, acceptability, demandingness, mood, hyperactivity/distractibility, and reinforces parent.

- **Parent Domain** – depression, attachment, restriction of role, sense of competence, social isolation, relationship with spouse, and parental health.
- **Life Stress Domain (optional)** – the number of major life events in the past year.

There is also a Defensive Responding Scale to identify parents who are trying to present themselves in an unrealistically positive light.

Over 200 studies have been published using the PSI or some of its subscales. There is good internal consistency of the subscales (0.75 to 0.95) and test-retest reliability ranges from 0.55 to 0.96 over three weeks to one year. The normative sample of 2,633 white, married parents had children under 5 years of age, some of whom suffered from behavioral or physical health problems.

After reviewing this data, Heinze and Grisso conclude that, “Numerous studies attest to the concurrent, predictive, and discriminant validity of this measure . . . [so that] elevations on the PSI can be interpreted to suggest increased stress in parent-child interactions and increased likelihood of the child displaying or developing behavior problems in this parent’s care” (1996, p. 309). On the other hand, low scores on the PSI do not necessarily indicate the absence of problems because parents may be engaging in impression-management. For this reason, the PSI is best used as an initial screening tool, with clinical interviews to explore the potential areas of parent-child conflict.

Child Abuse Potential Inventory (CAP)

The CAP was developed to assist child protective workers in investigating cases of child physical abuse, and has been used in about 3% of child custody evaluations.³⁴ This 160-item, self-report questionnaire uses an agree/disagree, forced-choice format and requires a third grade reading level (Milner, 1986, 1994). The CAP assesses a variety of characteristics that a parent may share with parents who physically abuse their children. Thus the CAP is not a measure of actual physical child abuse, but rather a measure of abuse potential or risk.

The current version of the CAP (Form VI) contains a 77-item physical abuse scale comprised of six factor scales: stress, rigidity, unhappiness, problems with child and self, problems with family, and problems from others. There are also three validity scales: a lie scale, a random response scale, and an inconsistency scale. Two special scales have also been developed: an ego-strength scale, and a loneliness scale (Milner, 1994).

The CAP has strong psychometric properties. Over 100 studies have shown good reliability and validity, although elevated CAP scores are associated not only with risk of physically abusing children, but also with having a child who is physically ill, handicapped, or learning disabled. Those with elevated scores also share a number of personal characteristics with both child abusers and with adults who are emotionally distressed or mentally ill. For this reason, the risk assessment must include other data such as interviews and observations.

The CAP may be useful for evaluations in which child abuse is suspected or already documented, but it is not appropriate for child custody evaluations in which child abuse is not an issue.

Custody Quotient (CQ)

The CQ was developed to provide a single score for parenting skills, but it is rarely used in child custody evaluations (2% of adults).³⁵ The evaluator rates the parent on 12 dimensions: emotional needs, physical needs, no dangers, good parenting, parental assistance, planning, home stability, prior caretaking, specific acts and omissions, values, joint custody, and frankness. Each dimension is rated from 0 to 2, and the scores are then summed across the 12 areas.

Otto et al. (2000) point out that the psychometric properties of the CQ have never been established. There is no reliability information, the normative sample was too narrow, and there is no information on predictive validity. These authors also report that the CQ is no longer commercially available.

The CQ also shares the following conceptual problems with the ASPECT, namely that:

- It is simplistic to reduce complex measures of characteristics and behavior to a 3-point scale.

- There is no system for weighting the various dimensions.
- The single CQ score encourages the evaluator to answer the “ultimate question” regarding custody.
- The CQ is focused on parental fitness rather than on the best interests of the child.

Given the CQ’s problems with conceptualization, psychometric properties, and lack of commercial availability, it should not be used in child custody evaluations.

Parenting Scale

The Parenting Scale is a 30-item parental self-report scale designed to assess dysfunctional parental discipline. There is no available information on the scale’s rate of use.³⁶ In a pilot study with 168 mothers, the authors (Arnold et al., 1993) report acceptable levels of internal consistency and test-retest reliability and moderate correlations with three other tests of parenting.

Until the Parenting Scale is subjected to peer review and adequate psychometric properties are established, it should not be used in child custody evaluations.

Parental Authority Questionnaire – Revised (PAQ-R)

This 30-item, parental self-report questionnaire is designed to assess the authoritarian, authoritative, and permissive parenting styles defined by Baumrind (1971).³⁷ In an initial study of 87 private-school, 102 public-school, and 171 Head Start parents, modest correlations were found between subscales of the PAQ-R and relevant subscales of the PCRI and PS. Reliability of the PAG-R varied significantly across the three samples, however (Reitman, Rhode, Hupp, & Altobello, 2002).

Further research is needed before the PAQ-R should be used in child custody evaluations.

GUIDELINES FOR USING PSYCHOLOGICAL TESTS IN CUSTODY EVALUATIONS

It is important to consider the need for psychological testing in each child custody evaluation, on a case-by-case basis. Standard

psychological tests should be used only when there is a question of parental fitness. That is, these psychological tests should be used only when one or both parents exhibit behavior or characteristics that would be harmful to the child and/or interfere with adequate parenting. Some of these parental characteristics include the ability to be consistent and reliable, to modulate emotions, to be emotionally sensitive and available to the child, and to provide the child with appropriate levels of cognitive stimulation, advocacy, and care and protection (Medoff, 2003)

For reasons of actual and perceived fairness, both parents should usually be administered the same test battery, even if only one parent is problematic. The results of the psychological tests can then be used to help account for the parents' difficulties in relating to each other and the children.

Psychological tests should never be used alone in a child custody evaluation.³⁸ The results must always be combined with other sources of information such as interviews, observations, parental self-report, DSS reports, police reports, CORIs, and information from professionals familiar with the family.

If an evaluator decides that there are parental fitness issues that could be addressed by standard psychological tests, they should refer the parents to a psychologist who is experienced in using these tests for *forensic* purposes. This professional will be familiar with whatever adaptations are required for using the tests in a child custody context. They will also be able to answer technical questions about the tests' psychometric properties, should these questions be raised by the attorneys or the judge. The testing specialist should not rely heavily on computerized reports, however, as these can be challenged in court.

Also be sure that evaluations do not rely on the TAT, Drawings, and Anatomically-Detailed Dolls, none of which meet the *Daubert* standards for admissibility of evidence. Given the criticisms of the psychometric properties of the Rorschach, evaluators should also use extreme caution in requesting and using the results of this test.³⁹ The psychometric properties and extensive research about the MMPI-2, the MCMI-III, and the WAIS III make these tests most admissible in court.

At the present time, the custody-specific testing devices provide little added value to a child custody evaluation. The Child Abuse Potential Inventory (CAP) is well-conceived and validated, but it is only relevant to cases involving potential or documented child abuse. The Parenting Stress Index (PSI) can be a useful screening tool, and the Parent Perception of Child Profile (PPCP) and Parent Awareness Skills Survey (PASS) can both be used as the basis for semi-structured interviews. There are other, less cumbersome formats for interviews, however, as we will see in Chapter 13.

PRESENTING TEST RESULTS TO THE COURT

Every child custody report must explain the methodology used in the evaluation. First, there should be a general explanation of reliability and validity that will apply to all aspects of the evaluation. Simple rather than technical language is needed here; although the readers are undoubtedly intelligent, they are trained in another discipline and are probably not familiar with technical psychology terms. A sample explanation is included in Box 38.⁴⁰

Next, the report should explain the evaluator's reasons for deciding to include or omit psychological testing in the evaluation. If the evaluator *did* use psychological testing, the following issues must be discussed in the body of the report:⁴¹

How the Tests are Related to the Psycho-legal Questions Asked by the Court

Psychological tests should not be used to address legal or "ultimate issue" questions. They are appropriate for providing indirect information relevant to those issues. Box 39 shows a sample explanation of test relevance as applied to the MMPI-2.

The Psychometric Properties of Each Test

The evaluator must summarize the research regarding the reliability and validity of the tests they have used. If the report includes an

Box 38. *Explanation of Methodology – Reliability and Validity*

It is essential that the assessment devices used in child custody evaluations are both reliable and valid. *Reliability* is the degree to which results are consistent when a test or other assessment procedure is repeated. *Validity* is a test or assessment procedure's ability to predict behavior in real-life situations.

In child-custody evaluations, *convergent validity* is also provided by using multiple independent sources of information (e.g. interviews, observations, home visits, record review, and test data) about the same variables. The greater number of information sources that lead to (or converge on) the same conclusion, the more powerful the conclusion, i.e. the more confidence one can have that the conclusion is within a reasonable degree of psychological certainty. Some data are also given more weight than others, depending on the neutrality of the source and the extent to which the information does not involve a subjective judgment on the part of the informant.

explanation of these technical terms (as in Box 38), the terms do not need to be redefined here. A short statement such as that in Box 40 should suffice.

The Impact of Each Person's Response Style

The report should also include a description of how the evaluator arrived at their interpretation of the individual's response style. Make sure there is a clear statement that results based on defensive, malingering, or non-engaged responses need to be

Box 39. *Sample Explanation of Test Relevance – MMPI-2*

In the present custody evaluation, the mother maintained that the father is impulsive and emotionally explosive. She feels that these characteristics interfere with his ability to parent the couple's two children, and also cause the father to interact with the mother in a hostile, verbally abusive manner. In response to these allegations, this evaluator requested that both parents participate in a psychological evaluation conducted by Ruth Craig, Ph.D. The purpose of the psychological evaluation was to assess these and other personality traits that enhance or interfere with the stability, firm limit-setting, and emotional sensitivity required for effective parenting.

Dr. Craig's psychological evaluation included the the MMPI-2, a 567-item parental self-report questionnaire with a true/false format. Although the MMPI was developed to screen for severe psychopathology such as depression, paranoia, and schizophrenia, the scores can also be used to assess the following parenting-relevant variables: capacity for emotional attachment, potential for antisocial behavior, anger management problems, tendency to alienate the child from the other parent's affection, and long-term disposition towards substance abuse.

discounted. Finally, there should be an explanation of how the parents' strong motivation to present themselves in a positive way during custody evaluations makes it especially important to compare the testing results with information obtained from other sources.

Box 40. *Sample Explanation of Psychometric Properties of Test –MMPI-2*

There have been over 10,000 published studies about the MMPI, and its reliability and validity are well-established.

In order to interpret the results of the MMPI-2, scores are compared with a normative sample of custody litigants. The present evaluator used the litigant's MMPI-2 results to develop hypotheses about how the litigant's psychological functioning affected their parenting. These hypotheses were then compared with information obtained from the independent sources mentioned above.

How the Test Results are Related to the Rest of the Evaluation

Every evaluator must identify the hypotheses they drew from the test results, and describe how these were corroborated from other data sources such as interviews and observations of family members, medical records, verbal and written reports from professionals involved with the family, incident reports from local police departments, and investigations by the Department of Social Services.

If an evaluator chooses *not* to use psychological tests, they need to explain why. Given that about three-quarters of attorneys and judges expect custody evaluators to use psychological testing (Ackerman et al., 2004), it is important to help them understand why not using psychological tests reflects current best practice guidelines. The discussion should refer to the research related to child custody evaluations, and explain why the methods chosen are more reliable and valid than the available psychological tests. A sample explanation is contained in Box 41.⁴²

Box 41. *Sample Explanation for Not Using Psychological Tests*

Psychological tests were not used in the present evaluation because the methods employed here (interviews, observations, home visits, record review, and information from collateral sources) are more reliable and valid for child custody evaluations than are the tests currently available.*

* Insert a footnote giving a more detailed explanation, such as the following:

Some standard psychological tests (e.g. MMPI-2, MCMI-III, and WAIS) have been the subject of extensive research and have well-established reliability and validity. Reliability is the degree to which results are consistent when a test is repeated. Validity is a test's ability to predict behavior in real-life situations. These tests are appropriate when there are parental fitness issues such as an inability to be consistent and reliable, to modulate emotions, to be emotionally sensitive and available to the child, and to provide the child with appropriate levels of cognitive stimulation, advocacy, and care and protection. These parental fitness issues were not present in the current case.

Most of the tests that have been developed specifically for use in custody evaluations measure various aspects of parenting (e.g. ASPECT, Bricklin Scales, Parent-Child Relationship Inventory, Custody Quotient, Parenting Scale). Although their intended results are very relevant, their psychometric properties are poor: because there is little normative data, adequate reliability and validity cannot be established. The Child Abuse Potential Inventory (CAP) is well-conceived and validated, but it is only relevant to cases involving child abuse; Child abuse is not an issue in the present case.

For the reasons outlined above, neither the standard psychological tests nor the custody-specific tests would have been appropriate or useful in the present case.

Notes

1. Brodzinsky's main complaint was that "psychologists routinely overstep the boundaries of their professional role by offering opinions about custody and visitation matters based to a great extent, and sometimes exclusively, on the results of psychological testing" (1993, p. 214).
2. Hagen and Castagna's (2001) re-analyzed the data collected for Ackerman and Ackerman's (1997) replication of Keilin and Bloom's (1986) study. Ackerman's (1997) nationwide survey included 201 doctoral-level psychologists with mean characteristics of: 49 years of age, 19 years in practice, and 215 completed custody evaluations. Ackerman and Ackerman are often cited as having found that "more than 90 percent of custody evaluators use some standardized tests" (e.g. Gould and Bell, 2000, p. 25), leaving the impression that using standardized tests is the usual practice. Ackerman and Ackerman actually asked their respondents "to list all of the tests that they had ever used in custody evaluations for children and adults and the percentage of time that each of these tests had been used" (Ackerman and Ackerman, 1997, p. 138); they did not ask the respondents "to calculate or estimate the actual percentage of custody evaluations in which they had used a particular test with an adult or a child" (Hagen and Castagna's, 2001, p. 270). When Hagen and Castagna used the data presented by Ackerman and Ackerman to estimate these percentages of use in all custody evaluations, they found that only the MMPI was used frequently (in 84% of evaluations); no other test was used in more than one quarter of evaluations.
3. Bow and Quinnell (2002) found that 87.8% of evaluators used "objective personality tests" with adults, a figure similar to Ackerman and Ackerman's (1997) finding that 92% used the MMPI at least some of the time. These findings are also consistent with those of LaFortune and Carpenter (1993), who surveyed 165 experienced custody evaluators in five states and found that they almost always used the MMPI (Average rating of 4.19 on a 5-point scale from 1= never to 5=always; p. 217).
4. These advantages of using psychological testing in child custody evaluations have been advanced by a number of writers, including Ackerman, 2001, 2006; Ackerman and Ackerman, 1997; Bow and Quinnell, 2001; Gould, 2005; Gould and Bell, 2000; Quinnell and Bow, 2001.
5. The definitions and types of reliability and validity are outlined in the glossary, and should become clearer as you read the descriptions of each of the tests.
6. These terms are defined in the Glossary. General discussions of these dimensions of tests, and of the need for a rigorous approach to using psychological testing in custody evaluations, are contained in Flens, 2005; Gould, 2005; Heilbrun, 1992; Hunsley et al., 2003; Medoff, 2003; Otto et al., 2000; and Shuman, 2002.
7. Ackerman and his colleagues (2004) combined the data from earlier studies (Ackerman & Ackerman, 1997; Ackerman & Kelley-Poulos, 2001; Ackerman & Steffen, 2001) to examine how the expectations of attorneys and judges compare with the practices of custody evaluators. They reported that 79.8% of attorneys and 76.9% of judges expect custody evaluators to do psychological testing on adults, while 85.5% of attorneys and 73.9% of judges expect custody evaluators to do psychological testing on children.
8. Box 37 elaborates on a consistent set of recommendations made by Flens, 2005; Gould, 2005; Heilbrun, 1992, 2001; Hunsley et al., 2003; McCann, Shindler, and

Hammond, 2003; and Otto et al., 2000. I have added the caveat regarding sexual orientation because many psychological tests assume that heterosexuality is the norm for healthy development, contrary to the current position of the American Psychological Association and the DSM-IV; this aspect of the tests makes them inappropriate for lesbians and gay men.

9. This estimate of frequency of usage for the MMPI is taken from Hagen and Castagna's (2001) re-analysis of the Ackerman and Ackerman (1997) data. Quinell and Bow (2001) got comparable results in their 2001 study.
10. The general information about the MMPI-2 in this section is taken from Ackerman and Ackerman, 1997; Bow et al., 2005; Hagen and Castagna's, 2001; LaFortune and Carpenter, 1998; and Shuman, 2002.
11. Caldwell's (2005) reference list indicates that Greene's sample constitutes "unpublished raw data" (p. 115). Interested readers may be able to contact Dr. Greene (2000) through his publisher, Allyn & Bacon.
12. This estimate of frequency of usage for the MCMI-II/III is taken from Hagen and Castagna's (2001) re-analysis of the Ackerman and Ackerman (1997) data. Quinell and Bow (2001) got comparable results in their 2001 study.

The general information about the MCMI-III in this section is taken from Ackerman and Ackerman, 1997; Bow et al., 2005; Hagen and Castagna's, 2001; LaFortune and Carpenter, 1998; and Shuman, 2002.

13. These difficulties with using computer-generated reports for the MCMI-III also apply to using computer-generated reports for other tests, such as the MMPI-2 and the Rorschach.
14. This estimate of frequency of usage for the WAIS is taken from Hagen and Castagna's (2001) re-analysis of the Ackerman and Ackerman (1997) data. Quinell and Bow (2001) got similar results in their 2001 study.
15. The general information about the WAIS in this section is taken from Ackerman and Ackerman, 1997; Hagen and Castagna's, 2001; and Medoff, 2003.
16. This estimate of frequency of usage for the Rorschach is taken from Hagen and Castagna's (2001) re-analysis of the Ackerman and Ackerman (1997) data. Quinell and Bow (2001) got similar results in their 2001 study.

The general information about the Rorschach in this section is taken from Ackerman and Ackerman, 1997; Hagen and Castagna, 2001; Hunsley et al., 2003; Medoff, 2003; and Shuman, 2002;

17. The Board of Trustees of The Society for Personality Assessment has responded to the controversy about the Rorschach by publishing a summary of the evidence in which they conclude that, "Overall, meta-analytic reviews and individual studies show the Rorschach possesses adequate psychometric properties [and that] the Rorschach meets the variety of legal tests for admissibility, including validity, publication in peer reviewed journals, and acceptance within the relevant professional community" (Society for Personality Assessment, 2005, pp. 220–221).
18. Johnston, Walters, & Olesen (2005a) also suggest that the Rorschach can be used to assess parenting capacity. In a study of 98 parents from 49 families, they found correlations between (a) clinical judgments of deficiencies in parental warmth and substantiated child abuse and (b) Rorschach scores indicating parental depression, anxiety, difficulty modulating emotions, excessive use of intellectualizing defenses, and a rigid authoritarian coping style.
19. The uses of the Rorschach proposed by Calloway (2005) appear to be contradictory, in that she discusses generating hypotheses, testing hypotheses,

- integrating the data in the CCE, and how “data obtained from Rorschach administration leads directly to sensible, thoughtful recommendations that address the ‘best interests’ of children” (Calloway, 2005, p. 155).
20. This estimate of frequency of usage for the TAT is taken from Hagen and Castagna’s (2001) re-analysis of the Ackerman and Ackerman (1997) data. Quinnell and Bow (2001) got similar results in their 2001 study.
 21. The general information about the TAT in this section is taken from Ackerman and Ackerman, 1997; Hagen and Castagna’s, 2001; Hunsley et al., 2003; Medoff, 2003; and Shuman, 2002.
 22. The BPS was first published by Bricklin in 1984 (see Bricklin, 1990a). The frequency of use for the BPS has been examined by Ackerman and Ackerman, 1997; Hagen and Castagna, 2001; LaFortune and Carpenter, 1998; and Quinnell and Bow, 2001.
 23. The PORT was first published by Bricklin in 1989. The frequency of use for the PORT has been examined by Ackerman and Ackerman, 1997; Hagen and Castagna’s, 2001; and Quinnell and Bow, 2001.
 24. The PASS was developed by Bricklin (1990b). The frequency of use for PASS has been examined by Ackerman and Ackerman, 1997; Hagen and Castagna’s, 2001; and Quinnell and Bow, 2001.
 25. The PCP was developed by Bricklin and Elliot (1997). Its frequency of use is not recorded by Ackerman and Ackerman, 1997; Hagen and Castagna’s, 2001; or Quinnell and Bow, 2001.
 26. LaFortune and Carpenter report that the ASPECT is “commonly, but not routinely, used (1998, p. 217), while Hagen and Castagna’s (2001) re-analysis of the Ackerman and Ackerman (1997) data indicate that in 1996 it was used in 10% of custody evaluations. Quinnell and Bow found that in 2001 it was used slightly more often.
 27. The ASPECT raw scores are converted to T scores (usually by a computerized scoring service), and “Any T-score difference of 10 points or more is interpretable” (Ackerman & Schoendorf, 1992, p. 31), meaning that the evaluator should recommend that sole physical custody be awarded to the parent with the higher PCI score. The manual recommends that joint custody be considered only when both parents have high PCI scores (above 60).
 28. The ASPECT’s conceptual problems have been discussed by a number of writers, including Connell, 2005; Heinze and Grissod, 1996; Maccoby and Mnookin, 1992; Melton et al., 1997; Otto et al., 2000; and Shuman, 2002.
 29. In his later writing, Ackerman states that, “The vast majority of individuals have ASPECT scores within 10 points of one another. These results, then, would support placement schedules that would allow for substantially equal periods of placement for each of the parents.” Ackerman goes on to say that, “Individuals with scores that are 20 or more points apart tend to be those who are active substance abusers, those who engage in maltreatment, and those who have significant mental health issues (Ackerman, 2005b, p. 211).” It is not clear how Ackerman would treat cases where both parents have some of these parental fitness issues, resulting in *similar but low* PCI scores.
 30. The ASPECT’s lack of adequate psychometric properties has been pointed out by many writers, including those who have discussed the ASPECT’s conceptual shortcomings (see note 29 above). Ackerman (2001, p. 161; 2006, p. 161) has responded by arguing that the ASPECT has content and face validity because the items were derived from the literature on custody

- issues. [Ackerman \(2005a\)](#) also reports on the following three unpublished doctoral dissertations: [Hubbard \(1996\)](#) studied 60 parents and found that PCI scores on the ASPECT had a correlation of 0 with scores on the Parent-Child Relationship Inventory (PCRI). [Beyer \(1996\)](#) found that three years after divorce, the parental preferences of 67–73% of a sample of 22 children were for the parent who had higher PCI scores at the time of the divorce. [Schoendorf \(2001\)](#) found a significant, inverse relationship between PCI scores and certain subscales of the MMPI-2 in 100 pairs of divorced parents.
31. Since the PCRI was developed recently ([Gerard, 1994](#)), its use may have increased since the Ackermans collected their frequency of use data in 1996 ([Ackerman & Ackerman, 1997](#); [Hagen & Castagna, 2001](#)). Whereas 11% of evaluators reported using the PCRI in 1996, 44% reported using it in 2001 ([Quinnell & Bow, 2001](#)).
 32. The evaluation of the PCRI in this section is based on [Heinze and Grisso, 1996](#).
 33. The usage rate for the PSI was assessed by [Ackerman and Ackerman, 1997](#); [Hagen and Castagna's, 2001](#). The present description and critique of the PSI is primarily based on [Heinze and Grisso, 1996](#).
 34. The CAP was developed by [Milner \(1986\)](#) and its use in child custody evaluations was assessed in 1996 ([Ackerman & Ackerman, 1997](#); [Hagen & Castagna, 2001](#)) and 2001 ([Quinnell & Bow, 2001](#)). Both [Heinze and Grisso \(1996\)](#) and [Milner \(1994\)](#) offer detailed summaries of the research pertaining to the CAP; the present discussion is primarily based on these two sources.
 35. The CQ was developed by [Gordon and Peek \(1989\)](#) and its use in custody evaluations was assessed in 1996 ([Ackerman & Ackerman, 1997](#); [Hagen & Castagna, 2001](#)). [Quinnell & Bow \(2001\)](#) found even lower rates of use in 2001. The information about the CQ in this section is based on [Otto et al 2000](#).
 36. The only information this author could find on the Parenting Scale is the original publication by the authors ([Arnold, O'Leary, Wolff, & Ackel, 1993](#)).
 37. The parenting styles that [Hetherington & Kelly \(2002\)](#) found in their nationwide study of divorced families are similar to the parenting styles described by Baumrind (1971), with the addition of Hetherington and Kelly's description of the "disengaged/neglecting" parent. See Chapter 8 for a discussion of these parenting styles.
 38. [Medoff \(2003\)](#) points out that although psychological tests should never be used in isolation when evaluating custody-related issues (e.g. legal or physical custody, parental contact, visitation, type of adoption, presence of child abuse, or removal from one jurisdiction to another), they can be used alone for consultations regarding psychiatric treatment and educational/career interventions.
 39. For a discussion of these tests, see the section above on "Standard Psychological Tests".
 40. Parts of the explanation of convergent validity in Box 38 are adapted from [Gould 2004](#), p. 95.
 41. These guidelines for presenting test results to the court are derived from the consistent group of suggestions made by [Flens, 2005](#); [Gould, 2004](#),

2005; Gould and Bell, 2000; Gould & Lehrmann, 2002; Gould et al., 2004; Heilbrun, 1992; and Heinze and Grisso, 1996.

42. When using the explanation in Box 41, it is helpful to reference the general discussion in the present volume along with the more specific information contained in Bow et al., 2005 and Medoff, 2003. Paragraph 1 should go in the body of the report, while paragraphs 2 through 4 can be included in a footnote. Gould and Bell (2000) suggest the use of such a disclaimer regarding not using psychological tests in a child custody evaluation.

12

STARTING THE EVALUATION

SCREENING REFERRALS

For evaluators, the first contact with most cases is a phone call from the court or the attorneys. This is an opportunity to find out the basics about the case: who is involved, what the central issues are, what the source of payment is, and the time frame. In talking with the referral source, the evaluator should cover the issues in Box 42 on *Screening Referrals*.¹ The material discussed in Chapter 5 is essential here, especially conflict of interest (Box 15), how to relate to the legal system, payment for services, and problems presented by *pro se* litigants.

As Chapter 5 indicates, it is a good idea to ask each attorney to prepare a *short* summary of the case (with a copy to opposing counsel). This information can be very useful in planning the evaluation.

In order to ensure impartiality, most evaluators prefer to be appointed by the court or hired by *both* parties through a stipulation filed in court.² It is essential to avoid being hired by one litigant, because the evaluator's impartiality is automatically compromised in that situation.

Occasionally, a mental health or legal professional may be asked to do an evaluation in a situation where it would not be helpful or even feasible. Sometimes it is premature: The couple

Box 42. *Screening Referrals*

◆ ***Referral source***

- Conflict of interest?
- Court appointment or stipulation of both parties
- Litigants – pro se?
- Attorneys – character, competence, professional style
- Judge – attitude towards custody evaluations

◆ ***Professional expertise required***

- Special issues – sexual abuse, domestic violence, substance abuse, removal, abduction, etc.
- Courtroom testimony and depositions

◆ ***Schedule***

- Date report due –enough time for completion?
- Date trial scheduled –available for depositions and testimony?

◆ ***Financial arrangements***

- Private case – ability to pay? Need for adjusted rate?
- State-pay case – sufficient hours pre-approved?
Ability to motion for more hours if needed?

◆ ***Location***

- Travel required – to homes of parties, offices of attorneys, court?³
- Within jurisdiction of evaluator's licensing?

is ambivalent about the relationship and has not yet attempted couples counseling; or they know they want to separate or divorce but have not tried to reach an agreement through mediation. Perhaps the professional has had prior contact with the family in another capacity. One of the parents may refuse to participate in the evaluation.⁴ Or one of the parents lives in another state and refuses to come to the professional's location to be evaluated.⁵ All

of these dilemmas can be avoided by doing evaluations only by court order or stipulation.

There are also situations where an evaluation is too risky for an evaluator in private practice. If one of the parents has a history of violence and explosive outbursts directed at law enforcement officials and other professionals, the family should be evaluated in a more protected setting. Possibilities include the Family Service department of the court, a court clinic, a hospital, or another facility that has security officers that can provide a modicum of physical protection during the evaluation. These more institutional settings also lead the parties to perceive the evaluation as coming from a group, which may decrease the likelihood that a disgruntled, violence-prone parent will seek physical retaliation against the evaluator and his/her family after the evaluation is complete.

PURPOSE OF THE EVALUATION

Clarifying the Court's Request

The court appointment specifies what areas the evaluation should cover. Many courts use an appointment form that lists possible issues, so that the judge simply checks off the appropriate boxes, which may include:

- issues of legal and physical custody
- issues of visitation/parenting plan/ access to child(ren)
- need for supervised visitation
- removal of the child(ren) from the state
- relationship between the child(ren) and the custodial parent and/or non-custodial parent
- sexual abuse of child
- domestic violence
- substance abuse
- allegations of _____
- other _____

Sample appointment forms for custody evaluators are included in Section I of the CD accompanying this volume.

If the court order is unclear, the evaluator needs to send the court a *Motion for Additional Instructions* or *Motion for Clarification*. These motions are discussed in Chapter 6, and samples are included in Section XI of the CD.

Translating the Court Order into Behavioral Variables

After examining the court order, the evaluator needs to translate it into a series of psycho-legal questions that the court wants answered. These questions can be developed by combining the instructions in the court order with the areas of assessment required for child custody evaluations (Box 7, Chapter 3) and the best interests criteria for custody standards (Box 14, Chapter 4). For example, if the court simply instructs the evaluator to assess and report on “issues of legal and physical custody,” the evaluation will need to address the psycho-legal questions in Box 43 on *Translating the Court Order into Behavioral Variables*. In order to answer these psycho-legal questions, the evaluation should address the specific behavioral variables that are also indicated in Box 43.⁶

CONTENTS OF EVALUATION

Chapter 3 discusses the broad areas of assessment required in a comprehensive child custody evaluation. (See the summary in Box 7 on *Areas of Assessment*.) In order to cover these areas, each evaluation must assess the behavioral variables listed in Box 43 on *Translating the Court Order into Behavioral Variables*.

The types of information required to assess the behavioral variables are listed in Box 44, along with (a) percentages of previous evaluations that have been found to contain each type of information and (b) the importance that the legal profession accords to each type of information. As you can see, attorneys and judges view the most valuable aspects of custody evaluations as the following:

- **Areas of assessment** –
 - Parents’ strengths and weaknesses,
 - Parents’ psychological functioning

Box 43. *Translating the Court Order into Behavioral Variables*

COURT ORDER

Guardian ad litem/evaluator to evaluate and report on issues of legal and physical custody

PSYCHO-LEGAL QUESTIONS

- ◆ **What is the ability of each parent to parent the child(ren) effectively?**
- ◆ **What parenting tasks has each parent carried out in the past?**
- ◆ **What kind of relationship does each parent have with the child(ren)?**
- ◆ **How effectively can the parents cooperate with each other?**
- ◆ **Does either parent have physical or mental health problems that interfere with their parenting abilities?**
- ◆ **What is each child's adjustment and personality style?**
- ◆ **Are there any patterns of domestic violence or child abuse in the family?**
- ◆ **What are the custody wishes of each parent and each child?**

BEHAVIORAL VARIABLES◆ **Living situation**

- Is the home clean and safe, with adequate provisions for nutrition, supervision, and age-appropriate privacy and entertainments?
- Is the home located near the other parent's residence and close to extended family, friends, school, sports, and other child activities?

◆ **Parenting tasks and abilities of each parent**

- What caretaking tasks has each parent performed, both now and in the past?
- How does each parent handle child discipline?
- What are each parent's strengths and weaknesses as a parent?
- Is there any risk that either parent would abuse the child(ren)?

◆ **Parent/child and sibling relationships**

- What kind of relationship does each child have with each parent?
How does each child describe the parent?
Do they confide in the parent?
What kind of activities do they enjoy doing with each parent?
Are they afraid of the parent?

Box 43***BEHAVIORAL VARIABLES, continued***◆ **Parent/child and sibling relationships, continued**

- How well does each parent understand and empathize with each child?
How does each parent describe each child?
How much understanding and information does each parent have about each child's feelings, thoughts, and activities?
- What kind of relationship do the children have with each other?
How do the children describe each other?
What kinds of activities do they enjoy doing together?

◆ **Parent/parent relationship**

- How do the parents perceive each other?
How do they describe each other, especially as parents?
How does each parent describe their relationship/marriage?
- How well can the parents cooperate with each other?
Can the parents make major decisions together?
Does each parent support the parental role and involvement of the other parent?
- Are there any patterns of common couple aggression or domestic violence in the parental relationship?

BEHAVIORAL VARIABLES, continued**◆ Mental and physical health**

- Does either parent have physical, mental health, or substance abuse problems that interfere with their parenting abilities?

Has either parent been in psychotherapy? How does the psychotherapist describe that parent's personality and parenting abilities?

Has either parent been hospitalized for either mental or physical illness?

- Do the child(ren) have physical or mental health problems that present a particular parenting challenge?

What is each parent's ability to meet this challenge?

◆ Child(ren)'s adjustment in home, school, and community

- How does each child do in school or daycare?

What are their grade reports like?

How do their teachers describe them?

- How is each child adjusted in the community?

What activities (sports, church, scouts, etc.) does each child do?

Who are each child's friends? How does the child describe them?

Is each child close to an adult in the community (e.g. teacher, minister/rabbi/priest, neighbor, family friend, scout leader, coach)?

Box 43***BEHAVIORAL VARIABLES, continued***

◆ **Child(ren)'s adjustment in home, school, and community, continued**

- Who is each child close to in the immediate and extended families?
How do the various family members perceive the child?
What is the child's role in the family?

◆ **Family dynamics**

- Are there any patterns of child abuse, substance abuse, or domestic violence in the immediate or extended families?
Has the family had any contact with the Department of Social Services?
Has the family had any contact with local police departments?

◆ **Custody wishes**

- What are the custody wishes of each parent?
- What are the custody wishes of each child?

- Children's history and psychological functioning
- Parent/child relationships
- Comparison of parents on legal criteria
- **Recommendations** –
 - Custody
 - Visitation/Parenting time

The methods for collecting these types of information are described in Chapter 13.

Box 44. Components of Child Custody Evaluations

	Per cent Usage by CCEs*	Importance to Attorneys and Judges**
◆ Background to evaluation & general coverage		
● Clearly stated reason for referral.....		3.83
● Describe procedures used in evaluation.....		3.90
● List of documents reviewed.....		3.69
◆ Family History and Dynamics.....		3.68
● Interview couples therapist		
◆ Parents – strengths and weaknesses.....		4.31
● Parent history		
– personal.....	69	3.96
● Parent history – legal.....	26	
● Parent history – substance abuse, emotional problems	43	
● Parent interview.....	91	
● Interview parent’s therapist.....	30 [†]	
● Review parent’s medical records.....	13	
● Psychological testing of parent.....	19	4.00
● Assess parenting skills.....	87	3.96

Box 44

	Per cent Usage by CCEs*	Importance to Attorneys and Judges**
• Assess stability of current living situation.....	84	
• Home visit.....	32	
• Interview parent's new partner..... (when applicable)	92	
• Interview other relatives.....	44	
◆ Parent/child relationships		
• Parent/child observation.....	62	4.01
◆ Children		
• Child history.....		4.23
• Child interview	70	4.23
• Interview teachers.....	25	
• Interview daycare providers.....	10	
• Interview child's therapist.....	30†	
• Psychological testing of child.....	12	3.80
• Interview medical providers.....	9	
• Ask child about custody preferences.....	44	

		<u>Box 44</u>
		Per cent Usage by CCEs*
		Importance to Attorneys and Judges**
◆ Recommendations		
● Compare parents on legal criteria.....		4.13
● Recommendation for custody.....		4.23
● Recommendation for visitation.....		4.18
● Recommendations – other services.....		3.88
* Percentage of evaluations using each procedure in a given jurisdiction over a 2-year period (Horvath et al., 2002).		
** Ratings of value: 5-point scale from 1 = unimportant to 5 = very important. Ratings are from Bow & Quinnell, 2004, p. 120.		
† Horvath et al. (2002) describe this procedure as “Interviewed counselors”; it is unclear whether these were couples counselors, individual adult therapists, or individual child therapists		

TIME NEEDED FOR EVALUATION

Once the court’s request is clear, the evaluator needs to estimate how much time the evaluation will take. Child custody evaluations have become more time-consuming over the past two decades, due to the requirements for scientifically-based information (as discussed in Chapters 3 & 4). A decade ago, the average child custody evaluation took 26.4 hours including report-writing (Ackerman & Ackerman, 1997).⁷ More recent studies have found a range of 2–88 hours used for evaluations that included reports from 5–63 pages long (Bow & Quinnell, 2002). It is difficult to determine how much time custody evaluators currently spend on each case

because the cases vary as do the procedures used by the evaluators. Many evaluators also tend to report how much time they get paid for rather than how much time they actually spend on each case. Unfortunately, these amounts may differ greatly. I recommend using a functional analysis such as the one shown in Box 45, with adjustments for additional people and issues as shown in Box 46.

Box 45. *Time Required for Comprehensive Child Custody Evaluation*

[Assuming two parents/caregivers and two children]

Activity	Time Needed
◆ Interview parents (separately)	4 – 8 hours
◆ Interview children (separately)	1.5 – 3 hours
◆ Interview significant others/ family members	1 – 2 hours
◆ Observe children with each parent (during home visits)	3 hours
◆ Collect collateral information – interviews and written reports	4 – 5 hours
◆ Review records	2 hours
◆ Communications (correspondence, telephone, fax, email)	1 – 2 hours
◆ Write report	<u>8 – 10 hours</u>
Total Estimated Hours	25 – 35 hours

Box 46. *Additional Time Required for Complicating Factors*

Additional Factor	Additional Time Needed
◆ Additional children (beyond 2)	4 – 5 hours/child
◆ Additional parties to case (beyond 2)	4 – 5 hours/person
◆ Special issues	10 hours each
• Domestic Violence	
• Physical Abuse and/or Neglect of Child	
• Child Sexual Abuse	
• Substance Abuse	
• Removal/Relocation	
• Alienation/Estrangement	
• Mental Illness or serious Physical Illness in Parent or Child	
◆ Additional length of report (beyond 15-20 pages)	½ hour per page
◆ Court Testimony (to be determined after evaluation is completed; use separate billing)	
• Preparation – review case	3 – 4 hours
• Testimony and court wait time	4 – 8 hours

Please note that these time estimates do not include psychological testing. If psychological testing is necessary, it is advisable to refer that part of the evaluation to a forensic psychologist who specializes in doing psychological testing in child custody cases.

Before making a decision about using testing, be sure to consider the information discussed in Chapter [11](#).

These time estimates also do not include court testimony. This is a separate process that is only required in about half of the cases in which child custody evaluations are completed. The more complicated the case, the more time will be needed for preparation and for testimony. Most evaluators charge a higher hourly fee for preparation and testimony than they do for the custody evaluation itself.

Once the time estimate is completed, notify the parties and the attorneys and include the estimate in the Fee Agreement. As with all human endeavors, custody evaluations tend to take longer than expected. So be sure to allow some extra time in the time range included in the Fee Agreement. If the evaluation ends up taking less time than estimated, simply return the unused portion of the retainer.

RECORD KEEPING

All professionals working with separating families should keep a record of initial contacts with the court or the attorneys in each case, in a file for Referrals. Once the professional has agreed to do the evaluation or to serve in any other capacity in a case, they need to begin a separate file containing all of the case information.

Completeness

Retain a record of *all* contacts related to each case, including notes, tapes, and dated telephone and Email messages. The guidelines specify that evaluators must also retain copies of all of the materials reviewed. Some of these materials will be in hard copy, while others may be maintained in electronic form.⁸ The types of records are listed in Box 47.⁹

The record-keeping guidelines mean that once a parent or other party gives you material, you cannot return it to them. Some attorneys have their clients prepare large scrapbooks full of original

Box 47. *Types of Records to Maintain*

- ***Court order/appointment form***
- ***Fee Agreement***
- ***Informed consent forms***
- ***Telephone log*** – all contacts, with any parties or professionals in the case. Include time and length of call, who initiated call, and content of conversation.
- ***Notes, recordings, and transcriptions*** – from interviews, observations, and all conversations with anyone involved in case. Include direct quotations whenever possible.
- ***Correspondence*** – both received and sent by Email, hard copy, or fax.
- ***Legal pleadings*** and other materials provided by attorneys or court.
- ***Visual and Audiovisual Materials*** – tape recordings, videotapes, photographs.
- ***Documents*** reviewed.
- ***Raw data*** – from any measures or tests administered, both scored and unscored.
- ***Billing Records*** – time sheets, ledgers, billing statements.
- ***Report of Evaluation***

copies of family photographs, report cards, educational and psychiatric reports, etc. Once an evaluator looks at this material, they cannot give it back. One solution is to tell the parent that the evaluator is required to retain all materials, express concern about depriving them of their memorabilia, and then ask the parent to choose the essential items and prepare a photocopy that the evaluator can keep on file, as the guidelines require.

It is also essential to ensure that all of the information offered to the evaluator is available to the other party in the case. This may require a written assurance that the other party has been provided with a copy.¹⁰

Remember that all of an evaluator's records are discoverable and could be viewed by the attorneys, the judge, or the parties themselves. Be sure to write all observations and comments in a descriptive, factual, and respectful manner. Whenever possible, include direct quotations from each person who is interviewed or observed.

If an evaluator testifies in court or at a deposition, they need to bring all of their records. This openness will enhance their credibility.¹¹

Methods for Recording Information

Evaluators must make a detailed record of every interview and observation. Audio-taping, video-taping, or contemporaneous note-taking are required. Each record must include: the date, time, and setting; who was present; what the evaluator asked or commented; what the interviewee said; and the interviewee's physical appearance and actions. A standard interview format will provide a record of the questions so that the evaluator can concentrate on recording the interviewee's comments and behavior.¹² Some sample interview formats are discussed in Chapter 13, and a protocol for a *Parent Interview* is included in section VII of the CD.¹³

Tracking Evaluations

After accepting a case and receiving a court appointment, make a case label that can be attached to the top sheet of each form or

collection of papers in the evaluation. This can be done by printing two sheets of case labels through the address-label function of your word processing program. A sample case label is included in Section II of the CD, along with sample folder labels.

Evaluators also need to keep track of the progress of the evaluation. Section II of the CD provides a *Checklist for Child Custody Evaluations* that can be attached to the left-hand side of the case folder, on top of the time log sheets.

Time Usage and Billing

Evaluators must keep a detailed record of the time spent on each case, including the date of service, time of service, number of hours billed, and a description of the work done. Section II of the CD provides a *Time Sheet* for this purpose.¹⁴

When a retainer is exhausted or the evaluation is finished, simply transfer the information from the *Time Sheet* onto an itemized billing statement for the parents. Section II of the CD contains a sample *Billing Statement* for a child custody evaluation, and also a *Billing Statement* for forensic consultation with attorneys and/or parents involved in child custody disputes.

INITIAL CONTACT WITH PARENTS

After accepting the court appointment, the evaluator should get in touch with the parents directly. Send an initial packet, and fax copies to each parent's attorney. This gives the attorneys a chance to review the material and counsel their clients about responding. The packet should contain the following materials.

Introductory Letter

This cover letter informs each parent of the evaluator's appointment and asks them to complete some initial forms and send the retainer, so that the evaluation can begin. A sample introductory letter is contained in Section III of the CD.

Brief Description of Evaluator's Background and Experience

This is the same biographical statement that an evaluator would routinely send to attorneys and others who inquire about forensic services. It should be present-oriented and brief; about 200 words is sufficient. Include the items from the CV that are essential and relevant to doing child custody evaluations, such as:

- Address and contact information
- Description of current forensic practice
- Credentials
- Membership and offices in professional associations
- Family forensic experience
- *Relevant* clinical experience
- *Relevant* books and/or research projects.

Release of Information Form

Each parent's permission is required in order to obtain information from other professionals who have been involved with the family. The content of this release should conform to the requirements of the Health Information Portability and Accessibility Act (HIPAA), so that health care providers will be able to respond to these inquiries. In fact it is prudent to use a HIPAA-compliant release form for *all* information in evaluations because this form is very thorough and specific.¹⁵

It is prudent to have the parents complete an *Authorization for Release of Information* form for each person, regardless of whether that person has a professional relationship with the family. Only professionals are legally required to have permission before they release information. Using a release form for non-professionals ensures that each relative, neighbor, and friend knows that the parents wish them to speak with the evaluator, and also ensures that each collateral understands what the evaluator will do with the information they provide.

Send one copy of the *Authorization for Release of Information* form to each parent before meeting with them. This will give them a chance to read the form thoroughly without distractions or pressure, thus ensuring a more informed consent.

Sending the *Release of Information* form ahead of time also gives the parents the opportunity to gather the information needed for these collateral contacts. Some particularly efficient parents may even bring completed copies of the *Release* form to their first meeting with the evaluator, which saves some time.

Sending the *Authorization for Release of Information* form to the parents beforehand also gives the parents' attorneys a chance to examine the release form.

Section IV of the CD contains sample *Authorization for Release of Information* forms for child custody evaluations and for forensic consultations.

Directions to Evaluator's Office Fee Agreement

(See separate section below.)

Parent Questionnaire

(See separate section below.)

CONTRACT AND FEE AGREEMENT

Before beginning any evaluation, the evaluator must inform the parents and their attorneys about the evaluation's purpose, methods, costs, and limits of confidentiality. This information is required by all of the guidelines regarding child custody evaluations (e.g. AFCC, 2007; APA, 1991, 1994). A written contract and fee agreement can convey this information to the parents, and also obtain their consent to participate and their agreement to pay for the evaluation. The factors to include in a contract and fee agreement are listed in Box 48, and a sample *Contract and Fee Agreement* is contained in Section V of the CD.

PARENT QUESTIONNAIRE

In order to obtain objective information about the parents in an efficient manner, it is helpful to send a questionnaire to them before their first appointment. The information in the questionnaire can

Box 48. *Contract and Fee Agreement – factors to include*

- ◆ Who ordered evaluation
- ◆ Purpose and scope of evaluation
- ◆ Assessment methods and steps in evaluation
- ◆ Confidentiality/privilege issues
- ◆ Evaluator as mandated reporter in case of child abuse
- ◆ All evaluation records to be retained and made available to court and others with legal authority to inspect and possess them.
- ◆ Fees and methods of payment, including:
 - hourly fees and estimate of total hours needed
 - who is responsible for costs, and in what proportions
 - services and expenses covered by fees
 - necessity for retainers
 - timing of payments
- ◆ Ability to refuse to answer any questions
- ◆ Contact information for questions about any aspect of the evaluation

identify some of the areas of difficulty that need to be examined further during the parent interviews.

Completing a questionnaire also requires each parent to begin the time-consuming process of assembling the required information before they meet with the evaluator. This will free up more of the interview time for focusing on more subjective information, such as each parent's view of the marriage and custody dispute, their assessment of the parenting abilities and unique contributions of each parent, and their view of the children's personalities and how the separation has affected them.

Using a questionnaire may also avoid parental resistance. Some parents are much more forthcoming in the beginning of the evaluation, when they assume that the evaluator will agree with them about the family situation and custody issues. As the evaluation progresses, sometimes they "forget" the details about sensitive topics such as Restraining Orders, incidents involving the police, and the contact information for couples therapists. These topics can be included in the questionnaire along with other less provocative topics; hopefully, this will increase the accuracy and detail of the information available to the evaluator.¹⁶

Section III of the CD contains a sample *Parent Questionnaire*.¹⁷ This questionnaire is *not* a psychological test, because there are no scores or norms involved, and no attempt to establish reliability or validity. The questionnaire is simply a more organized, written way to collect parent information.

INFORMED CONSENT/RELEASE OF INFORMATION

Chapter 5 discusses the need to obtain the informed consent of the parents and all others providing information in a child custody evaluation. The elements necessary for informed consent are contained in Box 16, and a sample informed consent warning for children is contained in Box 17 (both in Chapter 5). As explained above, the *Contract and Fee Agreement* serves to obtain the written consent of the parents.

During the course of the evaluation, the evaluator also needs to obtain the informed consent of others. This should be done

orally at the beginning of every interview, whether talking in person, on the telephone, or via email/webcam. Some experienced evaluators prefer to obtain the consent of collaterals in writing, to ensure that they understand how their information will be used. A sample consent form for non-professional collaterals is included in Section VIIIb of the CD.

NON-COMPLIANCE

Occasionally, a parent will refuse to provide necessary information or to pay their portion of the fees for a court-ordered custody evaluation. Chapter 6 explains that the evaluator should first notify the party's attorney in this situation. If the party continues to refuse to comply with the requirements of the evaluation, the evaluator will need to notify the court using one of the declarations or motions described in Chapter 6. Samples of those forms are contained in Section XI of the CD.

Notes

1. These referral issues have been discussed by a variety of other writers, including Ackerman, 2001, 2006; Benjamin and Gollan, 2003; Gould, 1998, 2006; Hess, 1998; Kirkpatrick, 2004; and Stah, 1994.
2. In their nationwide surveys, the Ackermans found that almost 100% of child custody evaluators "prefer to serve in an impartial capacity [and therefore] prefer to be retained by both parents, the guardian ad litem, or the court" (Ackerman et al., 2004, p. 42). These results are similar to those obtained by Keilin and Bloom (1986) and LaFortune and Carpenter (1998).
3. In some jurisdictions, travel time cannot be included in the cost of state-pay child custody evaluations.
4. Stah (1994) discusses these situations and the related ethical dilemmas.
5. Chapter 5 explains the legal issues that limit interstate forensic consultations.
6. Gould, (1998, 2006) offers a lengthy discussion of how to formulate specific "psycholegal" questions that are based on the general psycho-legal questions that the court wants the evaluation to address. Gould notes that, "Without focus from the court, how does the examiner know which type of 'psychological evaluation' to conduct?" and recommends that the evaluator "ask the court or attorneys to define the psycholegal questions that guide the report. Write a letter to either the judge or the attorneys of record asking for clarification" (Gould, 2006, pp. 312, 313). Gould goes on to argue that one should not assume that the court wants a "child custody evaluation" because the best interests standard requires that these comprehensive evaluations include such a broad range of factors.

I take a different approach. The current standards for child custody evaluations were developed to ensure that *all* of the relevant factors are included

in each child custody evaluation. Therefore, I have used those standards to develop a list of psycho-legal questions implied by the most common form of court order that simply asks the evaluator to “evaluate and report on issues of legal and physical custody.” In other words, I think that the best interests standard requires that the evaluator conduct a comprehensive child custody evaluation in every case, unless the court specifies otherwise.

The psycho-legal questions and behavioral variables I have included in Box 43 are slightly different from the general and specific psycholegal questions suggested by [Gould \(1998, 2006\)](#). Nevertheless, I am indebted to Gould’s discussion of the need to formulate specific psycholegal questions to guide the evaluation.

7. [Ackerman and Ackerman’s \(1997\)](#) figures show a 12% increase in time spent doing evaluations in the previous decade (cf. [Keilin & Bloom, \(1986\)](#)), an increase that the Ackermans attribute to more time spent reviewing records and writing reports. [LaFortune and Carpenter \(1998\)](#) had results similar to those of the Ackermans, with 165 mental health professionals reporting spending an average of 21.1 hours on each report.
8. In contrast to (a) the requirements of the standards and (b) prevailing practice, [Benjamin and Gollan \(2003\)](#) have indicated that they routinely destroy all of their videotapes of interviews and observations. They have prospective evaluatees sign an *Agreement to Parenting Evaluation* that states, “The interviews and observations will be videotaped. All videotapes will be destroyed before the end of the evaluation process, and you agree that none of the tapes will be released to any party, attorney, or court.” Benjamin and Gollan maintain that erasing tapes of interviews and observations “prevents the opposing counsel from using contemporaneous material out of context during a later cross-examination at deposition or trial” ([Benjamin & Gollan, 2003](#), pp. 177–178, 35).
[Martindale \(2004\)](#) has correctly pointed out that destroying records, even with the consent of the litigants, violates professional ethics codes and may also be a violation of the law.
9. All of the professional specialties have issued similar guidelines for documentation and record keeping, including psychology (APA, 1992, 1993, 1994, 2002), psychiatry ([APA-med, 1988](#)), and social work (e.g. [Louisiana, 1998](#)). Interdisciplinary professional organizations specializing in family law and child custody have also issued guidelines calling for careful and complete record keeping ([AFCC, 2007](#)). In addition, some jurisdictions have issued standards that require child custody evaluators not only to include clear and extensive documentation in their reports, but also to “retain any notes, records, documents, taped recordings, videos, or other material gathered or created during the investigation so that these materials are available for trial, discovery, appeal and remand of the case” ([Comm. Mass., 2005b](#), section 8.7).
10. [Martindale \(2004\)](#) is emphatic about obtaining such a written assurance, saying that “under no circumstances whatsoever should an evaluator take possession of information offered by one party without a written assurance that the other party has been provided with a copy” (p. 33).
11. [Martindale and Gould \(2004\)](#) make this point, and also note that there are exceptions to this rule. When a professional is working as an expert witness or consultant to an attorney, for example, portions of their file may be protected by attorney work product privilege.

12. Benjamin and Gollan (2003) recommend taking notes on a laptop computer during interviews, saying that, "As the evaluator enters the answer from a party, the evaluator can ask the next question to maintain the fluidity of the interview. This approach allows for a further impersonalized stance and a detached objectivity" (p. 60). The main difficulty with this approach is that the evaluator is focused on typing and cannot focus as directly on the interviewee. This may decrease the evaluator's eye contact, which will interfere with the interviewee's sense that the evaluator has given them a fair and sensitive hearing. It may also decrease the evaluator's ability to notice details and nuances of behavior and verbal reports.
13. There is an on-going controversy about whether contemporaneous note-taking is sufficiently accurate, given that verbatim, contemporaneous accounts of investigative interviews with alleged child abuse victims have been found to misrepresent the structure of the interview, what the children said, and the way the information was elicited (Lamb et al., 2000). Due to research of this type, many experienced forensic evaluators have concluded that contemporaneous note-taking is not sufficiently accurate for forensic purposes.

On the other hand, many others have emphasized the disadvantages of audio-recording and video-recording, which include the cost of the equipment, the difficulty of using the equipment outside the office, technical malfunctions interrupting interviews, the extensive time and hence cost of analyzing the resulting tapes, and the increased opportunity for the attorneys to challenge the evaluator or elicit contradictory testimony from the witness in court. Martindale notes that although there are on-going discussions of this matter in the professional forensic societies, none of the professionals offering training workshops under the auspices of those organizations assert that evaluators are obligated to tape record evaluative sessions (2004, p. 34). Furthermore, none of the current guidelines or standards for doing child custody evaluations require audio-recording or video-recording.

14. Some evaluators use the billing software designed for attorneys, which provides a similarly detailed record of time and activity for each case.
15. The Health Information Portability and Accessibility Act (HIPAA) of 1996 contains very specific requirements for how health care providers obtain, store, and share information about their patients. A copy of HIPAA and accompanying information can be obtained at <http://www.tricare.osd.mil/hipaa/> More detailed information about compliance with HIPAA is available from professional organizations for mental health providers and physicians.
16. The *Parent Questionnaire* is designed to elicit background information about the family members. It is not focused on the parent's allegations about each other. I agree with Shear's (2004) point that child custody evaluations should be focused on the best interests of the child, not on the parental allegations as Benjamin and Gollan (2003) suggest.
17. The *Parent Questionnaire-Child Custody Evaluation* reproduced in the CD accompanying this volume is an edited, re-formatted version of a *Guardian ad Litem – Evaluation Questionnaire* developed by Linda Santos Smith, Ph.D. from an earlier questionnaire by Joseph Onofrio, LICSW. My revised version of the questionnaire is reprinted here with the permission of Dr. Smith and Mr. Onofrio.

13

COLLECTING INFORMATION

GENERAL CONSIDERATIONS

Relevance

It is essential to collect information that is pertinent to the issues in the case. “Fishing” for any and all data about family members is both unethical and inefficient. Collecting standard background information about each person will suggest areas of strength or weakness that affect their parenting; then follow-up on those areas. It is not necessary to subject every person to drug testing, a CORI check, psychological testing, or other procedures unless there is an issue that makes that additional information relevant.

Evaluators should take note of the allegations made by the parties in the case, but not organize the evaluation around those allegations. The evaluation should be organized around the best interests of the child with special attention to the issues identified by the court. Although the court’s concerns and the parties’ concerns often overlap, it is important to remember that the purpose of the evaluation is to provide the court with the information it needs to make decisions in the case. The purpose of the evaluation is not to confirm or to deny the allegations of the parties.¹

Equity

The total time and methods of assessment should be similar for both parties in an evaluation. Total interview time should be the

same, and home visits should be done on both residences. Once an area of concern is identified, it is important to use the same assessment technique for both parties. For example, if one parent appears to have a substance abuse problem, both parents must undergo drug testing. Similarly, both parents must undergo CORI checks, psychological testing, etc. This approach will help to ensure both the equitable treatment of all parties and the parties' perception of the evaluation as fair and impartial.²

Scientific Basis

The data-gathering must reflect the social science research. Identify the relevant issues by considering the research on similar situations, ages, and characteristics of parents and children. For instance, the child development research indicates common reactions to divorce at different ages. Be sure to explore those age-related areas of functioning when evaluating children.

Multiple Methods

Multiple sources of information are required in order to provide convergent validity, or an enhanced likelihood that the information will be accurate.³ Whenever possible, important facts and opinions should be documented by at least two sources of information.

Using multiple methods of data gathering also guards against confirmatory bias, or the tendency to seek only information that confirms an initial hypothesis or impression.⁴

Areas of Assessment

The general areas of assessment required in all child custody evaluations are outlined in Chapter 3. (See Box 7). The Best Interests of the Child standard requires that certain types of information be collected, which includes detailed information about the functions involved in caretaking. (See Boxes 12 and 13 in Chapter 4.) When information from Boxes 7, 12, and 13 is combined, it yields an extensive list of types of information to collect in each custody evaluation. This information is collected through the various components of the child custody evaluation. (See Box 44 in Chapter 12).

The present chapter considers these components separately, as a function of the various methods of information-gathering.

Structure of Evaluation

The order in which information is gathered may influence the results. It is best to start with direct reports by the family members, and then move on to direct reports by other major caretakers. Collateral information from third-parties should come later, so that it will not interfere with the personal impression that the family members make. In general, information provided directly to the evaluator should precede indirect reports and the review of documents. A possible sequence of procedures is contained in Box 49.⁵

Structure and Recording of Interviews

A semi-structured interview protocol provides a standard set of questions, which can be supplemented as the interview progresses. By customizing standard, pre-existing adult and child interview formats, the evaluator can address specific issues raised by the court. Using a semi-structured interview format ensures that no important questions or issues are inadvertently omitted; although the evaluator can ask the omitted questions during a later interview, the context and sequence of questions may affect the results. A structured interview format also permits a comparison among the responses given by all parties to the same question, which increases the reliability of the resulting data. And finally, the interview protocol provides a framework for organizing the interview data.⁶

For these reasons, I recommend using a semi-structured interview format whenever possible. I have provided a selection of techniques and questions for interviewing children of various ages. (See Boxes 53–56 below). Sections VII and VIII of the CD contain semi-structured interview protocols for parent/caretakers; teachers; and friends, relatives and community members.

Purpose of Interviews

Interviews with both adults and children serve a number of purposes.⁷

Box 49. *Structure of Evaluation*

- 1. Parent interviews**
 - Each parent separately
 - Parents together— for joint custody considerations
- 2. Home visits**
- 3. Parent/child observations**
- 4. Child interviews**
 - Each child separately
 - Siblings together
- 5. Interviews with other caretaking adults**
- 6. Collateral interviews**
- 7. Record review**
- 8. Collate and compare information from different sources**
 - Rival hypotheses
 - Additional information needed
- 9. Write report**

- ***Establish rapport*** with the interviewee.

As Chapter 2 explains, the role of an evaluator is different from that of a psychotherapist in many ways, including the attitude towards the interviewee: The evaluator is not seeking to form a therapeutic alliance or to become an advocate for any party in a custody dispute. Nevertheless, it is helpful for

the evaluator to establish a sense of mutual understanding and trust in the evaluator's impartiality, so that the parties will be willing to participate fully in the evaluation.⁸

- **Collect information** that is not provided by other sources.
- **Compare information** drawn from different data sources.
- **Challenge discrepancies** in the data by asking each person about them.
- **Test hypotheses** drawn from other data sources.

Interviewing Techniques

Custody evaluators should be experienced mental health or legal professionals who have already mastered basic interviewing techniques. Stahl (1994) has also suggested specific approaches that are particularly useful in child custody evaluations.

- **Confrontation** – Confront each party with contradictory information from other sources, to see how their account may change.
- **Observation** – Notice the emotional, verbal, and behavioral reactions to confrontation, as well as the interactions among the family members.
- **Wise fool** – Ask many seemingly innocent questions to elicit more information.
- **Talk with the children** – Although it is inappropriate to interrogate the children, it is possible to ask them skillful questions in order to assess the accuracy of the information provided by their parents.

INTERVIEWING PARENTS

Expanding on the *Parent Questionnaire*

Before the initial interview with the parents, it is important to review the issues raised by the court appointment. Then examine each completed *Parent Questionnaire* and highlight any areas needing further clarification.

Topics to Cover

Box 50 lists the most important topics to cover when interviewing parents. These topics are based on the social science research about how separation and divorce affect all family members.⁹

Parent Interview Protocol

The topics in Box 50 are covered in the *Parent Interview* contained in Section VII of the CD. If special concerns are raised by the *Parent Questionnaire* or by other sources of information in the case, additional questions will need to be added to the interview. Screening questions are already included for the regrettably common issues of substance abuse and domestic violence; the latter issue is embedded in questions about styles of conflict management.

Solo or Joint Interviews

Some evaluators advocate joint interviews with the parents as a way to observe the parental interactions. This may be particularly important if joint physical and/or joint legal custody is being considered. The parents should first be interviewed separately, however, so that they can be screened for domestic violence; this sensitive and often inflammatory information is not covered in the self-report questionnaire. If there has been domestic violence, or even extensive common couple aggression, a joint interview could intimidate and re-traumatize one or even both parties.

Order and Number of Parent Interviews

Through the process of screening a new referral, the evaluator usually learns what the major issues are in a case, and which complaints each parent has made. It is useful to interview the parent making the most serious or numerous complaints first, because this provides an opportunity to ask the accused parent about the complaints during their later, separate interview. Of course, complaints and allegations are so often mutual that it may make little difference whose interview is scheduled first.¹⁰

Box 50. *Topics in Parent Interviews*

◆ Background information

- **Name, DOB, SSN, address**
- **Family Background:** Where grew up; name, occupation, health, marital status of parents and siblings; special issues (physical abuse, sexual abuse, alcoholism, substance abuse, mental illness, involvement with social services)
- **Extended Family:** location, health, involvement with children in evaluation
- **Education/Employment History**
- **Physical Health** – major health problems, use of drugs and alcohol
- **Mental Health** – psychotherapy, medications, psychiatric diagnoses, hospitalizations
- **Previous Legal Involvement**
- **Religion** – childhood/family background, current practice, area of dispute/agreement with other parent
- **Living Situation**
- **Previous Relationship History**

◆ Spousal/couple relationship in current custody dispute

- **Development of relationship; time line**
- **Outside relationships, leisure time**
- **Employment and finances**
- **Task division:** Childcare, homework, transportation, housekeeping, finances
- **Conflict management in couple**

Box 50**◆ Parenting activities and abilities**

- **Activities with children:** homework, transportation, medical, recreation
- **Methods of discipline**
- **Understanding and perception of each child**

◆ Children in evaluation

- **Name, DOB, age**
- **Personality/temperament**
- **Health**
- **Activities**
- **Friends**
- **School** – school, grade level, teacher, academic performance, abilities/strengths, weaknesses/special needs
- **Favorite things to do with parent**
- **Understanding of parental separation/divorce** – what told by parents, child's reaction, how parents reassure child
- **Psychotherapy**

◆ History of current custody dispute**◆ Current concerns****◆ Desires re. custody****◆ Additional issues/concerns**

It is best to interview each parent at least twice. The second interview gives the evaluator a chance to ask the parent about information obtained after the first interview; This would include allegations made by the other parent, as well as information from collateral sources. The second interview also gives the parent an opportunity to offer more detailed information. Parents who are highly anxious may need the second interview to relax enough to be effective reporters.

INTERVIEWING CHILDREN

Need for Child Interviews

Despite the challenges involved, it is important to interview all of the children involved in each child custody evaluation because:

- Children observe family interactions from day to day.
- Children can provide additional information on parenting beyond that provided by the parents, through the child's own perspective on parental nurturance, play, education, and discipline.
- When children feel that their preferences and perceptions are valued, they
 - provide better information
 - adjust better to the post-separation changes in the family.

After outlining these reasons for interviewing children, Kuehnle, Greenberg, and Gottlieb state that, "It is our position that, in the majority of custody cases, 'best interests' cannot be fully understood unless information and perceptions are directly obtained from the child" (2004, p. 98).¹¹

Topics for Child Interviews

In order to collect the information required to determine the best interests of the child, child interviews and observations should focus on the following areas:¹²

- **General functioning** – physical, intellectual, and emotional, including adjustment to home, school and community
- **Relationships** with other family members, especially parents
- **Feelings** about the custody issues (both spoken and unspoken).¹³

The topics in Box 51 are designed to assess these general areas of child functioning.

Accuracy of Reports by Children

There is considerable concern about the accuracy of child reports, which focuses on the following areas.

- **Child language and cognition.** There are many ways in which children do not grasp the complexities of adult language. This is particularly evident with preschool children, who are literal, do not understand abstractions and categories, tend to use idiosyncratic words, mix up their pronouns, are confused by negatives, and tend to say “yes” to all questions because it feels more socially desirable to them. These difficulties linger in elementary school children, and even adolescents have trouble with complex statements, double negatives, and time sequences (Condie, 2003; Stone & Lemanek, 1990). Given these limitations, it is important to interview children carefully, using the strategies listed in Box 52.¹⁴
- **Child memory.** Research has shown that although children do not encode or retrieve memories in quite the same way as adults do, their ability to store memories is the same as that of adults. Children also have difficulty communicating the contents of their memories. Despite these limitations, children as young as 3 or 4 show accurate recall under the following conditions:
 - neutral interviewer
 - open-ended questions
 - no repeated, suggestive questions
 - no praise or criticism for specific answers
 - no request for the child to speculate
 - no incentive to make a false report.

When these conditions are met, children report fewer details than do adults, but report them accurately. Children also understand more words than they are able to use correctly, so their recall and ability to understand often exceeds their ability to communicate. Finally, children tend to give abbreviated reports, offering different but accurate details in different interviews.

This does not mean that *all* early memories should be presumed to be accurate, whether reported by adults or children. The research indicates that memories from the first two years of life cannot be consciously recalled later in childhood or adulthood, because

Box 51. *Information to Obtain from Child Interviews*

- ◆ **Child's self-presentation (alone and with different family members)**
 - **Activity level**
 - **Attention span and distractibility**
 - **Communication facility** – speech clarity, organization, and syntax
 - **Physical coordination; mannerisms and peculiarities of physical motion**
 - **Frustration tolerance and impulsiveness**
 - **Emotional comfort, mood state, signs of distress or anxiety**
 - **Response to limit-setting**
 - **Response to praise**
 - **Social skills and interactions** – eye contact, facial expressions, voice tone and quality, presence (and meaning) of sexualized or eroticized behavior
 - **Cognitive development** – ability to analyze logically, recall and report details, empathize, take on role of another person
 - **Physical condition** – general appearance of wellness, cleanliness, clothing
- ◆ **Child's perception of and relationship with family members**

Box 51

- ◆ **Child's perception of each parent's home, including structure and routine**
- ◆ **Child's perception of each parent's approach to limits and discipline**
- ◆ **Child's understanding of separation/divorce**
 - **What each parent told child about separation/divorce**
 - **Perception of child's own role in the separation/divorce**
 - **View of each parent as they go through the separation/divorce**
 - **Perception of how separation/divorce has affected child's relationships with parents, siblings, relatives, and friends**
 - **Perception of impact of each parent's new social life on child**
 - **Child's sense of loyalty conflict**
- ◆ **Child's support systems**
 - **Who child confides in – family members, teachers, friends, etc.**
 - **Child's expression of emotions with different people**

children do not have the capacity to accurately perceive, organize, and report memories until the early preschool years. For this reason, one should be suspicious of memories of events that supposedly happened before the reporter's third birthday.¹⁵

Box 51

◆ **Child's wishes and preferences about custody
(addressed indirectly)**

- Does child have information that would help the judge decide what is best for them?
- What does child expect it would be like to live primarily with each parent?
- How would child feel if the judge decided they should live with mother/father?
- What three wishes does child have?
- Would child like any change in amount of time spent with each parent?

◆ **Child's psychological functioning**

- Child's activities and adjustment in school, community, and neighborhood
- Child's adjustment to changes in family and home
- Child's ability to form and maintain emotional attachments
- Child's self-concept, self-esteem, anxieties, fears, and anger
- Child's overall temperament

- **Distinguishing between truth and falsehood.** Young children have a limited capacity to both understand the truth and tell the truth, which involves the ability to do six separate things:
 - Distinguish between truth and a lie
 - Understand the responsibility to speak the truth
 - Perceive events accurately at the time of the occurrence
 - Retain an independent memory of the occurrence

Box 52. *Strategies for Interviewing Pre-adolescent Children*

- ◆ **Assess the child’s language complexity and sophistication, then match it in your own speech.**
- ◆ **Use proper pronunciation, not baby talk.**
- ◆ **Use simple words and short sentences.**
- ◆ **Ask the child to define words.**
- ◆ **Encourage the child to tell you if they do not understand a question, or do not know the answer to a question.**
- ◆ **Repeat names rather than use pronouns.**
- ◆ **Use the active rather than the passive voice.**
- ◆ **Avoid vague, leading, and hypothetical questions.**
- ◆ **Use neutral follow-up questions to clarify child answers.**
 - Tell me more about that.
 - What happened next?
 - I’m confused. Can you tell me about that again?
 - You said, “Poppa.” Is that your father?
 - Did anything else happen?
 - Tell me everything you can remember.
 - Is there anything else you’d like to tell me?
 - How did it feel when that happened?

- Translate the memory into words
- Respond to questions about the occurrence.¹⁶

It is fruitless to ask a young child, “Do you know the difference between the truth and a lie?” Children under 7 do not have the abstraction abilities required for considering the idea of “difference” and for defining the terms “truth” and “lie.” Answering this question

is difficult for them and does not predict to their ability to report events accurately.

On the other hand, research indicates that by age 3 children have a rudimentary understanding of what it means to lie. By age 4 they understand that lies are not factual, that it is wrong to lie, and that lying may elicit punishment. At this age they focus on the possibility of punishment rather than on accuracy, and view any statement that adults regard as “bad” to be a lie. Children 5 to 7 years old still have difficulty providing definitions of “truth” and “lie,” but they can respond accurately to hypothetical questions such as, “If I tell you X, is it the truth or a lie?” By age 7 children begin to consider the intention of the speaker in defining a lie, and hence their definition of a lie begins to approach the definition used by adults.

The research on understanding truth and lies suggests that even children 3 to 6 years old can be accurate reporters if evaluators avoid abstractions and complex language, as indicated in Box 54. Children 7 and over should have little cognitive difficulty providing accurate reports.

- **Suggestibility.** Young children are very susceptible to suggestions from adults close to them. Preschoolers are apt to have difficulty differentiating between events they have actually experienced and those they have only heard or thought about. By ages 6–7 children are more resistant to misinformation, and by ages 10–13 children achieve the level of resistance shown by adults.¹⁷

In child custody evaluations, the main focus of concern about suggestibility is **coaching** by the parents. A parent may encourage a child to report intoxicated behaviors or abuse by the other parent, or simply instruct the child to “tell the truth.” This type of coaching does not necessarily lead to inaccurate reporting by the child. Some parental coaching occurs as part of one parent’s efforts to distance the child from the other parent, however, and does lead to distorted and inaccurate child reports. Thus it is important to notice not only whether there are indications of coaching, but what function that coaching seems to serve. Some signs of coaching in child interviews include:¹⁸

- **Volunteers opinions** about parent without being asked.
- **Inappropriate language** – more complex than the child’s other speech, or reflecting word usage of a parent
- **Inappropriate information** – too complex for child’s developmental level, or child could not have observed event
- **Extremely negative view of one parent** – without any stated reason or supporting information from collateral sources

The best way to minimize a child’s susceptibility to suggestion is to follow the interviewing strategies in Box 52. These strategies have been developed to deal with the difficulties surrounding both child memory and child suggestibility.

Corroboration of Information Provided by Children

The difficulties surrounding child self-report require that information obtained from children be corroborated by at least one other source. It is also advisable to assess a given topic in several different ways within the child interviews and parent/child observations. For instance in Chapter 7, Box 25 gives an example of information from a child (drawing, description of father, observed behavior with father) that is compared with information from collaterals (pre-school teacher, child therapist).

Children's Wishes About Custody

The Uniform Marriage and Divorce Act (UMDA, 1979, §402.9A) as well as the major guidelines and books about child custody evaluations all indicate that the child’s wishes should be taken into account.¹⁹ In their nationwide survey, Bow and Quinnell (2004) found that judges thought that the child’s preference should be considered once the child was 7½ years old, while attorneys thought the appropriate age was almost 9 years.

The problem is how to find out children’s preferences without forcing them to choose between their parents. As indicated in Box 51, this can be done indirectly by asking:²⁰

- Is there anything the judge should know to help them decide what would be best for you?
- What do you think it would be like to live with your mother/father?

- How would you feel if the judge said you should live with your father/mother?
- If you could have three wishes, what would they be?
- Would you like to see your mother/father more than you do now, less than you do now, or about the same amount of time as you do now?²¹

Although the last question about parenting time is more direct than the other questions, it does not imply a change in living situation or total absence of either parent, and therefore is probably less anxiety-provoking than direct questions about living arrangements.

Arrangements for Child Interviews

It is usually best to interview the children after the parent interviews and the home visits. Once they have met the evaluator, the children should feel more comfortable and develop a sense of rapport more rapidly. The information acquired during the parent interviews and home visits will also enable the evaluator to develop specific questions to explore areas of concern. For instance, the mother might have said that her 12-year-old daughter “only wants to live with her father because she feels sorry for him being all alone.” The evaluator would then make a special effort to understand how the daughter views the father, whether she feels she ought to be taking care of him (and of the mother), how much emotional support she actually receives from each parent, etc.²²

Having each parent bring the child to an office interview provides an opportunity to observe the child’s demeanor with each parent. Is the child more anxious with one parent? Is the child reluctant to leave one parent but not the other? If the child interviews are conducted during the home visits, the differences in child/parent interactions can still be observed, but the standardized backdrop is lost.

Some evaluators interview siblings together. This provides an opportunity to observe the sibling interactions and relationships. One sibling may speak for the others in a group interview, however, which prevents the evaluator from obtaining sufficient information from the other siblings. Furthermore, younger siblings are apt to be influenced by the presence of the older siblings, so that an

independent report cannot be obtained from each sibling. For these reasons, it is preferable to interview each child separately (in the office or during the home visit), and to observe the sibling interactions during the home visit and/or the parent/child observation sessions.

Structure and Techniques for Child Interviews

The child's age will determine the structure, length, and content of each interview. A sampling of techniques for children of various ages is displayed in Boxes 53 through 56.²³

OBSERVING PARENT/CHILD INTERACTIONS

The major guidelines for doing child custody evaluations specify that each parent should be observed with the child(ren) (e.g. AFCC, 2007; APA, 1994). In order to suggest ways to do the parent/child observation, this section will combine information from research on (a) child development, (b) family functioning, (c) parenting styles and abilities, and (c) assessment methods and techniques.

The parent/child observation is one of the best ways to assess parenting behaviors and abilities. During the observation, keep in mind the protective and risk factors in parenting that are summarized in Chapter 8. These factors are included in the list of parenting strengths and weaknesses listed in Box 57 below.

The parent/child observation is also a good time to assess the parent/child relationship. Are both parent and child emotionally

Box 53. *Interviewing Techniques for Ages 0-3: Play Interview and/or Observation with each parent*

- Observe child's interactions with other family members
- Observe child's self-presentation (section 1 of Box 51)

Box 54. *Interviewing Techniques and Questions for Ages 3-5: Structured Questions, and Play with Follow-up Questions*

- **“Mommy’s house, Daddy’s house” –**
Have the child select stuffed animals to represent their family members, set up two separate “houses” [shoe boxes, etc], then have the animal representing the child go from one house to another. Ask open-ended questions such as “What happens next? Where does the little [animal] sleep? What does the momma [animal] feel about that? What does the little [animal] want to do?”
- **“Calling Mom, Calling Dad” –**
Evaluator and child each have toy phones, evaluator says, “Let’s call your Dad/Mom.” Child is encouraged to play role of self and also each parent. Evaluator asks questions about child’s statements, behaviors, and feelings.
- **“If you could change yourself into an animal, what animal would you be? Why?”**
The animals that children choose may reflect aspects of their desires. This game also provides comic relief from the earlier activities.
- **“If you could have three wishes, what would they be?” –**
This may reflect a lot about the child’s needs and desires. The child often spontaneously mentions matters related to the custody dispute.
- **“Island Game” –**
In this version of the famous game, the evaluator draws pictures while telling the following story:
“Once upon a time there was a little girl/boy who lived on an island all alone in the middle of a big ocean. The girl/boy had everything s/he needed – food, water, a bed, toys, and everything. But s/he was missing something. S/he was very lonely because no one lived there with her/him.
“One day a magical elf came to the island and said, ‘I know you would like to live with somebody here. You can choose one person and I will bring that person to you.’ Who does the little girl/boy choose?” [If child chooses both parents, say, “We can only have one person come. Who will that be?” After child answers, draw second figure on island.]

Box 54

“Now the little girl/boy felt much better. One day the magical elf came back and said, ‘I can bring one more person to live with you. Who should that be?’ [Child answers; draw another figure].

“Finally the elf came back and said, ‘Now you can have whoever you want come to live with you. You tell me who they are, and I’ll bring them.’ [Continue until child has named all he people s/he wants; record them in order of appearance.]

“Well, the elf looked down at the island and said, ‘You know what, I think that it’s time for everyone to go home now. I’m going to take you all back to the land where you live.’ And Poof, everyone went back and lived happily ever after.”

- **Draw your family doing something together—**

If the child asks, “Who should be in it?” or “What should the family be doing?” say “Draw it any way you want.” Notice who the child draws first, where the family members are placed, who is left out. Ask follow-up questions to elicit feelings about the family members and activity.

- **“Who would you want to be with if you were” –**

- Lost in the woods
- Sick

- **“Who would you ask to come with you” –**

- On a picnic, if there were room for only one person in the car

- **“Who would you save first” –**

- From a fiery dragon [or a burning building]

expressive? Do they make eye contact with one another? Do they smile and act physically affectionate (especially when the child is under age 10)? Does the young child seek the parent for comfort and reassurance when frightened, hurt, or anxious? What is the child’s mood? Does the parent set limits clearly and firmly? How does the child respond to those limits? All of these dimensions of parent/child relationships should be noted during the parent/child observation and compared with the characteristics of parent-child attachment and relationships discussed in Chapter 8.

Box 55. *Interviewing Techniques and Questions for Ages 6 – 9: Tasks and Structured Questions*

● **Three wishes –**

Ask follow-up questions about the wish – what type of thing they want, why, what they would do with it, etc. For example, a boy who wants a go-cart may want his father to build it with him. Thus the wish is really about wanting his father to spend more time with him.

● **Confiding in others –** This technique takes two forms:

▪ **Emotion labeled** – Ask the child who they would talk to if they were “worried,” “nervous,” “sad,” “afraid,” “happy,” or “proud.” Then use follow-up questions to explore the situations and personal relationships involved.

▪ **Dilemma presented** – The evaluator describes a dilemma, then asks the child, “What would you do?” Notice whether the child would confide in anyone, and then ask who they would talk with first, why they would pick that person, and what the confidant would say. Some possible dilemmas are:

□ **Lost item** – *Your friend loaned you their [best toy] and asked you to take good care of it. Now you can't find it.*

□ **Unfair teacher** – *Your teacher seems to have a grudge against you. Nothing you do in class is right.*

□ **Nightmare** – *Last night you had a terrible nightmare. You can't seem to get it out of your mind. It scares you just to think about it.*

● **Best and worst features of spending time at each parent's home**

Box 55

- **Draw your family doing something together –**

If the child asks, “Who should be in it?” or “What should the family be doing?” say “Draw it any way you want.” Notice who the child draws first, where the family members are placed, who is left out. Ask follow-up questions to elicit feelings about the family members and activity.

- **Complete the sentence –**

Present the beginnings of sentences and ask the child to complete them. Emphasize that the child should “say whatever comes into your head” and that “there are no right or wrong answers.” The evaluator can invent items that reflect the issues in the case. Some examples are:

- Sometimes I feel worried about....
- My favorite food is....
- When I stay with my father [mother, or other litigant]....
- My friends....
- I feel sad when....
- The nicest person in the world is....
- Sometimes I wish that....
- The worst thing about divorce is
- When I was younger
- I feel really mad when....
- I wish that my mother [father, or other litigant]....
- If I’m rude to an adult, my mother [father, or other litigant]....
- If I interrupt when my father [mother, or other litigant] is on the phone....
- If I lie about something, my mother [father, or other litigant]....
- If I get into a fight with my brother or sister, my father [mother, or other litigant].....

Box 56. *Interviewing Techniques and Questions for Ages 10 and up: Structured Questions, Open-ended Questions, and Discussion*

- ◆ **Structured questions** – same as for ages 6-9, namely:
 - **Three wishes**
 - **Confiding in others**
 - **Best and worst thing about being with each parent**
 - **Complete the sentence** – For children 10 and up, the incomplete sentences can be typed with space left for the child to write a response.

- ◆ **Open-ended questions** – Older children have the linguistic and cognitive ability to answer unstructured questions with follow-up probes. Some examples are:
 - **Family and pets**
 - **Who is in your family?** [Elicit names, nicknames, and descriptions.].
 - **Tell me about** [Each central family member]. What do you do together? How do you get along? What do you like best about them? What do they do that bothers you? When you argue or fight, what is it about? What things does [each caretaker or parent] do best as a parent? What would you like them to do differently? What are your favorite things to do with them?
 - **Tell me about** [Grandparents and other extended family members]. Where do they live? When do you see them? What kinds of things do they do with you? How do you get along? When did you see them last?
 - **Is there anyone else in your family that you like a lot?** Are close to? Have fun with?
 - **Do you have any pets?** [Elicit names, nicknames, and descriptions.] Where do they live? Who takes care of them?

◆ Open-ended questions, continued

- **Daily routine, parental involvement, and discipline**
 - **Tell me about a typical day** at [each parent or caretaker's] house. For example, who gets you up? Who helps you get dressed? Gets you breakfast? Packs your lunch? Who cooks dinner? Do you help cook or clean up? What are your favorite things to eat? What happens at bedtime? Do you have regular chores?
 - **Tell me about weekends** at [each parent or caretaker's house]. How do mornings usually go? What kinds of things do you do during the day? What happens at night?
 - **Do you ever crawl into bed with** [each parent or caretaker]? Sleep with your [parent or caretaker]? What happens if you have a bad dream?
 - **Has anything scary every happened** at your [each parent or caretaker's house]?
 - **Who takes care of you when** [each parent or caretaker] goes out? Where do you go before and after school? How do you feel about that arrangement?
 - **If you are sick**, who takes you to the doctor? Who stays home with you? If you get sick at school, who picks you up?
 - **What kinds of rules for kids** are there at [each parent or caretaker's home]? What happens if you break the rules? How do you get punished? What do you usually get in trouble for?
 - **Has your father [mother, or other litigant]** started doing anything *now* that s/he has not done before?

Box 56♦ **Open-ended questions**, continued● **Parent social activities and drug/alcohol use**

- **Who does your [each parent or caretaker] like to spend time with?** What do they do together? Do they come to your house? What do they do when they're there? What do you do while they're there?
- **Do you think your [each parent or caretaker] might get married again?** Who would they marry? How would you feel about that?
- **Does your [each parent or caretaker] drink alcohol?** Beer? Wine? Mixed drinks? When? With whom? Have you ever seen them when they've had too much to drink?
- **Does your [each parent or caretaker] take drugs** other than medication that the doctor gives them? What? How often? What effect does it have on them?

● **Child activities**

- **What is your favorite thing to do for fun?** Who do you do it with? Where?
- **Who do you play with? Do you have a best friend?** Where do they live? When do you see them? Where? What do you like to do with them?
- **Do your friends come to your house?** Do you go to their houses? How do you get there?
- **What does [each parent or caretaker] think of your friends?**
- **Do you play sports?** Which ones? Where? Who takes you to games and practices? Do your parents help out by coaching or doing other things for the team?

♦ **Open-ended questions**, continued

- **Do you take music or dance lessons?** Which ones?
Where? Who takes you to the lessons? Who comes to recitals and performances?
- **What do you like to watch on TV?** When do you watch TV? Where?
- **Do you ride a bike?** Who taught you?
- **Do you drive a car?** Who taught you?

- **School**
 - **Tell me about your school.** What grade are you in? Who's your teacher? What are they like?
 - **What do you like best about school?** What do you dislike the most?
 - **What kind of homework do you get?** How much? How long does it take to do? Do you get help with it at home? Who helps you?
 - **Do you have any problems in school?** Who helps you with that?
 - **Who do you play with at school?** Who are your friends?
 - **Did your school have any fairs this year?** Concerts? Plays? Did you go? Who went with you?

- **Religion**
 - **What religion is your mother [father, other caretaker]?**
Do they go to church [synagogue/temple/mosque]?
 - **What religion are you?** Do you go to church [synagogue/temple/mosque]? Who takes you? How often do you go?
 - **Do you go to religious education classes?** Where? When? Who takes you ?

Box 56**◆ Open-ended questions, continued**

- **Separation/divorce, custody dispute, and domestic violence**
 - **What was the longest time you didn't see your [each parent or caretaker]? What was that like?**
 - **Why aren't your parents living together?** What did your [each parent or caretaker] tell you? What do you think is really going on? How do your parents feel about each other now?
 - **What kinds of things did your parents argue or fight about?** Did they ever hit each other? Did anyone ever get hurt? Did they have to go to the hospital? Did the police come to your house? Did they ever hit you kids? Can you tell me about their scariest fight? How do you feel when they fight?
 - **How is your life different since your parents separated/divorced?** How is it better? Worse?
 - **Does your [father/mother/other caretaker] call you** when you're at the other parent's house? When do they call? How often? What do you talk about? Do you call them?
 - **When you leave your father's [mother's, or caretaker's] house** to go to the other parent, what is it like for you? How does it make you feel?
 - **When your [each parent or caretaker] picks you up, are they on time?** Do they come in? Are you ready to go? What happens if they're late? What happens if they don't show up? Has that ever happened?
 - **Where does your mother [father, or other litigant] think you should live? Why?**

Box 56

- **What do you think it would be like to live with your mother** [father, or other litigant]?
- **How would you feel if the judge said you should live with your father** [mother, or other litigant]?
- **Would you like to see your mother [father, or other litigant] more than you do now**, less than you do now, or about the same amount of time as you do now?
- **Is there anything the judge should know to help them decide what would be best for you?**

- **Screening for child abuse**
 - **Do you know what a good touch and a bad touch are?**
Give me an example of a good touch. Give me an example of a bad touch.
 - **Has anyone ever bad-touched you? Who? Where on your body? Where were you when that happened? Did you tell anyone about it? What happened next?**

- **Coaching**
 - **Did we talk about all the important things?**
 - **Is there anything else you'd like to tell me?**
 - **Is there anything that someone told you to be sure to tell me? Who? What did they want me to know?**

- **Discussion** — For older children, all of the questions and tasks are really just ways to get them to talk about the issues that are relevant to the family and custody dispute.

Box 57. Parenting Strengths and Weaknesses

◆ **Strengths**

- **Emotionally warm** – positive emotional tone
- **Supportive** – reassuring, attentive, encourages independence; helps with homework; involved in school activities
- **Affectionate** – can express and receive physical and verbal affection
- **Communicates clearly**– age-appropriate language, encourages verbal exchange with child, seeks to clarify child statements, shows understanding of child emotional states
- **Adequate monitoring and safe environment**
- **Effective discipline**
 - **Firm**
 - **Consistent**
 - **Positive** – rewards, praise
 - **Verbal controls** – time-outs, deprivation of privileges, explanation and reasoning
- **Respectful towards child** – avoids interrupting, criticizing in front of child's friends, humiliating inadvertently
- **Age-appropriate expectations**
- **Emotionally healthy**
 - **Avoids display of intense negative emotions in front of child**
 - **Avoids exposing child to parental conflict**
 - **Clear boundaries** – not dependent on child, puts child's needs first, no role reversal
 - **Organized** – consistent coping style
- **Promotes other parent's relationship with child**

◆ **Weaknesses**

- **Emotionally withdrawn or cold** – negative emotional tone
- **Not supportive or reassuring** – absorbed in own life and issues, helps little with homework; ignores child's school activities
- **Communicates poorly** – age-inappropriate language, makes incorrect assumptions about child's emotional state
- **Inadequate monitoring, unsafe environment**
- **Ineffective discipline**
 - **Coercive**
 - **Harsh, punitive, rigid, and intrusive**
 - **Physical controls** – slaps, hits, or threatens to beat; few explanations
 - **Permissive or neglectful**
 - **Sets few limits**
 - **Inconsistent**
- **Disrespectful towards children** – bullies, humiliates, criticizes in front of friends
- **Age-inappropriate expectations** – too lax or unrealistically critical
- **Emotionally unhealthy**
 - **Displays intense negative emotions in front of child**
 - **Exposes child to parental conflict**
 - **Boundary confusion** – emotionally dependent on child, puts own needs before those of child, insists child share parent's feelings, general role reversal
 - **Disorganized and unpredictable, impatient**
- **Sabotages other parent's relationship with child**

There are several ways to approach parent/child observations, which vary in location, structure, length, and record-keeping methods.

Location

- **One-way mirror.** Some evaluators prefer to observe the interaction from behind a one-way mirror, thinking that this prevents the evaluator's presence from interfering with the usual parent-child interactions. The advantage of non-interference is offset by the necessity for doing this type of observation in an office that is equipped with a playroom with a one-way mirror. Such a setting may not be available, and the parent and child may also experience the setting as formal and intimidating. It is also more difficult to observe the nuances of interactions from behind the one-way mirror.
- **Office.** Other evaluators conduct the observation in their office, with the evaluator present. If toys and play space are available, this neutral setting provides a standard backdrop for the observation, thus enhancing the opportunity to make comparisons among the various children and parents in the family.
- **Home visit.** A third possibility is to conduct the parent/child observation during the home visit. This setting is more relaxing for the parent and child, and therefore may provide a more realistic assessment of the parent/child interactions. Observing during the home visit may also save some time, since a home visit is usually required anyway.

Structure

- **Task.** Many evaluators ask the parent and child to complete a task, which varies by the age of the child. Box 58 shows some useful cooperative and teaching tasks. Use tasks of equal complexity for each parent. Some of these tasks and activities are also appropriate for home visits.²⁴

Using a task provides an opportunity to observe the various parent/child groups doing a similar activity, and to notice whether the parent instructs, assists, and participates without overwhelming the child.

Box 58. Tasks and Activities for Parent/Child Observations		
Activities	Cooperative Tasks	Teaching Tasks
	AGES 3 - 5	
<ul style="list-style-type: none"> • Free Play Crayons and paper, blocks & Legos, doll houses, storybooks, dolls, puppets, cars & trucks, tea set, puzzles, Playdoh, toy telephone, simple games, e.g. Candyland, Cootie, Chutes & Ladders, Hi Ho! Cherry-o 	<ul style="list-style-type: none"> • Draw picture of family • Clean up toys • Build house, bridge with blocks or Legos • Discuss problem about discipline, sibling relationships, friends 	<ul style="list-style-type: none"> • Match shapes with blocks • Name and match geometric shapes • Lace or tie shoe • Play board game
	AGES 6 - 11	
<ul style="list-style-type: none"> • Free Play Same as 3-5 plus magic markers, Etch-a-Sketch, super heroes, Barbie dolls with accessories, intermediate games, e.g. Checkers, ConnectFour, Chinese Checkers, Trouble, Life, cards 	<ul style="list-style-type: none"> • Draw picture of family • Clean up toys • Copy Lego model • Discuss problem about discipline, sibling relationships, friends 	<ul style="list-style-type: none"> • Sew on a button • Play checkers • Play board game • Play card game

<u>Box 58</u>		
Activities	Cooperative Tasks	Teaching Tasks
AGES 12+		
<ul style="list-style-type: none"> • Free Play Drawing materials, construction materials (blocks, Legos, Construx), cars, trucks, dolls, modeling clay, advanced games, e.g. Chess, Chinese checkers, Othello, Clue, Risk, Life, cards 	<ul style="list-style-type: none"> • Draw picture of family • Clean up toys • Plan vacation • Discuss problem about discipline, sibling relationships, friends 	<ul style="list-style-type: none"> • Maintain checkbook • Read a map • Plan driving route • Play chess

- **Free play.** Other evaluators prefer to instruct the parent to play with the child as usual while the evaluator observes as unobtrusively as possible. This provides an opportunity to observe the parent's attitude towards toy choice, as well as the dimensions observed during the directed task.
- **Combined: task followed by free play.** Of course it is possible to combine the task and free-play approaches and thereby gain the advantages of both.

Length, Scheduling, and Number of Sessions

There are no specific guidelines about the length or number of parent/child observation sessions. Schutz, Dixon, Lindenberger, and Ruther (1989) recommend that each child be observed individually with each parent twice, and in a group with each parent and all siblings once. For a family with two parents and two children, this yields ten observation sessions.

Although Schutz's protocol would yield extremely useful information, it is too time-consuming and hence costly for most child custody evaluations. On the other hand, clinical research has indicated that one session is not adequate for assessing a family's general interactional style. For this reason, Hynan (2003) recommends that each parent participate in a minimum of two observation sessions that are each 45 to 60 minutes long.

There is no empirical data bearing on whether parent/child observations should include one child at a time or all the children together. The latter arrangement is probably most representative of the family's daily life, however, and also saves time.

If the observations are done during the home visit, the parent-child interactions will occur off and on throughout the entire home visit, which is usually 1–2 hours long (depending on the number of children to be interviewed). In order to save time, it may be advisable to conduct a 1–1½ hour home visit at each parental home, with all the children present, and then observe each parent with each child one time when the parent brings the child for an office interview.

Record-keeping

- **Contemporaneous notes.** Taking notes during the observation can preserve the details and nuances of parent-child interactions. It may make the parent and child nervous, however, which leads many evaluators to record their observations immediately after the parent/child session.
- **Observational checklist.** By using an observational checklist such as the NIMS (Nims, 2004), the evaluator can ensure that they have recorded all of the essential dimensions of the parent/child interactions. The NIMS is a 46-item workbook for the evaluator to record parent-child interactions along five dimensions: safety/ environment, general behavior toward child, teaching/training, control, and child-initiated behavior.

Checklists are essentially more organized versions of note-taking, and do not constitute a psychological test because there are no norms or attempts to establish reliability or validity. This means that even when a checklist yields a numerical “score,” there is no way to tell what amount of difference between the parental scores is statistically significant. Thus the comparison of parents must remain narrative and a matter of clinical inference by the evaluator.²⁵
- **Recording – audio or video.** Recordings certainly capture more details than notes or checklists, but they also create a time-consuming task of listening to and transcribing the session. One could also argue that the visual images in video recording constitute an unnecessary invasion of the family’s privacy, since all recordings must be retained along with all of the other materials collected during the evaluation.

HOME VISITS

Home visits provide an excellent opportunity to observe the family in their natural setting, where interactions should be more relaxed and typical of daily life. However, there is no research evidence that indicates whether home visits or in-office observations are a more valid observational method (Hynan, 2003).

Box 59 lists the types of information that can be obtained from a home visit.²⁶ In assessing the home, the important dimensions are the safety, supervision, and nurturance of the child. There is no empirical evidence that an affluent home is better for a child than a modest but adequate home (Hynan, 2003).

Box 59. *Things to Observe during Home Visits*

- ◆ **Physical condition of home**
 - **Cleanliness and order**
 - chores posted
 - family schedules and appointments posted
 - **Safety**
 - safety latches & gates, plug covers, etc
 - cleaning supplies and medicines not accessible to children
 - screens or barriers on upper-story windows
 - **Food/Kitchen**
 - nutritious food
 - snacks accessible to older children
 - scheduled meals
 - **Sleeping arrangements and routines**
 - privacy for children and adults
 - adults accessible for nightmares and other child needs
 - **Play Areas**
 - indoor space – clean, visible for supervision
 - yard or outdoor play space – enclosed, no dangerous clutter
- ◆ **Child activities**
 - **Toys and entertainments**
 - age-appropriate
 - adequate storage
 - **Enrichment materials** – computer, books, musical instruments
 - look as if actually used?
 - **Place to do homework**
 - **Photographs and awards**
 - on display
 - photographs of immediate family? of other parent? of extended family?

Box 59

- ◆ **Family Pets**
 - Physically well-cared for
 - Affectionate interactions with children and adults
 - Children take some responsibility for care

- ◆ **Behaviors of family members**
 - Child's level of comfort and spontaneity
 - Interactions among family members

- ◆ **Neighborhood and Community**
 - General safety and upkeep of neighborhood
 - Child's walking and riding routes to daycare, school, after-school
 - Relationship between family and neighbors

On the other hand, home visits are inconvenient, time-consuming, and the least controlled part of the evaluation.²⁷ To introduce more control, it is helpful to follow a standard set of procedures similar to those listed in Box 60.²⁸

Interviewing children in their own home provides an opportunity to initiate the conversation using the child's own possessions. Skafté illustrates this point with the following exchange:

Evaluator: Tell me, Megan, what is your favorite thing in this room?

Child: This little dog who lives in the basket.

Evaluator: It's cute. Where did you get it?

Child: My Grampa gave it to me.

Evaluator: Sounds like your Grampa is a nice man.

Child: He is. My mom and I always go to see him on Sunday. He tells me stories and is nice. He has a dog just like this one. But his dog is real.

Evaluator: Now let's see, you have another Grampa, don't you? The one on your Dad's side of the family?

Child: Yes, but I've never been to his house. He lives far away. I think he might be mean but I'm not sure.

(Skafté, 1985, p. 80)

In doing the home visit, many evaluators like to use structured activities similar to those listed in Box 58 for Parent/Child Observations, because the evaluator can observe the family interacting while using standard materials provided by the evaluator. This approach is compatible with Format B in Box 60. I prefer to observe the family doing activities they would normally do in their home, and also to interview the children during the home visit. My approach is compatible with Format A in Box 60.

Box 60. Ways to Standardize Home Visits

- ◆ **One visit to each home**
- ◆ **All people living in home must be present**
 - **Adults – parent; parent’s current romantic partner; relatives; friends; boarders**
 - **Children – children in divorce dispute; step-siblings; relatives; others**
- ◆ **Same time of day for each visit**
- ◆ **Same length of time for each visit** (1½-2 hours)
- ◆ **Both visits made on weekday, or weekend**
- ◆ **Children in household long enough to recover from transition from other parent**
Longer absences require longer transition times.
- ◆ **Same Standard format used for both visits**
 - **Format A: Family Discussion and Child Interviews**
 1. Initial greeting
 2. Visit with evaluator and all family members (20 min)
 - Accept beverage if offered – coffee, tea, soda, water
 - Initiate discussion of family vacation, pets, movies, etc .
 3. Tour of house, led by children. (10-15 min)
 4. Interview children separately in bedroom or other private area. (30 min each)
 5. Say goodbye; If 1st home visit, explain that evaluator will see children at home of other parent, on date of 2nd home visit.

Box 60

- **Format B: Family Discussion and Structured Family Activities**
 1. Initial greeting
 2. Visit with evaluator and all family members (20 min)
 - Accept beverage if offered – coffee, tea, soda, water
 - Initiate discussion of family vacation, pets, movies, etc .
 3. Tour of house, led by children. (10-15 min)
 4. Ask family to participate in 3 structured activities (20 min each)
 - Game chosen from selection brought by evaluator
 - Family drawing, using materials brought by evaluator
 - Building project, using materials brought by evaluator
 5. Say goodbye; If 1st home visit, explain that evaluator will see children at home of other parent, on date of 2nd home visit.

PSYCHOLOGICAL TESTING

Chapter 11 covers the standard and custody-specific tests available at this time. Be sure to read that chapter carefully before requesting psychological testing for the parents or children in a custody evaluation. As I noted in that chapter, the empirical research indicates that testing is appropriate only when there are questions regarding serious mental illness in the children, or parental fitness issues in the parents. Psychological testing for a custody evaluation should only be done by a psychologist who specializes in forensic evaluations.

This does not mean that the mental health of the parents and children is not relevant to a child custody evaluation. On the contrary, it is essential to evaluate the psychological adjustment of each adult and child involved in the custody dispute. This evaluation can be done without psychological testing, however, by using

information from (a) interviews and direct observation of adults, children, and adult/child interactions, and (b) collateral information: record review and interviews with medical providers; mental health providers; teachers and daycare providers; ministers, rabbis, and priests; and any social service providers involved with the family. This type of information is covered in the next section.

INFORMATION FROM COLLATERAL SOURCES

Once the interviews and observations are completed, the evaluator can compare the information collected in one interview or observation with information collected in other interviews and observations. The resulting hypotheses about individuals and family patterns must then be compared with information obtained from professionals and non-professionals who have had extensive contact with the family. The process of examining collateral information is crucial to custody evaluations because parents involved in custody disputes are notoriously biased reporters.²⁹ For these reasons, collateral interviews are used by virtually all experienced evaluators.³⁰

Criteria for Choosing Collaterals

There are two central criteria for choosing collaterals.³¹ First, collaterals should be neutral, or not aligned with the parties in the custody dispute. The less the alignment, the higher the credibility of the collateral source. People who are less emotionally involved with the custody litigants are assumed to be less aligned and more neutral.

The second criterion is that collaterals should possess relevant information that is based on direct observation of behaviors rather than on second-hand reports. In order to obtain this information, evaluators need to ask collaterals to describe specific behaviors and interactions, rather than to discuss their opinions about the parents, children, or custody issues.

Types of Collateral Information

- ***Collateral interviews.*** Box 61 lists the types of collaterals who should be interviewed. Professionals who have been

involved with the family are the most important collaterals because they are relatively neutral and have access to extensive information about the functioning of the family members and the family system as a whole.³² Next in importance are non-professionals who have a relationship with the child and are not involved in the custody dispute, such as coaches, babysitters, and scout leaders.

Although friends and relatives may have in-depth knowledge and understanding of the family members, they are apt to be biased. For this reason, judges and attorneys do not consider this information to be helpful (Bow & Quinnell, 2004), and some evaluators have a policy of not interviewing friends and relatives. On the other hand, parents often feel more satisfied with the evaluation process if the evaluator has talked with these supporters (Skafta, 1985). A good compromise is to have each parent choose one friend or relative for the evaluator to interview. The evaluator may also suggest that the parents have other friends and relatives submit letters. Although such letters have little impact because of their perceived bias, they do give the parents a chance to have more of their supporters heard.³³

- ***Review of written records.*** The evaluator needs to review written materials for some types of collateral information, such as criminal records, medical records, and some educational records. Various types of documents and materials to examine are listed in Box 61.³⁴

Confidentiality Issues

Confidentiality rules apply to the relationships between professional informants and the parents. This means that the evaluator must obtain an *Authorization for Release of Information* from the parents for each professional informant, because the professionals must have a signed copy of the form before they can speak with the evaluator or send any written material.

Confidentiality rules do not apply to the relationships between the parents and non-professionals, so an *Authorization for Release of Information* is not legally required for the evaluator to talk with these

non-professionals. In practical terms, however, using a parental release form with non-professional informants lets the informants know which parent has requested that they talk with the evaluator. In this way, the evaluator may avoid confusion and recriminations later on, if one or both parents are unhappy with the information the non-professional collateral provides.

Box 61. Types of Collateral Sources

Interviews

◆ **Child**

- **Health:** pediatrician, hospital
- **Education:** teachers and daycare providers
- **After-school activities:** sport coaches, scout leaders, instructors for music, art, dance, and religious instruction
- **Mental health:** child therapist³⁵
- **Personal relationships:** babysitters, relatives, neighbors, and family friends

◆ **Parent**

- **Health:** personal physician, hospitals, detox centers, disability records
- **Substance Abuse and Mental Health:** individual psychotherapist or counselor; staff in hospital or shelter; AA or NA sponsor
- **Couples and Family Therapists**
- **Social Service Agencies:** staff at Department of Social Services, Head Start, Early Intervention, Alcoholics Anonymous, Narcotics Anonymous; community case workers; visitation supervisors
- **Employment:** employer, supervisor, fellow workers, consultants; Social Security Administration
- **Criminal:** local police officers; jail staff
- **Military:** commanding officer
- **Religion:** minister, rabbi, or priest
- **Personal relationships:** babysitters, roommates and housemates; relatives, neighbors, and family friends

Box 61**Documents and materials**

- **Legal materials:** pleadings; statements; affidavits; transcripts of previous hearings; previous GAL reports; Family Service reports
- **Health:** intakes; treatment summaries; discharge plans; prescriptions and medication bottles; letters from medical providers; autopsy reports
- **Substance Abuse and Mental Health:** hospital or outpatient-- intakes, treatment summaries, discharge plans, psychotherapy notes; substance abuse treatment; shelters; halfway houses; psychological or psychiatric evaluations; prescriptions and medication bottles; letters from mental health providers
- **Social Service Agencies:** reports by Dept. Social Service; Social Security Disability Admin.; Head Start; Early Intervention; visitation center
- **Employment:** contracts; performance reviews; pay stubs
- **Military:** discharge papers; performance reviews
- **Education:** school records; report cards; transcripts; diplomas; Individual Education Plans (IEP)
- **Criminal:** CORI; CARI; police reports; criminal juvenile history
- **Personal:** letters; Emails; blogs; computer hard drive; journals; diaries; photographs and videos; phone bills; voicemail messages; credit card bills

Confidentiality does not apply to the information that third-party collaterals give to the evaluator, so collaterals do not need to sign an *Authorization to Release Information* form.³⁶ The collaterals must be informed of this lack of confidentiality, however, and told that the information they provide will be included in the evaluator's report to the court. Collateral informants can also be subpoenaed to testify in court, and are subject to both direct-examination and cross-examination.

Although a written *Consent Form* (or "Lamb Warning") is not legally required for collaterals, it is preferable to an oral consent

because it provides a written record that the evaluator warned the collateral about the absence of confidentiality in the custody evaluation. A sample *Consent Form for Non-Professional Collaterals* is included in section VIIIb of the CD. Even when a written *Consent Form* is used, the evaluator should still discuss the confidentiality issues at the beginning of every interview.

Methods of Data Collection

- **Interview protocols.** It is important to ask similar questions of comparable collaterals.³⁷ In each evaluation, compose a list of questions for all of the medical providers, teachers, adult mental health providers, non-professionals, etc. For example, Section VIIIa of the CD contains *Questions for Teachers*, which give the school staff a sense of what type of information you are seeking. The questions should then be used in the semi-structured *Interview for Teachers*. Section VIIIb of the CD also contains a set of *Questions for Friends, Relatives, and Community Members* and a corresponding *Interview for Friends, Relatives, and Community Members*.³⁸
- **In-person vs. Telephone interviews.** Because of the time and costs involved, many third-party interviews have to be conducted on the telephone. This practice is common, and permitted by the current guidelines for custody evaluations (e.g., AFCC, 2007, section 5.10, p. 81).³⁹
- **Questionnaires.** Some experienced evaluators have begun to use standardized questionnaires that focus on behavioral observations (Kirkland, McMillan, & Kirkland, 2005). For instance, Gould now sends non-professional informants a brief questionnaire that focuses on their behavioral observations of parent/child interactions (2006, p. 109). The *Questions for Friends, Relatives, and Community Members* (see section VIIIb of the CD) can be used in this manner as well. The questions I use regarding parent/child interactions are similar to those used by Gould; I also include questions regarding behavioral observations of parent/parent interactions.

Steps in Collecting Collateral Information

- **List of informants** – First, the evaluator must have each parent provide a list of professionals and others they would like the evaluator to speak with, including contact information for each.
- **Release Forms** – Second, have each parent sign an *Authorization for Release of Information* form for every collateral source. (See the copy reproduced in section IV of the CD.)
- **Packet to Informants** – Third, the evaluator should send a packet to each collateral, containing the following:
 1. Cover letter to collaterals explaining the evaluator's role, and specifying the type of information needed.
 2. Photocopy of evaluator's court appointment (for professionals only).
 3. Copy of Authorization for Release of Information form, signed by one or both parents, as needed.
 4. Informed Consent form, to be signed and mailed back to evaluator.
 5. List of questions or issues to be discussed.

Sample copies of each of these materials can be found in section VIII of the CD. When seeking information from professionals, it often saves time to fax this information to them.

Notes

1. As noted in note 15 of Chapter 12, the evaluation should be organized around the best interests of the child (Shear, 2004), not the allegations of the parents as Benjamin and Gollan (2003) suggest.
2. This use of a balanced process is specified in the guidelines for custody evaluations, e.g. AFCC, 2007, section 5.5, p. 80.
3. The concept of convergent validity is discussed in Chapter 11. In that chapter and elsewhere, I have already discussed the standards for child custody evaluations, which all require multiple methods of data gathering for this reason (e.g. AFCC, 2007; APA, 1991, 1994; copies of these guidelines are contained in section XII of the CD that accompanies this volume).
4. Martindale points out that although there has been no published research addressing the role of confirmatory bias in child custody evaluations, there is extensive research on the process in other evaluative endeavors such as psychiatric diagnosis. Martindale distinguishes between "confirmatory bias," which is an unconscious, inadvertent process, and the conscious, deliberate operation of "confirmatory distortion" wherein an evaluator who wants to bolster a favored hypothesis selectively gathers and reports data or interprets

it in a skewed manner, thus producing a distorted picture of the family being evaluated (2005, p. 33).

5. The order of procedures in Box 49 is extrapolated from Clark, 1995.
6. There is extensive research on the non-forensic use of semi-structured interviews. Based on this research, Gould has encouraged the use of semi-structured interviews in child custody evaluations (Gould, 2006; Gould & Bell, 2000; Gould & Lehrmann, 2002). Other writers have also advocated the use of semi-structured forensic interviews; for instance, Benjamin and Gollan (2003) provide questions for a semi-structured interview to be used with parents.
7. Gould (1998, 2006) has proposed a similar list of purposes for forensic interviews, without emphasizing the importance of establishing rapport.
8. Shear alludes to Johnston's suggestion that professionals working with high-conflict families should adopt a "tone of empathic objectivity" and goes on to point out that, "Parents are more likely to follow the advice of an evaluator who has established rapport." (Shear, 2004, p. 132; alluding to Johnston's "various books, articles, and presentations," thus presumably such works as Johnston, 1994, 1995, 1999, 2000, 2003; Johnston & Campbell, 1993; Johnston & Girdner, 2001; Johnston & Kelly, 2004a, 2004b; Johnston et al. 2001; Johnston, Lee, et al., 2005; Johnston & Roseby, 1997; Johnston & Straus, 1999; Johnston, Walters, et al., 2005a, 2005b.
9. The topics in Box 50 have also been discussed by writers such as Ackerman, 1995, 2001, 2006; Garon, Donner, and Peacock, 2000; Gould, 1998, 2006; and Stahl, 1994.
10. I am not suggesting that the evaluation be organized around the parental allegations (cf. Benjamin & Gollan, 2003), but merely proposing that the evaluator consider how the order of interviews affects the information-gathering process.
11. Benjamin and Gollan (2003) ignited a controversy by asserting that pre-adolescent children should not be interviewed because they are highly suggestible and therefore do not give accurate reports. This viewpoint differs from both professional guidelines (e.g. AFCC, 2007; APA, 1994) and writings by custody experts (e.g. Ackerman, 2001, 2006; Gould, 2006; Kuehnle et al., 2004; Shear, 2004; Stahl, 1994), which all call for interviewing children in custody evaluations.
12. Child interviews regarding child sexual abuse and child physical abuse are exceptions. As explained in Chapters 24 and 25, these specialized interviews cover a different range of topics and require specific interviewing techniques.
13. This summary of general areas matches the areas of focus in the Uniform Marriage and Divorce Act (UMDA, 1979, §402.9A) as well as the major guidelines for doing child custody evaluations (e.g. AFCC, 2007; APA, 1994).
14. The strategies in Box 52 are based on Condie, 2003; Gould, 2006; Hynan, 1998; Poole and Lamb, 1998; Sattler, 1998, pp. 760–763; Saywitz and Camparo, 1998; Steward, Bussey, Goodman, and Saywitz 1993; and Stone and Lemanek, 1990.
15. This summary of the research on child memory is based on Condie, 2003; Kuehnle et al, 2004; and Poole and Lamb, 1998.
16. This discussion of children's capacities to perceive and tell the truth is based on the summaries of research contained in Condie, 2003, pp. 220–225; and Steward et al., 1993.

17. This discussion of suggestibility is based on the summaries of research contained in Hynan, 1998; Kuehnle et al., 2004; Poole and Lamb, 1998; and Saywitz and Camparo, 1998.
18. Hynan (1998) discusses these signs of coaching.
19. The major guidelines (e.g. AFCC, 2007; APA, 1994) and books about child custody evaluations (Ackerman, 1995, 2001, 2006; Benjamin & Gollan, 2003; Bricklin, 1995; Galatzer-Levy & Kraus, 1999; Gould, 1998, 2006; Schutz et al., 1989; Skafte, 1985; Stahl, 1994, 1999) have already been discussed in previous chapters in this volume.
20. All questions should be asked regarding each parent separately, alternating the order of the parents. The first two questions are adapted from Hynan, 1998, p. 475. The third and fifth questions are from Ackerman, 2001, p. 117. The fourth question is from Skafte, 1985, p. 106; and Ackerman, 2001, p. 114, although Ackerman proposes the question for use in interviewing parents rather than children.
21. For younger children, this question needs to be broken into three separate questions.
22. This example is taken from Skafte, 1985, p. 97.
23. The techniques in Boxes 53–56 are adapted from my practice as well as from Ackerman, 1995, pp. 89–91; Ackerman, 2001, pp. 116–118; APA-med, 1988, pp. 6–7; Schutz et al., 1989, pp. 155–161; and Skafte, 1985, pp. 98–114.
24. Both Hynan (2003) and Schutz et al (1989) recommend having the parent/child groups discuss a problem. The other sample tasks in Box 58 are adapted from Schutz et al, 1989, pp. 162–169.
25. Hynan (2003) discusses a few behavior rating systems that were developed for clinical use with families. Unfortunately, these rating systems are either unpublished or too detailed for use in child custody evaluations.
26. The information in Box 59 is adapted from Schutz et al, 1989, p. 86.
27. Benjamin and Gollan (2003) state that, “Home visits are to be avoided, if at all possible, because they lack standardization that could influence clinical judgment and require more evaluator time than in-office observations” (p. 71). Other evaluators, including this author, feel that home visits provide a unique and extremely valuable source of information.
28. The procedures in Box 60 are taken from my forensic practice; some were originally adapted from Schutz et al. 1989, pp. 87–88 and from Skafte, 1985, pp. 73–94.
29. As Gould and Bell (2000) have noted, there is some empirical research indicating that parents in child custody disputes tend to “project their own disturbance and strong feeling” when describing the family situation (Hysjulien, Wood, & Benjamin 1994, p. 472).
30. Gould and Lehrmann state that, “Acquisition of reliable and relevant collateral information is arguably the most important component of a child custody evaluation” (2002, p. 25). Other experienced evaluators agree with this assessment (e.g., Austin & Kirkpatrick, 2004). Guidelines for child custody evaluations call for collecting collateral information (e.g. AFCC, 2007; APA, 1991, 1994). In a nationwide survey of experienced custody evaluators who are members of AFCC, Kirkland et al. (2005) found that 100% reported using collateral interviews in their evaluations.

31. A number of experienced forensic psychologists have discussed these guidelines for choosing sources (e.g., Austin, 2002; Austin & Kirkpatrick, 2004; Gould, 1998, 1999b, 2006; Kirkland et al, 2005; Skafte, 1985).
32. Professionals are often viewed as having little or no emotional stake in the custody dispute, so that information obtained from them can be used to test the hypotheses based on interviews with the family (e.g. Benjamin & Gollan, 2003; Gould, 2006; Skafte, 1985). Professionals may also provide the evaluator with biased information, however (Austin, 2002; Austin & Kirkpatrick, 2004). Teachers, therapists, and others working closely with family members are emotionally involved and therefore tend to have positive views of their clients. Professionals may also base their judgments on biased or inaccurate information they received from their clients. For these reasons, it is important for the evaluator to approach all sources of information, including third-party sources, with a healthy dose of skepticism. Be sure to check all of the sources of information against each other; there is no one authoritative, completely accurate source of information.
33. It would add considerable length to the report if the evaluator were to list each writer and discuss each letter; this approach would add little unbiased information to the evaluation, while adding work for the evaluator and the judge. One solution is to simply report the number of letters received, and summarize their themes.
34. Most of these collateral sources are listed in Heilbrun, 2001, p. 174.
35. Child therapists can only be interviewed by court order, after a special Guardian Ad Litem has made a recommendation to the court as to whether the therapist/patient privilege should be waived. Interviewing a child therapist often disrupts the therapy because the child feels betrayed and exposed. For these reasons, it is preferable to obtain information about the child's psychological functioning from interviewing the child and from talking with other professionals such as the child's teacher, pediatrician, and day care provider. The evaluator should only interview the child therapist if sufficient information is not available from other sources.
36. Austin notes that some "commentators suggest there may be a duty of confidentiality between evaluator and third-party informant and encourage evaluators to get permission from all collaterals before using their information." However, he then goes on to say that, "This arduous task may assuage any hard feelings by a reluctant collateral source, but is probably unnecessary" (Austin, 2002, p. 179). In his practice, Austin gives the collaterals an oral non-confidentiality warning at the beginning of each interview.
37. Gould has also made this point (Gould, Kirkpatrick, Austin, & Martindale, 2004) and provided sample questions to ask non-professional collaterals (Gould, 2006, p. 109). In a nation-wide survey, Kirkland et al. (2005) report that 49% of evaluators follow a formal outline for third party interviews.
38. Some of the questions for teachers are similar to those used by Skafte, 1985, p. 125. Some of the questions for friends, relatives, and community members are similar to questions used by Gould, 2006, p. 109.
39. Kirkland et al. (2005) report that 81% of evaluators use a mixture of telephone and in-person interviews for collaterals, and 16% use only telephone interviews.

14

WRITING THE REPORT

FUNCTIONS AND GENERAL GUIDELINES FOR REPORTS

The report is the culmination of the evaluator's work. It must summarize the evaluation in a way that makes it clear what the *questions* are, what *procedure* was used, what *data* was collected, and what the *inferences and conclusions* are.

Remember your audience. The report must provide the judge and attorneys with the information they need to settle or decide the case. Try to explain the complex issues in a compelling but extremely brief narrative. Be sure to present the information in a way that preserves each family member's dignity by describing their particular strengths and weaknesses in a sensitive, impartial manner.

First I will review some general guidelines for report-writing, and then discuss each section of the report separately. Box 62 contains a Report Outline that works well for incorporating the required sources of information and levels of inference.

Language, Focus, and Levels of Inference

The report should be written in simple, clear language. Brevity is essential. This is *not* an opportunity to display your knowledge of literature, the arts, or even law and psychology.

Think about what the decision-makers need to know about the family, and provide *only* that information. This often requires sifting

Box 62. Outline for Report of Child Custody Evaluation

I. Introductory Information

- A. Title and Date of Report
- B. Contents of Report
- C. Identifying and Contact Information for family, evaluator, and attorneys

II. Reasons for Referral

- A. Court Order
- B. Questions to be addressed by evaluation

III. Informed Consent / Waiver of Confidentiality

IV. Data-Gathering Procedures

- A. Interviews with family members
- B. Observation of parent/child interactions
- C. Home visits
- D. Interviews with third-party collaterals
- E. Records reviewed
- F. Psychological testing

V. Explanation of Methodology used in Evaluation

- A. Custody standards and social science research
- B. Explanation of reliability and validity
- C1. Explanation for *not using* psychological tests or
- C2. Explanation for *using* psychological tests
 - a. Relevance of each psychological test used
 - b. Psychometric properties of each psychological test used
 - c. Identification of psychological testing expert
- D. Order of interviews and observations

VI. Background to the Evaluation

Box 62

VII. Parent #1: [name]

- A. Data-gathering procedures and parent's general demeanor
- B. Concerns and desires re. custody
[Level I observations about parent #1: sections VII. B through VII.H]
- C. Personal history
 - 1. Family background
 - 2. Education and Career
 - 3. Health
 - 4. Religion
- D. Living situation
- E. Relationship history
- F. Parenting history and pattern
- G. Relationship with children
 - 1. Child #1
 - 2. Child #2
- H. Social and psychological functioning
- I. Summary re. parent #1 – **[Level II inferences about parent #1: section VII.I]**

VIII. Parent #2 : [name] [Same subsections as for parent #1.]

IX. Child #1: [name, age – oldest child first]

- A. Data-gathering procedures for child #1
- B. Living situation **[Level I observations about child #1: sections IX.B through IX.G]**
- C. Relationship with family
- D. Health
- E. School
- F. Social and psychological functioning
- G. Wishes re. custody
- H. Summary re. child #1 – **[Level II inferences about child #1: section IX.H]**

Box 62

- X. Child #2: [name, age]** [Same subsections for each child as for child #1.]
- XI. Family Dynamics** [if not adequately covered in previous sections]
- XII. Domestic Violence** [or other special issues; special section for each]
- XIII. Conclusions – [Level III inferences – Implications of all Level II inferences for custody-specific variables: Section XIII]**
- XIV. Recommendations – [Level IV inferences – Implications of Level III inferences for the ultimate issue: Section XIV]**
- XV. Evaluator Credentials and signature**

through the voluminous information available, so that you can focus on the essentials.

Avoid jargon and especially psychiatric diagnoses. Diagnoses are often used by the litigants and their attorneys in an inappropriate, pejorative manner.

Most of your writing should be focused on specific behavioral observations because they enable the reader to assess the accuracy and appropriateness of the inferences you have drawn from those observations. Before you start writing, it might be helpful to review the levels of inference discussed in Chapter 7 on the Ultimate Issue. Take special note of the examples of report writing in Box 25. Box 63 shows where the various levels of inference fit into the report.

Box 63. *Levels of Inference and Sections of Report*

Discussion in Report	Sections of Report
<i>Level I – Observations</i>	
<ul style="list-style-type: none"> • Behavioral Observations • Statements by Family Members • Statements by Third-Party Collaterals • Statements in Documents Reviewed • Psychological scores 	<ul style="list-style-type: none"> VII. PARENT #1, sections A-H VIII. PARENT #2, sections A-H IX. CHILD #1, sections A-G X. CHILD #2, sections A-G XI. FAMILY DYNAMICS – beginning of section XII. SPECIAL ISSUES – beginning of section
<i>Level II – Inferences about family dynamics and psychology of family members</i>	
<ul style="list-style-type: none"> • Patterns of behavior • Emotional issues • Description of parent/child relationships • Parenting Style • General Psychological functioning • Level of family conflict • Parents' ability to cooperate 	<ul style="list-style-type: none"> VII. PARENT #1, summary (section I) VIII. PARENT #2, summary (section I) IX. CHILD #1, summary (section H) X. CHILD #2, summary (section H) XI. FAMILY DYNAMICS – summary of section XII. SPECIAL ISSUES – summary of section

Level I – Observations

- | | |
|--|--|
| <ul style="list-style-type: none"> • Behavioral Observations • Statements by Family Members • Statements by Third-Party Collaterals • Statements in Documents Reviewed • Psychological scores | <ul style="list-style-type: none"> VII. PARENT #1, sections A-H VIII. PARENT #2, sections A-H IX. CHILD #1, sections A-G X. CHILD #2, sections A-G XI. FAMILY DYNAMICS – beginning of section XII. SPECIAL ISSUES – beginning of section |
|--|--|

Level II – Inferences about family dynamics and psychology of family members

- | | |
|--|--|
| <ul style="list-style-type: none"> • Patterns of behavior • Emotional issues • Description of parent/child relationships • Parenting Style • General Psychological functioning • Level of family conflict • Parents' ability to cooperate | <ul style="list-style-type: none"> VII. PARENT #1, summary (section I) VIII. PARENT #2, summary (section I) IX. CHILD #1, summary (section H) X. CHILD #2, summary (section H) XI. FAMILY DYNAMICS – summary of section XII. SPECIAL ISSUES – summary of section |
|--|--|

<u>Box 63</u>	
Discussion in Report	Sections of Report
<i>Level III – Implications of psychology inferences for custody-specific variables</i>	
<ul style="list-style-type: none"> ● Characteristics of family evaluated in context of research findings on: <ul style="list-style-type: none"> ▪ Age and developmental needs ▪ Children’s reactions to divorce ▪ Effect of parenting styles ▪ Impact and requirements for various parenting plans ● Answers to questions related to referral issues in court order ● Risks and advantages of various custody arrangements 	<p>XIII. SUMMARY AND GENERAL CONCLUSIONS</p>
<i>Level IV – Recommendations about custody and related matters</i>	
<ul style="list-style-type: none"> ● Recommendations re: issues in court order 	<p>XIV. RECOMMENDATIONS</p>

Research vs. Clinical Experience

All of the data must be evaluated in the context of the relevant social science research. This is crucial in the Conclusions and Recommendations sections of the report. Although it is not necessary

to discuss the complexities of the research, it is important to briefly state what the research indicates about the custody-relevant variables. Include a note identifying a source that summarizes the research and discusses its relevance to custody.¹ This can be a general source such as the present volume, or a more specialized article or book. Such a reference gives the reader the opportunity to find out exactly what research you are relying on. This can be important in controversial or fast-paced fields, especially if the report is used in later years.

Essential Information and Length of Report

The report must cover the essential areas of assessment listed in Box 7: parent/parent relationship, parent/child relationships, parenting abilities of each parent, psychological health of all family members, and the family dynamics. In Box 62, this information is divided into sections on each family member.

The challenge is to include all of the required information without making the report extremely long. Whereas reports average 21–24 pages, attorneys and judges prefer them to be 10–12 pages and also think they should be more comprehensive and include more supporting data.² My personal goal is to condense all of the information into 10–15 pages. I seldom achieve this, but at least the effort reminds me to be concise.

Format and Style for Report

Using a standard report format makes writing more efficient, ensures that all the essential areas will be covered, and responds to the need to standardize evaluation procedures. If the court order calls for a focused, limited evaluation, the evaluator can use the same procedures and format but limit the evaluation to the requested information. As I noted in Chapter 3, the method, procedures, and writing style should be the same for all evaluations; only the scope of the investigation should vary.

An annotated Report Form is included in Section X of the CD, and can simply be adapted to the evaluator's own practice. The sections indicated there (and in Box 62) cover the minimum information

required. Add sections as required for special issues such as those discussed in Chapters 16 through 25.

Whatever report format you use, be sure that all sections are labeled with numerals, letters, and numbers. This way, you can give specific references when you summarize the implications of various data sources discussed in the report. Labeled sections also permit attorneys to refer to particular sections in legal documents and court testimony. Numbering the lines on each page is helpful for similar reasons.

INTRODUCTORY INFORMATION

Report Title

It is important to identify the report by case name, name of court, and docket number. The date of filing the report should also be indicated here, for ease of reference.

Contents of Report

A list of contents is extremely helpful to the reader, especially when the report is complex or lengthy. Even short reports benefit from a list of contents, so that the reader can quickly see what areas are covered in the report.

The disadvantage of listing the contents is that it inevitably adds a half page to the report's length. The crucial dimension is really the amount of *text* that the report contains, however. More introductory material simply aids the reader in accessing the text efficiently.

Identifying Information About the Family

Putting the identifying information on the cover page of the report assists everyone involved in the case. Be sure to include each family member's date of birth and age, and up-to-date contact information for all the parties, their attorneys, and the evaluator.

Labeling the parties with gender-neutral terms such as "Parent #1" and "Parent #2" makes the report format appropriate for all family units, including those with same-sex parents who are lesbian

or gay, and those with parenting adults who are of the same sex but not romantic partners. As indicated in Chapter [12], it is best to interview the parent with the most complaints first. In the report, this order should be maintained, so that in describing parent #2 the evaluator can address the allegations made by parent #1. The disadvantage of these gender-neutral terms is that they may seem to imply that Parent #1 is more central to the family dynamics, or closer to being the primary parent, than is Parent #2. This disadvantage is offset by the explanation of procedure in section V.D of the report.

REASONS FOR REFERRAL

Court Order

Make a brief statement quoting the exact words used in the court order. The report form in the CD offers the following example:

This evaluation was conducted pursuant to a [date] court order appointing a child custody evaluator signed by the Hon. [judge's name] of the [Court] Probate and Family Court. The evaluation was ordered regarding the fitness of mother and father as well as what custodial arrangements are in the best interests of the children.

Questions to be Addressed by Evaluation

This section should list psycho-legal questions that translate the court order into behaviors and characteristics that the evaluator can assess. As Box 43 indicates, the following questions need to be answered in order to assess parental fitness and best interests of the children:

1. What is the ability of each parent to parent the children effectively?
2. What parenting tasks has each parent carried out in the past?
3. What kind of relationship does each parent have with the children?

4. How effectively can the parents cooperate with each other?
5. Does either parent have physical or mental health problems that interfere with their parenting abilities?
6. What is each child's adjustment and personality style?
7. Are there any patterns of domestic violence or child abuse in the family?
8. What are the custody wishes of each parent and each child?

INFORMED CONSENT AND PARENT CONTRACT

This section makes it clear that everyone who participated in the evaluation was informed about the lack of confidentiality. Mentioning the *Contract and Fee Agreement* makes it clear that the parents were informed about the purpose, methods, cost, and lack of confidentiality in the evaluation. The Report Form in the CD contains the following statements about confidentiality and informed consent:

All of the people interviewed (in person or by telephone) as part of this evaluation were informed that the information they offered in the context of this evaluation would be used in the preparation of a report that would go to the court. The parties interviewed indicated that they understood the conditions under which they were participating in this evaluation and gave their informed consent to that effect.

The parents in this case signed a *Contract and Fee Agreement* that explained the purpose, methods, cost, and lack of confidentiality in this child custody evaluation.

This statement does not mention *written* informed consent because it may have been necessary to speak with a few third parties after obtaining only oral consent, because time was too limited to mail them the *Consent Form* for non-professional collateralers reproduced in Section VIIIb of the CD. If this is not the case, insert the word "written."

DATA-GATHERING PROCEDURES

This section should include a detailed list of all the data-gathering procedures used in the evaluation. For each interview, observation, or home visit, include the date, description of the procedure, names of the parties involved, and the number of minutes or hours spent. Under each category, list the data sources in order by the date the document was obtained or the interview or observation was completed. Every report should list the following types of data-gathering; the first five are considered standard practice.³

1. Interviews with Family Members
2. Observation of Parent/Child Interactions
3. Home Visits
4. Interviews with Third-Party Collaterals
 - Professionals
 - Non-Professionals
5. Records Reviewed
6. Psychological Testing.

If one or more types of data-gathering were omitted, simply note that under the appropriate heading in this section. The report section on methodology will need to explain why this data-gathering technique was not appropriate or necessary.

EXPLANATION OF METHODOLOGY USED IN EVALUATION

Explain briefly that the evaluation conforms to current standards of practice, using a statement like the following (which is included in section V.A of the Report Form in the CD)

This evaluator sought to obtain all of the information required for child custody decisions based on the Best Interests Standard. This information was then assessed in the context of the most recent social science research on issues related to child custody.

In order to clarify the scientific basis for the custody evaluation, it is helpful to include an explanation of reliability and validity. Here is such an explanation, which can be used in all reports (and is included in Box 38, and section V.B of the Report Form in the CD).

In child custody evaluations, it is essential that the assessment devices used are both reliable and valid. *Reliability* is the degree to which results are consistent when a test or other assessment procedure is repeated. *Validity* is a test or assessment procedure's ability to predict behavior in real-life situations.

In child-custody evaluations, *convergent validity* is also provided by using multiple independent sources of information (e.g. interviews, observations, home visits, record review, and test data) about the same variables. The greater number of information sources that lead to (or converge on) the same conclusion, the more powerful the conclusion, i.e. the more confidence one can have that the conclusion is within a reasonable degree of psychological certainty. Some data are also given more weight than others, depending on the neutrality of the source and the extent to which the information does not involve a subjective judgment on the part of the informant.

After making this general statement about methodology, the report needs to indicate why the evaluator decided to omit or include psychological testing. The following explanation for *not* using psychological testing is included in Box 41 and also appears in section V.C1 of the Report Form in the CD, with a note appended.

Psychological tests were not used in the present evaluation because the methods employed here (interviews, observations, home visits, record review, and information from collateral sources) are more reliable and valid for child custody evaluations than are the tests currently available.*

* Some standard psychological tests (e.g. MMPI-2, MCMI-III, and WAIS) have been the subject of extensive research and have well-established reliability and validity. These tests are appropriate when there are parental fitness issues such as an inability to be consistent, to modulate emotions, to be emotionally sensitive and

available to the child, and to provide the child with appropriate levels of cognitive stimulation, advocacy, and care and protection. These parental fitness issues are not present in the current case.

Most of the tests that have been developed specifically for use in custody evaluations measure various aspects of parenting (e.g. ASPECT, Bricklin Scales, Parent-Child Relationship Inventory, Custody Quotient, and Parenting Scale). Although their intended results are very relevant, their psychometric properties are poor because there is little normative data and adequate reliability and validity cannot be established. The Child Abuse Potential Inventory (CAP) is well-conceived and validated, but it is only relevant to cases involving child abuse. Child abuse is not an issue in the present case.

For the reasons outlined above, neither the standard psychological tests nor the custody-specific tests would have been appropriate or useful in the present case.

[Here, give a reference for a general review of the relevant research, such as the present volume.]

An explanation for *using* psychological tests must refer to two characteristics of each test used: (a) relevance and (b) psychometric properties. The following statements regarding the MMPI-2 are contained in Boxes 39 and 40, and are also included in sections V.C2.1 and V.C2.2 of the Report Form in the CD.

Relevance

In the present custody evaluation, the mother maintained that the father is impulsive and emotionally explosive. She feels that these characteristics interfere with his ability to parent the couple's two children, and also cause the father to interact with the mother in a hostile, verbally abusive manner. In response to these allegations, this evaluator requested that both parents participate in a psychological evaluation conducted by [tester name]. The purpose of the psychological evaluation was to assess these and other personality traits that enhance or interfere with the stability, firm limit-setting, and emotional sensitivity required for effective parenting.

Dr. [name's] psychological evaluation included the MMPI-2, a 567-item parental self-report questionnaire with a true/false format. Although the MMPI was developed to screen for severe psychopathology such as depression, paranoia, and schizophrenia, the scores can also be used to assess the following parenting-relevant variables: capacity for emotional attachment, potential for antisocial behavior, anger management problems, tendency to alienate the child from the other parent's affection, and long-term disposition towards substance abuse.

Psychometric properties

There have been over 10,000 published studies about the MMPI, and its reliability and validity are well-established. In order to interpret the results of the MMPI-2, scores are compared with a normative sample of custody litigants. The present evaluator used the litigant's MMPI-2 results to develop hypotheses about how the litigant's psychological functioning affected their parenting. These hypotheses were then compared with information obtained from the independent sources listed in section IV above.

Finally, the report must indicate who did the psychological testing. If it was done by an independent forensic testing expert (as I would recommend), state this and include contact information for the expert. Indicate whether the expert used a computerized scoring system. The report must also indicate that the inferences about psychological functioning derived from the psychological tests are drawn from the expert's psychological testing report. Section V.C2.3 of the Report Form in the CD includes the following paragraph for this purpose:

In the present evaluation, the psychological testing was done by [name and degree of testing expert]. Dr. [name] is a clinical psychologist with expertise in adapting standard psychological tests for use in custody evaluations. Dr. [name] based her report on the results of a computerized scoring system. The inferences about psychological functioning contained in the present custody

evaluation report are derived from Dr. [name's] psychological testing report. Dr. [name] can be reached at: [street address, city/town, zip code, phone, fax, Email].

BACKGROUND TO THE EVALUATION

This section provides the basic history of the family and highlights factors that affect custody of the children. Write a *very brief* paragraph saying when the couple relationship began, when the couple married, and the number and current ages of the children. State when the marital difficulties began, and around what issues. Give the date of separation and the current arrangements for parenting time. Finish by stating what each parent is seeking in the current custody dispute.⁴

A typical history without special issues might look like this:

John and Jane Doe met in 1998 and married in 2000. They have two children: Jamie aged 4, and April aged 2. In 2005 they began having marital difficulties around issues of finances and marital infidelity, and separated in June 2006. Since the separation, the children have been with the mother during the week and with the father on the weekends. The current custody dispute began when Mr. Doe began a new romantic relationship in September 2006. Ms. Doe is currently seeking legal and physical custody, with Mr. Doe to have parenting time on alternate weekends only. Mr. Doe is seeking joint legal and joint physical custody.

PARENTS/CARETAKERS

In each section on a different person, it is important to differentiate between information based on self-report and information based on other data-gathering techniques. The Report Form includes the following statement for this purpose, printed in smaller type than the rest of the text and positioned right after the section title for each person.

The information contained in this section is based on [name's] report and constitutes [his/her] recollections, perceptions, claims, and opinions of personal and family events. Information from other sources is identified as such.

Data-Gathering Procedures and General Demeanor

To introduce the section on each person, it is also helpful to summarize where you got the information about them. Indicate when you interviewed and observed the person, what assessment devices were administered to them, and any special materials they gave you. Then briefly describe the person's general appearance, demeanor, and degree of cooperation during the evaluation. This can all be done in two brief paragraphs like the following.⁵

This evaluator interviewed Ms. York twice in the office, once at the home visit, and once on the telephone. This evaluator observed Ms. York with the children twice, during the home visit and in the office. This evaluator also spoke with Ms. York's individual therapist, the couples therapist, and the family minister.

Ms. York was always neatly and casually dressed and acted friendly, cooperative, and self-deprecating. Ms. York repeatedly said that she was afraid she was being too negative about her husband and was not being sufficiently clear about her own role and responsibility in the breakdown of the marriage.

Concerns and Desires re. Custody

In one or two sentences, describe what the parent's concerns are (e.g. that the other parent has a substance abuse problem, is negligent, is a caring parent but preoccupied with work). Then indicate whether the parent wants sole or joint legal custody, and where they want the children to live. For example, in the case of Jane and John Doe described above, the section on the mother might say something like this:

Ms. Doe reports that Mr. Doe was verbally and physically abusive to her during their relationship, is irresponsible and negligent with the children, and that he focuses on his new romantic

relationship to the exclusion of the children. Ms. Doe thinks that Mr. Doe is seeking joint legal and joint physical custody to spite her, and to avoid paying child support. For these reasons, Jane Doe is currently seeking sole legal and sole physical custody of both children, with Mr. Doe to have parenting time on alternate weekends only.

Personal History

The purpose of this section is to give a brief summary of the essential elements of the parent's background. It is helpful to the reader to divide the history by topic.

- **Family background** – State where the parent was born and grew up, and give the names of their parents and siblings.⁶ Describe any major problems in the family, such as substance abuse, mental illness, or severe health problems while the parent in the current custody dispute was growing up. Indicate how involved, supportive, and helpful the extended family is today; this can be a crucial resource for many separated and divorced parents.
- **Education and Career** – Briefly summarize the parent's education and career. If education/employment is not an area of concern in the evaluation, simply give the general outline of where and how far they went in school, type of occupation, and current employment and work schedule. If the parent has had difficulties in this area, state what the difficulties are and how they affect parenting. Present corroborating information for areas of concern: interviews with employers and co-workers, and materials reviewed (e.g. performance reviews, diplomas, certificates, drivers license when used in work). This section is also the place to discuss any military record.
- **Health** – Describe any major health problems and how they affect parenting abilities. Corroborate information about problems by interviewing health care providers and reviewing medical records.
- **Religion** – Describe the parent's religious practice as a child, adult, during the marriage/relationship, as a parent, and

currently. Specify whether religion is an area of dispute in the separation/divorce.

Living Situation

This section should tell the reader whether the parent can provide an appropriate living situation for the children, either part-time or full-time. Include a brief description of the variables listed in Box 59: physical condition of the home (cleanliness and order, safety, food/kitchen, sleeping arrangements, and play area). Also consider the availability of appropriate child activities, toys, and family pets. Describe the neighborhood and community in terms of safety and the family's involvement with the neighbors. Specify who lives in the home, or is a frequent visitor (e.g. parent's current boyfriend or girlfriend, extended family members).

The behaviors and interactions of the family members during the home visit should be incorporated into sections VII.G and VIII.G on each parent's relationship with the children.

Relationship History

The purpose of this section is to inform the reader of any marked relationship difficulties and maladaptive patterns the parent may have, because these (a) have a bearing on the parent/parent relationship and family dynamics in the present, and (b) will affect the children in the future when they spend time with the parent and with any new romantic partner the parent may have.

This section will also let the reader know if the parent has children by previous relationships. These children will continue to interact with the children in the present custody dispute. The parent's relationship with those children and their other parent may also be predictive of the parent's continuing involvement with the children in the current custody dispute, as well as the parent's ability to co-parent with ex-partners and ex-spouses.

List any previous long-term relationships and marriages, along with the current ages of any children and their current custody arrangements. Report any domestic violence, substance abuse, or other major difficulties in these relationships (and be sure to indicate where you got this information).

Parenting Style and History

In this section, describe the specific parenting activities done by parent #1 (or #2) before the separation and/or custody dispute. Be sure to consider all of the primary caretaker functions listed in Box 12, as well as the research-based criteria for identifying attachment figures in Box 13. Include (1) specific behaviors from the parent/child observations, as well as information from (2) reports by each parent and each child, and (3) reports from collateral sources such as teachers; daycare providers; health care providers; religious leaders; scout leaders; and neighbors, friends, and relatives. Then discuss the relevant parenting strengths and weaknesses from the list in Box 57.

Relationships with Children

This section differs from the previous one because it focuses on the emotional relationship of each parent/child pair rather than on the parent's activities and abilities. The sources of information are the same: Observation of parent/child interactions, self-report and observation of family members, and reports from collateral sources. It may be clearer to the reader if the parent's relationship with each child is discussed under a separate heading.

Social and Psychological Functioning

Describe the parent's personality style, based on your behavioral observations, interviews with the parent, and reports by other family members and third-party collaterals. If the parent has been in psychotherapy, a description from the psychotherapist is extremely useful. Couples therapists can also comment on the parent's general style of interaction and emotional expressiveness.

You should state whether or not the parent suffers from major mental illness. Do not use technical terms, simply make descriptive statements such as, "Ms. Smith has struggled with depression for ten years," and note dates of psychotherapy and any hospitalizations. Remember, **do not use psychiatric diagnoses** because they are often used in pejorative, manipulative ways by the parties and their attorneys. Furthermore, the child custody evaluation does

not necessarily yield the kind of data that is collected during a psychiatric in-take, and hence the custody evaluator does not really have the data on which to base a psychiatric diagnosis.

If you have had psychological testing done, this is the place to report the results. Discuss the general findings, focusing on the dimensions relevant to parenting. Despite the fact that the MMPI was developed to screen for severe mental illness, for instance, the most appropriate way to use it in child custody evaluations is to examine parenting-relevant variables, not to speculate about the parent's psychopathology.

In general, it is helpful to emphasize the parenting-relevant strengths of both parents, as well as their weaknesses. It is counterproductive to use descriptions that use psychological jargon or terminology that pathologizes relatively high-functioning or normal parents.

Summary re. Each Parent

Summarize the information in the previous sections, e.g. the parent's patterns of behavior, emotional issues, psychological functioning, parent/child relationships, and parenting style. Discuss the parent's role in the family, especially regarding the potential for conflict and cooperation. For each issue, you need to refer to the specific types of data that converge on that conclusion.

CHILDREN

At the beginning of the section on each child, summarize the data collection methods and general demeanor of the child, just as you did with each parent.

The sections on the children cover their emotional, social, and cognitive adjustment at home, school, and in the community. A major focus is the children's family relationships, especially with the parents and other adult caretakers/attachment figures. Each topic should be handled in the same way as the topics for the parents: first present the data, then the interpretations of the data, and then present conclusions based on those interpretations. Box 63 shows

how this progression is similar for the child and adult portions of the report.

As you think about the children, you may want to review Box 26, which summarizes the research on children's developmental stages and responses to divorce. Locating the children on the developmental continuum will help to conceptualize their responses to various stresses, family relationships, and parenting arrangements. If these issues are discussed in the section on each child, their implications for a parenting plan can more easily be included in the Summary and General Conclusions.

FAMILY DYNAMICS

Data-gathering Procedures

As with other sections of the report, begin by listing the sources of information about the family dynamics. Here is an example:

The family dynamics in the Hernandez family were assessed by examining (a) each family member's statements to the evaluator, (b) observations of the interactions among the family members during the home visits, (c) interviews with each parent's individual psychotherapist, (d) interviews with three different couples therapists, and (e) interviews with each child's current teacher. In the section below, the information is first presented by source, and then summarized by the themes in the family dynamics.

After presenting a brief summary of the information obtained from each source, summarize the major themes in the family dynamics. Here is one example of part of such a summary:⁷

The pattern of familial relationships in the Carter family is of major concern to this evaluator. There is quite consistent information provided by five mental health professionals: three family and couples therapists who observed the Carter family directly, one therapist who worked with the father and the 13-year-old daughter Sophia, and the mother's individual therapist. The information obtained from these mental health professionals matches

the mother's report that the father has a history of bullying, verbally abusing, and violating the personal boundaries of his wife and children. This behavior has caused the father to be estranged from his older daughter, Sophia. The younger daughter, Teresa, is more emotionally engaged with the father and attached to both parents.

SPECIAL ISSUES

The specific data-gathering techniques and research related to special issues are covered in chapters 16–25. The subsections will be different for the various topics, and should be evident from the discussions in the pertinent chapters. These topics, too, should be handled in the same manner as the sections on the parents: present the data, then the interpretations of the data, and then conclusions based on those interpretations.

SUMMARY AND GENERAL CONCLUSIONS

This section should summarize the interpretations from all of the previous sections, and then consider the implications for custody. The discussion can be organized around the questions in section II.B of the report, which translate the court order into psycho-legal variables.

The following example (from Box 25 in Chapter 7) shows what level of specificity is needed in the Conclusions section of the report. In this example, earlier sections of the report have already described Mr. Smith's parenting behaviors, and explained why these behaviors constitute an authoritarian style of parenting.

Mr. Smith's parenting style is a risk factor for paternal custody. Research has shown that the authoritarian style of parenting displayed by Mr. Smith is often associated with anger, excessive anxiety, and bullying behavior in the child.* This is a matter of

some concern because Susan has a history of hitting and biting the other children in preschool.

***[Here, give a reference for a general review of the relevant research, such as the present volume.]**

In the Summary, it is helpful to discuss the advantages and disadvantages of various parenting plans for this family. Explain the developmental needs of the children, and the strengths and weakness of each parent. Then discuss these parental and child characteristics in the context of the research on various parenting plans.

For example, the Summary and General Conclusions section of the report on the Carter family described the characteristics and needs of each family member, and summarized the pattern of aggression and conflict in the family (quoted above). The report stated that although this pattern did not match the description of domestic violence in the applicable statutes, research indicates that high levels of inter-parental hostility and aggression are detrimental to the best interests of the children.⁸ Then the report explained why joint custody would not be advisable in this situation.

When all the information regarding domestic violence is combined (see section XII above), there is no clear indication that domestic violence has occurred in the Carter family. That is, there have not been any incidents involving severe *physical* injuries. The information does indicate that Robert Carter did engage in verbal and psychological abuse of his wife and children by (1) violating their personal boundaries, (2) verbally threatening them, and (3) pushing and shoving them on occasion, and that Janice Carter did on occasion push and shove her husband.

Despite the fact that Robert Carter's actions do not fit the criteria for domestic violence, the type of bullying he is reported to have engaged in does have a negative psychological impact on the children. Research has shown that exposure to inter-parental hostility and aggression is associated with children being emotionally distressed, angry, physically aggressive, and overly sensitive to hostility. These child reactions, in turn, may interfere with the formation of intimate relationships in adulthood.*

Given the pattern of verbal abuse and bullying by Robert Carter, it is extremely unlikely that Janice Carter and Robert Carter will be able to make joint decisions about the children in a constructive fashion. Janice Carter is seeking sole legal custody and feels that she and Mr. Carter cannot make decisions together, although she would like to have a Parenting Coordinator to assist them in implementing the parenting plan ordered by the court. Although Mr. Carter is seeking joint legal custody, he does not want a Parenting Coordinator. If one parent is going to be legally responsible for major decisions about the children, it should *not* be the one with a history of intimidating and bullying other family members.

*** [Here, give a reference for a general review such as the present volume, or for a more specific review of domestic violence. For the latter, see Chapter 23 of this volume.]**

RECOMMENDATIONS

Before you write a section on recommendations, be sure that you have considered the issues discussed in Chapter 7 on the Ultimate Issue. Starting the recommendation section on a new page permits the judge to simply remove that page without disrupting the rest of the report. The date and contact information for the evaluator are already included on the first page.

If you are going to suggest a specific parenting plan, be sure to include all of the factors listed in Box 33. It may also be useful to consult one of the forms for parenting plans which are included in section IX of the CD (e.g. [AAML, 2005](#); [NH, 2006](#)).

FILING THE REPORT

Send the original copy of the report to the court, at the address given on the court order of appointment. Enclose a copy of your court appointment for ease of tracking the case.

DISSEMINATING THE INFORMATION

Often, the attorneys will ask for copies of the report. In most jurisdictions, however, the report belongs to the court and cannot be sent to the attorneys without a court order. If you need to clarify this matter, simply call the judge's assistant or clerk.

Retain a hard copy of the report. It is wise to also retain one copy on a CD or diskette. Occasionally, a judge will request such a copy for ease in quoting the custody report in their decision.

Some evaluators advocate meeting with the attorneys and the parents after the report has been filed (e.g. Benjamin & Gollan, 2003). As discussed in previous chapters, however, the custody evaluator's job is done when they complete the evaluation. The report cannot be used for other purposes, and the evaluator should not take on other tasks or roles beyond those outlined by the court appointment.

PRELIMINARY V. FINAL REPORTS

During the course of an evaluation, the attorneys or the parents sometimes ask the evaluator to make a temporary or *interim recommendation*. This is not advisable because the evaluator does not yet have all of the necessary information. The AFCC Model Standards of Practice address this issue directly by stating that "Child custody evaluators shall refrain from making interim recommendations" (AFCC, 2007, section 4.5, page 78).

On the other hand, occasionally an emergency may arise that requires immediate intervention. In this situation, the court may ask the evaluator to write an *Interim Report*. This report should contain all of the information collected in the evaluation to date. In the Summary and Conclusions section, the factors affecting custody (Level III Inferences) should be discussed with enough detail so that the court could make a thoughtful interim decision. Any recommendations by the evaluator should be confined to the immediate, emergency situation. As soon as possible, the evaluator should collect the remaining information and submit a *Final Report*.

Notes

1. Although he agrees that all reports should be research-based, Gould says that, “One does not need to provide citations in the body of the text or a reference list at the end of the report” (Gould, 2006, p. 399). Without some notes or citations, however, it is difficult to know what research the report-writer is relying on. Given the increasing emphasis on research in recent discussions of the *Daubert* criteria, it seems more prudent to include one or two notes regarding research related to the custody issues.
2. In their studies of evaluation practices, Bow and Quinnett (2001, 2002) found that report length averaged 21–24 pages. In 2004 the same authors found that lawyers and judges wanted reports to be only 10–12 pages long, but also wanted them to include more supportive information. Given the *Daubert* requirements for supporting data whose interpretation is informed by research, the average length of reports may have increased in the past five years.
3. As Chapter 11 indicates, in the past decade many evaluators used psychological testing routinely. A review of the current research and discussion suggests that the custody-specific tests have poor psychometric properties, however, and that the standard psychological tests should only be used when there is a question of parental fitness. Thus at the present time, psychological testing does not constitute a standard of practice that conforms to the requirements of the *Daubert* standard.
4. My description of the brief paragraph needed is similar to the description offered by Skaffa (1985, p. 188).
5. It is not necessary to give dates in this list, because the dates are included in the list of procedures in section IV on Data-Gathering Procedures.
6. Specific information about the family of origin is helpful if a later reader needs to obtain a CARI report for the parent. Include name and age/DOB, and town of residence for the grandparents. Maintain specific contact information in your case records.
7. This summary is taken from a report about a family in which domestic violence was alleged. The summary goes on to discuss those allegations, and to explain that although the interactions do not fit the legal definition of domestic violence, the extreme level of inter-parental conflict is detrimental to the psychological health of the children.
8. Child custody evaluators are expected to be knowledgeable about state and federal laws that are relevant to custody issues. Evaluations should not usually discuss legal issues directly, however, because matters of law fall within the purview of the court. The evaluator needs to use wording that provides the court with the necessary information to form a legal opinion, without stating legal conclusions in the report itself. This is particularly important in evaluations where domestic violence is an issue, because many jurisdictions have statutes stating a rebuttable presumption that domestic violence perpetrators should not have custody.

15

REVIEWING CUSTODY EVALUATIONS

ROLES IN REVIEWING EVALUATIONS

Judges, attorneys, and forensic mental health professionals all have occasion to review child custody evaluations. To do this, they all must be familiar with the information covered in previous chapters of this book. The approach of the three roles differs somewhat, however.

Judges

In order to reach decisions regarding custody, judges must attend to *both* the legal *and* the psychological dimensions of the evaluation report. The models for judicial assessment are essentially the same as those for mental health professionals (e.g. [Gould & Bell, 2000](#)), and the judicial role is a consistently *impartial* one.

Attorneys

As advocates for one party in a case, attorneys are *not impartial*. Attorneys examine reports to determine whether they will be helpful or harmful to their client's case. Sometimes an attorney seeks to challenge part or all of the report. Most attorneys do this by addressing legal issues related to the report (e.g. [Storrow, 2002](#)).

It is also important for attorneys to consider the psychological dimensions of the report, however. Thus the components of a comprehensive legal assessment are the same as for a judicial

assessment or a forensic mental health assessment, but attorneys are not guided by an impartial attempt to foster the best interests of the child.

Forensic Mental Health Professionals as Consultants

When forensic mental health professionals act as evaluators, they must be *impartial*. When they agree to review an evaluation done by a colleague, however, they are *not impartial*; they are acting as a consultant to the attorney who hires them.¹

From a legal perspective, the consultant is an agent of the attorney and their communications with the attorney are protected by the attorney-client and the attorney – work product privilege. The privilege between the consultant and the attorney is strengthened if the consultant obtains the report and other confidential materials directly from the attorney, and then evaluates and interprets them for the attorney.²

When acting as a consultant, the forensic mental health professional can only offer a critique of the evaluation methods. They cannot offer any opinions regarding custody because they have not usually had the opportunity to interview the family members, or to review the other information in the case. Even if such interviews and record review are available to the consultant, this does not constitute the range of data required for a custody evaluation. The consultant needs to make these limitations clear in any written or oral summary of their critique.

GENERAL ISSUES IN REVIEWING EVALUATIONS

The first set of questions has to do with the referral process, the qualifications and impartiality of the evaluator, and the general structure of the evaluation. Some pertinent issues are listed in Box 64.

SCIENTIFICALLY-BASED METHODOLOGY

The second area of inquiry concerns the *Daubert* requirement that all child custody evaluations be done with a scientifically-based methodology. There are several aspects to this issue, which are

Box 64. *General Issues in Reviewing Evaluations*

◆ **Referral and Scheduling**

- Conflict of interest
- Court appointment
- Specialized expertise required – sexual abuse, domestic violence, etc.
- Parties provided with information about purposes, cost, process, lack of confidentiality, and intended use of evaluation
- Timely completion

◆ **Focus of Evaluation**

- Wording of court order reported
- Court order translated into psycho-legal questions
- Identifies factors and variables to be measured
- Best Interests Standard specified

◆ **Structure of Evaluation**

- Clear description of method and procedures
- Balanced data collection – same methods for both parties
- All family members interviewed and observed
- Basic data-collection techniques used
 - Interviews
 - Parent/child observations
 - Home visits
 - Third-party interviews
 - Document review
 - Psychological testing (if needed)

◆ **Confidentiality and Privilege Issues**

- Non-confidentiality warning given to all participants
- Release of Information forms used for family members
- Consent forms used for third-party informants
- Waiver of child/therapist privilege (if child therapy information obtained)

◆ **Impartiality**

- Tone of discussion objective and impartial
- Limitations of data addressed
- Inconsistencies in data addressed
- Alternate hypotheses and possibilities discussed

discussed below and outlined in Box 65 for each type of data collected during an evaluation.

General Methods and Procedures

As noted in Chapters 13 and 14, every evaluation should follow a systematic procedure that is described clearly in the report. The report should offer a brief explanation of reliability and validity, being sure to mention the use of multiple data-gathering techniques to obtain convergent validity.

Relevance

The Federal Rules of Evidence require that the evaluation procedures yield data that are relevant to the court's questions in the custody dispute. This criterion is applicable to all of the assessment measures used, and is most evident in the choice of psychological testing instruments. (See Chapter 11 for a discussion of this issue in psychological testing.)

Gould (2004, p. 92) lists the following six questions to assess the relevance of an evaluation:

1. Were the primary questions or concerns for the court clearly defined as the focus of the evaluation?
2. Were the behavioral data collected relevant to the legal questions?
3. Did the evaluator identify the factors to be measured?
4. Did the evaluator define testable hypotheses for the evaluation?
5. Did the evaluator consider plausible alternative hypotheses?
6. Did the evaluator identify the link between the behavioral data collected and the outcome being predicted?

Box 64 addresses these issues in the following sections: focus of evaluation; impartiality; and observations, interpretations and conclusions.

Reliability and Validity

The main way to achieve *reliability* in a child custody evaluation is by using a standardized approach to all information-gathering techniques. This should increase the likelihood that other evaluators would obtain the same results if they repeated the measures.

The main way to attain *validity* in a child custody evaluation is by using multiple sources of information. As explained previously, this constitutes *convergent validity*. The greater the number of sources that yield matching information, the greater the convergent validity, or probability that the information is accurate.

Box 65 suggests ways to assess the different types of data-gathering techniques used in custody evaluations. The underlying issues include comprehensiveness, systematic data-recording, and ways to achieve reliability and validity.³

Social Science Research

The report should examine the data in the context of research on issues such as child development, parenting functions and styles, the psychological impact of divorce and separation, and the psychological impact of various parenting plans. The findings of the most recent research should be summarized *briefly* to explain how the family dynamics and characteristics of the various family members would interact with different parenting arrangements. The report should also have a note or other reference to a summary of relevant research.

EVIDENTIARY REQUIREMENTS

The third area of inquiry concerns legal aspects of the custody evaluation. Despite the admissibility of hearsay in child custody reports, the report must still meet certain evidentiary requirements. Thus an attorney can motion to strike various portions of the report of a child custody evaluation for a variety of reasons, including:⁴

Box 65. *Assessing Scientific Method in Custody Evaluations*

- ◆ ***Explanation of methods used in evaluation***
 - Explanation of reliability, validity, and use of concurrent validity (multiple sources of data)

- ◆ ***Interviews with family members***
 - Semi-structured interview format
 - Same questions for both parents or caretakers, and for all children in similar age range
 - Children over age 3 interviewed separately; Children under 3 observed with each parent

- ◆ ***Observations of parent/child interactions***
 - Role and participation of evaluator reported.
 - Same method for each parent/child observation
 - Structured tasks and free play (See Box 58)
 - Systematic method for recording observations

- ◆ ***Home visits***
 - Observe physical conditions, child space and activities, pets, neighborhood, behaviors of family members (See Box 59)
 - Standardized procedure (See Box 60)

- ◆ ***Self-report measures***
 - Parent Questionnaire (not a psychological test; data checked against other sources)

- ◆ ***Third-party sources of information***
 - List of collateral sources obtained from each parent
 - Range of sources interviewed (See Box 61)
 - Consent Form
 - Structured interview form used
 - Questions asked re. specific concerns, and also general parenting abilities

Box 65

- ◆ **Record review**
 - Identify source, when and how record obtained
- ◆ **Psychological Testing**
 - Explanation for omitting psychological testing (if needed)
 - Relevance and psychometric properties of each test are explained
 - Participant's response style explained
 - Forensic testing expert identified
- ◆ **Conclusions based on empirical method**
 - Data from different sources compared
 - Data evaluated in context of relevant social science research
 - Findings of research are summarized
 - Review of research is cited
 - Different hypotheses, interpretations, and conclusions are considered
 - Clear progression from Level I through Level IV comments
 - Level I – Behavioral observations clearly described
 - Direct quotations from interviews
 - Level II – Interpretations based on observations and quotations
 - Level III – Summary of implications of level II interpretations for custody-relevant variables
 - Level IV – Recommendations based on application of Level III summaries

1. **Unattributed Hearsay** – The source of reported information is not identified and therefore is not available for cross-examination.
2. **Unavailable for cross-examination** – The source is identified but is outside the state, unwilling to testify, and not subject to subpoena.
3. **Lay opinion** – The report quotes the *opinions* of non-professional witnesses, rather than just their observations of events.

4. Inadequate foundation – This involves two issues:

- a. **Lay source** – The personal knowledge or observation of the witness is not specified.
- b. **Professional source** – Credentials, experience, and methodology for reaching an expert opinion are not specified.

5. Comments on the credibility of a witness – The custody evaluator quotes statements that comment on the credibility of a witness.

6. Opinions in official records – The custody evaluator may quote the *information* obtained during an official investigation, such as one done by the Department of Social Services. Statements of *opinion or evaluation* that are contained in such reports are not admissible, however.

7. Statements by children concerning sexual abuse – Statements by children are only admissible if:

- a. The child is under 10 years of age
- b. The child's statement describes an act of sexual contact and the circumstances or perpetrator involved.
- c. The person to whom the child made the statement is available to testify, and the child is not available as a witness.
- d. The judge finds that the child's statement is reliable.

8. Privileged information – The custody evaluator quotes privileged information when the privilege has not been waived. For example:

- a. *Psychotherapist/patient privilege* – for psychologists, social workers, and psychiatrists.
 - Adults: A HIPPA-compliant Release of information form is required for adults
 - Children: A Guardian Ad Litem to investigate and make a recommendation regarding waiver of therapist privilege is required, followed by a court order waiving privilege.⁵
- b. *Clergy*
- c. *Sexual assault counselor*

- d. *Domestic violence counselor*
- e. *Mediator or Mediator's work product*

9. Irrelevant or stale information – Information from old records that has little bearing on the current issues in the case.

Notes

1. [Gould](#) and his colleagues ([2004](#)) also point out that the forensic consultation should not be described as offering a “second opinion” because the forensic consultant is not doing a second, full evaluation from which they could make a recommendation regarding a parenting plan.
2. [Gould](#) make this point, and note that the forensic consultant cannot contact anyone else (the court, the evaluator, or opposing counsel) without prior, written authorization from the retaining attorney. These authors also call for a written contract between the reviewing expert and the retaining attorney ([2004](#), pp. 42, 44).
3. The information in Box 65 summarizes information from previous chapters, combined with similar points made by [Weissman \(1991\)](#) and by [Gould and his colleagues \(Gould 2004; Gould & Bell, 2000; Gould & Lehrmann, 2002; Gould et al., 2004\)](#).
4. These examples are provided by [Storrow \(2002\)](#), pp. 546–549). Although the examples rely on Massachusetts case law, they point to areas of legal concern that are undoubtedly applicable to case law in other jurisdictions.
5. Although the statutes in most jurisdictions require such a court order, in some courts the recommendation of the special Guardian Ad Litem is usually treated as sufficient.

PART IV

SPECIAL ISSUES IN EVALUATING CHILDREN AND FAMILIES

This section covers the special issues that are relevant to families involved in custody disputes. Although many of these families have more than one of these problems, the chapters are not cumulative, so they do not need to be read in order. Simply go to the chapter that concerns your current cases.

Eventually, everyone who works with high-conflict families will encounter each of these issues. For this reason, it is advisable to develop a basic understanding of all of these topics. For complex cases, you may need to explore some issues in more depth. The sources in the *Reference List* can provide additional information, and the organizations listed in the *Resource List* run specialized trainings and conferences from time to time.

16

DIVERSITY IN FAMILY STRUCTURES

CURRENT VARIETY OF FAMILY STRUCTURES

Most people in the United States picture an ideal childhood as one rooted in the traditional nuclear family: a father working outside the home and a mother at home with the couple's two children. This family type only began in the 1950s, however, and was found primarily among affluent groups. Certainly today it does not match the reality of most children's lives. Only 24% of U.S. households consist of a married couple with their own children. The other domestic units are:¹

- one-parent households with children;
- unmarried cohabiting parents and their biological children;
- same-sex unions with or without children;
- blended families containing re-married parents and their children from previous marriages;
- multi-generational extended families living together;
- groups of adults and children;
- married adults without children;
- single adults without children.

For mental health and legal professionals who order, assess, or conduct child custody evaluations, it is crucial to understand the psychological functioning and legal status of the major types of

domestic units that contain children. The sections below will review recent changes in family structure in the U.S. and then examine the research on families headed by never-married parents, families headed by same-sex parents, and the roles that stepparents and grandparents play in children's lives.²

CHANGES IN FAMILY STRUCTURE

Over the past 30 years in the United States, there has been a major shift towards never-married parenting. Statistics from a variety of sources reflect this trend:

- 27% of children currently live in single-parent families, according to reports by the Brookings Institution and the Center for Research and Child Well-being at Princeton University.³
- Over a third of U.S. births are to unmarried parents, according to census data from 2004.⁴
- 40% of children are born into cohabiting families, according to the U.S. National Center for Health Statistics.⁵
- About half of new, unwed mothers are cohabiting at the time their children are born, and only 17% are living alone, according to the Fragile Families and Child Wellbeing Study.⁶

These statistics do not mean that there is a baby boom among unmarried women. In the past 30 years birth rates have actually *fallen* for unmarried women of all ages and types of marital status, including adolescents. Meanwhile, however, the birth rates have *fallen even faster* for married women than for unmarried women, leaving a larger share of births to unmarried women each year (Cherlin, 2005, p. 35).

The meaning of these statistics is also obscured by the fact that there are two basic types of never-married mothers:

- **Single mothers** – unmarried mothers without life-partners
- **Cohabiting mothers** – unmarried mothers living with their partners.

Unfortunately, much of the early research on “single mothers” did not differentiate between mothers who were truly parenting alone

and mothers who were parenting with a non-marital partner who was ignored by the researcher. As researchers have begun to pay more attention to this dimension, they have discovered that most of the increase in never-married parenting over the past 30 years has been due to an increase in cohabitation. It is not that cohabiting women are more apt to have children than they were before, but that the overall numbers of women cohabiting have risen.⁷ The increase in cohabitation, in turn, has been attributed to changes in economics and in attitudes towards marriage and parenting.

NEVER-MARRIED PARENTS

Education, Race, and Socioeconomic Factors

A lot of the research on single parenting views it as a negative phenomenon found among poor teenagers, and looks for risk factors that can be decreased or eliminated. Education is important, since the risk of a non-marital pregnancy increases immediately after a young woman leaves school (Upchurch, Lillard & Panis, 2002), and is higher for those with lower levels of education (Musick, 2002; Wu, 1996). Men who become fathers before marriage also leave school earlier, have lower wages, work fewer weeks per year, and are more likely to live in poverty than men who do not father children before marriage (Insabella, Williams, & Pruett, 2003; Nock, 1998).

Research has also examined the effects of economic factors, attributing $\frac{1}{4}$ of the increased financial support for unwed mothers to higher government subsidies and the rest of the increase to stricter enforcement of child support laws in the past two decades (Freeman & Waldfogel, 2001). Higher welfare benefits do not necessarily encourage higher rates of parenting outside marriage, as some have feared, because increased welfare benefits are associated with increased marriage rates in Blacks, and there is limited evidence of an association between levels of welfare and marriage rates in Whites (Blackburn, 2000).

On the other hand, differences in family structure *are* related to financial resources and ethnicity. Women in all social groups have been postponing marriage in recent years. More highly educated

women have done this even more than poor and less-educated women, however, and have also been divorcing at a slower rate than before. As a result, the family structures of poor and non-poor women are less similar than they were 50 years ago. Instead, 43% of poor and less-educated mothers are now unmarried as compared with 7% of more affluent and better-educated mothers. Professionals working with children and families are now faced with two increasingly disparate groups: privileged children who have two parents with adequate financial resources, and less fortunate children who live with a financially stressed single parent.

The decline in marriage has also been more marked for African Americans than for Whites. At the present time, 20% of White children versus 60% of African American children will never live in a two-parent family. Mexican-Americans have higher birth rates and more marriage-based, multi-generational households than do African Americans. Puerto Ricans and other Hispanic groups have traditions of long-term cohabitation, so more of their “single” mothers may be living with partners. After discussing these trends, Cherlin concludes that, “Today [marriage] is but one among many options available to adults choosing how to shape their personal lives” (Cherlin, 2005, p. 41).

Changes in Attitude

Another approach to the changes in family structure is to examine attitudes towards marriage and parenthood. This approach assumes that single parenthood is not necessarily undesirable, and looks for reasons why women and men may choose it. For instance, a recent study found that 79% of college students agreed that, “It is perfectly OK for a woman to decide to have and to raise a child without a husband,” with significantly more men (85%) than women (73%) in agreement. Many women (56%) and men (40%) also agreed that, “Children can develop just as well with either a single mother or a single father.”⁸

In a large national study, Manning (1995) found that marriage and parenting have become separate issues. That is, a woman may choose one or both; marriage and parenting do not have to go together. In a later study, Manning (2001) found marked racial differences: Hispanic and Black women were 77% and 69% more

likely than White women to conceive while cohabiting. Hispanic women were also the most likely to remain cohabiting with their partner after the child was born. Manning concluded that cohabitation as a family-building strategy is most acceptable among Hispanics, followed by Blacks, and least accepted among Whites.

Feminist scholars have approached this issue from a political perspective, arguing that the traditional model of the family life cycle has treated single parenting as deviant (e.g. Rice, 1994). The very existence of such an argument testifies to the changing conceptions and opinions about family structure in the U.S. today.

Reasons for Choosing Single Parenthood

Some research has assessed parental motivations indirectly, by studying the correlations between various attitudes and child-bearing behavior. For instance, Barber (2001) reports that preferences for educational attainment, careers, and luxury spending lower the odds of premarital childbearing.

Other research looks at women's own reports about childbearing choices. Zabin, Huggins, Emerson, and Cullins (2000) found that low-income women's decisions focused on the desirability of a particular partner: the desire to avoid childbearing reflected a sense of "not with this partner" rather than the mother's abstract sense that she already had enough children. When other groups of unmarried mothers were asked about their attitudes towards marriage, they reported the following motivations for wanting to marry or to stay single:⁹

Reasons to marry:

- Increase respectability
- Increase financial stability and resources

Reasons to avoid marriage:

- Maintain control over household decisions
- Avoid domestic violence
- Mistrust of men
- Men have inadequate or unstable earnings

Effects of Single Parenthood

Researchers have found that parenting alone can be depressing. Mothers without partners are more depressed than mothers with partners, and cohabiting mothers are more depressed than their

married counterparts. Unmarried mothers may also tend to have a more negative relationship with their children than do married mothers.¹⁰

Other researchers have examined how being raised by a single parent affects children. While one large English study found that children of single mothers have a higher incidence of psychological problems than do children with two caretaking adults (Golombok et al., 2003), a recent nationwide study in the United States did not find any adverse effects of single parenthood (Ricciuti, 2004).¹¹ The marital status of adoptive parents also has no effect on adoption outcome.¹²

Family instability is a major concern because it requires children to experience upsetting transitions. A nationwide study of cohabiting Canadian families found that the presence of children inhibited the cohabiting couple from terminating their relationship; the age, gender and number of children made no difference (Wu, 1995). This does not mean that cohabiting relationships are particularly stable, however. When transitions into and out of cohabiting families are considered along with transitions into and out of married families across the United States, the rates of instability increase by 30% for White children and by over 100% for Black children (Raley & Wildsmith, 2004).

SAME-SEX PARENTS¹³

Over 28% of partnered lesbians and 14% of partnered gay men have children in their households (Black, Gates, Sanders, & Taylor, 2000). Using data from a variety of sources, current estimates indicate that 75,000–100,000 families with minor children are headed by coupled lesbian and gay parents.¹⁴

The overwhelming majority of gay and lesbian families function well, in a manner similar to that of healthy heterosexual families.¹⁵ Extensive social science research has studied the children of gays and lesbians and found that the children's psychological adjustment, school performance, gender identity, and gender-role behavior are not related to their parents' sexual orientation. Children of lesbians and gays also have normal peer relationships, satis-

factory relationships with adults of both genders, and are not at any greater risk of child sexual abuse than are their heterosexual counterparts.¹⁶

Most problems and conflicts in same-sex relationships have the same roots as those in opposite-sex relationships, such as differences in religious, socioeconomic, cultural, and ethnic backgrounds; financial and job pressures; friction with members of the extended family; and divisions of labor within the home. Some problems are unique to same-sex relationships, however, and are caused by the negative attitudes towards homosexuality; thus the couple may disagree about how open or public to be about their sexual orientation.

The longevity of same-sex relationships is similar to that of other cohabiting couples. When same-sex relationships do break-up, the process of arranging for parenting time can be fraught with the same underlying issues as in any separating or divorcing couple. The process is further complicated by the legal issues surrounding parenting in same-sex couples.¹⁷

Family-building Strategies

Same-sex couples acquire their children in a variety of ways, which can have different legal implications upon break-up.¹⁸

- **Childbirth by one partner.** This is a very common route to parenthood for lesbians. One woman becomes pregnant through alternative insemination (AI) with sperm from a known donor or sperm bank. In most jurisdictions the birth mother has all the legal rights of a single mother; the non-biological mother has none.¹⁹
- **Childbirth by surrogate mother.** This route is used occasionally by gay men, who arrange to have a woman inseminated with the sperm of one male partner. The legal contract between the sperm-donating father and the surrogate mother usually designates the father as the legal parent.
- **Adoption.** In most jurisdictions, one partner has to adopt and then has all the legal rights of a single parent; the non-adoptive parent has none. Currently every state except

Florida permits lesbians and gays to adopt as individuals. No countries besides the United States permit adoption by openly lesbian or gay Americans.²⁰

- **Blended families.** Many lesbians and gay men were previously in heterosexual relationships. Children from those relationships are often parented by the same-sex couple at least part-time in a blended-family arrangement.²¹

Parenting Styles and Effects on Children

Research on the behaviors and parenting styles of lesbian and gay parents has consistently found positive parent-child relationships and well-adjusted children.²² This research has led the professional associations for psychology, psychiatry, and pediatrics to issue policy statements supporting the viability and appropriateness of lesbian and gay parenting by stating:

Psychologists understand that homosexuality and bisexuality are not indicative of mental illness.... Psychologists strive to understand the particular circumstances and challenges facing lesbian, gay, and bisexual parents [and] recognize that the families of lesbian, gay, and bisexual people may include people who are not legally or biologically related (APA, 2005, p. 1)

The AACAP [American Academy of Child and Adolescent Psychiatry] opposes any discrimination based on sexual orientation against individuals in regard to their rights as custodial or adoptive parents (AACAP, 1999, p. 1)

The American Academy of Pediatrics recognizes that a considerable body of professional literature provides evidence that children with parents who are homosexual can have the same advantages and the same expectations for health, adjustment, and development as can children whose parents are heterosexual... Because these families and children need the permanence and security that are provided by having two fully sanctioned and legally defined parents, the Academy supports the legal adoption of children by coparents or second parents. (ACP, 2002a, p. 2339)

Legal Issues in Custody

There are two separate types of custody disputes involving lesbian or gay parents: (1) disputes between opposite-sex parents where one parent is heterosexual and the other is lesbian or gay, and (2) disputes between same-sex parents who are both lesbian or gay. The legal issues and practicalities of these two situations are quite different.

- **Opposite-sex parents.** In the past, many courts ruled that homosexuality was a factor to consider in custody decisions, and routinely denied custody and visitation to a lesbian or gay parent in order to avoid exposing the children to the parent's lifestyle (Melton et al., 1997; Patterson & Redding, 1996; Triantafillou, 2006). Because of the extensive research demonstrating that parental sexual orientation is not detrimental or even relevant to parenting, the trend is away from such restrictions. Nevertheless, in many jurisdictions lesbian and gay parents continue to lose their children in custody disputes due solely to the parents' sexual orientation.²³
- **Same-sex parents.** Custody disputes between same-sex parents are shaped by the legal inequality between the parents: the biological (or adoptive) parent is legally recognized, while the non-biological (or non-adoptive) parent is not. Unfortunately, parents in crisis sometimes resort to whatever legal advantage they have; in same-sex relationships, this can take the form of arguing that the non-biological or non-adoptive parent has no legal standing.²⁴

There are four main ways for the non-biological parent to claim parental rights during or after the relationship.

2nd Parent Adoption

In about half of the states, both same-sex partners can be recognized as legal parents by doing a "second-parent adoption" wherein the non-biological (or non-adoptive) parent adopts the child without the biological (or first adoptive) parent relinquishing their parental rights (Kauffman, 2006; Tye, 2003). Previously, this was permitted

only for heterosexual married couples, where the husband could adopt a child born to the wife before the marriage, without the wife relinquishing her parental rights.²⁵

Civil Unions and Same-sex Marriages

Civil unions were enacted in Vermont in 2000, conferring the same rights and responsibilities as marriage (Lambda, 2000). Same-sex marriage was enacted in Massachusetts in 2003 (Granda & Levi, 2006). Under both civil union and same-sex marriage, both partners are considered legal parents and have equal standing in the event of a separation or divorce. It is currently unresolved whether children born to a same-sex couple before the couple's subsequent marriage or civil union are legitimized by their parents' later marriage or civil union (Zeldin, 2006).

The federal Defense of Marriage Act (DOMA, Publ. L. No. 104–199, 1996) defines marriage as between one man and one woman, and gives states the option of not recognizing same-sex marriages or relationships treated as a marriage in another state (Granda & Levi, 2006, pp. 372–375). There are many implications of DOMA, including (a) same-sex marriage does not entitle the partners to any of the 1000+ federal benefits accorded wives and husbands, and (b) civil unions and same-sex marriages are seldom honored outside their state of origin. Inter-state recognition of the legal parenthood of same-sex couples in a civil union or marriage also remains unresolved.²⁶

De Facto Parent

Unmarried parents who have not given birth to or adopted their child may seek to establish legal parenthood through the concept of a *de facto parent*.²⁷ In considering a claim for *de facto parent* status, the court will look for factors such as:²⁸

- Joint decision to have the child
- Parenting agreement
- *De facto parent* resided with the child for a significant period of time, usually 2 years
- *De facto parent* performed at least 50% of the caretaking functions

- De facto parent has been held out to others as the child's parent
- De facto parent contributed to the financial support of the family.

Parent by Estoppel

Some writers have suggested that the criteria for a parent by estoppel may be successfully applied to same-sex custody disputes. Such a parent has been:²⁹

- Obligated to pay child support, or both (a) and (b) apply
 - a. Lived with the child for at least 2 years, during which time the mother led them to believe they were the child's biological father, and they accepted parental responsibility,
 - b. If later they no longer believed they were the child's father, they continued to accept responsibilities as the child's father
- Lived with the child since the child's birth, or for at least 2 years, accepting parental responsibilities as part of a co-parenting agreement with the child's legal parent

The central problem in same-sex custody disputes is that the legal definitions of parents and families do not fit the family structures created by lesbian and gay couples. This difficulty is shared by other family structures as well, and is addressed in the last section of this chapter, on legal definitions of parents and families.

In the past few years, the law has been changing rapidly regarding same-sex relationships. All legal and mental health professionals would be well-advised to check on the current status of the applicable state laws when working with a family with same-sex parents.

BLENDED FAMILIES

Stepparents

One in three children in the United States spends at least some of their childhood years living with a stepparent (Amato, 2000; Malia, 2005). There is extensive research that looks at the roles, parenting styles, effect on children, and legal issues regarding stepparents in blended families.

Roles

Hetherington and Kelly (2002) found that most stepchildren resisted the stepparent's involvement, especially with stepmothers. Others have found that conflict between a child and stepfather is correlated with conflict between (a) the child and the biological mother and (b) the child and the biological, nonresident father (Dunn, Flory & Berg-Weger, 2004). This suggests that the stepfather's role must be evaluated in the context of the general level of family conflict.

Hetherington and Kelly (2002) report that successful stepparents built a warm relationship with their stepchildren first, before trying to assume an authoritative, parental role. Stepmothers tended to be pressured into a parenting role earlier than stepfathers because of the "Mommy gene expectation" (p. 189). A good relationship was most apt to develop between the stepmother and the children if (a) the father was actively involved in parenting and supported the stepmother's discipline, and (b) the mother and stepmother were not locked into a hostile competition, or the mother was disengaged from the children.

Hofferth and Anderson (2003) looked at the factors associated with increased stepfather involvement. They found that stepfathers tend to be more involved with preschool than with older children, and more involved with children they have lived with for a longer time. The stepfather's involvement is not reduced by the biological, non-residential father's level of involvement; in fact the two fathers taken together raise the level of father-involvement to that of the sole father in families with two biological parents living together. This finding is consistent with White and Gilbreth's (2001) finding that many adolescents have a good relationship with both their stepfather and their biological father.

The one thing that is correlated with lower stepfather involvement is the stepfather paying child support to his own biological, non-residential children. This presumably reflects the stepfather's social and emotional involvement with the biological children, making him less available to his stepchildren.

Parenting Style and Effect on Stepchildren

Hetherington and Kelly (2002) found that stepfathers seem to be less powerful than non-divorced fathers. While 75% of children in non-divorced families say that the father is “the boss in the family,” only 25% of children in stepfamilies share this view.

The issue of authority also affects the stepfather’s parenting style. Although 60% of non-divorced parents manage to be warm, consistent, and emotionally supportive, only 33% of stepfathers and 25% of stepmothers are “authoritative” in this way. The most common parenting style for stepfathers is a disengaged one where they avoid the children and focus on their own needs. This avoidance seems to be a response to rejection by the stepchildren. While 70% of the parents in blended families think that the stepparent role should be similar to that of a biological parent, fewer of their children agree.

Despite the difficulties in navigating the conflicts in the new blended family, about one third of stepfathers achieve a warm, authoritative relationship, especially with their stepsons. Other stepfathers become a “buddy” who plays with and monitors the children and supports the mother’s role. A positive stepfather/child relationship is very important because “a caring stepfather can make a critical difference in a boy’s life.”³⁰ There is an overall, positive association between child outcomes and the quality of the stepfather/child relationship (White & Gilbreth, 2001).

Legal Issues

The Parental Rights Doctrine provides constitutional status for the rights of biological parents. The parental functions of stepparents derive from being married to the children’s legal parent, and end if the marriage is terminated. Stepparents cannot give permission for school field trips or medical procedures, and do not have an obligation to support their stepchildren.³¹ If a stepparent dies without a will, the stepchildren have no rights of inheritance.

During the marriage, a stepparent can adopt their stepchildren only if the nonresidential biological parent is dead, unfit, or voluntarily relinquishes their parental rights. The criteria for a de facto

parent can apply to a stepparent, but this ends with the end of the marriage to the children's legal parent. Although stepparents do have a right to file for custody of stepchildren following divorce in about 60% of states, custody of the children almost always goes to the biological parent rather than the stepparent (Hans, 2002; Levine, 1996; Malia, 2005; Skinner & Kohler, 2002).³²

Post-divorce visitation (or parenting time) is easier for stepparents to obtain than is custody. Some third-party visitation statutes identify stepparents specifically, while others include criteria that would apply to stepparents.³³

Step-siblings

Sibling relationships are an integral part of child development. During their younger years, siblings spend more time with each other than with a parent. A sibling is often a child's first friend, and older siblings provide a model of appropriate social behavior as well as a context in which to practice that behavior. In view of the strong emotional bond between siblings, it is no surprise that severing a sibling relationship causes a variety of negative emotional and developmental effects (Seifert, 2004).³⁴

Many children acquire step-siblings when their parents re-marry because the parent's new partner already has children, and because 1/3 of stepfamilies have a new, joint child within 4 years of the re-marriage. The relationships between step-siblings are more complex than those between biologically-related siblings. As young adults, biologically-related siblings are more emotionally engaged and supportive than step-siblings, but are also more locked into competition with each other. Hetherington and Kelly (2002) found that in all family types, over half of biologically-related siblings as opposed to 25% of stepsiblings had congenial or congenial-competitive relationships as young adults. Three-quarters of the stepsiblings were "disengaged" from each other at this age.

The emotional importance of sibling relationships has led professionals to call for continuing sibling contact following adoption (e.g. Seifert, 2004). Step-sibling contact following divorce could conceivably be approached through third-party visitation statutes, but this has not yet been an area of legal focus.

EXTENDED FAMILIES

Role of Grandparents

Grandparents are an essential part of most childhoods. One third of parents and $\frac{3}{4}$ of their children live in the grandparent's home during and following divorce. Research has found that grandparents exert a positive influence on their grandchildren's mental health and development in two ways. First, they have an indirect influence by providing social support to the custodial parent. Second, they have a direct influence by providing the grandchildren with childcare, emotional support, and a sense of security and continuity. The result is that greater closeness to grandparents is associated with fewer adjustment problems in the grandchildren (Hetherington & Kelly, 2002; Lussier, Deater-Deckard, Dunn, & Davies, 2002; Riggs, 2003).

There are gender differences in grandparent contact. Children's contact with maternal grandparents is greater than that with paternal grandparents, across all family types. And contact with grandmothers exceeds contact with grandfathers. On the other hand, the frequency of contact remains steady at about once per week for all grandparents who have contact with their grandchildren (Lussier et al., 2002).

The role of grandparents is especially important in ethnic minority families, such as Asian Americans, American Indians, and African Americans (Vasquez, 2003).

Members of Extended Step-families, and Other Adult Relatives

Children form emotional attachments to whoever interacts with them on a regular basis. Hetherington and Kelly (2002) found that *all* of the successful children in their studies had at least one such post-divorce relationship with an adult. The researchers included teachers, coaches, guidance counselors, and extended family members in this category of adult "mentors."³⁵ Although the Best Interests Standard calls for evaluating all of a child's significant relationships, the child's contact with members of an extended family and extended step-family is usually dependent on the wishes of the child's legal and custodial parents.

Legal Issues

Between 1966 and 1994, every state enacted legislation permitting the courts to order grandparent visitation, and some courts have done so without parental consent (O'Connell, 2003).³⁶ In June 2000, however, the Supreme Court (*Troxel v. Granville*, 530 U.S. 57) ruled that ordering visitation over the objections of a fit mother violated that mother's constitutional right to raise her children as she thought best (Vasquez, 2003; White, 2001).

The *Troxel* decision has led to considerable controversy. Some writers have maintained that *Troxel* goes against recent trends which acknowledge that society "can no longer consider the traditional nuclear family the normal or optimal family structure" because the decision "favors biological parents' rights over the psychological interests of children" (Riggs, 2003, p. 39). Others note that it is almost impossible to know whether the parent or grandparent is right in a given case, and question whether the benefit of court-ordered grandparent visitation is worth the pain and cost of litigation (O'Connell, 2003).³⁷ This point is very important because the research suggests that children derive enormous benefit from being close to members of their extended family, but *only if* the relationship between the extended family and the nuclear family is reasonably harmonious (Hetherington & Kelly, 2002; Martindale, 2003).

LEGAL V. PSYCHOLOGICAL DEFINITIONS OF PARENTS AND FAMILIES

In discussing the increase in cohabitation, some social scientists suggest that, "Cohabitation is becoming more like formal marriage in that both are childrearing institutions" and go on to point out that "coresidence and childbearing behaviors [are] defining characteristics of families" (Seltzer, 2000, p. 1247). This approach is not found in case law or statutes, however, where there is a dramatic discontinuity between the legal, biologically-based definition of a parent and the realities of many children's lives. Psychological parenting is based on the reciprocal parent-child relationship that is

formed through the physical, social, and emotional interactions of parenting. Such a psychological parent is not necessarily accorded any legal rights, however, when legal parenting is defined by biology and genetics.³⁸

The current legal definition of family constitutes a doctrine of “exclusivity” wherein children can have only two parents, and adults are either full parents or legal strangers to the child.³⁹ There is no recognition of the many other caretaking adults who love and nourish the child, or the many ways in which the child may be connected to those adults. This definition of family excludes step-parents, grandparents, non-biological gay and lesbian parents, as well as members of the extended family (aunts, uncles, cousins, adult siblings) who have an ongoing, caretaking relationship with the child. This creates a “basic conflict between the law and the reality of children’s relationships with others” (Gottlieb, 2003, p. 9).

The American Law Institute has tried to address the need for a pluralistic conceptualization of parenthood by applying the *in loco parentis* designations of “parent by estoppel” and “de facto parent” within the current “best interests” standard (ALI, 2002; Hans, 2002).

Kavanagh (2004) suggests replacing the “best interests” standard with a “mutual care-giving relationships” standard which legally recognizes adults who (1) provide for the needs of a child in a beneficial manner, and (2) are recognized as family by the child. Parentally-defined care-giving could not be done out of self-interest, so paid caregivers would not warrant legal recognition. And legal recognition would no longer be limited to two parents, with an all-or-nothing designation for parental status. Under this new standard, multiple care-giving adults could all receive some limited, and not exclusive, legal protection for their parenting status.⁴⁰

ASSESSMENT METHODS FOR DIVERSE FAMILY STRUCTURES

There are no unique assessment methods for families headed by never-married or same-sex parents, or for extended-family or step-family structures. The same methods should be used as for any

family evaluation, with an emphasis on the best interests of the child. However, those working with the family must be aware that healthy child development can be fostered by a variety of family structures. It is essential to evaluate *all* of the people who have caretaking relationships with a child, and whom the child perceives as family. The psychological dimensions of parenting should be considered, along with other factors that are part of the de facto and estoppel criteria for legal parents. The court will only be able to make a constructive custody decision when it has a realistic and comprehensive appraisal of the child's daily life and familial relationships.

Notes

1. Morrissey (2002) bases these rates on the 2000 census. The U.S. Council of Economic Advisers (2000) gives the same rate of 24% for families where the father is the breadwinner and the mother is a homemaker. The point about this family type originating in the 1950s has been made by many writers (e.g. Coontz, 1992; Kavanagh, 2004), who also remind us that only the affluent ever lived this way.
2. Single parents without partners will not be discussed in detail because they are seldom involved in custody disputes. If the biological father is an active parent, the mother would be in a position comparable to that of a cohabiting parent.
3. Haskins, McLanahan and Donahue (2005) report that while 12% of children lived with a single parent in 1970, 27% now live with a single parent. They also note that 33% of all children and 70% of black children are currently born outside of marriage. The 2000 Annual Report of the US Council of Economic Advisers lists the percentage of children living with single parents as 28%, and also indicates an increase in age of first marriage, to a median age of 26.7 for men and 25.0 for women.
4. Hamilton et al. (2005) examined the U.S. preliminary birth statistics for 2004 and found that 35.7% of all births were to unmarried women. Compared with comparable statistics for 1970, this represents a decrease of unwed births to teenage mothers and an increase of unwed births to mothers in their middle-to-late 20s. This shift is consistent with the trend towards never-married parenting, which is discussed later in this section.
5. Cherlin (2005) reports this finding of 40% based on the *Vital Statistics of the United States, 1999 Vol. 1*, published by the U.S. Center for Health Statistics. Bumpass and Lu (2000) report a comparable finding of 39% of children born to cohabiting parents, based on the National Survey of Families and Households (NSFH), Cycle 5. The NSFH is a periodic survey conducted by the National Center for Health Statistics. Cycle 5 included interviews with over 13,000 respondents nationwide.
6. Sigle-Rushton and McLanahan (2002) examined the living arrangements of unmarried mothers using data from the Fragile Families and Wellbeing Study.

7. This point is made by a variety of researchers and commentators including Bumpass and Lu, 2000; Cherlin, 2001, 2005; Raley, 2001; and Sigle-Rushton and McLanahan, 2002.
8. Knox, Sturdivant, Zusman, and Sandie (2000) used an anonymous, confidential questionnaire with 248 never-married undergraduates at East Carolina University. Quotes are from page 585.
9. These factors are from Edin (2000), who interviewed 292 low-income mothers in three U.S. cities. The factors are also compatible with the findings of Bock (2000), who interviewed 26 single members of two Single Mothers by Choice support groups and found that the mothers felt entitled to enter solo motherhood because they possessed four essential attributes: age, responsibility, emotional maturity, and financial capability.
10. In the United States, pregnant women without partners have higher rates of depression than do pregnant women with partners (Taylor & Baker, 1997), and cohabiting mothers report higher levels of depression than do their married counterparts (S. L. Brown, 2000). In the Canadian National Population Health Survey (NPHS) done in 1996–1997, single mothers 25–50 years old had higher rates of major depression than did married women. Single mothers with ethnic minority backgrounds, and mothers who were working outside the home, were especially at risk for depressive disorders (Wang, 2004).
11. Ricciuti (2004) examined data from the National Longitudinal Study of Youth and found no adverse effects of having a single parent either when the children were 6–7 years old or when the same children were 12–13 years old.
12. Groze (1991) found no difference in the disruption rates of adoptions by single parents versus couples. “Disruption” indicates the removal of the child from the adoptive home before the adoption is legalized. Groze also reviewed longitudinal studies which indicated that single-parent families were as nurturing and viable as dual-parent families.
13. In academic psychology the appropriate term would be “same-gender parenting” because “sex” is used to refer to physiological attributes and “gender” is used to refer to social roles and their required behaviors. Therefore, in my previous writing I have used the term “same-gender relationships” (e.g. Rohrbaugh, 2006). In family law, however, “sex” is used to refer to physical attributes, reproductive activities, and social roles. In order to enhance cross-disciplinary communication, I have decided to use the term “same-sex” to refer to relationships involving two people of the same gender, or to parenting by the people in such a relationship.
14. Kavanagh (2004) estimates that at least 75,000 same-sex couples in the U.S. have children in their homes, while Tye (2003) estimates that there are 100,000 such families. Earlier writers gave estimates of 3–8 million gay and lesbian parents raising at least 6–14 million children (Martin, 1993; Patterson, 1994). Precise estimates are difficult to obtain because many gays and lesbians are excluded from the data collected by the U. S. Census Bureau (Tye, 2003).
15. There is an extensive and consistent body of research and commentary on same-sex families. See for example Kurdek, 1994, 1995; Patterson, 1995, 2000; Patterson and Redding, 1996; Rohrbaugh, 1989, 1992.
16. For summaries of this extensive and consistent body of research on children in gay and lesbian families, see American Academy of Pediatrics, 2002b; Patterson, 1994, 1995, 2000; Patterson and Redding, 1996; Skinner and

Kohler, 2002; Wainright and Patterson, 2002; and Wainright, Russell, and Patterson 2004. The main limitation of this research is that the samples have been primarily White, middle-class, professional families. There are also variations among lesbian and gay families and their children, which are just beginning to be studied. Because of the controversy surrounding same-sex couples and their children, the first wave of research has focused on comparisons *between* same-sex and opposite-sex couples and their children, rather than focusing on differences *within* the same-sex group of families and their children.

17. For research and discussion about the characteristics of same-sex relationships see Kurdek, 1994, 1995; Patterson, 2000; and Patterson and Redding, 1996. For a discussion of the issues in break-up, see Rohrbaugh, 2000.
18. For a discussion of the full range of routes to parenthood for alternative families, and the legal implications of each, see Kauffman, 2006 and Monks, Ordoñez, Turley, and Zupcowska, 2006, p.16.
19. Same-sex marriage was enacted in Massachusetts in 2003 (Granda & Levi, 2006), and hence both same-sex, married partners are considered legal parents and have equal legal standing in the event of a separation or divorce. It is currently unresolved whether children born to a same-sex couple before the couple's subsequent marriage are legitimized by their parents' later marriage (Zeldin, 2006).
20. Kauffman points out that because no other countries permit openly gay or lesbian Americans to adopt, "It is essential for practitioners to understand that lesbian and gay couples who are considering international adoption should *not* get married" (2006, p. 129). There are other reasons why a lesbian or gay couple may not get married or enter a civil union even if they live in a jurisdiction where it is permitted. These reasons should be carefully explored; no mental health or legal professional should automatically interpret a decision not to marry as a lack of commitment to the family or the children.
21. Combining a variety of systematic social science data sources, Black et al. (2000) found that about 68% of gay men and 94% of lesbians have lived with a same-sex partner at some time, and about 25% of gay men and 40% of lesbians are or were previously in a heterosexual marriage.
22. The research on same-sex parenting styles and effectiveness overlaps with the research on the child outcomes. For research on same-sex parenting see American Academy of Pediatrics, 2002b; Gartrell et al., 2000; Golombok et al., 2003; and Patterson, 1995.

Stacey and Biblarz have argued that researchers frequently downplay the differences found in studies comparing children from heterosexual and lesbian/gay families. They examined the results of 21 recent studies, however, and concluded that (1) "the effects of parental gender trump those of sexual orientation," and (2) "Most of the differences... either favor the children with lesbian/gay parents, are secondary effects of social prejudice, or represent 'just a difference' of the sort democratic societies should respect and protect." They go on to conclude that "Indeed, it is time to recognize that the categories 'lesbian mother' and 'gay father' are historically transitional and conceptually flawed, because they erroneously imply that a parent's sexual orientation is the decisive characteristic of her or his parenting" (2001, pp. 176, 177).

23. Attitudes have been changing, at least among custody evaluators. In 1986, Keilin and Bloom found that 54% of custody evaluators would recommend

- placement with the other parent if one parent was homosexual. Ten years later, Ackerman and Ackerman (1997) found that only 12% of custody evaluators would use sexual orientation as a basis for their custody recommendations.
24. In response to this problem, the Gay and Lesbian Advocates and Defenders in Boston issued a set of standards urging all members of the legal and LGB communities to renounce and avoid such tactics (GLAD, 1999).
 25. Kauffman (2006) and Tye (2003) discuss the provisions of 2nd parent adoption. At this time, only eight jurisdictions have statutes or appeals decisions upholding second-parent adoptions (CT, DL, D.C., ILL, MA, NJ, NY, and VT). For the current status of these and other laws affecting same-relationships, see Lambda, 2005.
 26. On August 4, 2006, the Vermont Supreme Court ruled that the parental rights of a former civil union spouse must be honored even after the birth mother moves out of state (*Miller-Jenkins v. Miller-Jenkins*, 2004–443 & 2005-030, 2006 VT 78). This is the first case of this type.
 27. The American Law Institute defines the *de facto parent* status (ALI, 2002, section 2.03, pp. 107–110) and uses as one example a 9–10 year lesbian relationship in which the parents planned a child together, one partner gave birth via alternative insemination, and the parents split up after co-parenting for 5 years (ALI, 2002, p. 115).
 28. Kauffman (2006, p. 127) provides a similar list of de facto parenting functions, with discussion of relevant cases such as *E.N.O. v. L.M.M.*, 429 Mass. 824, 711 N.E.2d 886. Zeldin (2006, pp. 190–193) also discusses the parenting/caretaking functions and legal issues involved in establishing de facto parental status.
 29. The American Law Institute defines the parent by estoppel status (ALI, 2002, section 2.03, pp. 107–110), and uses as one example the lesbian case described in footnote 27 above. The legal criteria are also discussed by Zeldin (2006, p. 194–195). In addition, Zeldin discusses the possibility of applying contracts to same-sex custody disputes by arguing that the same-sex parents had made an agreement to co-parent their children. Application of the parent by estoppel and parent by contract statuses to same-sex custody disputes had not been resolved at the time of this writing.
 30. These findings regarding parenting styles in stepparents are from Hetherington & Kelly, 2002; quotes are from pp. 192, 182, 217.
 31. The exceptions are New Hampshire and Utah, where stepparents are obligated to support their stepchildren, but the obligation ends if the marriage to the mother is terminated (Skinner & Kohler, 2002).
 32. Eight states have adopted the Uniform Marriage and Divorce Act's provision that custody can be granted to stepparents only if the children are not in the physical custody of the biological or legal parent (Hans, 2002; citing UMDA, 401, d[2], 1998).
 33. Legal scholars have pointed out the applicability of third-party visitation statutes to stepparents (e.g. Hans, 2002; Levine, 1996; Skinner & Kohler, 2002). The American Bar Association lists ten states in which a third-party visitation statute names stepparents and the statute has not been declared unconstitutional by a court of the state (ABA, 2006).
 34. Seifert (2004) is focused on the importance of providing visitation between biological siblings after adoption, rather than on the issues surrounding

- custody and visitation. Her summary of research on the effects of the sibling bond is relevant to siblings in divorcing and blended families, however.
35. Hetherington and Kelly's (2002) research on adult mentors is discussed in more detail in Chapter 8.
 36. The American Bar Association (ABA, 2006) indicates that CT, SC, WA, and the District of Columbia do not have third-party visitation statutes that specifically mention grandparents. The third-party visitation statutes specifically naming grandparents have been declared unconstitutional by a state court in IO, MD, NJ, and OK. The remaining states have third-party visitation statutes that permit grandparents to obtain visitation under various conditions such as death of the parent, divorce of the parents, and parents never married.
 37. O'Connell goes on to note that grandparent visitation may sometimes be part of a legal maneuver on the part of abusive fathers. She says, "One small but frightening study of case files in Boston showed that paternal grandparents were more than six times as likely as maternal grandparents to litigate visitation. Cross-indexing these files showed that in virtually every case the father was alleged to have abused the mother" (2003, p. 83).
 38. The gap between the psychological and legal definitions of a parent exists in both (a) nontraditional family structures and (b) traditional families where the children were conceived through alternative reproductive technologies (Schwartz, 2003).
 39. Kavanagh (2004) elaborates upon the concept of a legal doctrine of "exclusivity" first identified by Bartlett (1984).
 40. Milot (2001) approaches the gap between the reality and legality of families from a different direction. First she notes the current varieties of marriage-like relationships, such as "statutory marriage, common-law marriage, covenant marriage, same-sex civil union, and domestic agreement." She then proposes that "marriage and family should be conceptually and legally separated" rather than continuing to use marriage as a "proxy for the nuclear family." In this way, the law could address the regulation of "marriage – a long-term sexual, social, and economic relationship between two adults [in terms of] contract law," and address "the regulation of families [as a] status designation with its concomitant rights and obligations" (Milot, 2001, pp. 701, 702, 703).

17

RELOCATION

RATES OF RELOCATION

About half of the children of divorce relocate after their parents separate.¹ Although many of these moves are within the child's neighborhood or town, about a third of custodial parents move out of the area within 2 years of break-up.² By the time they are young adults, 61% of the children of divorce report that they were separated from one of their parents during childhood by one or both parents moving away.³

Although most children adjust adequately after divorce, they are challenged by the numerous changes required of them. The more changes children have to make, the worse their emotional and social adjustment post-divorce. When the custodial parent moves far away from the non-custodial parent, the number of changes multiplies in the context of a significant disruption in the child's relationship with the non-custodial parent.⁴

Relocation cases arise when the non-custodial parent objects to the custodial parent's plans to relocate a significant distance away. In order to consider the complex factors in this custody dilemma, we need to look at the psychological effects on children, the legal issues in relocation, ways to assess relocation issues, and methods for minimizing the negative effects of relocation.

PSYCHOLOGICAL EFFECTS OF RELOCATION ON CHILDREN

Disrupted Relationship with Non-custodial Parent

The main area of concern in relocation cases is how the move will interfere with the child's relationship with the parent left behind. Chapter 8 has already discussed the fact that losing contact with fathers is one of the most painful outcomes of divorce (Amato, 2005) and is associated with poor psychological adjustment in children up to 6 years of age (Pruett et al., 2003). When mothers are the non-custodial parents (which is now 12–30% of the time), they tend to be more involved with the children than are non-custodial fathers, and to have an even greater influence on the child's positive adjustment than do non-custodial fathers (Gunnoe & Hetherington, 2004).

Studies of disrupted parent-child relationships have shown that they have an adverse effect on a child's psychosocial adjustment. Older children tend to show the highest levels of maladjustment following a post-divorce move (Kelly & Lamb, 2003). When college students from divorced families are compared on move-away status as children, they have the same overall level of adjustment but the move-aways have more emotional distress about the divorce, lower physical health, and less rapport with both parents. The drop in parental rapport is due to a loss of rapport with the non-custodial father, because 82% of the moves separated the children from their fathers (Braver, Ellman, & Fabricus, 2003).

As explained in Chapter 8, fathers have recently become more actively involved in childrearing, both during marriage and after separation/divorce. This makes it more appropriate to refer to the post-divorce family as "binuclear," or located in two residential units simultaneously (Ahrns, 2004; Warshak, 2000b). The increase in paternal involvement means that it will be even more distressing to the father *and* the child if the father/child relationship is disrupted by relocation.

Attachment in Young Children

Although there are no direct studies of the effect of relocation on young children, there is a substantial body of social science

research indicating that children develop best when they have a close attachment to both parents (Kelly & Lamb, 2003; Warshak, 2000b). The extensive literature on the processes of attachment can also be applied to the issue of relocation. Box 26 in Chapter 8 summarizes children's developmental stages and responses to separation and divorce per se, without relocation. From infancy through age 2, children need frequent, regular contact with both parents; this contact should involve the daily parenting tasks of dressing, feeding, bathing, bedtime rituals, and reading/playing with the child. These parent/child activities foster a strong parent/child attachment.⁵ Preschool (3–5) and early school (6–9) children can tolerate slightly longer periods between parenting time with the non-custodial parent, but it is still essential to have frequent contact; minimal transitions; and parental involvement in setting and enforcing limits, dealing with conflict, and supervising chores, interactions with peers, and homework.

Although children 10–12 years old can tolerate a more flexible parenting schedule than can younger children, they still need to have both parents involved in regular parenting tasks. Sharing occasional recreational activities is fun, and better than no contact, but it cannot substitute for emotionally engaged, consistent parenting.

Adolescents (age 13–18) have the cognitive maturity to maintain relationships over gaps of distance and time, especially with electronically-mediated parent/child contact. On the other hand, peer activities are even more important to adolescents than to younger children, and adolescents often resent missing these in order to “visit” the non-custodial parent who lives far away.

Loss of Other Relationships

As Chapter 16 explains, a child's adjustment after divorce is enhanced by positive, nurturing relationships with a variety of people: members of both extended families and stepfamilies, teachers, coaches, religious leaders, and other adults with whom the child interacts regularly. These relationships are crucial to child adjustment, as are peer friendships and activities. If a child relocates with the custodial parent, most of these relationships are

disrupted or even terminated. Although there are no studies of the effects of this loss, it is reasonable to assume that the impact is significant and negative.

LEGAL ISSUES IN RELOCATION

Trends in Relocation Law

Over the past ten years, the legal trend has been towards permitting relocation by a fit custodial parent if there are no bad faith motives for the move, and if the custodial parent proposes satisfactory alternative arrangements for contact between the child and the non-custodial parent. This approach assumes the primacy of the custodial parent's new family unit, as opposed to viewing the divorced family as "binuclear." This approach also assumes that the relationship with the custodial parent is most important to child development.⁶

Summary of Types of Relocation Law

Within the general tendency to permit relocation, there are several general types of relocation laws:

- Substantial change in circumstances required for relocation
- Presumption in favor of relocation, must be overcome before applying the best interests standard
- Presumption vs. relocation, easily overcome by showing a sensible reason for the move
- Non-custodial parent must show danger of physical or emotional impairment to child in order to oppose relocation

All states try to preserve the continuity of the child's relationship with the non-custodial parent, and disallow the relocation if the custodial parent has vindictive motives for moving. All states also allow for judicial discretion on a case-by-case basis.

After summarizing the types of laws, Austin points out that the common themes are (a) the parents' motives, (b) the possibility of harm created by the move, and (c) the need to balance the relative advantages and disadvantages of the move. He concludes that the approach of most state relocation standards is "best interests plus harm" (Austin, 2000d; quote from Austin, 2000d, p. 71).⁷

There are several readily-available summaries of state relocation laws (e.g. [Atkinson, 2006](#); [Elrod, 2006](#); [Morgan, 2005](#)). The American Bar Association categorizes the laws in terms of the length of notice required, the existence of a presumption for/against relocation, and whether the best interests of the child are paramount ([Elrod, 2006](#)).⁸

ASSESSMENT OF RELOCATION CASES

Factors to Consider

There are common themes in all of the relocation laws, which can be expressed in terms of 13 factors to consider in relocation cases. These factors are displayed in Box 66.⁹ In order to weigh the advantages and disadvantages that a move has for the child, it is essential to take all of the relevant factors into account in each case.

Relocation Risk Assessment

Given the large number of factors involved in relocation cases, it is difficult to specify a rule that applies to all individual cases. Austin has recommended a “Risk X Stakes” approach that examines the likelihood of various levels of harm. The higher the stakes, or degree of harm predicted, the lower the risk needed to deny relocation. Conversely, the lower the stakes, the higher the risk that can be allowed when permitting relocation. [Austin \(2000c, p. 81\)](#) provides the following examples to clarify the model:

- #1. *High stakes, low risk:* A custodial mother who is psychologically fit and a competent parent remarries a man who was convicted of manslaughter while driving drunk 5 years ago, but he is now sober, attends AA, and lives a stable life. Although the likelihood of the stepfather drinking again is low, if he did drink while driving the harm to the children could be severe.
- #2. *Low stakes, high risk:* The custodial mother wants to move over 75 miles away with the school-aged child in order to take a new job. The involved nonresidential father opposes the move

Box 66. *Factors to Consider in Relocation Cases*

1. Parental motives for seeking to move

- **Sound, acceptable reasons**
 - job transfer or vocational opportunities, for parent or new spouse
 - educational opportunities for parent
 - remarriage
 - living closer to extended family
 - get away from violent ex-spouse
 - special educational opportunities or medical treatment for child, not available in home community
 - remove child from non-familial, destructive influences in home community
- **Vengeful, unacceptable reasons**
 - block non-custodial parent's access to child
 - disrupt child's relationship with non-custodial parent and/or stepfamily
 - isolate child from non-custodial parent's extended family

2. Parental motives for opposing move

- **Sound, acceptable reasons**
 - maintain contact and relationship with child
- **Vengeful, unacceptable reasons**
 - control custodial parent's life
 - disrupt custodial parent's new romantic relationship
 - prevent child from forming close relationships with family of custodial parent in location of proposed move

Box 66**3. Parent-child relationships** –for both parents, pre- and post-separation:

- emotional tone and supportiveness
- schedule of parenting time and frequency of actual contact
- involvement in basic parenting tasks after break-up
- extent to which parenting is shared, regardless of legal custody arrangements (*de facto* as opposed to legally-ordered custody)
- parenting skills

4. Psychological functioning of both parents**5. History of parental relationship** (through present)

- ability to cooperate with each other
- pattern of facilitating or hampering child's relationship with other parent
- willingness to put child's interests above own
- pattern of threats, intimidation, or domestic violence

6. Child's age, maturity, and temperament

- Cognitive maturity to maintain relationships over gaps of distance and time
- Ability to communicate electronically – by telephone, email, fax, instant messaging, and webcam
- Ability to travel alone
- Ability to express own wishes without parental interference
- Current adjustment: emotional, social, behavioral, and academic
- Emotional and intellectual resources to handle move

Box 66**7. Child's wishes regarding move**

- Expressed directly in response to questions
- Expressed indirectly and non-verbally
- Reasons for child wishes – screen for:
 - parental pressure
 - child's desire to take care of emotionally fragile parent
 - child's guilt at leaving either parent
 - realistic assessment of advantages and disadvantages of move

8. Distance and travel arrangements

- Beyond range for one-day roundtrip by car (75 min.)?
- Child old enough to travel by bus, train, or plane?
- Friends or relatives for non-moving parent to stay with in new location?
- Moving parent plans to bring child back to home community periodically, to see relatives, friends, and mentors?

9. Feasibility of restructuring parenting time

- Relocating parent's plans for maintaining child's contact with non-moving parent
 - realistic
 - financially affordable
 - provisions for sharing cost and travel between parents
 - provisions for daily or at least weekly contact via electronic communications between child and non-moving parent
- Daily parenting functions preserved, over significant periods of time
- Child will spend significant periods of time in other parent's home

Box 66**10. Likelihood that move will improve quality of life for child**

- Child's involvement with extended family, stepfamily, peer groups, community activities, and mentors in home community
- Child's involvement in special enrichment/educational programs in home community: music, language, educational programs for gifted students or those with learning disabilities
- Educational, health, and leisure activities in new location –including special programs comparable to those in home community
- Manner in which advantage to moving parent will also benefit child

11. Likelihood that move will be harmful for child

- Specific area of dysfunction expected, and why
- Child's involvement in special enrichment/educational programs in home community: music, language, educational programs for gifted students or those with learning disabilities
- Educational, health, and leisure activities in new location – including special programs comparable to those in home community

12. Non-custodial parent's ability and willingness to move**13. Other factors affecting the best interests of the child**

because the distance would make it difficult for him to stay involved in the child's extracurricular activities. Although there would be changes in the type of parenting by the nonresidential parent, liberal access would still be available. "There is certainty of short-term distress and adjustment for the child, but the level of long-term harm is low."

- #3. *Low stakes, low risk:* A competent custodial mother wants to move 1000 miles to return to her home community. The nonresidential father has had regular but infrequent parenting time with the 12-year-old son. The child wants to relocate with the mother, and looks forward to fishing and hunting with his maternal grandfather in the new community. The schools in the new community are superior. "Any harm to the child could be counter-balanced with extended summer visitation with the father."
- #4. *High stakes, high risk:* A residential father wants to move several hours away with a pre-school age child. The mother asserts that the child will be harmed because he has asthma and the stress of separation from her may endanger his health. "The harm is potentially great and very likely in this context."

Although one may disagree with Austin's evaluation of the particular factors in these case vignettes, the idea of weighing the risk and harm of each major factor is very useful in relocation assessments.¹⁰

Austin also conceptualizes the relocation risk assessment in terms of "risk factors" and "protective factors." Some of the major risk and protective factors for the child in a relocation case are outlined in Box 67.¹¹

ELEMENTS OF A LONG-DISTANCE PARENTING PLAN

In order to mitigate the negative effects of relocation on the child, it is important to revise the parenting plan to maximize the access of the left-behind parent. Although there is not yet any research on the effectiveness of post-relocation arrangements, the following measures should help to protect the non-residential parent's relationship with the child.¹²

Box 67. Risk Factors and Protective Factors for Relocation

Risk Factors	Protective Factors
<ul style="list-style-type: none"> ● Child: <ul style="list-style-type: none"> ▪ under 10 years of age ▪ special needs ▪ poor adjustment to divorce ▪ very attached to non-residential parent ▪ very attached to non-residential parent's extended family ▪ attached to non-residential parent's new partner and step-children ▪ highly involved in home community ▪ poor relationship with residential parent ● Non-residential Parent <ul style="list-style-type: none"> ▪ active in childrearing ▪ close relationship with child ▪ limited financial resources, and job schedule that prevents travel 	<ul style="list-style-type: none"> ● Child: <ul style="list-style-type: none"> ▪ over 10 (and especially 13) years of age ▪ intelligent and emotionally mature ▪ well adjusted ▪ not attached to non-residential parent ▪ not attached to non-residential parent's extended family ▪ not attached to non-residential parent's new partner and step-children ▪ not involved in home community ▪ good relationship with residential parent ● Non-residential Parent <ul style="list-style-type: none"> ▪ infrequent contact with child ▪ no intimate relationship with child ▪ able to travel ▪ negative psychological adjustment

<u>Box 67</u>	
Risk Factors	Protective Factors
<ul style="list-style-type: none"> ● Residential Parent <ul style="list-style-type: none"> ▪ negative psychological adjustment ▪ limited ability to promote parent/child relationship of non-residential parent ● Parental Relationship <ul style="list-style-type: none"> ▪ high inter-parental conflict – residential parent may block non-residential parent’s access ● Characteristics of Move <ul style="list-style-type: none"> ▪ large geographical distance ▪ no extended family in new community ▪ poor facilities in new community – educational, recreational, and health facilities for child ▪ no alternative parenting plan to foster non-residential parent’s relationship with child 	<ul style="list-style-type: none"> ● Residential Parent <ul style="list-style-type: none"> ▪ positive psychological adjustment ▪ able to promote parent/child relationship of non-residential parent ● Parental Relationship <ul style="list-style-type: none"> ▪ high inter-parental conflict – move may insulate child from conflict and promoted parallel parenting ▪ history of domestic violence ● Characteristics of Move <ul style="list-style-type: none"> ▪ small geographical distance ▪ extended family in new community ▪ better facilities in new community – educational, recreational, and health facilities for child ▪ alternative parenting plan to foster non-residential parent’s relationship with child

- Long periods of residence with the left-behind parent, during the summer and school vacations.
- Visual and auditory reminders of the left-behind parent, such as photographs, videos, and familiar toys used with that parent.
- Frequent parent/child communication via letter, telephone, email, fax, and webcam.
- Participation of extended families and friends to provide lodging for the non-residential parent's trips to see the child.
- Sharing the cost and travel between the parents.

RELOCATION FOR VICTIMS OF DOMESTIC VIOLENCE

The risk and severity of domestic violence increases when the victim attempts to break-up with the abuser, or to escape the abuser's influence after separation/divorce. This means that if a victim of domestic violence seeks to relocate, there is a risk of violent retaliation by the abuser, even if the abuser has little or no current contact with the victim or the children.

In recent years, laws such as the Parental Kidnapping Prevention Act (2003), the Uniform Child Custody Jurisdiction and Enforcement Act (1997), and the Violence Against Women Act (2000) have begun to incorporate safety provisions for victims of domestic violence (Goelman, 2004). Haberman (2005) has suggested that there should be a mechanism to assist victims of domestic violence to escape via relocation, modeled after the Federal Witness Protection Program.

The issue of domestic violence will be discussed in detail in Chapter 23. When working on a relocation case that involves domestic violence, all mental health and legal professionals should be aware of the underlying issues involved in domestic violence, and of the significant risk to the safety of the victimized parent and children who are seeking to relocate.

Notes

1. For ease of discussion, I refer to "children of divorce" in this chapter. Children are affected similarly by both parental separation and parental divorce.
2. Braver and O'Connell (1998) found that 3% of custodial parents moved out of the area within 3 months, 10% moved away within a year, and 17%

moved within 2 years. Booth and Amato (2001) reported that 46% of young adults recalled moving within the first year after separation. Hetherington and Kelly (2002) found that custodial mothers moved 4 times in the first 6 years after divorce, and that after two years only 25% of non-custodial fathers saw their children at least once a week; after six years, only 25% of the children say their father once a year.

3. Braver et al (2003) administered questionnaires to 2067 college students, of whom 602 were the children of divorce. 61% of the 602 students reported moving away from a parent following divorce: 25% relocated with mother, 25% stayed with mother when father moved away, 4% relocated with father, and 8% stayed with father when mother moved away.
4. Warshak (2000b) summarizes a number of studies that indicate that frequent changes per se are associated with problems in child adjustment. The additional changes due to relocation include leaving friends and familiar caregivers; changes in school, neighborhoods, and activities; and most importantly, disrupting the ongoing contact with the non-custodial parent.
5. Kelly and Lamb discuss the research on attachment in more detail, explaining why "Infants and toddlers need regular interaction with their 'attachment figures' in order to foster, maintain, and strengthen their relationships" (2003, p. 194).
6. In 1996, Judith Wallerstein filed an *amica curiae* brief in the California Supreme Court case of *In re Marriage of Burgess*, 913 P.2d 473 (1996). The California Supreme Court then adopted standards in child relocation cases that are generally consistent with those proposed by Dr. Wallerstein. (See Wallerstein & Tanke, 1996, for an edited version of the original *amica curiae* brief.) Dr. Wallerstein suggested that a fit parent with legal or de facto primary custody should be permitted to relocate in order to protect the stability of the post-divorce family unit. Wallerstein's discussion and proposed standards have generated considerable controversy focusing on (a) Wallerstein's interpretation of the social science research, (b) her lack of attention to the binuclear nature of the post-divorce family, (c) her lack of attention to the increasing involvement and importance of fathers, and (c) the research on attachment processes in young children (e.g. Kelly & Lamb, 2003; Warshak, 2000a, 2000b, 2002).
7. Other legal and mental health commentators have underscored the importance of the child's best interests. They decry the emphasis on parental rights in discussions of relocation, and point out that "when one has children, regardless of marital status, one subjugates individual rights to the needs of the children....Relocation, in all its forms, needs to be refocused as an issue of the rights of children, applying the best interest standard to the family situation. In this respect, it is no different than any other issue faced by the court" (Rotman, Tompkins, Schwartz, & Samuels, 2000, p. 349).
8. Canadian relocation laws are similar to those in the U.S., using a "material change in circumstances" as a threshold and then applying the "best interest of the child in the particular circumstances of the case." The factors to consider in relocation cases are also comparable to those in the U.S. (Thompson, 2004, p. 401).
9. The American Academy of Matrimonial Lawyers has distilled a similar list of relevant factors from legal decisions, articles, and the social science research (AAML, 1997, p. 2). Most of the factors listed in Box 66 have been discussed by previous writers, including Atkinson, 2006; Austin, 2000b; Kelly & Lamb, 2003;

[Stahl, 1999](#); [Wallerstein & Tankel, 1996](#); and [Warshak, 2000b](#). To those factors discussed by previous writers, I have added concerns regarding removing the child from destructive community influences.

10. I have included Austin's examples here to clarify how the Risk X Stakes model works, not to endorse any particular solution in the case examples. I am particularly concerned with his assessment in vignette #2, because the research indicates that depriving a child of frequent contact with an involved, nonresidential father can cause long-term harm.
11. The risk and protective factors in Box 67 are taken from the discussion above on the psychological effects of relocation on children ([Amato, 2005](#); [Braver et al., 2003](#); [Kelly & Lamb, 2003](#); [Pruett et al., 2003](#); and [Warshak, 2000d](#)). Many of these factors are also included in Austin's discussion of risk and protective factors (2000b, pp. 200–201; 2000c, p. 73).
12. Most of these factors are discussed by [Kelly and Lamb \(2003\)](#) and [Austin \(2000b, 2000d, 2000d\)](#). In addition, [Austin](#) recommends tutoring ([2000d](#)) and therapy to help "any and all family members... deal with this potentially negative life transition event" (2000d, p. 69).

18

ESTRANGEMENT AND ALIENATION

DESCRIPTION AND RATES OF ESTRANGEMENT AND PARENTAL ALIENATION

All professionals who work with separating/divorcing families have seen children who are reluctant to spend time with a non-custodial parent, or even refuse to do so. For some children, this is a transient reaction to the painful process of separation and divorce. For others, it is a long-term reaction to having had a conflict-ridden or abusive relationship with one or both parents before the separation. In the latter situation, it is understandable that these children do not want to see the abusive parent after the separation, and are *estranged* from them.

A third group of children were close to both parents before the separation and did not reject either parent. After the separation, however, some of these children refuse to see the non-custodial parent and express severe anger and hostility towards that parent. These children may have experienced pressure to form an angry alliance with the custodial parent that is designed to exclude, reject, and humiliate the other parent. About one quarter of the children in custody-litigating families form such a vengeful alliance, which Wallerstein, Johnston, and their colleagues have called “*parental alignment*” or the “Medea syndrome.”¹ Gardner has called this phenomenon the “*parental alienation syndrome*.”²

Clawar and Rivlin refer to the process leading to parental alienation as parental “**programming**” and “**brainwashing**.” By “programming” they mean a belief system “designed to damage the child’s image of the target parent in terms of his or her moral, physical, intellectual, social, emotional, and educational qualities (as well as his or her parenting abilities).” By “brainwashing” they mean the application of specific techniques to control and change the child’s thoughts and perceptions (Clawar & Rivlin, 1991, pp. 7–8). In their 12-year study of 700 court-involved, divorced families, the researchers used a variety of observations, interviews, and record reviews for a total of 25 hours spent on each case. They found that about 40% of parents used brainwashing techniques to turn their children against the other parent at least once daily, 20% used them at least once a week, 20% used them occasionally, and only 20% did not use these techniques at all.³

PARENTAL ALIENATION V. DENIED VISITATION

When one parent blocks access to the child at times when the court has ordered parenting time for the other parent, it is called “denied visitation.” In reviewing the research on this problem, Stolberg et al. (2002) found that denied visitation occurs in 20–37% of divorces. In some of these cases the denial is appropriate because the custodial parent is worried about direct threats to the child’s safety due to the non-custodial parent’s history of substance abuse or suspected child abuse. Or else the custodial parent is worried about indirect threats to the child’s physical and emotional well-being due to the non-custodial parent’s history of poor child supervision, exposing the child to poor role models, or refusal to let the child go to developmentally-appropriate extracurricular activities such as lessons, sports, religious training and services, and time with peers.

Stolberg and his colleagues found that in the cases where denial of visitation is not appropriate, the denial is due to inter-parental conflict. In these cases, the families usually engage in other forms of inter-parental hostility as well. Given this pattern, it is difficult to

separate the impact of the denied visitation from the impact of the broader parental conflict.

Stolberg et al. also noted that “the allegations of the ‘denier’ and the claims of the ‘denied’ cannot be easily validated” (2002, p. 3). Thus it is often impossible to know whether or not denied visitation is warranted and appropriate in any specific case. Other researchers have also found little realistic basis for parents’ negative attitudes towards each other. In studying parental programming and brainwashing, for instance, Clawar and Rivlin (1991) found that there were “substantial elements for litigation” in only 9.5% of their cases, namely abuse (.5%), parental neglect (5%), alcoholism and drug use of a dangerous nature (3%), and poor social/physical environment (1%). They concluded that, “In other words, the majority of the cases were based on the social, emotional, and philosophical needs of the programmer/brainwasher” (1991, p. 165).

GENDER DIFFERENCES IN PARENTAL ALIGNMENT/ALIENATION

Research in the 1970s and 1980s indicated that the indoctrinating parent was more apt to be the mother. For instance, Wallerstein and Kelly (1980) found that alienating mothers outnumbered alienating fathers by 2:1. Clawar and Rivlin (1991) found that depending on the technique used, 4–85% of mothers compared with 2–25% of fathers were involved in programming/brainwashing their children.⁴ Clawar and Rivlin attributed the gender differences to the following 13 factors:

- **Birthright** – Many mothers felt that giving birth created a special connection between them and the child. They said things such as, “I’m the one who went through the pregnancy—he didn’t,” or “When he gives birth, he can have the child.”
- **Proprietary perspective** – Most women indicated that the children were theirs, and spoke in possessive terms about “us,” “our home,” “our life,” “my children,” or “my family.” They also made direct statements such as, “The children are not

his, and he's not getting them" or "The kids are mine, and I'll see to it that it stays that way."

- **Family and women are synonymous** – This cultural perspective was reflected in women's saying things like, "I will do everything I can from here on in to see that the rest of *us* stay together."
- **Female identity and parenting** – The social and psychological identity of women is more dependent on children than is that of men. Divorced mothers said, "This [full-time parenting] has always been my job and I intend to continue doing it," or "Since the children aren't with me full time, I just don't feel the same."
- **Financial-support needs** – Because of the dramatic drop in women's income following divorce, many mothers felt that they needed to maintain longer periods of contact with the children in order not to lose financial support for themselves and the children.
- **Lack of other resources** – Having lower social status and less access to legal and professional resources than did men, women resorted to using their verbal skills in the post-marital combat.
- **Continuity and family history** – Women often felt that because they did the majority of childrearing during the marriage, they should continue in this role during and after the divorce. They said things like, "What was good enough before is good enough now."
- **Negative opinions of men's capacity to parent** – Many women felt that men are not sensitive to the emotional, social, and physical needs of the children, and that women have a more innate sense of how to parent. These women felt that men cannot change or improve, saying things like, "Even though he is changing his schedule now, I know that once he obtains more custody he will go back to the same work/social-life schedule that he has had before."
- **Peer-group expectations** – Women experienced social pressure from family and friends to maintain the full-time parenting role. They said, "My mother would be very upset if

I lost the children,” or “My girlfriend said that she has never heard of having to share the children in the way that the judge said we should.”

- **Fear of another loss** – The most severe brainwashing was done by mothers who had been left for other women. Women more than men felt that they had lost a lot during the divorce – social position, opportunity to travel, house, sense of family, and identity – and said “I am simply not giving any more” or “He’s gotten everything, he’s not getting them.”
- **Desire to move to another geographical area** – Many of the mothers were forced to relocate because of money, a new relationship, career, or the selling of the marital home. Other mothers chose to “create a new life and get out of here.” Fathers were less apt to move, and were less apt than mothers to rely “on programming and brainwashing as a tool in helping the children become part of the total move.”
- **Desire to create the new family** – Being more connected to the image of the family than men, women were also more apt to argue that the new family (mother, new partner, and mother’s children) was more important and better for the children than the old pre-divorce family.
- **Opportunity** – Since the mothers usually had more time with the children after divorce than did the fathers, the mothers had more time to brainwash the children. Also, brainwashing was more effective if the children had less time with the father. In fact, Clawar and Rivlin noted that programming/brainwashing was less frequent when the parenting time was more equally divided between the parents. (1991, pp. 155–161)

In the past five years, research reports have indicated that there are no longer marked gender differences in parental alienation of children (e.g. Gardner, 2004; Johnston & Kelly, 2004b; Kelly & Johnston, 2001). This is consistent with the recent finding that allegations of abuse by mothers and by fathers are each substantiated about 51% of the time, suggesting that mothers are *not* more apt to make unsupported allegations of abuse as part of a campaign to vilify the father (Johnston, Lee, Olesen, & Walters, 2005). The recent decrease in gender differences in rates

of parental alienation is presumably due to changes in the general social factors described in the gender analysis offered by Clawar and Rivlin, including the increase in joint custody.

ESTRANGEMENT V. ALIENATION

Before examining the family dynamics that cause some children to become estranged from one parent after separation or divorce, it is important to differentiate the alienated child from the child who is simply estranged from one parent. The alienated child persistently refuses to spend time with one parent because of unreasonable ideas and negative feelings about that parent. The estranged child also resists contact with one parent, but does so for a variety of normal, realistic, and developmentally appropriate reasons (Kelly & Johnston, 2001, p. 251).

Children's relationships with their parents exist on a continuum: at one end is the child who has a warm, positive relationship with both parents, while at the other end is the child who is close to one parent and alienated from the other parent. Box 68 shows this continuum as conceptualized by Kelly and Johnston (2001, pp. 251–254.)

CAUSES OF PARENTAL ALIENATION

A number of researchers and custody experts have suggested that parent/child alienation after divorce is caused by a complex mixture of family dynamics. Box 69 lists the major dynamics that are risk factors for alienation.⁵

Recent studies have supported the view of alienation as multiply-determined. For example, one study examined 215 children of divorce who were 5–14 years old in 1981–1991, 2–3 years after their parents separated. The study found direct causes of child alienation in (a) aligned mothers who used the child for their own emotional support and acted to sabotage the child's relationship with the father, and (b) rejected parents, both male and female, who showed a lack of warmth, involvement with the child, and

Box 68. *Children's Relationships with Parents after Separation or Divorce*

Type of Relationship and Family Dynamics	Characteristics of Relationship
<ul style="list-style-type: none"> ● Positive relationship with both parents <ul style="list-style-type: none"> ▪ most healthy adjustment ▪ majority of separated children 	<ul style="list-style-type: none"> ● Child wants time with both parents <ul style="list-style-type: none"> ▪ extensive time with each parent ▪ intimate relationship with both parents
<ul style="list-style-type: none"> ● Affinity with one parent <ul style="list-style-type: none"> ▪ healthy adjustment ▪ affinity may shift over time ▪ affinities are typical of all families, intact or separated ▪ low inter-parental conflict 	<ul style="list-style-type: none"> ● Child feels closer to one parent <ul style="list-style-type: none"> ▪ frequent contact with both parents ▪ better match with one parent because of temperament, age, gender, shared interests, or parenting practices ▪ child may express preference for spending time with one parent
<ul style="list-style-type: none"> ● Alliance with one parent <ul style="list-style-type: none"> ▪ intense inter-parental conflict ▪ child may be pressured to take sides 	<ul style="list-style-type: none"> ● Child prefers one parent <ul style="list-style-type: none"> ▪ ambivalent towards non-preferred parent- expresses anger, sadness, love, disapproval ▪ resists contact with non-preferred parent, but does not reject them

Box 68

Type of Relationship and Family Dynamics	Characteristics of Relationship
<ul style="list-style-type: none"> • Estranged from one parent <ul style="list-style-type: none"> ▪ medium inter-parental conflict ▪ parental history of violence or abuse by rejected parent, <i>or</i> ▪ severe parental deficiencies— e.g. rigid and controlling, emotional abuse, mental illness, substance abuse. 	<ul style="list-style-type: none"> • Child rejects one parent <ul style="list-style-type: none"> ▪ intense fear and phobic reactions, based on actual experiences; not ambivalent ▪ usually try to severely limit contact rather than avoid all contact ▪ healthy response - to distance self from abusive parent ▪ found most at 10-18 years of age
<ul style="list-style-type: none"> • Alienated from one parent <ul style="list-style-type: none"> ▪ high conflict custody dispute ▪ rejected parent is a competent parent with no history of abuse ▪ aligned parent is angry and vindictive towards rejected parent, pressures child to side with aligned parent 	<ul style="list-style-type: none"> • Child rejects and vilifies one parent <ul style="list-style-type: none"> ▪ exaggerated negative feelings and distorted view of rejected parent, with no factual basis ▪ no sense of ambivalence or guilt ▪ refuses all contact with rejected parent ▪ pathological response – distortion of previous positive parent/child relationship

Box 69. Risk Factors for Alienation

1. Factors due to inter-parental relationship

- Child caught in middle of intense inter-parental conflict
 - School-age child is asked to take sides, be a messenger, rescue a parent, or be punitive towards one parent
 - Infant/toddler replaces parent's spouse as object of affection, has difficulty separating from needy, dependent primary parent
- Parental conflict and dispute continues after separation
 - Legal dispute re. child custody and child support
 - Cross-allegations re. child abuse, neglect, poor parenting
 - Child tries to escape the conflict by rejecting one parent, avoiding all contact

2. Factors due to aligned parent

- Permissive parenting style – warm but few rules or restrictions, while rejected parent is harsh and authoritarian
- Parent experiences separation as complete abandonment
 - Parent experiences rage and humiliation, becomes vengeful and vindictive towards other parent, and blurs boundaries between parent and child.
 - Most common with traumatic separation – e.g. no emotional preparation, departing parent had lover or decided to pursue gay lifestyle, took furniture and children without notice.
- Programming – negative attitudes and beliefs about departing parent
- Brainwashing – techniques to force child to agree with them

Box 69**3. Factors due to rejected parent**

- History of abusive behavior – emotional, physical, or sexual abuse of child or other parent during relationship
- Authoritarian parenting style – harsh, rigid, punitive, while aligned parent is permissive (warm but few rules or restrictions)
- Immobilized by conflict with other parent, withdraws – child sees this as further abandonment
- Angry, hurt counter-rejection of child
- Personality – critical, demanding, self-centered, immature – child exaggerates parent's faults in midst of post-separation conflict
- Lack of empathy – misperceives child's rejection as totally due to manipulation by aligned parent
- Lack of financial resources to oppose aligned parent's blocking of access to child

4. Factors due to child

- Age and cognitive capacity – 8-12 years old most common, when still cannot maintain opposing images about rejected parent, cannot sustain loyalty shifts, and cannot pull away from parental conflict as adolescent can, but is able to form judgments and feel moral outrage,
- Feels abandoned by rejected parent – confused about reason for rejected parent leaving marital home, hurt by diminished attention from this well-loved parent.
- Poor psychological adjustment or cognitive limitations

5. Factors due to parent/child relationships

- Role reversal – child taking care of depressed, humiliated aligned parent
- Child extremely dependent on aligned parent
- Threats from aligned parent – to disown or withdraw from child if they spend time with other parent.
- History of little contact with rejected parent or his/her extended family

Box 69**6. Factors due to re-coupling of parents**

- New partner of rejected parent – becomes target of left-behind parent's rage
 - Child may also feel betrayed or rejected
 - Child experiences intense loyalty conflict
- New partner of aligned parent – child jealous, this intensifies child's feelings of abandonment by rejected parent
- Step-siblings as competitors – for attention of re-coupled parent

7. Factors due to environment

- Polarization – of professionals, extended families, and community members.
- Child has few adult mentors – not close to therapists, teachers, extended family members, or other trusted adults.
- Supervised visitation – allegations of abuse lead to supervised visitation; although supervision is necessary for the child's protection during investigation, it also reinforces the idea that the rejected parent is dangerous and bad.

parenting competence. The indirect causes of child alienation included (a) prolonged custody litigation, and (b) the children's own attributes, namely being older, emotionally troubled, and less socially competent (Johnston, 2003; Johnston & Kelly, 2004a, 2004b).

In a later study, Johnston, Walters, and Olesen (2005b) coded clinical research data for 125 children who were referred from family courts for a custody evaluation or custody counseling. They found that about half of *both* mothers and fathers frequently engaged in alienating behavior; this is similar to Clawar and Rivlin's (1991) finding that 40% of parents engage in intensive "brainwashing"

techniques designed to alienate the children from the other parent. Johnston and her colleagues also reported that a significant amount of “reciprocal alienation” exposed the children to intensified stress from the inter-parental conflict.

While 20% of the children in the [Johnston et al. \(2005b\)](#) study were consistently negative about one parent, only 6% of the children were “extremely rejecting of one of their parents” and displayed “sustained expressions of anger, dislike, scorn, denigration, and complaints about the parent that were at times backed up by the child citing family legends or allegations of maltreatment, often accompanied by resistance or refusal to visit.” Sons and daughters were equally likely to be extremely rejecting of one parent, but fathers were more likely to be strongly rejected than were mothers. The overall alienation rate of 6% is surprisingly low, and suggests that “pre-adolescent children’s ties to both their parents are remarkably resilient in the context of family conflict and divorce” (p. 206).

Johnston et al. [\(2005b\)](#) found multiple causes of the children’s negativity and alienation. First, there were high rates of child abuse and domestic violence in these families. In 27% of the families, child abuse (neglect, physical abuse, or sexual abuse) had occurred, and mothers and fathers were equally like to be implicated. Domestic violence had occurred in 44% of the families, in which 40% of the fathers and 15% of the mothers were perpetrators. Second, alienating behavior was the norm among the parents, who also had poor parenting abilities. Third, the child’s rejection of one parent added to the level of conflict in the family.

EFFECTS OF PARENTAL ALIENATION ON THE CHILD

Chapter [8](#) has already discussed children’s reactions to their parents’ separation and divorce. Although most children of divorce eventually become as well-adjusted as children from intact families, children of divorce do tend to have lower grades and scores on academic achievement tests, more behavior problems, more symptoms of psychological distress, lower self-esteem, and more difficulties in interpersonal relationships. It is also well-established

that inter-parental conflict is detrimental to children's adjustment, so that children of high-conflict divorces fare worse than do children of low-conflict divorces. Within the group of high-conflict children, do alienated children fare worse than non-alienated children?

In their long-term study of 131 children from 60 divorced families, [Wallerstein and Kelly \(1980\)](#) reported that 23 (19%) of the children formed alignments with one parent. Five years after the divorce, all but 3 of "these very intense relationships had calmed or totally disappeared," so that only 2% of the children remained alienated from one parent ([Wallerstein & Kelly, 1980](#), pp. 233–234). Despite this resolution of most of the aligned relationships, after the ten-year follow-up Wallerstein offered this description of children with alienating parents:⁶

Whether one or both parents act the Medea role, children are affected for years to come. Some grow up with warped consciences, having learned how to manipulate people as the result of their parents' behavior. Some grow up with enormous rage, having understood that they were used as weapons. Some grow up guilty, with low self-esteem and recurrent depression, while others desperately wish to rescue a parent and feel anguish when they realize they cannot. Many acquire disdain for both parents. All of Medea's modern-day children sense that no one has any real regard for their needs; they know that they have become extensions of their parents' anger.

[\(Wallerstein & Blakeslee, 1989, p. 196\)](#)

When Gardner first proposed the *Parental Alienation Syndrome (PAS)* in 1992, he made a similar point by saying that PAS not only deprives the child of a relationship with the target parent, but also produces "lifelong psychiatric disturbance in the child."⁷

In their 12-year, descriptive study of 700 families with children 1–20 years old, Clawar and Rivlin (1991) examined the psychological effects of brainwashing, or the alienation techniques employed by parents. Thus this study did not examine the effects of parent/child alienation per se, but rather the effects of the parental behaviors that cause such alienation. These authors found that the impact of brainwashing was greater the longer it went on, and the younger the child was.⁸ The major psychological effects of brainwashing are listed in Box 70.⁹

Box 70. *Children's Reactions to Brainwashing/Alienation*

- **Anger –**
 - At target parent for “giving up” on spending more time with the child
 - At brainwashing parent for mistreating target parent and making them unavailable
- **Excessive guilt and confusion –**
 - Feel unusually responsible for parental separation
 - Confused by mismatch between brainwashing re. target parent and that parent's behaviors
- **Depression, anxiety, sleep disturbance, eating disorders**
- **Clinginess, separation anxiety, bed-wetting or general regression**
- **Development of fears and phobias –**
 - Fear of abandonment
 - School phobias
 - Hypochondriasis
 - Hypervigilance re. parents
 - Fear of the future
 - Fear of death (of oneself or of parents)
- **Obsessive-compulsive behavior**
- **Motor tension (tics, fidgeting, restlessness)**
- **Psychosomatic disorders**
- **Retreat into fantasy and daydreaming**
- **Loss of self-confidence and self-esteem**
- **Lack of self-control, conduct disorders**
 - Delinquency, stealing, truancy
 - Aggression, explosiveness
 - Sexual promiscuity
 - Drug abuse
 - Self-destructive behaviors
- **Dramatic change (decrease or increase) in academic performance**
- **Peer group problems**
 - Aggression
 - Withdrawal
 - Extreme focus on peers, to exclusion of parents
- **Relationships with parents**
 - Withdrawal from one or both parents
 - Desire to live with neither parent
 - Role reversal – rescuer or caretaker of parent

Based on Clawar & Rivlin, 1991, pp. 104-130.

Although Clawar and Rivlin's results are fascinating, the study is descriptive: it examined the processes and impact of brainwashing throughout their large, high-conflict, post-divorce sample. The study had no control group of non-brainwashing parents, however, nor did it compare the characteristics of alienated v. non-alienated children. This means that it is impossible to differentiate the overall impact of parental conflict and brainwashing from the specific impact of alienation. To do this, we need studies of children from high-conflict, separated families that compare the adjustment of alienated children with the adjustment of non-alienated children. Lampel (1996, 2002) has begun this work with two small samples of 20 children and then 20 families. Lampel's preliminary results indicate that:

- All children of high-conflict divorce have difficulties in:
 - solving problems,
 - coping with feelings,
 - seeking or giving assistance
- Alienated children differ from non-alienated children by being:
 - more angry
 - less anxious
 - less adept at solving complex problems
 - more self-confident
- Alienated and non-alienated children are the same in:
 - intellectual abilities – information processing of alienated children is not simplistic and rigid

Lampel (2002) goes on to propose that future studies compare alienated and non-alienated high-conflict children on (a) level and processing of anger, (b) adoption of the preferred parent's thoughts and feelings, (c) issues of enmeshment, and (d) idealization of self and the preferred parent.

CONTROVERSY ABOUT PARENTAL ALIENATION SYNDROME

Definition of PAS

Richard Gardner¹⁰ used the term "Parental Alienation Syndrome" (PAS) to apply to situations where the brainwashing behaviors of one parent cause a child to join with that parent in a campaign

to humiliate and vilify the other parent. Gardner's description of PAS was:

The *parental alienation syndrome* (PAS) is a disorder that arises primarily in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present the child's animosity may be justified, and so the parental alienation syndrome explanation for the child's hostility is not applicable.

(Gardner, 1998b, p. xx)

This definition indicates that a child may be estranged from the target parent for two reasons: (1) abuse or neglect by the target parent, or (2) brainwashing by the aligned parent.

Gardner saw PAS as "one specific *subtype* of parental alienation" in which there was "a typical constellation of symptoms" in the child:¹¹

1. Campaign of denigration against target parent
2. Weak, frivolous, or absurd rationalizations for the deprecation
3. Lack of ambivalence
4. The "independent thinker" phenomenon –

Child insists that they decided to reject the target parent totally on their own, without any contribution from the brainwashing parent

5. Reflexive support of the alienating parent in the parental conflict
6. Absence of guilt over cruelty to and/or exploitation of the alienated parent.
7. Presence of scenarios borrowed from the alienating parent.
8. Spread of the animosity to friends and/or extended family of the alienated parent.

Gardner differentiated three different levels of PAS (mild, moderate, and severe) based on the severity of the child's symptoms, and suggested that there were four additional diagnostic considerations: (1) degree of transitional difficulties at the time

of visitation, (2) degree of destructive and antagonistic behavior during visitation, (3) degree of bonding with the alienator, going from healthy/strong to pathological/paranoid, and (4) bonding with the target parent, which appears not to differ across the three levels of PAS (Gardner, 2003a, Table 1).

Gardner noted that “The *diagnosis* of PAS is based upon the level of symptoms in the child, not on the symptom level of the alienator” (2003a), and went on to specify that, “Whereas the *diagnosis* of PAS is based upon the level of symptoms in the child, the court’s decision [regarding response to PAS] should be based primarily on the *alienator’s symptom level* and only secondarily on the child’s level of PAS symptoms.” (2003b, 2003c).

Criticisms of PAS

There have been many criticisms of the PAS concept, including:¹²

◆ Causality –

- PAS focuses only on brainwashing by the alienating parent, ignoring the many factors (other than abuse) that may cause a child to become estranged from one parent and aligned with the other parent. These other factors include:
 - natural affinity between the child and the aligned parent
 - short-term reactions to stress of divorce
 - variety of negative factors outlined in Box 69.
- Behaviors labeled “alienating” by PAS do not always produce alienation in the child.

◆ Dismisses sexual abuse – Gardner has asserted that PAS leads the mother to make false accusations of sexual abuse by the father.

◆ Gender bias – Gardner is stereotypically anti-mother, claiming that almost all alienators are female.

◆ Clinical diagnosis – PAS does not appear in the DSM-IV (APA-med, 2000), and mental health professionals disagree about whether it meets the criteria for a psychiatric syndrome.¹³

◆ Lack of empirical support – No studies have supported Gardner’s contention that unless there is child abuse, child

alienation is caused by parental brainwashing. On the contrary, studies have consistently indicated that there are multiple causes of alienation (as discussed in the section above).

Admissibility of PAS in Court

Because of the controversy and the lack of empirical support for PAS, some psychologists have recommended that custody evaluators use an alternative term such as “pathological alienation,” which Warshak defines as follows:

a disturbance in which children, usually in the context of sharing a parent’s negative attitudes, suffer unreasonable aversion to a person or persons with whom they formerly enjoyed normal relations or with whom they would normally develop affectionate relations.

(Warshak, 2003, p. 292)

Simply using a new label is not going to solve the many conceptual and empirical problems associated with PAS, however. Nor is it going to address the *Daubert* requirements that expert testimony is only admissible if the scientific theory or technique is testable, has been supported by peer review, has a known error rate, and has general acceptance in the field (McCann et al., 2003). Although PAS *may* be testable, none of the other criteria for admissibility have been met.¹⁴

Estrangement and alienation should be considered in each custody case, but in the context of the empirical research on the multiple factors that increase or reduce a child’s vulnerability to these reactions. The statements and behaviors of the parents and children need to be described by the evaluator and considered by the court, without labeling them as part of a “syndrome.”¹⁵

METHODS FOR IDENTIFYING ESTRANGEMENT AND ALIENATION

Parent/child Relationships

In evaluating high-conflict families, it is important to consider where the parent/child relationships fall on the continuum outlined in

Box 68. Does each child have positive relationships with both parents, or a special affinity for one parent? Does each child prefer one parent and feel ambivalent towards the other parent? Or does the child prefer one parent and reject the other parent? Is the child's rejection of the other parent intense and vengeful?

Risk factors for Alienation

One should also look for the risk factors for alienation listed in Box 69. The presence of these risk factors does not mean that a child is alienated, aligned, or estranged from one parent or the other. The risk factors do increase the child's vulnerability for alienation, however, and should provide information about the pattern of relationships within the family.

Signs of Distress, Estrangement, and Alienation in the Children

As the evaluator works with the family, they should also note any signs of distress in the children. A number of responses to stress are listed in Box 70, which outlines children's reactions to brainwashing. Again, do not leap to the conclusion that a child who shows a number of these reactions has been brainwashed, or is alienated from one parent. *These are reactions that may occur in response to a number of stressors.* These child behaviors and characteristics should serve as warning signs of distress, leading to a thorough investigation of the sources of the distress within the child's life.

Alienating Parental Behaviors

In every evaluation, it is important to assess the family relationships carefully. Can the parents communicate and cooperate in taking care of the children? Are the parents locked into an on-going campaign to win the children to their side of the parental dispute? Are the parents engaged in brainwashing/alienating behaviors with the children?

Alienating behaviors have several dimensions, including (a) severity, (b) duration (c) obviousness, and (d) parental awareness of the behaviors (Drozd & Olesen, 2004). The behaviors

are apt to be done by both parents, but lead to severe child alienation in only a small percentage of cases.

Box 71 lists the detection factors that Clawar and Rivlin (1991) found in their study of programming and brainwashing. Box 72 gives examples of the detection factors, to clarify their meaning.

The indicators of brainwashing behaviors need to be interpreted in the context of the overall family dynamics. In assessing those dynamics, it is useful to consider the following issues.¹⁶

◆ **Parental attitudes and beliefs** –

- ◇ Does the protective and/or alienating parent believe the disparaging things s/he is saying about the other parent?
- ◇ Is s/he genuinely frightened and protective, even if mistaken?

◆ **Ulterior motives** –

- ◇ Is there any financial gain from the protective/alienating behaviors?
- ◇ Are the alienating behaviors part of preparation for relocation?
- ◇ Is there any other type of personal gain from the protective/alienating behaviors?

◆ **Parental personality and temperament** –

- ◇ Is there a personal or family history of rejection, being repeated in the custody dispute?
- ◇ Does either parent have a history of boundary violations in relationships? Is either parent prone to see the child as an extension of the parent?
- ◇ Is either parent having difficulty with flexibility and clear thinking? Is there any documented history of mental illness that could explain this difficulty?
- ◇ Does either parent have a history of physical, sexual, or emotional abuse? How is this experience related to their current functioning? Are they prone to simplistic thinking in general? Do they tend to see other things in all-or-nothing terms?

Box 71. Children's Reactions That May Suggest Brainwashing

<u>Detection Factor</u>	<u>% of cases</u>
1. Restrictions on permission to love both parents.....	90
2. Inappropriate information.....	85
3. Presents one parent as martyr.....	80
4. Contradictory statements.....	70
5. Indirect statements quoting brainwashing parent.....	70
6. Character assault on target parent.....	60
7. Anxiety arousal.....	60
8. Good parent vs. bad parent.....	55
9. Collusion or one-sided alliance.....	50
10. Scripted views – overly crystallized, including quotes from brainwasher.....	45
11. Radical changes and dysfunctional behavior outside family.....	44
12. Guilt about own role in family or custody dispute.....	40
13. Nonverbal messages.....	38
14. Child as spy or conduit of information.....	30
15. Age-inappropriate statements.....	30
16. Colludes in secret-keeping with brainwashing parent.....	30
17. Reports parental coaching behavior.....	28
18. Confusion about a birth parent's role or importance.....	21
19. Fear of contact with target parent.....	20
20. Child's statements mirror those of brainwashing parent.....	20
21. Unmanageability for no apparent reason.....	15
22. Brain twirling – confusion, anxiety, alliance, and hostility.....	15
23. Child as parent's best friend.....	12
24. Fear for own physical survival.....	10
25. Child threatens target parent.....	8

Adapted from Clawar & Rivlin, 1991, p. 178, Table 14

Box 72. Examples of Detection Factors for Brainwashing

<p>Question</p> <p>From Evaluator, Therapist, or Judge</p>	<p>Child's answer</p>
<p>1. Restrictions on permission to love both parents</p> <ul style="list-style-type: none"> ▪ Do you feel free in your heart to love both of your parents? or ▪ Is there anything that you are really afraid of that could happen because of the divorce? 	<ul style="list-style-type: none"> ▪ Dad said that if I go to live with Mom, that I'll never see him again
<p>2. Inappropriate and unnecessary information</p> <ul style="list-style-type: none"> ▪ Is Mom/Dad upset about anything special that you know of? ▪ You seemed very angry when you mentioned Mom. Do you know why you feel angry at her? 	<ul style="list-style-type: none"> ▪ My Dad was having an affair while my Mom was having me in the hospital. ▪ Mom never wanted me to be born. Dad said she wanted an abortion, but he wouldn't let her do it.
<p>3. Presents one parent as a martyr</p> <ul style="list-style-type: none"> ▪ Is there something that you think could happen that would make the family situation better now? 	<ul style="list-style-type: none"> ▪ Mom destroyed our family with this divorce; Dad always says that he still loves her and that she can come back.
<p>4. Contradictory statements</p> <ul style="list-style-type: none"> ▪ How do you feel about your Mom/Dad? 	<ul style="list-style-type: none"> ▪ Daddy's a bad man. I never want to see him again. But I really love him. I'd miss him a lot.

Box 72

Question From Evaluator, Therapist, or Judge	Child's answer
<p>5. Use of indirect statements quoting brainwashing parent.</p> <ul style="list-style-type: none"> ▪ How did this weekend go? Does Mom/Dad have an opinion about the time you spend at Dad's/Mom's? 	<ul style="list-style-type: none"> ▪ When I get home, Mom says things like, "Too bad you had to go with your dad this weekend – you missed a great ski trip. I bet you only watched TV, as usual." Mom's right, he's boring.
<p>6. Character assault on target parent</p> <ul style="list-style-type: none"> ▪ What do you like about being at Mom's? 	<ul style="list-style-type: none"> ▪ Mommy has lots of boyfriends who sleep over. Daddy says she's a whore because the Bible says so.
<p>7. Anxiety arousal</p> <ul style="list-style-type: none"> ▪ Are there things that are upsetting to you now? 	<ul style="list-style-type: none"> ▪ Mom and Dad [the stepfather is called "Dad,"] have to listen when Steve [biological father] telephones us because if he finds out where we live, he might kidnap us.
<p>8. Good parent vs. bad parent</p> <ul style="list-style-type: none"> ▪ How do you feel about Mom at this point? ▪ How do you know this? 	<ul style="list-style-type: none"> ▪ I know Mom is bad. ▪ Because Daddy says so, and I believe everything he says. My dad never lies to me.

Box 72	
Question	Child's answer
From Evaluator, Therapist, or Judge	
<p>9. Collusion or one-sided alliance</p> <ul style="list-style-type: none"> ▪ Sometimes children think things may be unfair. Is there anything that <i>you</i> think is unfair? 	<ul style="list-style-type: none"> ▪ Dad just bought a new car, but Mom's poor – he should have given us the money.
<p>10. Scripted views</p> <ul style="list-style-type: none"> ▪ You said you were confused about the fight and what really happened. What does Mom/Dad think happened? 	<ul style="list-style-type: none"> ▪ I really thought I saw Dad's girlfriend hit Mom first, but Dad says he saw Mom start it. I'm confused now.
<p>11. Radical changes and dysfunctional behavior outside family</p> <ul style="list-style-type: none"> ▪ I heard you've become a really good student—even better than before. Why do you think this has happened? ▪ At the time when you have your headaches or stomachaches, do you remember any particular thing in your mind? 	<ul style="list-style-type: none"> ▪ My grades have really improved since Mom and Dad decided to split. I figured out it's because school is the only place where I can escape. ▪ I really get terrible headaches and stomachaches. I wish my parents would leave me alone. I feel like I'm in the middle, and they're both pulling my arms off.
<p>12. Guilt about own role in family or custody dispute</p> <ul style="list-style-type: none"> ▪ Is there anything that <i>you</i> feel guilty about since this whole family change started? 	<ul style="list-style-type: none"> ▪ I testified against my mom in court, and I lied to the judge.

Box 72

Question From Evaluator, Therapist, or Judge	Child's answer
<p>13. Nonverbal messages</p> <ul style="list-style-type: none"> ▪ People can send messages with words and with gestures. Does Mom/Dad use gestures? How? 	<ul style="list-style-type: none"> ▪ I know Dad doesn't want to hear anything about Mom. If we did something special with her, and we're still excited when we see him, he acts (looks away as if to imitate Dad) like he doesn't care.
<p>14. Child as spy or conduit of information</p> <ul style="list-style-type: none"> ▪ Is there anything that you've done during your parents' separation that makes you feel not as good as you'd like about yourself? 	<ul style="list-style-type: none"> ▪ I brought Mom some of Dad's business receipts to help her in court because he says he has no money.
<p>15. Age-inappropriate statements</p> <ul style="list-style-type: none"> ▪ When you talk about your father, you use the word "father," but when you talk about your stepfather, you use the word "Dad." Could you tell me why you use different names? 	<ul style="list-style-type: none"> ▪ Anyone can be a father, but it takes someone special to be a Dad.
<p>16. Colludes in secret-keeping</p> <ul style="list-style-type: none"> ▪ Are there secrets that are bothering you about this whole custody problem? 	<ul style="list-style-type: none"> ▪ Dad told me to keep this a secret, but we're running away if he loses in court.

Box 72

Question From Evaluator, Therapist, or Judge	Child's answer
<p>17. Coaching behavior [During home visit]</p> <ul style="list-style-type: none"> ▪ How do you know that? 	<p>[Upon entering her father's home, a four-year-old exclaims to the evaluators, "Daddy pushed Mommy down."]</p> <ul style="list-style-type: none"> ▪ My mommy told me to tell you he did.
<p>18. Confusion about birth parent</p> <ul style="list-style-type: none"> ▪ Could you explain how your stepfather became your "real" father? 	<ul style="list-style-type: none"> ▪ My mom and dad got married, had me, and then divorced. They [mother and stepfather] told me that now I have a "real" father. Can you tell me how I got born again?
<p>19. Fear of contact with target parent</p> <ul style="list-style-type: none"> ▪ You say you pray every night. Are Mom and Dad in your prayers? ▪ What's wrong with your Dad that he needs to get better? 	<ul style="list-style-type: none"> ▪ We read the Bible every night and pray for Dad to get better. ▪ I don't know, but I hope he'll be okay. Maybe he's even dangerous because we're not allowed to give him our telephone number or address.
<p>20. Child statements mirror those of brainwashing parent.</p> <ul style="list-style-type: none"> ▪ Why do you think your father is trying so hard to make sure he has more time with you? 	<ul style="list-style-type: none"> ▪ Dad doesn't really love me or want me to live with him – he just wants custody to hurt Mommy.

Box 72

Question From Evaluator, Therapist, or Judge	Child's answer
<p>21. Unmanageability for no apparent reason</p> <ul style="list-style-type: none"> ▪ Are there things that you'd like to be able to tell Mom/Dad, but find it difficult? ▪ Do you have your own theories about why you had so much conflict at Dad's house? 	<ul style="list-style-type: none"> ▪ Yeah. ▪ I miss Dad, but I can't tell Mom. It's because of her that I don't see him and we moved so far away. I was always really bad when I was with him- I think Mom liked it when I gave him trouble. I wish so much that I could tell her that I want to see him.
<p>22. Brain twirling- confusion, anxiety, alliance, and hostility</p> <ul style="list-style-type: none"> ▪ On the one hand, you say that the joint custody was good in a lot of ways. On the other hand, you say you don't want it anymore. How come? 	<ul style="list-style-type: none"> ▪ I always thought I wanted joint custody [equal time in this case], and it was working in the beginning. But then my dad started so much trouble with Mom, it just isn't worth it anymore.
<p>23. Child as parent's best friend</p> <ul style="list-style-type: none"> ▪ You have some criticisms of how your dad treats you. Are there things that your dad could do to improve the relationship between the two of you? 	<ul style="list-style-type: none"> ▪ Dad treats me like a baby. He won't tell me anything or even let me do the things Mom lets me do. My mom and I are more like best friends than mother and daughter.

Box 72	
Question	Child's answer
From Evaluator, Therapist, or Judge	
<p>24. Fear for own physical survival</p> <ul style="list-style-type: none"> ▪ Is there anything scaring you at this time? 	<ul style="list-style-type: none"> ▪ Sometimes I'm afraid of my mom. She loses it a lot lately. I've been slapped around. She's really a lot rougher on my sister, especially when she tells Mom that she wants to live with Dad. I'm too smart to get her that mad – as long as I keep my mouth closed, I'm safe.
<p>25. Child threatens parent</p> <ul style="list-style-type: none"> ▪ I heard that you said you wanted to tell the judge certain things about your mom. What's the story? 	<ul style="list-style-type: none"> ▪ Yeah, I told my mom she better do what I want, because my dad told me I should tell him whenever Mom does something wrong, because the judge will punish her. <p style="text-align: right; font-size: small;">Examples 1-25 adapted from Clawar & Rivlin, 1991, pp. 95-103.</p>

Reports of custody evaluations should give the exact words of the questions and answers that suggest parental alienating behaviors, or brainwashing, so that the readers can form their own conclusions about the data. The report needs to summarize all of the possible explanations for any observations of child estrangement and alienation, and to explain how the various pieces of information confirm or disconfirm each explanation.

REMEDIES FOR CHILD ESTRANGEMENT OR ALIENATION

Many of the approaches to cases of child estrangement and alienation are the same as those for high-conflict custody cases in general, because the techniques are aimed at containing or reducing inter-parental conflict. It is important for all professionals to understand some of the specific characteristics of the possible interventions so that they can make more informed decisions about how to proceed with alienation cases.

Case Management

Sullivan and Kelly (2001) have proposed a number of strategies for working with families that have an alienated child, when there is no abuse in the case. These strategies are applicable throughout the family's participation in the family court process.

- **Continuity** – The same professionals should interact with the family over time. One judge should be assigned to the case, and one custody evaluator, who can conduct evaluation updates as needed.
 - Sullivan and Kelly (2001) also recommend using a “collaborative team” consisting of a judicial officer, special master or co-parenting coordinator, child therapist, parent therapists, co-parent counselor, parents' attorneys, and child's attorney or Guardian ad litem.
- **Shared responsibility** – Regardless of the physical custody arrangements, both parents should have the legal authority to make important decisions about the child. Having sole legal custody may encourage the alienating parent to continue blocking the other parent's access to the child. Specific court orders should prohibit both parents from making unilateral decisions about child health care, education, travel, and extracurricular activities that would interfere with the other parent's scheduled time with the child.
- **Clear, detailed and enforceable orders** – The more inter-parental conflict there is, the more detail and specificity are required in court orders and parenting plans. The presence

of an alienated child is an indicator of severe conflict, so the maximum possible detail is required. There should be a system for monitoring compliance with court orders, linked to the authority of the court.

- **Minimize face-to-face contact between parents** – Initially, conflict is best managed by trying to disengage the parents. Transitions should not involve face-to-face contact between the parents. Pick-up and drop-off should occur at a neutral place such as school or daycare, where only one parent needs to be present at a time. Parents should alternate attendance at child activities, and vacations and holiday rotations need to be specified.

Communication methods should be used that do not involve face-to-face contact, and that provide accountability through a written record. Letters, emails, or faxes fit these requirements.

- **Dispute resolution** – There should be a mediation or arbitration process for resolving disputes as they arise.

Family Interventions and Education

Family-focused counseling and therapy is often recommended for cases of alienation.¹⁷ The aligned or alienating parent should be included in the treatment, because if they are excluded the family dynamics can become even more polarized and entrenched. The goal and process of therapy with each family member is somewhat different, and requires the skills of a therapist experienced in working with alienated families.¹⁸

Aligned Parent

The goal is to help aligned parents differentiate legitimate worries from those that are distorted by lack of knowledge, communication difficulties, or the aligned parent's own fears. There are a number of steps in this process:

1. **Establish empathic relationship** – Gain initial cooperation by noting that it is an impossible task for any parent to control what happens when a child is in the care of the other parent.

2. Educate – Explain why it is beneficial for the child to have a relationship with both parents.
3. Discuss legal realities – Explain that parents have a legal right to have a relationship with their children, so the issue is not whether but *how* that relationship with the target parent will be re-established.
4. Explain how to help the child – Explain that the aligned parent needs to help the child by (a) preparing them for visits (giving specific details about the arrangements), (b) reassuring the child that the aligned parent will be okay while the child is away, (c) avoiding making any special plans that the child will miss while they are gone, (d) inviting the child to find ways to enjoy the visit (e.g. taking special toys along), and (e) telling the child they will be welcomed home after the visit.

If the child complains when they return from time with the rejected parent, these issues should be discussed at the next session, not with the child.

5. Encourage limit-setting – Notice any rude or obnoxious behavior that the child directs at the rejected parent. Explain to the aligned parent that “giving their child a voice” means allowing the child to have an emotional response, not letting the child act on their feelings in any way they wish.
6. Explore parent’s personal history – If enough rapport is established, it may be possible to address the aligned parent’s sense of personal loss and humiliation in the divorce, and how their rage may be connected with their own early history, such as disappointment with a neglectful, abandoning, or abusive parent.

Rejected Parent

The goal is to help rejected parents understand what has happened to their child in the context of the overall family dynamics, and to assist them with the steps required to re-establish a relationship with the child. The steps in this process are:

1. Establish empathic relationship – Gain the parent’s trust and cooperation by (a) validating their feelings of frustration and loss, (b) reassuring them that they are important to the child,

- (c) crediting their good intentions in seeking to develop or reinstate a good relationship with their child, and (d) explaining your role in assisting them in re-establishing their relationship with the child.
2. Educate – Offer the parent a more complete explanation of the family dynamics and how they have affected the child, and educate them about child development issues. Explore any issues of temperamental mis-match between the parent and the child, as well as the rejected parent's contribution to the current problem of estrangement/alienation.
 3. Coach – Once they are engaged in the therapy, offer the rejected parent advice about how to arrange the reconciliation with the child. Educate them about parenting styles and tasks. Begin to teach them about constructive ways to be self-protective.
 4. Explore deficits and styles of parenting – Assist the rejected parent in acknowledging any deficits in their parenting. This requires a strong therapeutic alliance because it means that the rejected parent has to acknowledge that some of what the child and the aligned parent are complaining about may be true.
 5. Forestall set-backs – Progress is slow in these cases, and the rejected parent may become so impatient that they lash out at the child, file another complaint in court, or disappear for some time. These actions may be forestalled by predicting and discussing them.
 6. Explore parent's personal history and dynamics – If sufficient rapport is established, it may be possible to address the parent's feelings about the divorce, role in the family dynamics, and history that contributed to those issues.

Child

The goal is to help the child explore their buried feelings towards both parents. This process is similar to other family-focused therapies with children. The approach will vary according to the age and developmental status of each child. The major steps should include:

1. Establish empathic relationship – Gain the child’s trust and cooperation by carefully listening to their story, without challenging its veracity.
2. Explore role of therapist – Discuss ways you can help the child with their problem. Explain rules of confidentiality; lines of communication with the parents, attorneys, and court; and the fact that the therapist does not have authority over the arrangements for parenting time.
4. Explain legal realities – Gently explain that the child does not have the (terrifying) power to avoid the rejected parent altogether. Explain that the question is *how*, not *whether*, the child will see the rejected parent.
3. Explore child’s feelings about rejected parent – Explore the basis for the child’s negative views and feelings toward the rejected parent. Ask neutral questions like, “I’ve heard you don’t want to have any contact with your Dad. What is it about your Dad that makes you feel that way?” or “How long do you think you are going to feel that way . . . months, a year or 2, until you are a teenager, or forever?” Use family photographs or albums to ask about previous activities with the rejected parent, because the child will usually deny that there were any “good times.”
4. Explore child’s feelings about aligned parent – Explore the child’s feelings and perceptions in the same way as for the rejected parent. Remember that the child’s rejection may have more to do with the aligned parent than the rejected parent.
5. Assist with arrangements for reconciliation – Explore with the child what arrangements would make them feel safer and more comfortable with the rejected parent.

Mediation

Vestal (1999) has recommended using mediation with alienated families. As she herself notes, however, “it is incongruent to require unwilling parties to participate in a process that is designed to be cooperative, interactive, and participatory” (p. 495). Therefore, mediation is not appropriate in severe cases of child alienation. Vestal suggests that in mild cases, the mediator would need to have mental health expertise in order to diagnose the underlying

motives and family dynamics. The power discrepancy between the parents would have to be neutralized, and an on-going process of monitoring cooperation would have to be utilized in conjunction with swift, clear judicial action to discourage stalling and deception by the aligned parent. Given these challenges to the mediation model, it seems more appropriate to use therapeutic intervention with families that contain an estranged or alienated child.

Re-uniting Child with Absent/Alienated Parent

It is important to consider exactly how to reunite an estranged or alienated child with the rejected parent. [Weitzman \(2004\)](#) has proposed using a one-way mirror to desensitize the child, providing an opportunity for the child to view and talk to the parent in a less anxiety-provoking setting before introducing face-to-face contact. [Gardner \(1998b\)](#) has proposed using neutral “transitional sites” for initial visitation in PAS cases, including residential treatment centers and visitation centers.

Others (e.g. [Sullivan & Kelly, 2001](#)) have proposed that in cases where there are no allegations of child abuse, the court can promote safe contact between an alienated child and the target parent by ordering contact sessions expedited by a mental health professional experienced with alienation. These sessions must be facilitated in a way that reassures all the family members that they will be protected: the rejected parent from false allegations, the alienating parent from dismissal of legitimate concerns, and the child from any harm. The term *access facilitator* is less stigmatizing than *visitation supervisor* or *visitation monitor*.

The access facilitator should be appointed by the court and provide the court with written documentation of behaviors during the visit. Thus the facilitator can serve three functions simultaneously: (a) keeping the child safe, (b) reassuring both the child and the parents, and (c) creating a record of child and parent behaviors.¹⁹

Sanctions for Non-compliance

Gardner has argued that sanctions should be used with both alienators and children refusing visitation because, “There is much too much coddling, indulging, and ‘empowering’ PAS children. These

measures would provide sorely needed disempowerment” (1998b, p. 446). Gardner proposes diagnosing PAS on the basis of the child’s symptoms, but applying sanctions based on the aligned parent’s level of symptoms (Gardner, 2003a, 2003b, 2003d).

Gardner’s punitive approach involves gradually escalating sanctions for non-compliant alienators: fines, posting a bond, community service, parole, house arrest, and incarceration in a local jail. Gardner points out that, “PAS children need the excuse to the alienating parent that they are only visiting in order to protect the alienator from the court sanctions” (1998b, p. 445).

Gardner goes on to say that older children (11–16) should be found in contempt of court if they continue to refuse to spend time with the target parent. “Once found to be in contempt, the youngster can be placed in a juvenile detention center for a few days to reconsider his(her) decision” (1998b, p. 445). To scare the children into compliance, Gardner recommends giving them an advance tour of the juvenile detention facility. To force younger children to comply with visitation orders, Gardner recommends temporary placement in a foster home or shelter for abused children.

Others have alluded to the need for sanctions if the aligned parent refuses to comply with court-ordered visitation with the rejected parent, including a change of custody or removal of the child from the parents (e.g. Lee & Olesen, 2001). Given the multiplicity of factors that cause child alienation, however, punitive measures aimed at the aligned parent and child are likely to be both ineffective and cruel.

Custodial Transfer

Gardner has likened the alienated child to one abducted and brain-washed by a cult, and argued that “PAS children need deprogramming just like cult children, and the deprogramming is only likely to be effective when the child is removed from direct exposure to the indoctrinators” (1998b, pp. 443–444). In his later writing, Gardner softened this stance to advocating custodial transfer only in moderate-to-severe cases where the alienator was implacable or the child was not visiting the rejected parent (Gardner, 2001b), or only in severe cases of PAS (Gardner, 2004).

Other child custody experts (myself included) think a change in custody is not usually beneficial if the child is functioning reasonably well in most areas of their lives such as in school, with friends, and in their relationship with the aligned parent. As Sullivan and Kelly note, “The pathology of these children is circumscribed to their alienation from the rejected parent and may be serving as an adaptive defense for an untenable loyalty conflict” (2001, p. 312). Although custodial transfer may serve the interests of the rejected parent, it is not necessarily in the best interests of the child.

Removal of Child

In some severe cases, removing an adolescent from the care of both parents may be the least detrimental alternative. Sullivan and Kelly (2001) point out that a boarding school may provide a positive, conflict-free environment with a therapeutic component when (a) the child is functioning poorly, (b) one or both parents are engaged in alienating behaviors, (c) severe, chronic inter-parental conflict is damaging the child, and (d) careful case management and therapeutic interventions have failed. When a boarding school is not feasible, temporary placement with a relatively neutral member of the extended family may be helpful, especially if the person lives some distance from the parents.

Notes

1. Research with nation-wide samples has indicated that 11–15% of children in community samples are aligned with one parent and reject or resist contact with the other parent, while about one quarter of the children in custody-litigating families are aligned in this manner (Johnston & Kelly, 2004; Johnston & Roseby, 1997; Wallerstein & Kelly, 1976, 1980). We should note, however, that Wallerstein & Kelly (1980) found that after 5 years, 88% of these alignments had disappeared.
2. Gardner's (1992, 1998b) formulation of Parental Alienation Syndrome (PAS) has been the subject of intense debate, which will be explored in the following sections.
3. In Clawar and Rivlin's (1991) 12-year study of 700 court-involved, predominantly white families from a variety of socioeconomic backgrounds, 2 or more evaluators spent a total of 25 hours per case doing (a) separate interviews with parents, children, members of the extended family, professionals, and community members, (b) observations of children with parents, and (c) extensive record review, including medical and educational records, court records, and personal diaries written by children, parents, and other people involved in the case.

Gardner has argued that, “The parental alienation syndrome is not the same as programming (‘brainwashing’) [because] the term PAS refers *only* to the situation in which the parental programming is *combined with* the child’s own scenarios of disparagement of the vilified parent” (1998b, p. xx, emphasis in original). Clawar and Rivlin do not report how many of the children in their study were aligned with one parent, but they do indicate that 4 to 86% of the children were aware of the parent’s attempts to influence their views and behaviors; the rate of awareness depended on the specific brainwashing technique employed (Table 16, p. 179). Clawar and Rivlin define 12 different brainwashing techniques (pp. 15–36) and indicate the percentage of use by gender of parent (Table 15, p. 179); all but the “physical survival syndrome” were used by many more mothers than fathers.

4. Gardner’s personal experience was similar. He reported that “in 85–90 percent of all the cases in which I have been involved, the mother has been the alienating parent and the father has been the alienated parent.” Gardner also did an “informal survey among 50 mental health and legal professionals I knew who were aware of PAS” and found that the ratio of alienating mothers to alienating fathers varied from 90/10 to 60/40 (Gardner, 2001a, p. 7).
5. The factors in Box 69 are derived from the work of many social scientists and child custody experts, including Clawar and Rivlin, 1991; Johnston, 2003; Johnston and Roseby, 1997; Johnston et al., 2005b; Kelly and Johnston, 2001; Stoltz and Ney, 2002; and Wallerstein and Kelly, 1980.
6. This author was unable to find a report of the number of children in Wallerstein and Kelly’s study who suffered these dire consequences of parental alignment or the “Medea Syndrome.”
7. Gardner’s assertion (Gardner, 1998b, p. xxi) appears to be widely accepted, because the controversy regarding PAS has focused on the causes rather than the effects of child alienation. That controversy is discussed in the next section of this chapter.
8. Cartwright (1993) cites other studies that reportedly indicate that alienation worsens over time, and that the degree of alienation in the child is directly proportional to the time spent alienating.
9. For a detailed discussion of the effects of brainwashing listed in Box 70, see Clawar and Rivlin, 1991, pp. 104–130. Please note that whereas Clawar and Rivlin (1991) found that brainwashing was more effective with *younger* children, Johnston (2003) found alienation more prevalent with *older* children. This discrepancy may be due to the difference between the age ranges of the samples used in the two studies: 1–20 years for Clawar and Rivlin versus 5–14 years for Johnston. Thus the younger children in Clawar and Rivlin’s sample may have been close in age to the older children in Johnston’s sample. This would be consistent with other studies that have noted the most effective age for brainwashing and alienation to be 8–12 years, (See note 5 above.)
10. Richard Gardner was a psychiatrist and psychoanalyst who died in 2003 at the age of 72. As of October 30, 2006, Dr. Gardner’s CV, personal statements, and selected publications were still available at his website: <http://www.rgardner.com>. This is also the website for Creative Therapeutics, a company created by Dr. Gardner in 1973 to distribute his games, therapeutic instruments, and books.
11. These quotations are from Gardner, 2004, pp. 613, 615. Gardner described these 8 symptoms in a virtually identical manner in a variety of other

publications, including Gardner (1998a, p. 311; 1998b, p. xxv; 1999a, p. 98; 1999b, p. 196; 2001a, p. 3; 2001b, p. 62; 2002, p. 97; 2003a, p. 1; and 2003d, p. 3).

12. These (and other) criticisms are discussed by a number of authors, including Bruch, (2001; Faller, 1998a, 1998b; Kelly and Johnston, 2001; Walker et al., 2004a, 2004b; Warshak, 2003; and Williams, 2001;
13. This point has been the subject of heated debate, with some psychologists arguing that PAS should not be included in the DSM-IV because of the lack of empirical support and the failure to meet the definition of a syndrome, which requires a group of symptoms with a common etiology and treatment (e.g. Walker et al., 2004a). Others have argued that all of the DSM-IV diagnoses are descriptions of clinical observations and not necessarily based on theoretical formulations or empirical research, and that inclusion in the DSM-IV would facilitate intervention and treatment of PAS (e.g. Andre, 2005; Gardner, 2002, 2003d, 2004; Warshak, 2003).

The debate about PAS and the DSM-IV seems somewhat irrelevant to custody evaluations because the guidelines admonish custody evaluators not to use clinical diagnoses in reports and court testimony. As I explained in Chapter 14, psychiatric diagnoses are often used by litigants and their attorneys in an inappropriate, pejorative manner. Furthermore, the custody evaluator seldom has access to the kind of information needed to make a definitive psychiatric diagnosis. And finally, many of the professionals reading the report will not have the technical background to understand what the psychiatric diagnosis implies about parental and child functioning.

14. Since there are no specific “scores” or severity criteria for a PAS diagnosis, it is not clear that PAS is actually testable. Other writers have also expressed concern about the inadmissibility of PAS, including Emery, (2005; Kelly & Johnston, 2001; Walker et al., 2004a, 2004b; Williams, 2001; and Ziropiannis, 2001).
15. A number of writers have made a similar point, including Ziropiannis, (2001);
16. These questions are adapted from Drozd and Olesen, (2004, p. 77).
17. Gardner strongly disagrees with using “traditional therapy” with these families because “PAS-inducers, with very rare exception, are not candidates for therapy. Candidates for therapy need insight into the fact that they have psychological problems and motivation to change. The vast majority of PAS-inducers satisfy neither of these criteria.” Gardner goes on to argue that, “Ordering PAS-inducers and/or their children into therapy is just what alienators want” because the alienators can continue inducing alienation and ignoring court orders for visitation while the therapy progresses slowly (1998b, p. 443).

In another publication, Gardner (1999b) advocated court-ordered family therapy for PAS families, saying that the approach must be “authoritarian” and use “threats” if the aligned parent does not comply with visitation orders. Gardner argued that the threats should go from mildest to most severe, notably (a) reporting the parent’s lack of cooperation to the court, (b) court-ordered reduction in child support payments, (c) permanent transfer of the children to the primary custody of the victimized parent, (d) house arrest, and (e) incarceration in the local jail (Gardner, 1999b, pp. 197–198).

18. Most of these suggestions for therapy are taken from Johnston, Walters, and Friedlander, (2001, pp. 317–325).

19. Freeman, Abel, Cowper-Smith, and Steir (2004) have also proposed a 7-step model for reconnecting children with parents they have not seen for 3 months or more, where the reasons for loss of contact include child adjustment, inter-parental conflict and child-parent alienation, the diminished capacity of one or both parents, and the separation adjustment of the absent parent. This 7-step model, which includes most of the issues covered in this chapter, is too detailed for discussion here but should be a useful resource for professionals specializing in reconciliation cases.

19

ABDUCTION AND PARENTAL KIDNAPPING

Sometimes a parent will tell an evaluator that the other parent has taken the child for visitation and refused to return them on time, or has threatened to take their child out of state and not return. In order to evaluate such allegations, it is important to understand the characteristics, risks, and psychological effects of parental abduction.

DEFINITIONS AND RATES

Parental abduction (also called *parental kidnapping*, *child snatching*, or *custodial interference*) is defined as taking, retaining, or concealing a child in violation of the custody or visitation rights of another parent or family member. Research and public policy distinguish between mild (“broad- scope”) cases and severe (“policy- focal”) cases (Chiancone, 2001).¹

- **Mild cases:** about 354,100 per year where someone
 - ◇ Took a child in violation of a custody agreement or decree, or else

◇ Failed to return the child at the end of their legal or agreed-upon visitation time and kept them away at least overnight.²

- **Severe cases:** about 203,900 per year where the abductor also did at least one of the following:

- ◇ Tried to conceal the taking or the location of the child (44%)
- ◇ Transported the child out of state to make recovery more difficult (17%)
- ◇ Attempted to prevent contact with the other parent (76%)
- ◇ Intended to affect custody permanently (82%)³

It is important to note that almost half (46%) of the left-behind custodial parents knew where the children were, or else they were not alarmed by the circumstances of the abduction; thus these caretakers did not consider the children to be missing. Forty percent of the caretakers did not contact the police about the abduction, citing a variety of reasons.⁴ Their reluctance to report may be justified, in that many police departments do not handle these cases themselves but instead refer them to family courts, prosecutors, and social service agencies (Chiancone, 2001).

The abducted children were gone for a wide range of times, from less than one day (23%), to less than one week (46%), to more than a month (21%). 94% had been returned by the time of the interview for this nationwide survey in 1999 (Hammer, Finkelhor, & Sedlak, 2002).

CHARACTERISTICS OF ABDUCTED CHILDREN

Age

Children 2–3 years old are most vulnerable to abduction because they are easier to transport and conceal, less likely to verbally protest, and may be unable to tell others their name or other identifying information (Johnston & Girdner, 2001). Nationwide studies indicate that 44% of abducted children are under 6 and 79% are under 11 years of age (Hammer et al., 2002).

Gender

Girls and boys are equally likely to be abducted (Hammer et al., 2002).

Race/Ethnicity

The racial/ethnic characteristics of abducted children match those of children in the general population. Thus family abductions are not more common in any one racial or ethnic group (Hammer et al., 2002).

CHARACTERISTICS OF ABDUCTORS

Families that experience abduction have high levels of on-going parental conflict, and approximately half of abductions occur during the period between separation and divorce (Chiancone, 2001). Thus abductions often occur during the period when a child custody evaluation is being done. In fact an abduction or threatened abduction may be one of the reasons for the court to order such an evaluation. This makes it especially important to try to identify those high-conflict families that are at risk for abduction.

Although child abductors are a varied group, researchers have identified common themes and characteristics of abduction. First I will discuss each characteristic separately, and then look at their combinations in six parental profiles. Finally, I will consider what risk factors are implied by the research findings.

Attitude Toward Other Parent

Abducting parents tend to dismiss the other parent's importance to the child, and do not see why they should share parenting with their ex-partner (Johnston & Girdner, 2001).

Motivation to Abduct

Some abductors are "forum shopping," or shifting their children from state to state in search of a favorable custody decision. This problem reached epidemic proportions until all of the states enacted the Uniform Child Custody Jurisdiction and Enforcement Act, which is

designed to avoid the jurisdictional competition that can arise in this situation.⁵ The federal Parental Kidnapping Prevention Act of 1980 is also designed to combat child abduction and forum shopping.⁶

Other abducting parents are trying to force a reconciliation or to initiate interaction with the left-behind parent, some are trying to blame or punish the left-behind parent, and some (particularly fathers) may fear losing custody or visitation rights. In extreme cases the abductor may have paranoid delusions about the evil or dangerous nature of the left-behind parent, or a personality disorder that causes them to have a total disregard for the law (Chiancone, 2001).

Some abductors are genuinely fearful for their children and are trying to protect them from a parent they think is molesting, abusing, or neglecting the child. Thus in 25–50% of abduction cases there are allegations of child abuse or domestic violence. These allegations are mostly made by the abducting parent, although both parents or the left-behind parent may have made the allegations.

Domestic Violence

Despite the frequent claim that the abduction was necessary to protect the child, one cannot assume that this is accurate. The abductor may in fact be more violent than the left-behind parent, given that some research has shown that 75% of male abductors and 25% of female abductors had exhibited violent behavior in the past (Greif & Hegar, 1993). The *level* of domestic violence also cannot be used to predict abduction, as Johnston (1994) found that the level was not significantly different for families involved in parental abduction and families involved in contentious levels of custody litigation.

Employment and Socioeconomic Status

By examining California records to compare (a) 50 families where children had been abducted with (b) 57 non-abducting families in highly contentious divorce and custody disputes, Johnston and Girdner (2001) found a cluster of factors related to poverty. Abductors were more apt to be poor, unemployed, young, never married, and to have young children and criminal records.

Abductors were also more apt to have financial or emotional support in a foreign country, which may suggest that they were more apt to be recent immigrants. The presence of foreign support may also be related to the nation-wide finding that abductors had high rates of cross-cultural and international marriages (Chiancone, 2001).

Johnston and Girdner (2001) also found that most of the California abductors were not aware that parental kidnapping is a crime and continued to insist that their actions were not illegal or morally wrong, even after being involved with the attorney general's office.

Network of Support

Most abductors had the support of a social network that provided emotional and moral support to validate the abducting parent's extra-legal actions. These networks also provided practical assistance such as money, food, and lodging, and consisted of family, friends, cultural communities, cult-like groups, or an underground dissident movement (Johnston & Girdner, 2001).

Gender and Relationship to Child

Nationwide surveys have found that about two-thirds of abductors are male (Hammer et al., 2002). Their relationship to the child is:

◇ Biological father	53%
◇ Biological mother	25%
◇ Grandparent	14%
◇ Sibling, uncle, aunt, mother's boyfriend	6%

In their California study, however, Johnston and Girdner (2001) found that fathers and mothers were equally likely to abduct their children, but at different times: fathers when there was no child custody order and mothers after the court had issued a formal custody decree.

Location and Season of Abduction

Sixty-three percent of family abductions occur when the child is with the abductor under legal circumstances; that is, the abductor simply fails to return the child from legal parenting time. Just prior to the abduction the children are usually in their own home or yard

(36%) or in someone else's home or yard (37%). It is very unusual for a child to be abducted from school or daycare (7%) or a public area (8%). Thirty-five percent of abductions happen in June, July, or August, probably because children tend to spend more time with non-custodial parents during the summer and go away on vacations with them (Hammer et al., 2002).

PROFILES OF PARENTS AT RISK FOR ABDUCTING THEIR CHILDREN

Johnston and Girdner (2001) used their California study of abducting families to develop six profiles of situations where abduction is likely to occur, along with recommended interventions in each situation. They noted that half of the families actually fit more than one risk profile.⁷

Profile 1: Prior Threat or Actual Abduction

There is justifiable mistrust and a heightened risk of abduction when a parent has made credible threats to abduct a child or has a history of hiding the child, snatching the child from the other parent, or withholding visitation. This risk profile is usually combined with one or more of the other profiles, and requires that the following general indicators of threat of flight be considered:

- Parent is unemployed, homeless, or without emotional and financial ties to the area.
- Parent has divulged plans to abduct the child.
- Parent has the resources to abduct, or support of extended family or underground dissident networks to survive in hiding.
- Parent has transferred funds: liquidated assets, made maximum withdrawals of funds against credit cards, or borrowed money from other sources.

This situation calls for the following specific interventions by the court:⁸

- **Court order** specifying custody and detailed arrangements for parenting time, including times, dates, and locations for all exchanges. The order should also indicate which court has jurisdiction and require the written consent of the custodial parent before the other parent can take the child out of the area. The order should also specify consequences for failure

to observe its provisions. Parents should be encouraged to keep a certified copy of the custody order available at all times.

- **Passports:** The court order can be presented to the appropriate agency providing passports and birth certificates, with a request that the custodial parent be notified if the other parent attempts to obtain copies of such documents without the certified, written authorization of both parents or the court. The child's passport can be marked with the requirement that travel cannot be permitted without similar authorization. The child's and the parents' passports may be held by a neutral third party.
- **Bond:** The court may require that a substantial bond be posted by a departing parent, especially if they are leaving the United States on vacation.
- **Notice:** A copy of the custody order should be provided to school authorities, daycare providers, and medical personnel with explicit instructions not to release the child or any records of the child to the non-custodial parent.
- **Criminal charges:** Any relatives or others who might support a parent in hiding a child should be informed of their criminal liability if they aid and abet what is considered a felony in most states.
- **Supervised visitation:** This is a very stringent and expensive method of preventing parental abduction, used only in serious cases to prevent repeat abductions.

Profile 2: Suspected Child Abuse

When parents have a fixed belief that abuse has occurred and will continue to occur, they may feel that they have to rescue the child. These abducting parents feel that authorities have not taken their allegations seriously or have failed to properly investigate their concerns. Often these parents have the help of supporters who concur with their beliefs – family members, friends, or an underground network that helps parents obtain new identities and find safe locations.

Interventions in these cases focus on protecting the child from both abuse and abduction:

- **Investigation:** A thorough and careful investigation of the allegations of abuse will reassure and calm the accusing parent. The accused parent will be more cooperative if they are respectfully asked to assist the investigator in discovering what might have incited the suspicions of abuse.
- **Supervision:** In order to protect the accused parent (who may be innocent) from further allegations, and to protect the child from ongoing abuse, parenting time may be supervised during the investigation. This is recommended if the child is very young, clearly frightened, and displaying distress in response to parental visits.
- **Foster care:** If both parents and their families have been diagnosed with severe psychopathology, the child may need to be placed in the temporary care of a neutral third party during the investigation. Both parents should have supervised visitation during this process.

Profile 3: Paranoid Delusional Parent

In extremely rare cases⁹ a parent may display flagrantly irrational beliefs and psychotic delusions about the other parent, such as insisting that the other parent is harming them and the child through mind control. These paranoid parents usually do not need or seek the support of others in their beliefs, and are the most dangerous and frightening abductors, especially if they have a history of domestic violence, psychiatric hospitalization, or substance abuse.

Separation, divorce, and a custody dispute often trigger an acute phase of disorganization for these psychotic individuals, who feel that their former partners have betrayed and exploited them. They may be obsessed alternately with reconciliation and revenge. They do not perceive the child as a separate person, but as part of themselves as a victim or as part of the other parent as a persecutor. These psychotic individuals may abduct the child, or else precipitously abandon or even kill the child.

In these rare but extreme cases, interventions should focus on protecting the child and the non-psychotic custodial parent:

- **Supervised visitation:** Psychotic parents should see the child in a high-security facility, where their interactions with the child can be closely monitored.
- **Suspended visitation:** The psychotic parent's visitation may need to be suspended if they repeatedly violate the visitation order, upset the child during contact, or use the visitation to (1) denigrate the other parent, (2) obtain information about the child or other parent, or (3) convey threats of physical harm or child abduction.
- **Safety plan:** The custodial parent should be assisted in developing a safety plan similar to those used in cases of severe domestic violence.

If the *custodial* parent is psychotic, the situation is even more dangerous because the litigation and custody evaluation processes may precipitate abduction or violence. Here there may need to be:¹⁰

- **Court orders** for emergency psychiatric screenings
- **Ex parte hearings** (without notice to the psychotic parent) to effect temporary placement of the child during a comprehensive psychiatric and custody evaluation
- **Confidentiality waiver** allowing all relevant professionals to share information about the case.
- **An ongoing Guardian Ad Litem, Special Master, or Parenting Coordinator** may be needed to monitor the family situation and ensure that the court orders are implemented.

Profile 4: Sociopathic Parent

In other rare cases,¹¹ a parent will have a long history of contempt for any authority and flagrant violations of the law. Their relationships with other people are self-serving and manipulative and they often have grandiose beliefs about their own superiority. These parents are gratified by their ability to have power and control over others and are often perpetrators of domestic violence. Like paranoid parents, these parents cannot perceive their children as separate individuals with needs and rights, and often use their children as instruments of revenge or punishment in the battle with the ex-partner.

For a parent with this history, intervention must focus on protecting the ex-partner and child:

- **Visitation** should be suspended or supervised.
- **Sanctions** such as fines and jail time should be imposed for violations of custody orders.
- **Confidential therapy should be avoided** because sociopathic individuals cannot develop a working therapeutic alliance with a therapist, and may use the confidentiality of the interaction to manipulate the other parties, including the therapist.
- **A Parenting Coordinator** may be needed to monitor the family situation over time.

Profile 5: Mixed-Culture Marriages

Parents who have been in mixed-culture marriages may feel the need to return to their ethnic or religious roots for emotional support during separation and divorce. Parents who are particularly distressed and have strong ties to an extended family outside the United States may try to return to their country of origin with the child as a way to insist that their cultural identity be given priority in the child's upbringing.

Of course not all parents in mixed-culture marriages are at risk of becoming abductors. Those at risk tend to (1) idealize their own family, homeland, and culture, (2) deprecate American culture, and (3) repudiate their child's mixed heritage. If the abductor's country of origin has not ratified the Hague Convention on the Civil Aspects of International Child Abduction, recovery of an abducted child may be difficult if not impossible.¹²

As with Profile 1, preventive measures for potential international abduction include:

- **Restricting removal of child** from the state or U.S. without authorization,
- **Preventing issuance of child's passport**
- **Surrendering passports** belonging to the child and the parent who is a foreign national.

If the child has dual citizenship, however, foreign embassies and consulates are not obligated to honor these restrictions if they are

requested by an ex-spouse who is a U.S. citizen. But a U.S. family court may require that the parent who is a foreign national request these passport controls from their own embassy before the U.S. court grants unsupervised visitation. The court may also require the foreign-national parent to post a bond before leaving the U.S. The bond would be released to the left-behind parent in the event of an abduction, to assist in the cost of seeking return of the child.¹³

Johnston and Girdner (2001) also note that U.S. laws prohibit non-U.S. citizens who abduct a child out of the U.S. – and their relatives and friends who assist in keeping the abducted child abroad – from entering the U.S. This information may discourage others from assisting the international abductor.

Unfortunately, none of the current legal methods for retrieving abducted children are helpful in international access/visitation cases. The Hague Convention requires return in cases where a child was removed in violation of a parent's *custody rights*. There is no comparable remedy for the violation of a parent's *access or visitation rights*. This means that if an abducting parent who has court-ordered, sole physical custody takes the children outside the U.S., the foreign country they go to cannot enforce a return of the children to the parent in the U.S. who has court-ordered visitation.¹⁴

Profile 6: Parents Alienated from the Legal System

Johnston and Girdner found several subgroups of parents who felt alienated from the U.S. legal system and relied on their own informal networks of kin to resolve family problems. When those kin lived elsewhere, parental abduction tended to occur.

- **Poverty and lack of education:** 38% of parents were poor, had little education, were not aware of laws regarding custody and abduction, and could not afford legal representation or psychological counseling that would have assisted them in settling their custody disputes appropriately.
- **Criminal records:** 50% of abductors and 40% of left-behind parents had an arrest record and did not expect the family courts to be responsive to their plight.
- **Opposition to gender-neutral custody laws:** Parents belonging to certain ethnic, religious, or cultural groups

considered childrearing to be the prerogative of the mother and her relatives.

- **Unmarried mothers:** Women who had a transient, unmarried relationship with their child's father often viewed the child as their exclusive property, and their extended families supported this belief. Almost half of the abducting parents in the California study had never married their child's other parent.
- **Victims of domestic violence:** Parents who are victims of domestic violence are at risk of abducting their child, especially if the courts have failed to protect them from the abuse. When such victims do abduct their child, the abuser may manage to obscure the facts about the domestic violence and activate the abduction laws to regain control of their victim.
- **Interventions for parents alienated from the legal system** are similar to those for all parents who are socially and economically disadvantaged, and focus on education and social service supports:
 - **Legal counseling and advocacy**
 - **Affordable psychological counseling services**
 - **Family advocates** to help them gain access social services
 - **Members of extended families and social networks** to be included in short-term interventions.

RISK FACTORS FOR PARENTAL ABDUCTION

The research on parental kidnapping suggests a number of risk factors for abduction, which are outlined in Box 73. In reviewing these factors, keep in mind that a false allegation of abduction may be used in a custody dispute in much the same way as a false allegation of child abuse or domestic violence. Thus simply having a number of risk factors does not mean that a parent will abduct their child, or has done so in the past. An awareness of the risk factors will alert you to the possibility of abduction, however, so that you can investigate the matter thoroughly on a case-by-case basis.

Box 73. Risk Factors for Parental Abduction

◆ **Characteristics of Abductors**

- Sees other parent as unimportant or threatening to child
- Psychotic or delusional, with irrational beliefs about other parent
- Sociopathic – contempt for any authority
- Few emotional or financial ties to local area:
 - unemployed or homeless
 - poor and uneducated
 - young
 - never married
 - criminal record
- Ties and support in another geographical area or foreign country
- Opposed to gender-neutral custody laws
- Network of support for abduction

◆ **Characteristics of Abducted Children**

- Under age 6
- Male or female
- Any race or ethnicity

◆ **Situational Factors**

- Allegations of child sexual abuse
- Allegations of domestic violence
- Mixed-culture marriage
- Previous threats or plans for abduction
- Funds transferred, assets liquidated, or excessive money borrowed
- Child's passport taken or hidden

PSYCHOLOGICAL IMPACT OF ABDUCTION

Abduction or the threat of abduction creates (and reflects) chaos in a family system. Children whose parents ignore the limits of scheduled parenting time are often frightened, angry, and confused. Their parents make nasty comments about the other parent and try to control the child by threatening not to let the child see or talk to the other parent any more, not to return the child to the other parent, or other violations of the parenting arrangements. The parents in these families are also very upset, experiencing severe anxiety, rage, and often fear and depression.

The most common violations involve being an hour or two late, or restricting the child's access to a family celebration or holiday. These violations are minor compared to the legal/research definition of abduction, which must involve at least an overnight absence (Chiancone, 2001). The 1999 NISMART-2 study used a more stringent definition "where the taking or keeping involved some element of concealment, flight, or intent to deprive a lawful custodian indefinitely of custodial privileges" (Hammer et al., 2002, p. 2). The psychological impact of abduction is intensified when force is used to carry out the abduction or the child is concealed and held for a long period of time (Chiancone, 2001).

Abducted Children

Several studies have examined the psychological adjustment of abducted children who have been returned to their custodial parents (Chiancone, 2001). These studies indicate that although all of the children suffered emotional trauma, the victims of long-term abductions fared much worse. First, the victims of long-term abductions had experienced an unstable, nomadic lifestyle because the abducting parent had moved frequently to avoid being located. Second, children held for less than a few weeks did not give up hope of being reunited with the other parent, and therefore viewed the experience as an adventure and did not develop intense loyalty to the abducting parent. Third, younger children gradually forgot the left-behind parent, but older children felt confused and angry

at both parents – at the abductor for keeping them away from the other parent and at the left-behind parent for failing to rescue them.

Psychiatric evaluations of children who have been threatened by abduction or actually abducted indicate that the children experience grief and rage toward the left-behind parent and symptoms of emotional distress that include anxiety, eating and sleep disturbances, crying and mood swings, aggressive behavior, and fearfulness. Other aspects of abduction trauma include difficulty trusting other people (especially authority figures and relatives), social withdrawal, poor peer relationships, regression (thumb-sucking and clinging behavior), and difficulty having intimate relationships as adults.

The *degree* of emotional trauma to an abducted child is related to the amount of disruption to their routine, the child's awareness of what is happening, and the increase in the level of inter-parental conflict. These first two factors, in turn, are related to age: the older the child, the more traumatic the abduction experience is apt to be.

Left-Behind Parents

Parents whose children are abducted are also traumatized (Chiancone, 2001). All of them have difficulty sleeping and experience feelings of loss and rage. Half of them also report loss of appetite and feelings of fear, loneliness, anxiety, and severe depression. The suffering of these parents may actually intensify after their child is recovered because the re-unification is stressful and the parent fears re-abduction.

There are also severe economic strains on left-behind parents because the cost of recovery is so high. Fifteen years ago the average cost of searching for a child exceeded \$8,000 for domestic cases and \$27,000 for international cases; presumably it would be even higher now. Across all income brackets, parents report spending at least their annual salary in trying to recover their children (Chiancone, 2001).

Notes

1. Hammer et al., (2002) have reported the results of the Second National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMAART-2), National Household Surveys of Adult Caretakers and Youth

conducted during 1999. Chiancone (2001) has reported the results of the NISMART-1 study conducted in 1988. As Hammer, Finkelhor, Sedlak, and Porcelini (2004) have noted, in the decade between the two nationwide studies there was a decline in mild (broad-scope) family abductions (from 5.62 per 1000 children in 1988 to 4.18 in 1999), but the rate of serious (policy-focal) abductions remained the same. The overall characteristics of abductions have also remained the same. In this chapter, I have relied on the 1999 findings except for specific information that was reported only for the 1988 survey.

2. This number is from the NISMART-1 1988 survey (Chiancone, 2001) because the NISMART-2 1999 survey focused on abductions that matched the 1988 severe (“policy-focal”) definition (Hammer et al., 2002). In 1988 46% of the total abductions were of the severe type.
3. These percentages total more than 100 because some abductors engaged in more than one of these actions.
4. Of those who did not report the abduction to the police, 23% resolved it on their own, 15% thought the police would not help, 10% knew the child’s location, 8% were dissatisfied with prior police contact, 6% were afraid the child would be harmed if they reported the abduction, 6% handled the problem with a lawyer, 6% knew the child would not be harmed by the abductor, 3% were advised by others not to contact the police, 5% gave a variety of other reasons, and 19% provided no information (Hammer et al., 2002).
5. The Uniform Child Custody Jurisdiction and Enforcement Act (UC-CJEA) replaced the Uniform Child Custody Jurisdiction Act (UCJA) and is reprinted and discussed in Statsky (2002), pp. 335–338 & 547–556.
6. For a reprint of the Parental Kidnapping Prevention of 1980 (28 U.S.C.A. section 173A) see Statsky (2002), pp. 557–558.
7. Johnston and Girdner (2001) note that these profiles are drawn from a relatively small descriptive study so that we cannot know how representative they are of the national population of abducting and litigating parents, nor can we predict how likely an abduction is to occur when an individual or family meets (or does not meet) the criteria for these profiles. I have included the profiles here in order to assist custody evaluators in determining whether abduction is a serious threat or possibility. However, it is important to be aware that predictions about abduction cannot be made with any degree of certainty.
8. In many jurisdictions, the child custody evaluator can make such recommendations in their report to the court.
9. Johnston and Girdner (2001) found that about 4% of their sample of California abducting parents fit this profile. They emphasize, however, that theirs was a relatively small, descriptive study so they do not know how representative their sample is of the general population.
10. In many jurisdictions, the child custody evaluator may make such recommendations in an Interim Report to the court. Or the child custody evaluator may ask the attorneys in the case to do so.
11. Approximately 4% of Johnston and Girdner’s (2001) California sample were classified as sociopathic.
12. Custody evaluators should check with the National Center for Missing and Exploited Children to see if the country of a parent being evaluated has signed the Hague Convention. See the information on specific countries available at <http://www.missingkids.com>

13. Johnston and Girdner (2001) also note that a parent who is a U.S. citizen may petition a foreign court to issue an order that parallels the custody order issued by the U.S. court, but this is a costly and time-consuming approach.
14. Reynolds (2006) points out that in some jurisdictions in the U.S. a *ne exeat* right coupled with the right of access (visitation) is considered to equal a protected custody right under the Child Abduction Convention (Hague Convention); only in these jurisdictions can this custody right be enforced with a remedy of return. Reynolds argues for a consistent judicial interpretation wherein *ne exeat* rights would convey a protected custody right for policy reasons. In other words, if court orders were issued for *both* (a) *ne exeat* (that the parent with sole physical custody cannot take the children outside the jurisdiction of the court) and (b) visitation, then the parent with court-ordered visitation would have a remedy of return under the Child Abduction Convention.

20

CHILDREN WITH DISABILITIES

GENERAL REACTIONS TO SPECIAL NEEDS CHILDREN

All children with disabilities must struggle to maximize their potential and live full lives, and far too many must also face serious mistreatment by the adults around them. Compared to their non-disabled counterparts, children with disabilities are over 8 times more likely to be neglected or abused physically, emotionally, and/or sexually.¹

Parents who have a disabled child often struggle with feelings of shame and isolation, and feel that others perceive them as inept parents. Each parent must cope with their own feelings of grief and disappointment about the disability. Since women and men tend to grieve differently, the couple may grow apart. The father often retreats to work to avoid his feelings and the difficulties at home, while the mother becomes overwhelmed by the task of taking care of the disabled child. The stress is intense, and causes the rate of divorce in these families to skyrocket to about 90% (Kraus, 2005).

Separation and divorce often compound the parents' feelings of guilt, failure, and public humiliation in a manner that makes the child's diagnosis and care a central area of dispute. Perryman (2005) points out that some parents use the divorce to distract themselves from the painful truth about their child, adopting a stance of denial regarding the child's special needs. These

parents insist that the child is fine and challenge any assessment or finding that confirms the child's disability. Other parents focus on the child's disability in an overly anxious manner as a way to avoid their feelings about the divorce. These latter parents feel that only they can effectively care for the child.

Perryman has combined existing information about the process of grieving with specific features of child custody disputes. The result is a six-stage model of grief about special needs children in child custody disputes. The six stages are:

1. **Denial** – Parent refuses to believe the diagnosis, or to cooperate with recommended treatment because it would make the diagnosis more real. Parent puts child in obviously inappropriate activities. In court, the parent challenges any finding that confirms the disability, and insists on switching child therapists, special masters, and other professionals.
2. **Anxiety** – Parent panics and tries to become an expert by reading about the disability. Parent may become over-protective, projecting their fear onto family members or professionals and then denying child contact with those individuals.
3. **Anger** – Denial breaks down and disability becomes more real to the parent, who feels angry that this happened to them. Parents tend to blame each other and lapse into denial again by thinking that their own superior caretaking could minimize the child's disability. Many high-conflict divorces get stuck at this stage.
4. **Guilt & Bargaining** – Guilt about the disability is magnified by guilt about the divorce, and parents tend to blame each other for both the disability and the divorce as a way to avoid their feelings of guilt and self-doubt. Parent may make deals with God or the universe, e.g. "If only this changes, I'll be better." Parent may not be able to face own intolerance for the child's disability, and also deny that they suffer from a similar disability.
5. **Depression** – Sense of profound loss and hopelessness, with decreased availability to other children. One parent may back out of child's life, hoping to elicit pleas from the child to convince themselves it is worth the effort of trying to maintain a relationship. Or the parent may start another family, or disappear from the child's life, leaving the child feeling bereft.

6. Acceptance – Parent understands the disability, is aware of their own feelings about it, and is knowledgeable about the child's condition and requirements for care. They no longer blame the other parent for the child's disability, and can follow through with treatment plans. The parent enjoys the child and has realistic hopes for the child's future.

Perryman (2005, pp. 598–599) points out that parents cycle back and forth between the stages, and that parents of the same child may be in different stages of grief.

TYPES OF CHILDHOOD DISABILITIES

When a child's disability is visible and hence obvious to others, the parents are more apt to agree about the existence and treatment of the disability. For this reason, invisible disabilities are more apt to be seen in family court and can be divided into three categories: (a) acute life-threatening medical conditions, (b) chronic, pervasive developmental disorders, and (c) psychological and behavioral disorders (Saposnek, 2005).²

Acute, Life-threatening Medical Conditions

Asthma is the leading cause of chronic illness in children. The rates have more than doubled in the past 15 years, so that 10% of children now suffer from this disorder. The most common triggers for asthma attacks are dust mites, cockroaches, mold, animal dander, second-hand tobacco smoke, and upper respiratory viruses. Once initiated by such allergens, asthma causes the bronchiole tubes in the lungs to close down, and can rapidly lead to distress, suffocation, and even death.

Asthma treatment requires a combination of preventative and emergency measures. Many children take daily doses of corticosteroid inhalants to reduce the irritability of the lung tissue, and inhaled Albuterol which opens the airways in an acute attack. It is important to avoid allergens and keep stress to a minimum.

Food allergies are also increasingly common, and now affect 6% of school children. 90% of attacks are caused by eating or having

contact with milk, eggs, soy, or nuts. Avoidance of allergens is the main treatment. Affected children must carry an Epi-Pen (a needle and syringe loaded with epinephrine); injection provides a window of about 20 minutes to get to an emergency room for treatment. The same risk and treatment applies to children with bee allergies.

Because asthma and allergies are potentially lethal, it is imperative that the court (and custody evaluators) ask the following questions to ascertain whether each parent is well-informed, trained in emergency care for the child, and involved in the child's health maintenance.

1. Who is the child's primary treating physician?
2. When was the child's last visit to the doctor?
3. Does the child take steroids (as an inhalant or in pill form) or regular allergy shots?
4. Does the child have/use an Albuterol inhaler or an Epi-Pen?
5. When was the last asthma or allergy attack? How severe was it?
6. Has the child ever been hospitalized? When?
7. What are the child's triggers for an asthma attack (e.g. specific allergens, specific sports, smoke, cold air) or allergy attack (e.g. type of food or type of bee)?
8. Have the allergens been eliminated from both parental homes?
9. Are both or is just one parent comfortable with and trained regarding the care of the special needs child?

(Adapted from Saposnek, Perryman, Berkow, & Ellsworth, 2005, pp. 568–569)³

Chronic, Pervasive Developmental Disorders

Autism

The most serious disorder in this category is Autism, which begins before age 3 and is characterized by (a) impairment in social interaction, (b) impairment in communication, and (c) repetitive and stereotyped patterns of behavior and interests. A person with Autism is impaired in eye-to-eye gaze, facial expression, body posture, and gestures to regulate social interaction. They often fail to develop peer relationships and show a lack of social or emotional reciprocity. Although many have adequate speech, they may use idiosyncratic expressions and have difficulty sustaining a

conversation. Their behavior is often ritualized and involves repetitive mannerisms such as finger flapping or complex whole-body movements (APA-med, 1994).

The core feature of all **Autistic Spectrum Disorders (ASD)** is a lack of empathy, or difficulty discerning the intention and meaning of another person's communications. This in turn causes difficulty developing trusting relationships and resistance to change in the social and physical environment. Many individuals with ASD also show "sensory defensiveness," a tendency to be either overly sensitive or very insensitive to physical stimuli such as light, sound, smells, tastes, and touch. Autism is a life-long disorder with a genetic basis, so it is common for autistic children to have a parent with some degree of ASD (Jennings, 2005).⁴

There is a wide range of impairment in Autism. Lower functioning autistic people may require a therapeutic companion 24 hours a day. Home placement is exhausting for the caregivers, so institutional placement may become necessary. The debate about home vs. institutional placement is often a focus of parental conflict.

Autistic individuals with an intermediate level of functioning have some self-help skills, but still require labor-intensive care. It is common for one parent to give up a successful career to coordinate the daily care of such a child.

High-functioning autistic individuals have subtle impairment in social-emotional functions, but their intellectual functioning is often advanced. This enables them to mask their autism in public or even when interacting with mental health professionals. Many writers use the term "high-functioning autism" synonymously with "Asberger's Syndrome," which the DSM-IV describes as similar to Autism, except that Asberger's Syndrome usually develops somewhat later and does not involve an impairment in communication (APA-med, 1994). Jennings (2005) points out that in children, Asberger's Syndrome has been described as the "Little Professor Syndrome" while among adults it is commonly associated with the terms "geek," "nerd," "eccentric," and "quirky."

When a parent has an Autistic Spectrum Disorder (ASD), they are often obsessively controlling and have difficulty perceiving the child's needs. These issues will be addressed in Chapter 21 on Mental Illness in Parents.

A child with ASD has special needs which affect the development of a parenting plan. These special needs are outlined in Box 74.⁵ Professionals working with families with an ASD child may also want to consult additional resources, or recommend them for parents. Some helpful resources are:

- ◇ **National Autism Association:**
<http://www.nationalautismassociation.org>
- ◇ **National Autistic Society:** *<http://nas.org.uk>*
- ◇ **National Institute of Neurological Disorders and Stroke:**
<http://www.ninds.nih.gov/disorders/autism/autism.htm>
- ◇ **Autism Information Center, Center for Disease Control and Prevention:**
<http://www.cdc.gov/ncbddd/dd/ddautism.htm>
- ◇ **Autism Society of America:**
<http://www.autism-society.org/site/PageServer>

Mental Retardation

Mental retardation occurs in approximately 1% of the population and is defined as significantly below-average intellectual functioning accompanied by significant impairment in at least two of the following areas: communication, self-care, social-interpersonal skills, use of community resources, self-direction, academic skills, work, leisure, health, and safety. There are four levels of severity:⁶

- **Mild mental retardation: IQ 50/55 to 70**
This group constitutes 85% of those affected. These individuals have minimal impairment in sensorimotor areas, can acquire academic skills up to the 6th grade level by late adolescence, and are able to be minimally self-supportive and live either independently or in supervised settings.
- **Moderate mental retardation: IQ 35/40 to 50/55**
This group constitutes 10% of those affected. These individuals acquire communication skills, can acquire academic skills up to the 2nd grade level, and are able to work in unskilled or semi-skilled jobs in sheltered workshop settings. They usually adapt well to the community when living in supervised settings.
- **Severe mental retardation: IQ 20/25 to 35/40**
This group constitutes 3–4% of those affected. These individuals may learn to talk and acquire some self-care skills during the school-age years, but seldom benefit from academic instruction. As adults they may be able to perform some simple tasks with supervision, and usually adapt well to living with their families or in group homes.

Box 74. Parenting plans for children with Autistic Spectrum Disorders (ASD)

Child with ASD	Evaluation & Parenting Plan
◆ Genetic basis for ASD	<ul style="list-style-type: none"> ▪ Consider whether other family members also suffer a form of ASD (biological parents, siblings)
◆ Level of functioning varies	<ul style="list-style-type: none"> ▪ Document level of functioning with reports from medical providers, psychological assessment, teachers ▪ Base custody arrangements on developmental level, not on chronological age.
◆ Need for consistency/sameness	<ul style="list-style-type: none"> ▪ Having a primary home is best; “nesting” is beneficial. ▪ Overnights are very stressful.
◆ Intense need for routines	<ul style="list-style-type: none"> ▪ Daily routines must be identical in both parental homes.

Box 74

Child with ASD	Evaluation & Parenting Plan
<ul style="list-style-type: none"> ◆ Obsessive special interests that relieve anxiety 	<ul style="list-style-type: none"> ▪ Each household should have identical toy or other object of obsessive interest. ▪ Special collections should go with child during visitation.
<ul style="list-style-type: none"> ◆ Sensory defensiveness <ul style="list-style-type: none"> ▪ Hygiene-related activities often experienced as aversive. 	<ul style="list-style-type: none"> ▪ Both parents must use the same desensitization techniques through gradual exposure (e.g. to tooth brushing).
<ul style="list-style-type: none"> ◆ Distorted sense of time 	<ul style="list-style-type: none"> ▪ Transitions extremely upsetting, may trigger rage and tantrums <ul style="list-style-type: none"> ▫ minimize transitions ▫ expect distress after transitions ▫ delay or cancel transitions in crises
<ul style="list-style-type: none"> ◆ Self-absorbed 	<ul style="list-style-type: none"> ▪ Vulnerable to danger from traffic and to victimization by strangers or older children
<ul style="list-style-type: none"> ◆ Non-autistic siblings 	<ul style="list-style-type: none"> ▪ Non-autistic siblings should have regular periods without autistic sibling.

■ **Profound mental retardation: IQ below 20/25.**

This group constitutes 1–2% of those affected. These individuals usually have an identified neurological condition that accounts for their Mental Retardation, have extensive sensorimotor impairments, and develop very limited self-care and communication skills. Even as adults, these people require constant one-on-one care and supervision.

In considering parenting plans, the court needs to be aware of the long-term level of care required by children with Mental Retardation.

Attention Deficit / Hyperactivity Disorder (ADHD)⁷

This is the most common developmental disorder, occurring in 3–5% of school-age children at twice the rate in boys as in girls (APA-med, 1994), and accounting for 50% of referrals to clinics throughout North America (Saposnek et al, 2005). Yet little is known about the cause for ADHD, and treatment is controversial. The essential feature of ADHD is a persistent pattern of inattention, often accompanied by hyperactivity and impulsivity. Some of the indicators of inattentiveness are: tending to make careless errors, having difficulty sustaining attention, and appearing not to listen when spoken to directly. Individuals with attention deficits also have trouble organizing tasks, may avoid things that require mental effort, and are forgetful and easily distracted. Some of the indicators of hyperactivity are: fidgeting, running or climbing excessively, having trouble waiting one's turn, and being in constant motion. In order for a child to be diagnosed with ADHD, the problem behaviors must have started before age 7, be more marked than for other children the same age, and also interfere with the child's functioning at home or at school (APA-med, 1994).

Saposnek et al. (2005) point out that ADHD has had many different names, primary symptoms, and presumed causes over the years. There is no medical test for ADHD; diagnosis is usually based on questionnaires completed by parents and teachers. It is common for parents to disagree about whether their child has ADHD or is simply an active child who is bored in school. One parent may want to have the child medicated, while the other refuses to use medication or wants to administer homeopathic remedies.

Learning Disabilities (LD)

This difficulty is the most frequent reason for special education services (Saposnek et al., 2005). The DSM-IV categorizes learning disabilities in terms of the area of functioning that is affected: reading disorder, mathematics disorder, disorder of written expression, motor skills disorders, and communication disorders (APA-med, 1994).

The court needs to know what educational services are being received by a child with a learning disability, and whether the child has an Individual Education Plan (IEP). Ideally, both parents should be active in working with the various specialists who interact with the LD child.

Sports, music, and other extracurricular activities are especially important to children with ADHD and LD because these children often feel frustrated or even humiliated at school. Extracurricular activities give them another realm where they can succeed, develop peer relationships, and build their self-esteem. In these cases, it is extremely important for the parenting plan to provide ways for the children to participate in extracurricular activities on a consistent basis, regardless of which parent the child may be with at any given time.

Psychological and Behavioral Disorders

The prevalence rates for behavioral/emotional disorders in children are surprisingly high, including anxiety (2–10%), depression (2–8%), conduct disorders (2–12%), difficult temperaments (10%), and slow-to-warm-up temperaments (15%).⁸ All of these difficulties are bound to be exacerbated by the stress of parental divorce.

Children with emotional or behavioral disorders need consistency and firm limits, combined with warmth and reassurance. This approach to child management is similar to the authoritative parenting style identified by Wallerstein and Kelly (1980). Unfortunately, many disturbed children developed their difficulties in response to maladaptive treatment by parents who suffer from substance abuse or a psychiatric disorder.

Individual psychotherapy or counseling is extremely helpful to these children and can be arranged through the school, the child's pediatrician, and social service programs such as Head Start, the

Department of Social Services, and community hospitals or mental health centers. Medication may be useful for some children, and is best prescribed by a psychiatrist or medicating psychiatric nurse rather than by a pediatrician or internist who does not specialize in this type of treatment. Family therapy may also be beneficial.

For parents with a history of refusing to comply with court-ordered mental health services for the child or family, compliance can be made a precondition for physical custody and/or court-ordered parenting time.

In order to make appropriate plans for children with emotional or behavioral difficulties, the court needs to have detailed information about the child's personality and psychological functioning. Although the child therapist may have this information, it is not wise to obtain it from them because doing so will contaminate the therapy. These disturbed children from high-conflict families already have a hard time trusting adults; violating such a child's confidence often causes them to refuse to participate in any further therapy,

It is preferable to obtain this psychiatric information about the child from an experienced forensic mental health professional, who can do a child custody evaluation that provides information about the child's emotional attachments and psychological functioning within the context of the overall family dynamics. As described in previous chapters, the custody evaluator can obtain information from a variety of sources, and then combine and contrast the information in their report. Using a broad range of information sources will ensure that the custody evaluator has a more comprehensive, unbiased, and thorough picture of the child and family than would any individual mental health provider.

STRATEGIES FOR THE COURT⁹

In order to consider all of the issues raised by childhood disabilities, Saposnek et al. (2005) have suggested that the family court develop an Individualized Parenting Plan (IPP). This model is adapted from the juvenile court system and proposes specific strategies in each of nine domains: residence, education, family, medical, psychological, transportation, advocacy, and financial. The major features of the model are summarized in Box 75.

**Box 75. Individualized Parenting Plan (IPP)
for families with special needs children**

GENERAL PROVISIONS

- ◆ **General principle: greatest degree of access to both parents**
 - **continuum of contact** – from equal access to no contact with one parent
 - **criterion** – child's need for predictable and safe care

- ◆ **Team approach, including:**
 - judge
 - minor's counsel
 - special master or parenting coordinator
 - therapists

SPECIFIC PROVISIONS

- ◆ **Residence**
 - **structural needs** – e.g., wheelchair ramps, railings, TDD phone service, private bedroom.
 - **psychological needs** – e.g., primary residence, short separations from primary parent, few transitions, supervised exchanges, time away from siblings

- ◆ **Education**
 - **IEP** – e.g. accommodations, special services, professionals involved
 - **Other special services** – federal programs
 - **School evaluation** – teachers' reports of child's strengths and weaknesses
 - **Contained (separate) or regular classroom**
 - **Parental involvement, availability, and knowledge**
 - **Decision-making power** – cooperative, or one parent who is more knowledgeable, involved, and available during day

Box 75**SPECIFIC PROVISIONS, *continued*****◆ Recreation**

- **Specify** – appropriate type of extracurricular activities
 - amount of extracurricular activities
 - schedule for classes, rehearsals, games, and performances
 - obligation of both parents to take child to activities

◆ Family

- **Simplify arrangements**
- **Avoid** – multiple transitions
 - complex family structures
 - large number of household members

◆ Medical

- **Specify decision-making parent** if inter-parental cooperation is impossible
- **Medication compliance as a condition for parenting time**
 - schedule non-medicating parent at times when child is off medication
- **Emergency contacts and treatment must be available at each residence**
- **Specific child disabilities** –
 - **Allergies** – allergens must be controlled in each residence
 - Epi-pen must be available at each residence
 - **Asthma** – triggers for asthma attacks must be minimized at each residence
 - Albuteral and other medications to be available at each residence
 - **Hyperactivity** – child needs space to run around
 - **Speech impairment** – specific parent may provide more consistent, supportive feedback
 - **Autistic Spectrum Disorders** – greater need for consistency (see Box 74).

Box 75**SPECIFIC PROVISIONS, *continued***

- **Behavioral and Emotional Disorders** – greater need for consistency, firm discipline, coordination among parents and professionals such as mental health providers, pediatrician, & teachers
- ◆ **Psychological**
 - **Developmental level and attachment to parents determine child's tolerance for time away from primary parent**
 - **Child therapy** – provider or method for choosing provider
 - type and amount of parental involvement
 - responsibility for payment
 - method for providing feedback to court over time
 - copy of IPP given to child therapist
- ◆ **Transportation**
 - **Specify consistent methods of travel**
 - **Avoid long travel times**
 - **Expect somatic expressions of anxiety**
- ◆ **Advocacy** – If parents oppose each other, consider:
 - **Counsel for minor and/or special education consultant**
 - **Special master or parenting coordinator.**
- ◆ **Financial**
 - **Additional support for after-school care**
 - **Support continuing past age 18**
 - **Supplemental Security Income (SSI)¹⁰**

Adapted from Saposnek et al, 2005, pp. 574-578.

Notes

1. [Wilson \(2004\)](#) reports that the increased risk varies with the nature of the child's disability. One meta-analysis indicated that children with all types of disabilities experience victimization at a rate 8.5 times that of their non-disabled counterparts, while other studies indicate that the risk of maltreatment is multiplied 7 times for behavioral disorders, 4 times for mental retardation, and 3 times for blindness. The increased risk comes both from within the family and from adults in the social service system.
2. [Saposnek \(2005\)](#) suggests that the major visible disabilities in children involve wheelchairs, profound mental retardation, blindness, deafness, and muteness. The following discussion of invisible disorders in children seen in family court is based on [Saposnek et al. \(2005\)](#), pp. 567–573.
Of course there are many other disabilities which are not covered in this discussion. For instance, morbid obesity ([Pate, 2005](#)), juvenile rheumatoid arthritis ([Gerhardt et al. 2003](#)), and preschoolers with mild handicaps ([Tucker & Fox, 1995](#)) have been examined in terms of parenting issues.
3. The questions proposed by [Saposnek et al. \(2005\)](#) have been altered slightly to apply to bee allergies as well as food allergies and asthma, and to include information about the home environment.
4. The following discussion of Autistic Spectrum Disorders (ASD) is based on [Jennings \(2005\)](#), pp. 582–586), except as noted otherwise in the text and notes.
5. Box 74 is based primarily on information from [Jennings, 2005](#), pp. 586–592.
6. This description of mental retardation is based on the DSM-IV (APA-med, 1994).
7. Attention Deficit/Hyperactivity Disorder actually has three subtypes: one *without* hyperactivity (ADD), where the predominant symptom is being inattentive; one *with* hyperactivity (ADHD), where the predominant symptom is being impulsive and hyperactive; and a *combined* type, where the person is both inattentive and hyperactive ([APA-med, 1994](#), p. 80).
8. These prevalence rates are given by [Saposnek et al., 2005](#), p. 572, citing [Chess and Thomas, 1984](#).
9. This section does not address legal issues in custody disputes involving special needs children. This author found no recent research or writing about these legal issues, other than Hirasawa, who explores the complex interrelationships among “an individual's right to freedom of religion, the right to raise his or her children without government interference, and the right of children to be cared for, including the right to health care” (2006, p. 316). Hirasawa notes that although there has been a trend towards intervention, state courts will usually intervene to order medical treatment *only* when the child's illness or injury is life-threatening.
10. [Saposnek et al. \(2005\)](#) point out that there are some financial restrictions on eligibility for SSI. For more information see <http://www.socialsecurity.gov>, and especially SSA Publication No. 05-11000, ICN 480200. Retrieved November 7, 2006, from <http://www.ssa.gov/pubs/11000.pdf>.

21

MENTAL ILLNESS IN PARENTS

GENERAL IMPACT OF PARENTAL MENTAL ILLNESS ON CHILDREN

When parents suffer from serious mental illness, their children suffer as well because their childhood needs for stability, safety, and emotional support are not met. Instead, these children experience:¹

- ◇ inconsistent parenting
- ◇ lack of appropriate supervision
- ◇ questionable parental judgment regarding alternative caregivers
- ◇ role-reversal—being expected to take care of the mentally ill parent
- ◇ receiving a skewed world view from the mentally ill parent
- ◇ shifts in the parent's personality and behavior

Risk and Protective Factors

The effects of parental mental illness depend on a number of variables, which are summarized in Box 76.² In general, children fare better if they are older at the onset of the parent's illness, the illness is not severe or chronic, the ill parent is married to a healthy, warm parent, and the child has an easy-going temperament.

Box 76. *General Risk and Protective Factors for Effects of Parental Mental Illness on Children*

RISK FACTORS	PROTECTIVE FACTORS
Parental psychiatric disorder	
<ul style="list-style-type: none"> ▪ severe ▪ chronic ▪ schizophrenic diagnosis 	<ul style="list-style-type: none"> ▪ mild ▪ episodic ▪ mood disorder
Characteristics of parent	
<ul style="list-style-type: none"> ▪ socially isolated ▪ single parent ▪ marital discord ▪ financially impoverished 	<ul style="list-style-type: none"> ▪ extensive social supports ▪ married to healthy, warm, active parent ▪ harmonious marriage ▪ adequate financial resources
Characteristics of child	
<ul style="list-style-type: none"> ▪ younger age at time of onset ▪ introverted, withdrawn, angry 	<ul style="list-style-type: none"> ▪ older age at time of onset ▪ outgoing, friendly, affectionate

The type of parental mental illness may also be important, because children whose parents are diagnosed with schizophrenia or bipolar disorder are usually considered to be more at risk for poor adjustment and mental illness than are children of parents with depression.³ However, the differential impact of schizophrenia is mitigated by the fact that schizophrenic adults are far less apt to be caring for children than are adults with depressive or bipolar disorders (Ahern, 2003; Zahn-Waxler, Duggal, & Gruber, 2002). Furthermore, most studies examine the effect of only one type of parental psychopathology. This means that it is difficult to compare

the impact of different psychiatric disorders, so it is not entirely clear whether children are more affected by the nature of the disorder or by the overall impairment in the parent's functioning.

Effects on Parenting Styles

Research has typically examined four major dimensions of parenting: discipline, instruction, modeling, and emotional expression and regulation (Zahn-Waxler et al., 2002). The usual interpretation is that parenting behaviors are a major intervening variable, through which the parent's psychopathology affects the child in conjunction with other factors such as child development and age, parent-child relationship, and parental social and financial resources. For instance, Tebes, Kaufman, Adnopoz, and Racusin (2001) found that the following five family psychosocial processes were more predictive of adjustment in the child than was parental psychopathology per se:

- ◇ diminished family resources
- ◇ social network construction
- ◇ impaired performance of parenting tasks
- ◇ increased familial stress
- ◇ disruption of parent-child bond.

Child adjustment was most consistently predicted by parenting performance, and to a lesser extent by the parent-child bond and familial stress.

Long-term Effects on Children

Children of mentally ill parents have been found to share common traits and behaviors, including:

- ◇ social withdrawal ◇ defiant behavior
- ◇ shyness ◇ disruptions in school
- ◇ inattentiveness ◇ hyperactivity
- ◇ irritability

Children under 12 often display additional symptoms of stress such as sleep disturbances, diminished appetite, increased attention-seeking behavior, crying at night, and problems with attention and

learning at school. Children over 12 are apt to talk about their painful awareness of their parent's bizarre, deteriorated, or self-destructive state. Most of these older children also show declining school performance, although a few actually excel academically because school provides a safe haven for them. Children of mentally ill parents may also be at higher risk for committing suicide.⁴

This is not to say that *all* children with mentally ill parents will have serious problems. Recently [Mowbray et al. \(2004\)](#) found considerable resilience among 166 racially-diverse, low-income 15-year-olds whose mothers suffered from schizophrenia and similar disorders (23% of sample), depression (52% of sample), and bipolar disorder (25% of sample). The study assessed mental health, academic performance, behavior problems, and social relationships, and found five subgroups of children:

- 30% – academically and socially competent
- 22% – average in functioning but adult-oriented
(*endorsing values and behaviors congruent with adult expectations*)
- 15% – anxious and depressed
- 27% – delinquent and peer-oriented
- 5% – isolated non-conformists.

These results indicate that approximately half of the adolescents were functioning relatively well, despite the mother's psychiatric illness.

VARIATIONS AMONG MAJOR MENTAL ILLNESSES

The major psychiatric disorders vary in their symptoms, range of impairment, and prevalence in different populations. Some disorders occur at the same rates in different cultures, but the symptoms take varying forms. For instance, schizophrenia occurs in about 1% of populations cross-culturally, but cultural variations exist in personality patterns and the content of hallucinations and delusions. Box 77 provides an overview of the gender ratios and general prevalence rates for the major types of psychiatric disorders in the United States today.⁶

The sections below describe the diagnostic criteria for each disorder and then consider the research on how children are affected by parents having that disorder.⁷ All professionals working

Box 77. Gender Ratios and Prevalence of Major Types of Psychiatric Disorders

Psychiatric Disorder	Ratio F:M	Lifetime Risk
◆ <i>Major Depression</i>	2 : 1	5.0 – 25.0 %
◆ <i>Bipolar Disorder</i>	1 : 1	0.4 – 1.6 %
◆ <i>Anxiety Disorders (6 types)</i>	depends on type	1.0 – 13.0 % for each type
◆ <i>Post Traumatic Stress Disorder (PTSD)</i>	1 : 1	8.0 %
◆ <i>Schizophrenia</i>	1 : 1 ⁵	0.5 – 1.5 %
◆ <i>Autism</i>	1 : 4-5	< .05 %
◆ <i>Eating Disorders</i>	10 : 1	0.1 – 3.0 %
◆ <i>Personality Disorders (10 types)</i>	depends on type	0.5 – 3.0 % for each type
◆ <i>Attention Deficit Hyperactivity Disorders (ADHD)</i>	1 : 2-9 depending on type	3.0 – 7.0 %
◆ <i>Mental Retardation</i>	1 : 1.5	1.0 %
◆ <i>Factitious Disorder by Proxy</i>	1 : 0	unknown

with separating/divorcing families need to have this information in order to make appropriate recommendations, motions, and orders regarding child custody.

Regardless of their credentialing specialty (psychology, psychiatry, social work, or nursing), all mental health professionals use the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV, APA-med, 1994). Each patient is diagnosed by determining whether they meet the DSM criteria for that disorder; this usually means having a specified number of symptoms from two or more categories of symptoms. Thus all of the people who have been diagnosed as suffering from the same psychiatric disorder will have similar clusters of symptoms, but they will *not* have identical symptoms. This needs to be considered when assessing a parent in court because some symptoms may have a very specific impact on parenting and the parent/child relationship.

Treatment of mental illness is specific to each disorder. A combination of medication and psychotherapy is usually most effective, especially for the more severe mood disorders, anxiety disorders, and schizophrenic disorders.

The diagnosis and treatment of mental illness should be done in a clinical setting. Even mental health professionals with clinical experience and training should not attempt to make a psychiatric diagnosis during a child custody evaluation because the setting, patient incentive, and information gathered are not the same as they are for a clinical diagnosis. Of course the mental health professional doing a custody evaluation should obtain each parent's psychiatric records and interview the parent's current mental health providers. These sources of collateral information contain diagnoses and functional assessments that have implications for that person's parenting abilities.

The custody evaluator does need to assess each parent's psychological functioning and specific parenting behaviors and skills, whether or not that parent suffers from a diagnosed mental illness. This assessment should usually be done without psychiatric labels or diagnoses, however, and should be reported in language accessible to the court and to other legal professionals involved in the case.

MOOD DISORDERS

Description and Prevalence

The two basic types of mood disorders are Depressive Disorder and Bipolar Disorder. **Major Depressive Disorder** is characterized by one or more Major Depressive Episodes in which the person experiences at least two weeks of a depressed mood or loss of interest in all activities, accompanied by at least four of the following symptoms of depression nearly every day:⁸

- ◇ significant weight loss or gain,
- ◇ difficulty sleeping or over-sleeping,
- ◇ being physically agitated or slowed-down,
- ◇ marked fatigue,
- ◇ feeling worthless or extremely guilty,
- ◇ difficulty thinking or concentrating,
- ◇ recurrent thoughts of death.

When someone is in the midst of a Depressive Episode, they often show tearfulness, brooding, obsessive rumination, anxiety, phobias, excessive worry about physical health, and complaints of pain in the head, abdomen, or joints. They may also have Panic Attacks and psychotic symptoms (hallucinations and delusions).

Although Major Depressive Disorder may begin at any age, the average age at onset is the mid-20s. Major Depressive Disorder occurs twice as often in females as in males. In community samples, the lifetime risk for Major Depression is 10–25% for women and 5–12% for men.

Depressive Episodes usually become more frequent and more severe over time. Most people with Major Depressive Disorder respond well to anti-depressants, which are sometimes combined with low doses of anti-psychotic medication.

From this description, it should be clear that Major Depression is qualitatively different from the occasional “bad mood” or “blahs” experienced by most people, and is more intense and long-lasting than regular grief reactions.

Bipolar I Disorder is characterized by one or more Manic Episodes, while **Bipolar II Disorder** is characterized by one or more

Depressive Episodes that are accompanied by significant Manic symptoms. A Manic Episode is characterized by at least a week of an abnormally and persistently elevated or irritable mood, accompanied by significant evidence of at least three symptoms of mania:

- ◇ grandiosity
- ◇ decreased need for sleep (e.g. feels rested after 3 hours)
- ◇ rapid and excessive speech
- ◇ rapidly shifting ideas, or sense that one's thoughts are racing
- ◇ distractibility
- ◇ physical agitation, or frantic increases in sexual activity or in goal-directed activity at work or school
- ◇ excessive involvement in risky pleasures (e.g. gambling, buying sprees, sexual indiscretions, or foolish business investments)

Bipolar Disorders may also be accompanied by psychotic symptoms (delusions or hallucinations). The average age at onset is in young adulthood, and the episodes become more frequent over time. Most individuals return to a fully functional level between episodes, and respond well to mood-stabilizing medication. There are no gender differences in rates of Bipolar I Disorder, which occurs in 0.4–1.6% of community samples. Bipolar II Disorder may be more common in women than in men, and occurs in approximately 0.5% of community samples.

Research has consistently demonstrated a biological basis and genetic transmission for both major depression and bipolar disorder (Benjet, Azar, & Kuersten-Hogan, 2003; Cummings & Davies, 1994).

Effect of Mood Disorders on Children

Almost all of the research on parental mood disorders has examined depression in custodial mothers.⁹ For example, a number of studies have found that infants and toddlers with depressed mothers have more insecure emotional attachments and more behavioral difficulties than those with healthy mothers. The effect of the maternal depression is mediated by the mother's increased

stress, struggles with parenting, decreased social support, and lower marital satisfaction (Cicchetti, Rogosch, & Toth, 1998).

School-age children with depressed mothers tend to become depressed themselves and to have two to five times as many behavioral problems as children of well mothers. The children of depressed mothers also have elevated rates of:¹⁰

- attention deficits
- learning disabilities
- cognitive and social deficits
- substance abuse
- anxiety
- somatic symptoms

By adolescence, the children of depressed mothers are more likely to report suicidal thoughts or behaviors than are children of well mothers (Klimes-Dougan et al., 1999).

Research has indicated that the negative effect of maternal depression is associated with undesirable parenting practices such as:¹¹

- Overreacting to mild stressors (e.g. waiting in the doctor's office)
- Inconsistency (e.g. acting withdrawn, then acting controlling or intrusive)
- Using fewer questions and a less positive tone of voice
- Using more criticism and coercion

On the other hand, many children of depressed mothers function well, due to the resilience factors noted in Box 76, to the empathy that the children develop in dealing with a depressed parent, and to the fact that depressed mothers may function well in the specific realms of marriage and child management (Cummings & Davies, 1994).¹²

In summary, the research suggests that Major Depression in a primary caretaker can be extremely detrimental to the child *in some cases*. The major avenue of transmission (other than genetics) appears to be parenting behaviors. When a depressed parent is cooperating with a psychiatric treatment plan, uses effective parenting strategies, and has a well partner, however, their children may show considerable resilience and adequate psychosocial adjustment. Therefore, it is crucial to thoroughly evaluate the parenting behaviors and parent/child relationship in cases involving parental depression.

ANXIETY DISORDERS

Description and Prevalence

The essential feature of Anxiety Disorders is an intense fear or terror that has no basis in reality. Many of these disorders involve **Panic Attacks**, which are characterized by the sudden onset of intense apprehension, fearfulness, or terror, often associated with feelings of impending doom. In addition, at least four of the following symptoms must reach a peak within 10 minutes:

- ◇ heart pounding
- ◇ sweating
- ◇ trembling or shaking
- ◇ nausea
- ◇ chills or hot flushes
- ◇ feelings of unreality or being detached from oneself
- ◇ chest pain or discomfort
- ◇ feeling dizzy or faint
- ◇ numbness or tingling sensations
- ◇ sensations of shortness of breath or smothering
- ◇ feeling of choking
- ◇ fear of dying
- ◇ fear of losing control or going crazy

There are six main types of Anxiety Disorders:¹³

- ◇ ***Panic Disorder*** – Unexpected, recurrent panic attacks.
- ◇ ***Agoraphobia*** – Anxiety about or avoidance of places where escape might be difficult or help unavailable if a Panic Attack should occur.
- ◇ ***Phobia*** – Intense anxiety provoked by exposure to a specific feared object or situation (specific phobia) or by certain types of social or performance situations (social phobia).
- ◇ ***Obsessive-Compulsive Disorder (OCD)*** – Recurring obsessions (which cause anxiety) and/or compulsions (which neutralize anxiety). *Obsessions* are recurring thoughts, impulses, or images that are experienced as intrusive and inappropriate, and are not simply excessive worries about real-life problems. *Compulsions* are repetitive behaviors (e.g. hand-washing, checking, straightening) or mental acts (e.g. praying, counting, repeating words silently) that the person feels driven to perform in response to an obsession. The

obsessions or compulsions must cause marked distress, take at least an hour each day, or interfere with social, academic, or occupational functioning.

- ◇ **Generalized Anxiety Disorder** – Excessive, uncontrollable worry occurring most days for at least six months, accompanied by at least three of the following six symptoms:
 - ◇ restlessness or feeling on edge
 - ◇ irritability
 - ◇ being easily fatigued
 - ◇ muscle tension
 - ◇ difficulty concentrating
 - ◇ sleep disturbance
- ◇ **Post Traumatic Stress Disorder (PTSD)** – Although the DSM-IV lists PTSD as an Anxiety Disorder, PTSD has no biological basis or genetic link and is usually studied apart from other Anxiety Disorders. For these reasons, PTSD is discussed in a separate section below.

Effect of Parental Anxiety Disorders on Children

Children of parents with major anxiety disorders (e.g. Panic Disorder or OCD) are at risk for developing anxiety disorders themselves, due to a combination of (a) the genetic component of anxiety disorders and (b) parental impairment in parenting tasks. The research suggests that parents with anxiety disorders facilitate the development of anxiety in their children by:

- modeling fear or avoidance
- trying to control the child's behavior in a way that limits psychological autonomy
- facilitating avoidance responses.

As a result, these children show an elevated rate of general behavior problems as well as behavioral inhibition, which is a precursor to anxiety disorders.¹⁴

POST TRAUMATIC STRESS DISORDER (PTSD)¹⁵

Description and Prevalence

PTSD begins with exposure to a traumatic event that threatens death, serious injury, or damage to the physical integrity of self or others. The person must respond with intense feelings of fear,

helplessness, or horror, and then later re-experience the traumatic event in at least one of the following ways:

- ◇ recurrent, distressing recollections
- ◇ recurrent, distressing dreams
- ◇ acting or feeling as if the traumatic event were re-occurring
- ◇ intense emotional distress in response to cues that symbolize or resemble the traumatic event
- ◇ physical reactivity in response to cues that symbolize or resemble the traumatic event

In addition, the person must show persistent avoidance or numbing in response to stimuli associated with the event, and also have at least two persistent symptoms of increased arousal, such as

- ◇ difficulty falling or staying asleep
- ◇ irritability or outbursts of anger
- ◇ difficulty concentrating
- ◇ hypervigilance
- ◇ exaggerated startle response

The risk of developing PTSD does not vary by gender, race, or ethnicity, and the prevalence in community samples is 8%.¹⁶ The most important risk factors are the severity, duration, and proximity of exposure to the traumatic event. A number of other factors are also associated with the development of PTSD:¹⁷

- ◇ Pre-existing traumas
- ◇ Immediate social environment surrounding the trauma, especially lack of social supports
- ◇ Pre-traumatic psychological state
- ◇ Pre-existing personality disorders
- ◇ Negative life events during the year before the trauma
- ◇ Chronic strains

Many people who are exposed to trauma do not develop PTSD. Among trauma specialists, there is a new emphasis on risk and resilience factors and discussion of whether resilience to trauma

has been underestimated (e.g. Bonanno, 2004; Litz, 2005). For those working with divorcing families, this means that one should not assume that every parent who has experienced a traumatic event (e.g. child sexual or physical abuse, rape, domestic violence) has PTSD or is otherwise psychiatrically impaired. It is essential to evaluate parental functioning on a case-by-case basis, and make decisions regarding custody in a cautious manner.

Effect of Parental PTSD on Children

There is very little research on how parental PTSD affects children. The studies that have been done do not differentiate between exposure to trauma and development of PTSD,¹⁸ or between the effects of depression and the effects of PTSD.

SCHIZOPHRENIA

Description and Prevalence

Schizophrenia is a psychotic disorder characterized by delusions and hallucinations; the latter often take the form of one or more voices keeping up a running commentary on the person's behavior or thoughts. There may also be disorganized speech which is incoherent and changes topics constantly, bizarre body movements, and flattened affect. These symptoms interfere with the person's functioning in all major realms of life. The onset of Schizophrenia is usually between the late teens and mid-30s, and the prevalence rate is about 1% in both genders and all populations world-wide.¹⁹

Despite the fact that the psychotic symptoms of Schizophrenia can often be controlled with anti-psychotic medication, many individuals remain chronically ill. Others display exacerbations and remissions, but complete remission is rare. People with later onset usually have a better prognosis. People who suffer from Schizophrenia and are receiving psychiatric treatment are not especially prone to violence unless they are actively psychotic or abusing drugs and alcohol (Gallager, 2000).

Effect of Parental Schizophrenia on Children

Schizophrenia is biologically-linked, with first-degree biological relatives of individuals with Schizophrenia having a risk that is about 10 times greater than the general population (APA-med, 2000). Although twin and adoption studies show the heritability of Schizophrenia to be .60 to .84, it is not clear how much of that heritability is due to genetics and how much is due to poor parenting by Schizophrenic parents (Benjet et al, 2003).

Many research studies have found that compared to mothers with no mental illness, Schizophrenic mothers are less spontaneous, less active and involved in parenting, provide less sensory and motor stimulation, are more emotionally negative, and are more hostile. If they are psychotic, schizophrenic mothers pose a serious threat to the lives of their infants. And often the children of schizophrenics must provide their own physical care and assume adult responsibilities in the household.

It is not surprising that most studies of children with Schizophrenic parents have found that the children show marked deficits in cognitive, social, and emotional functioning. Thus, "Children of schizophrenic mothers are a high-risk group" (Zahn-Waxler, 2002, p. 303).

On the other hand, the severity of parental schizophrenic symptoms varies, as does the quality of social supports and alternate childrearing arrangements in these families. For this reason, there is quite a range of disturbance in the children's social, cognitive, emotional, and physiological functioning.²⁰

As noted in the discussion of other psychiatric disorders, it is essential for the court and its evaluators to consider the specific psychiatric history, current treatment and functioning, and parenting behaviors of each parent diagnosed with Schizophrenia. Almost all Schizophrenic parents would have an extremely difficult time meeting a child's needs on the daily basis required of primary custodial parents. Parenting time must be arranged in such a way that the current functioning and behaviors of the Schizophrenic parent can be closely monitored. Parent/child contact during psychotic episodes is detrimental to the child's well-being.

AUTISM

Description and Prevalence

Autism is described in Chapter 20 on Children with Disabilities, and essentially involves impairment in social interaction and empathy. This lifelong disorder is genetically-based, so many parents who suffer from it have children with the same disorder.

Effect of Parental Autism on Children

As Jennings (2005) points out, Autistic Spectrum Disorders (ASD) were not recognized until they were included in the DSM-IV in 1994. For this reason, most adults with ASD have not been diagnosed, and there is no research on the effect of parental autism on children. The egocentrism and deficiencies in compassion, empathy, and reciprocity inherent to this disorder create predictable deficiencies in parenting, however, because a parent with ASD has trouble recognizing the child's needs and putting them before those of the parent. For instance, Jennings (2005) notes several reports of parents who did not recognize the danger of an un-enclosed yard, failed to see the need to take a child to the hospital after injury in an accident, put a toddler into a scalding bath, made sandwiches with moldy bread, or turned to their own children for judgment and guidance.

EATING DISORDERS

Description and Prevalence

At least 90% of those suffering from eating disorders are female. Eating disorders are often accompanied by depression, and take two forms.

- ***Anorexia Nervosa***. In this disorder the individual refuses to eat despite having a normal appetite, and is determined to maintain a below-normal body weight (defined as 85% of the weight expected for their age). The disorder is accompanied by an intense fear of gaining weight, preoccupation with food, distortion in body perception, and the cessation of menses. There is either self-induced vomiting,

or a cycle of binge-eating and purging. Many of the physical symptoms of Anorexia Nervosa are due to starvation, including amenorrhea, constipation and abdominal pain, cold intolerance, lethargy, excess energy, cardiac problems, and excess body hair.

- **Bulimia Nervosa**. In this disorder the person engages in recurrent episodes of binge-eating where they eat abnormally large amounts of food and feel a sense of being out of control. After the binge they resort to inappropriate methods (such as self-induced vomiting) to avoid gaining weight. Unlike people with anorexia nervosa, those with bulimia maintain a relatively normal body weight.

Effect of Parental Eating Disorders on Children

There are a lot of case studies focusing on the effect of maternal eating disorders on early infancy and early childhood. There are few systematic, controlled studies, however, and no reports about the effects on older children or about the influence of fathers, stepfathers, or other males with eating disorders. The available evidence suggests that children of eating-disordered mothers have an increased risk of developing feeding difficulties and diminished physical growth, due to five possible mechanisms for intergenerational transmission.²¹

- **Genetic** – Twin studies and large, systematic family studies show a 7–12 time increase in the prevalence of Anorexia Nervosa and Bulimia Nervosa in first-degree relatives of individuals with eating disorders as compared with controls.
- **Parent's eating pathology imposed on the child** – Parents with eating disorders want the child to be thinner and withhold food from the child just as they do for themselves.
- **Disruption in parental functioning** – Parental preoccupation with food and body shape is associated with impaired attention and insensitivity to the child.
- **Poor parental role model** – Children copy the parent's behavior and attitudes regarding eating and body shape.
- **High-conflict marital and family relationships**

Many children appear to be unaffected by their mother's eating disorder, however, so courts and evaluators should not assume that a mother who has a current (or especially a previous) eating disorder would be an inappropriate custodial parent.

PERSONALITY DISORDERS

Description and Prevalence

The DSM-IV-TR defines a personality disorder as “an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual’s culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.” There are ten personality disorders, divided into three clusters.²²

■ **Cluster A: odd-eccentric**

- **Paranoid personality disorder** – a pattern of distrust and suspiciousness such that others’ motives are interpreted as malevolent.
- **Schizoid personality disorder** – a pattern of detachment from social relationships and a restricted range of emotional expression.
- **Schizotypal personality disorder** – a pattern of acute discomfort in close relationships, cognitive or perceptual distortions, and eccentricities of behavior.

■ **Cluster B: dramatic-emotional**

- **Antisocial personality disorder** – a pattern of disregard for, and violation of, the rights of others.
- **Borderline personality disorder** – a pattern of instability in interpersonal relationships, self-image, and emotions, accompanied by marked impulsivity.
- **Histrionic personality disorder** – a pattern of excessive emotionality and attention-seeking.
- **Narcissistic personality disorder** – a pattern of grandiosity, need for admiration, and lack of empathy.

■ **Cluster C: anxious-fearful**

- **Avoidant personality disorder** – a pattern of social inhibition, feelings of inadequacy, and hypersensitivity to negative evaluation.
- **Dependent personality disorder** – a pattern of submissive and clinging behavior due to an excessive need to be taken care of.
- **Obsessive-compulsive personality disorder** – a pattern of preoccupation with orderliness, perfectionism, and control.

Antisocial personality disorder is diagnosed more often in men, whereas Borderline, Histrionic, and Dependent Personality Disorders are diagnosed more frequently in women. The behavior of high-conflict, custody-litigating parents is often similar to the DSM descriptions of individuals with personality disorders, and

several authors have suggested that one or both parents may have a personality disorder in as many as 60% of these cases (Neff & Cooper, 2004). The DSM-IV-TR estimates prevalence rates of 1–3% of the general population for each of the 10 personality disorders, which totals 11–16.5% for all 10 personality disorders taken together.²³

Effect of Parental Personality Disorders on Children

Zahn-Waxler et al. (2002) have summarized the implications for parenting contained in the existing research. They note that people with Antisocial Personality Disorder (APD) have serious problems with interpersonal relationships and anger management and are self-preoccupied. These characteristics make it difficult for them to meet the basic requirements for parenting: patience, tolerance for frustration, and empathy. A number of studies have found that parents who are diagnosed with APD use harsh, hostile, and inconsistent discipline; poor supervision; are not emotionally involved with their children; and are apt to produce offspring who are hyperactive, antisocial, and display conduct disorder and/or substance abuse.

Zahn-Waxler and her colleagues (2002) note that although there has been little research on the parenting practices of people with Borderline and Narcissistic Personality Disorders, their “chaotic interpersonal worlds” are obviously relevant to parenting. For instance, the child is bound to be frightened and traumatized by exposure to the more severe symptoms: recurrent suicidal threats, gestures, and attempts; self-mutilating behavior; and impulsivity, including substance abuse and reckless driving.

In making decisions about child custody, courts need to attend to any comments about personality disorders that may be made by mental health professionals working with the parents on an on-going basis. Even more important than the diagnostic labels, however, are the behaviors and attitudes displayed by these impaired parents. It would be extremely helpful for all professionals, whether trained in law or mental health, to be aware of the clusters of behaviors in the DS-IV descriptions of the various personality disorders. It is essential to notice if these clusters occur in custody-litigating parents, and to realize that the clusters suggest

that serious impairments in parenting may also be present. Those parenting impairments then need to be assessed directly.

ATTENTION DEFICIT HYPERACTIVITY DISORDERS (ADHD)

Description and Prevalence

The DSM-IV-TR describes ADHD as a “persistent pattern of inattention and/or hyperactivity that is more frequently displayed and more severe than is typically observed in individuals at a comparable level of development.” There are three types of ADHD: predominantly inattentive, predominantly hyperactive-impulsive, and mixed.²⁴

ADHD occurs in about 3–7% of school-age children, but both editions of the DSM-IV note that there is little data about the prevalence in adolescence and adulthood (APA-med, 1994, 2000). In a large study, Biederman, Faraone, and Monuteaux (2002) found that although parental ADHD creates a biological risk for ADHD in children, it does not increase the risk of transmission due to non-biological factors. However, parental ADHD was associated with higher levels of family conflict and lower levels of family cohesion.

Effect of Parental ADHD on Children

There is no systematic research on the psychosocial impact of parental ADHD on children.

MENTAL RETARDATION

Description and Prevalence

Mental retardation is defined in Chapter 20, and occurs in 1% of the population. Although there is often a biological basis for mental retardation, only 15–30% of children with mentally retarded parents are cognitively-limited themselves (Benjet et al., 2003).

Effect of Parental Mental Retardation on Children

The parenting abilities of individuals with mental retardation have been legally challenged for many years, yet there is limited

research examining their actual competencies. The factors typically perceived as compromising their parenting include providing less cognitive stimulation and less economic resources. The available research indicates that a proportion of mildly retarded parents do provide minimally satisfactory care, however, defined as keeping children adequately fed, clothed, supervised and in regular school attendance (Benjet et al, 2003).

FACTITIOUS DISORDER BY PROXY

Description and Prevalence²⁵

People suffering from this disorder deliberately create or feign physical illness in someone under their care, usually a preschool child. The perpetrator is the mother in over 85% of the cases and the biological father in 5% of the cases (Horwath, 1999). When the perpetrator is the mother, boys and girls are equally victimized; but when the father is responsible, boys are more often victimized (Parnell, 2002). Unlike malingering, in Factitious Disorder by Proxy there are no external incentives such as economic gain. The perpetrator's motivation is presumed to be a psychological need to be in the sick role, achieved indirectly through the child.

Factitious Disorder by Proxy may occur in a variety of ways: the parent may bring the child to the pediatrician or hospital claiming that the child is sick, they may interfere with medical investigations (e.g. placing their own blood into the child's urine or stool samples), or they may deliberately harm the child before seeking treatment (e.g. administer sedative or laxatives; induce bleeding from the mouth, anus, or skin; suffocate or poison the child).

The DSM-IV-TR reports that "the most commonly induced or simulated conditions include persistent vomiting or diarrhea, respiratory arrest, asthma, central nervous system dysfunction (e.g. seizures, uncoordination, loss of consciousness), fever, infection, bleeding, failure to thrive, hypoglycemia, electrolyte disturbance, and rash. The simulation of mental disorders in the victim is much less frequently reported" (APA-med, 2000, p. 782).

Horwath (1999) summarizes research indicating common characteristics or behaviors of perpetrators:

- reluctance to leave child alone in hospital
- unusually calm in face of problems in medical care for child
- develop close personal relationships with hospital staff
- educational or employment background in the medical field and/or desire to be employed in the medical field
- fabricating information about many aspects of their own life

Some common characteristics have also been reported for the perpetrator's family:

- emotional, physical, or sexual abuse in family of origin
- perpetrator showed pattern of feigning illness as a child
- perpetrator's marital relationship is emotionally distant
- unexplained illness or death in sibling of victim or another child in perpetrator's care

Some writers have pointed out that despite the recent attention and numerous clinical case studies about Factitious Disorder by Proxy, there is a dearth of systematic, empirical studies; therefore, the legal and scientific status of the diagnosis remains controversial (e.g. [Mart, 2002](#); [McCann et al, 2003](#)).

Factitious Disorder by Proxy is considered to be child abuse, and the perpetrator may face criminal charges ranging from abuse to murder.²⁶

Effect of Factitious Disorder by Proxy on children

Victims of Factitious Disorder by Proxy suffer not only from the induced medical conditions, but also from complications due to medications, diagnostic tests, and surgical procedures.²⁷ As they get older, these children are at increased risk of developing Factitious Disorder themselves, and of developing a variety of emotional and behavioral disorders including difficulties in concentration and attention, impaired school performance, and symptoms of Post Traumatic Stress Disorder ([APA-med, 2000](#), p. 782).

INTERVENTIONS FOR CHILDREN WITH MENTALLY ILL PARENTS

First, the court needs to ascertain whether the parent who suffers from a psychiatric disorder is too ill to have primary or joint residential custody. As noted above, this requires a thorough and impartial

assessment of the parent's strengths as well as their weaknesses. Their parenting behaviors and abilities should be a central focus in this assessment. If a parent is too impaired to have the children live with them, parenting time should be arranged that will benefit the child (not just meet the parent's desire to spend time with the child).

Second, the child needs assistance to combat the deleterious effects of the parent's mental illness. In most cases the child will benefit from psychotherapy to deal with their own anger, fear, sadness, confusion, and sense of isolation, guilt, or embarrassment about the parent's illness. Education about mental illness, peer support groups, and one-on-one adult mentoring can also be helpful.²⁸ Finally, *Cognitive Behavior Therapy* can be used with preschool children to minimize their own anxious responses to their parent's Anxiety Disorder (Hirshfeld-Becker & Biederman, 2002).

Whatever specific intervention is utilized, it is essential to remember that addressing the parent's need for psychiatric treatment is not sufficient. The child also needs mental health services.

Notes

1. These effects are listed in a descriptive article by Schmier (2004, p. 523), and are supported by the research discussed in the following sections of this chapter.
2. The factors in Box 76 have been examined in a number of studies, which are summarized in Benjet et al. (2003); Cummings and Davies, 1994; and Zahn-Waxler et al., 2002.
3. The greater risk to children from parental schizophrenia and bipolar disorder has been reported in reviews of the research literature (e.g. Benjet et al. (2003); Cummings & Davies, 1994; Zahn-Waxler et al., 2002). Recently, however, Mowbray et al. (2004) studied a racially diverse, low-income sample of 166 15-year-old children and found no difference between those whose mothers suffered from schizophrenia or schizoaffective disorder (23% of sample), depression (52% of sample), or bipolar disorder (25% of sample).
4. This list of child behaviors and traits is from Gallager (2000, p. 239), and matches the findings of other summaries of the research in this area.
5. The Text Revision of the DSM-IV indicates that "A slightly higher incidence of Schizophrenia has been observed in men than in women," but does not give any specific figures (APA-med, 2000, p. 308).
6. The information on gender ratios and prevalence of psychiatric disorders in Box 77 is based on the Text Revision of the DSM-IV (DSM-IV-TR, APA-med, 2000). The Text Revision contains the same diagnostic categories as the original DSM-IV edition (APA-med, 1994), but the text has been revised to reflect recent research on associated features and disorders, familial patterns,

prevalence, course, and specific cultural, age, and gender features for each psychiatric disorder. The fifth edition of the DSM is scheduled for publication in 2008. Once the DSM-V is available, readers will need to check for any changes in the diagnostic categories as well as updated information on prevalence, gender ratios, and etiology.

7. The descriptions of the major types of psychiatric disorders in this text are based on the DSM-IV-TR (APA-med, 2000), except where noted otherwise.
8. The depressive symptoms cannot be due to grief from the loss of a loved one within the previous two months, unless the grief is so severe that it interferes with daily functioning and involves psychotic symptoms or a preoccupation with death.
9. Although some studies comparing types of psychiatric disorder include bipolar disorder, studies examining the effect of one disorder appear to focus primarily on depression. Zahn-Waxler et al. (2002) note that studies regarding the impact of parental mental illness on children have examined mothers because mothers usually had custody of the children in the past. For this reason, little is known about how children respond to mental illness in custodial fathers.
10. These difficulties in school-age children with depressed mothers have been reported in several reviews of the research (e.g. Amato, 2005; Benjet et al., 2003; Cummings & Davies, 1994; Williams & Corrigan, 1992).
11. The research on poor parenting by depressed mothers has been summarized by several writers (e.g., Benjet et al., 2003; Gelfand & Tetl, 1990).
12. For instance, Zahn-Waxler and her colleagues (2002) have identified positive parenting practices used by depressed mothers (and also fathers) that contribute to healthy adjustment in toddlers over the course of three years.
13. The DSM-IV-TR reports the following data on prevalence and gender ratios for the six main types of Anxiety Disorders: Panic Disorder – 1–2%, 2–3F:1M; Agoraphobia – 95% of those in clinical settings with Agoraphobia have Panic Disorder, F = M; Phobia – specific phobia 7.2–11.3%, 2F:1M; social phobia 3–13%, F = M; Obsessive-Compulsive Disorder: 2.5%, F = M; Generalized Anxiety Disorder - 3%, 3F:2M (APA-med, 2000).
14. Several summaries of research on parental anxiety disorders report these effects on the children (e.g. Hirshfeld-Becker & Biederman, 2002; Hirshfeld-Becker et al., 2004; Rosenbaum et al., 2000; Silverman, Cerny, Nelles, & Burke, 1988; Zahn-Waxler et al., 2002).
15. As noted above, PTSD is included among the Anxiety Disorders in the DSM-IV (APA-med, 1994). PTSD does not share the biological/genetic linkage of the other anxiety disorders, however, and is often studied and discussed separately.
16. Although the diagnosis of PTSD was originally developed in work with traumatized combat veterans, in the past 20 years it has been widely used to describe the symptoms of female victims of physical and sexual abuse (e.g. Herman, 1992). This has led many to view PTSD as a predominantly female diagnosis. For example, Becker has argued that PTSD is over-diagnosed because it is often applied to female patients who would previously have been diagnosed as having a Borderline Personality Disorder, and this practice “represents a further embrace of the medicalization of women’s problems” (2000, p. 423).
17. Cooperstein (1999) summarizes the research that found these factors to be associated with PTSD.

18. For example, [Cole, Woolger, Power, and Smith \(1992\)](#) studied the parenting of mothers who were or were not incest survivors, and reported that the incest survivors reported having less confidence and less sense of control, being less consistent and organized, and making fewer maturity demands on their children. The researchers did not assess the existence of PTSD or other psychiatric disorders in their samples, however, and many people who are victims of incest do not develop PTSD.
 In a similar study, [Banyard, Williams, and Siegel \(2003\)](#) did a longitudinal study of 152 mothers and found that higher rates of trauma exposure were related to decreased parenting satisfaction, and increased use of physical punishment and reports of child neglect. The researchers did not differentiate between trauma exposure and the development of PTSD, however.
19. The DSM-IV-TR reports that research over the past ten years suggests that more men than women may suffer from Schizophrenia, and that Schizophrenia is expressed differently according to gender. The modal age of onset for men is 18–25 years, while the age of onset for women is bi-modal: 25–35 years, and again after age 40. Women have better premorbid functioning than do men, and a better prognosis. Women tend to express more emotional symptomatology, paranoid delusions, and hallucinations, whereas men tend to express more flat affect, lack of volition, and social withdrawal ([APA-med, 2000](#)).
20. For detailed reviews of the research on how parental Schizophrenia affects children, see [Hans, Auerbach, Stvr, and Marcus, 2004](#); [Zahn-Waxler et al., 2002](#), pp. 300–303.
21. These possible effects and mechanisms for intergenerational transmission have been proposed by [Park, Senior, and Stein, 2003](#), and [Patel, Wheatcroft, Park, and Stein, 2002](#).
22. These descriptions of personality disorders are taken from the DSM-IV-TR ([APA-med, 2000](#), p. 685).
23. The DSM-IV-TR ([APA-med, 2000](#)) gives the following prevalence rates for the various types of personality disorders in the general population: paranoid .5–2.5; schizoid - uncommon in clinical settings, no information given for community studies; schizotypal 3%; antisocial 1–3%; borderline 2%; histrionic 2–3%; narcissistic < 1%; avoidant .5–1.0%; dependant – most common personality disorder encountered in mental health clinics, no information given for community studies; obsessive-compulsive 1%.
24. This description is from the DSM-IV-TR ([APA-med, 2000](#), p. 85). Chapter 20 also contains a description of ADHD in children.
25. Factitious Disorder by Proxy is also referred to as “Munchausen Syndrome by Proxy,” “Meadow’s Syndrome,” and “Polle’s Syndrome” ([O’Shea, 2003](#)). There are many other terms for particular behaviors that are part of the syndrome, including “doctor shopping,” “help seeking,” “extreme illness exaggeration,” “enforced invalidism,” and being a “doctor addict” ([Parneil, 2002](#)). The general description in this section is based on the DSM-IV-TR ([APA-med, 2000](#)).
26. Older children may collaborate with the perpetrator, and then receive both the usual diagnosis of Physical Abuse of Child and an additional diagnosis of Factitious Disorder ([APA-med, 2000](#)).
27. [Schreier \(2002, p. 162\)](#) reports a death rate of 9–10% in published reports about victims of Munchausen Syndrome by Proxy, but notes that the literature clearly represents the more serious cases.

28. Orel, Groves, and Shannon (2003) have described a promising new program named "Positive Connections," which has three phases: (1) a 5-week educational program to teach the children about the different types of mental illness, (2) a 5-week peer support group facilitated by mental health professionals, to help the children express their feelings and connect with one another, and (3) a mentoring program featuring a minimum of 6 months of one-on-one contact with a volunteer from *Big Brothers Big Sisters* of Northwestern Ohio.

22

SUBSTANCE ABUSE

DEFINITIONS AND RATES OF SUBSTANCE ABUSE

The DSM-IV defines **Substance Abuse** as “a maladaptive pattern of substance use leading to clinically significant impairment or distress” as shown by at least one of the following symptoms:¹

- ◇ Failure to fulfill major role obligations
- ◇ Use in dangerous situations (e.g. driving a car)
- ◇ Legal problems related to substance use (e.g. arrests for use, disorderly conduct)
- ◇ Social or interpersonal problems related to use

The DSM-IV also includes a more serious diagnosis called **Substance Dependence**, where severity is measured in terms of three dimensions: quantity/frequency of use, physiological dependence, and adverse consequences. The diagnostic criteria for Substance Dependence are the symptoms of Substance Abuse plus at least 3 of the following in any 12-month period:

- ◇ Tolerance – need for increased amounts of the substance, or diminished effect with use of the same amount of the substance.
- ◇ Withdrawal—shown by typical withdrawal symptoms for that substance, or using the same or another substance to relieve or avoid withdrawal symptoms.

- ◇ Loss of control – Substance is often taken in larger amounts or over a longer period than intended
- ◇ Persistent desire or unsuccessful efforts to reduce or control substance use
- ◇ Large amount of time spent procuring the substance
- ◇ Occupational, social, or recreational activities reduced or given up because of substance
- ◇ Use continued despite knowledge of physical or psychological problem caused or exacerbated by substance (e.g. depression, ulcer)

The current prevalence of substance abuse is quite startling:²

- ◇ Each month, more than 7 million adults use illicit substances and more than 50 million use alcohol.
- ◇ 15% of the general population develops Alcohol Dependence
- ◇ 24% of children live with an adult who is a binge or heavy drinker.
- ◇ 13% of children under 18 live with an adult who uses illicit drugs.

Children who live with a substance-abusing adult are at increased risk of abusing drugs themselves. Box 78 includes a list of warning signs for adult substance abuse, and Box 79 includes a list of warning signs for teenage substance abuse.³

Substance Dependence is a progressive disease. There are three stages of alcoholism, for instance, which are outlined in Box 80.⁴ If a person suffering from Alcohol Dependence resumes drinking after a period of abstinence, they resume their progression of symptoms at the point where they became abstinent; they do not begin again at the early stage of alcoholism.

GENDER DIFFERENCES IN SUBSTANCE ABUSE

There has been a persistent myth that women are less involved in substance abuse than are men. Yet for centuries women have been involved in abusing alcohol and opiates. In the eighteenth century,

Box 78. *Warning Signs for Adult Substance Abuse*

◆ **Changes in behavior**

- Work – abrupt changes in attendance, quality, or output
- Friends – association with known substance abusers
- Irresponsible
- Increased secrecy
- Unusual angry outbursts
- Argumentative, withdraws from family
- Appearance – deterioration in grooming
- Health – fatigue, repeated complaints
- Stealing – small items from employer, home, or friends

◆ **Other indicators of substance use:**

- Wearing concealing clothing:
 - sunglasses at inappropriate times (to hide bloodshot eyes)
 - long sleeves in warm weather (to hide needle marks)
- Lying (especially about substances they are using)
- Planning drinking in advance, hiding alcohol, drinking or using drugs alone
- Avoiding friends and family (in order to get drunk or high)
- Pressuring others to drink or use drugs
- Taking risks (including sexual)
- Problems with the law

Box 79. *Warning Signs for Teenage Substance Abuse*

- ◆ **Changes in Personal Attitudes and Behavior**
 - Family – deterioration in relationships: starting arguments, breaking rules, or withdrawing from the family.
 - School – absences; declining interest and grades; discipline problems
 - Social – new friends who are less interested in standard home and school activities; changes to less conventional styles of dress and music; increased secrecy
 - Extracurricular Activities – dropping preferred ones, such as sports
 - Emotional – sudden mood changes; aggressiveness; irritability; depression
 - Behavior – irresponsible; poor judgment; borrowing money excessively; problems with the law
 - Language and Cognition – forgetfulness, slurred speech, or difficulty expressing thoughts
 - Physical: fatigue, lack of coordination, poor balance, repeated health complaints, red and glazed eyes, lasting cough

- ◆ **Environmental evidence of substance use**
 - Increased use of incense, room deodorant, or perfumes (to hide smoke or chemical odors)
 - Increased use of eye drops (to mask bloodshot eyes or dilated pupils)
 - New use of mouthwash or breath mints (to cover the smell of alcohol)
 - Drug paraphernalia, e.g. pipes, rolling papers
 - Increased accumulation of inhalable products and accessories (e.g. hairspray, nail polish, correction fluid)
 - Missing prescription drugs (e.g. narcotics, stimulants, mood stabilizers)

Box 80. Three Stages of Alcoholism

◆ **Early Stage**

- Sneaking drinks, gulping drinks
- Preoccupation with drinking
- Drinking to become drunk
- Personality changes when drinking
- Guilt feelings about drinking
- Family complaining about drinking
- Seeking companions who are heavy drinkers
- Losing interest in activities not directly associated with drinking

- Hangovers- missing work and school
- Blackouts
- Increased tolerance to alcohol
- Changing forms of alcohol (e.g. vodka to beer)
- Job changes due to interpersonal problems

◆ **Middle Stage**

- Loss of control (drinking more than intended)
- Protecting the supply of alcohol
- Drinking to relieve anger, tension, insomnia, fatigue, depression, and social discomfort

- Drinking despite strong medical reasons not to
- Drinking despite strong social reasons not to, e.g. arrests for drunk driving, marital and family disruptions
- Repeated attempts at abstinence

Box 80

- Increased incidence of colds and infections
 - Benders/binges
 - Morning drinking
 - Paranoid attitude
 - Projections, resentments, and denial become more severe
- ◆ **Late Stage**
- Alcoholic hepatitis
 - Cirrhosis (enlargement of liver)
 - Tremors when sober
 - Brain damage
 - Alcoholic seizures
 - Delirium Tremens (DT's)
 - Alcoholic hallucinations
 - Blatant and indiscriminant use of alcohol
 - Choice of work situations that facilitate drinking
 - Lowering of personal standards
 - Depression, isolation, suicidal preoccupation
 - Fears of "going crazy"

for instance, alcohol and opiates were readily available in patent medicines that were frequently prescribed for nervous disorders. At that time the typical opiate addict was a middle-aged, middle-class woman whose addiction began with a prescription of opium for nervousness and stress. Only in the 1940s did the typical profile for opiate addiction become an urban, poor, male heroin user. More recently, cocaine abuse became prevalent among the poor and prostitutes. Thus there have always been women addicts – of all socioeconomic statuses – who have had children, and those children in turn have been deeply affected by their parents' addictions.⁵

There are some gender differences in the rates and physiological effects of substance abuse. For instance, the overall gender ratio for Alcohol Dependence may be as high as 5 males to 1 female, depending on the age group. However, when females drink alcohol they tend to develop higher blood alcohol concentrations than males at any given level of consumption. For this reason, women are more at risk for the health complications of heavy alcohol use (e.g. liver damage) than are men. This means that although females generally tend to start drinking several years later than males, once Alcohol Abuse or Alcohol Dependence starts in females it progresses more rapidly than in males.

CHARACTERISTICS OF SUBSTANCE-ABUSING PARENTS

A large body of research has found substance-abusing parents to be impaired. Not only do they tend to suffer from other mental illnesses besides substance abuse; they also tend to be disproportionately single and poor, with low levels of education and high levels of exposure to trauma. Homelessness, prostitution, and violence are common. However, the samples used in previous studies may not be representative of all those who over-use or misuse substances, because substance abuse may have a less devastating effect on people who have the resources associated with being educated, financially secure, and socially well-connected.⁶

These sampling issues should be kept in mind when considering the personal characteristics of substance-abusing parents listed in Box 81; that is, these may be the characteristics of the most impaired substance-abusing parents.⁷

EFFECTS OF PARENTAL SUBSTANCE ABUSE ON CHILDREN

Variability in Effects of Drug Use

The effects of parental substance abuse vary by substance, length of abuse, and parental circumstances. During pregnancy, the physiological effects vary somewhat by substance, as explained below. After birth, the detrimental effect on the child is generally more severe the longer the parent has abused the substance and the greater the conflict between the parents.⁸ It is also important to keep in mind that when the addicted parent is in a period of abstinence, he or she usually functions much better. The social acceptability and legality of using various substances is also important, because repeated arrests and incarcerations disrupt and impoverish the family.⁹

Physiological Effects of Parental Substance Abuse

Prenatal Exposure

Most drugs that are abused can cross the placenta during pregnancy, causing neurological damage to the fetus.¹⁰ Although the effects vary by drug and amount of maternal drug use, poor long-term development and behavioral outcomes have been found in children of all ages.¹¹

- **Alcohol.** When children are exposed to alcohol in utero, they develop *fetal alcohol syndrome*, which is characterized by:

- ◇ poor physical growth – deficits in both height and weight
- ◇ minor physical anomalies – including a characteristic facial appearance.
- ◇ central nervous system deficits – causing delayed development, hyperactivity, depressive symptoms, attention deficits, intellectual delays, learning disabilities, and sometimes seizures.

Box 81. *Characteristics of Substance-Abusing Parents*

◆ **Psychological functioning**

- Egocentric and narcissistic
- Feel worthless
- Poor self-esteem
- Anxious
- Depressed
- Feel isolated and lonely
- Difficulty sustaining interpersonal relationships
- Difficulty anticipating consequences of their behavior
- Externalizing traits - feel their lives are controlled by outside forces

◆ **History and Family of origin**

- Unstable family environment –
Family violence, hospitalizations, unexpected separations
- Poor family cohesion
- Childhood sexual abuse
- Substance abuse –
Child tends to use same type of drug as parent.
- Psychiatric disorders among parents and siblings – Especially depression and antisocial personality disorder
- Mother over-protective
- Father ineffective or weak

◆ **Relationships with own children**

- Punitive toward children
- Unrealistic expectations of infants and children
- Experience child's needs as demanding and inappropriate
- See infant as extension of themselves
- Poor sense of competence as a parent

The more alcohol the mother uses during pregnancy, the more severe the effects on the child's physical growth and intellectual functioning. One study found that 1.5 oz. of alcohol per day is enough to cause demonstrable effects,¹² while another found that timing is crucial: If exposure does not continue beyond the first trimester there may be no significant effects on attention, receptive language, and cognitive processing.¹³

The effects of fetal alcohol syndrome continue throughout life. Studies of adolescents and young adults exposed to alcohol in utero show continuing impairments in cognition, social functioning, and behavior.

- ***Opiates (heroin and methadone)***. Infants who are exposed to opiates in utero are born addicted, and display the following withdrawal symptoms for a few weeks:

- ◇ Low birth weight
- ◇ Increased incidence of sudden infant death syndrome
- ◇ Hyperactivity (even when sleeping)
- ◇ Increased irritability
- ◇ Poor muscle control (tremors, jerky movements)
- ◇ Lack of alertness

These effects diminish after a month, but many children continue to be hyperactive and have poor attention and physical coordination throughout their first year. In early childhood the cognitive deficits are no longer significant, but difficulties with impulsivity, hyperactivity, poor motor coordination, and attention deficits continue. By adolescence, when compared with non-exposed children, those who were opiate-exposed are more apt to drop out of school and to have a higher incidence of behavior and conduct problems, involvement in substance abuse, and antisocial behavior.

- ***Cocaine***. Exposure to cocaine and crack in utero is associated with low birth weight, premature labor, miscarriage, and congenital malformations. Research has not found global developmental impairments after birth, but it has documented continuing deficits in arousal, attention, and activity level. These deficits are also experienced by adult cocaine users, making the cocaine or crack-using parent relatively inattentive and unresponsive. An unfortunate interaction occurs between the inattentive child who needs extra pro-social parenting and the inattentive adult who is not capable of providing this.

Postnatal Exposure

After birth, children continue to be exposed to drugs whose ingestion is through smoking or inhalation: marijuana, tobacco, or crack. The physiological effects are often compounded by the psychological and social effects of being parenting by substance-abusing parents.

Parenting Behaviors

Most studies of parenting behaviors in substance abusers have focused on maternal control (restrictiveness, monitoring, and authoritarianism) and maternal responsiveness (warmth and involvement). These dimensions are related to the parent's drug of choice, since the use of depressants tends to make the parent inattentive and unresponsive, while the use of stimulants may make the parent impulsive and unpredictable (Benjet et al., 2003).

In general, parents who abuse substances show a variety of deficits in parenting, which are listed in Box 82.¹⁴ Although there is some indication that parenting deficits may be more severe for parents who abuse cocaine and opiates than for those who abuse alcohol (e.g. Fals-Stewart, Kelley, Fincham, Golden, & Logsdon, 2004), the overall pattern of deficits in parenting is similar for all types of substance abuse.

Box 82. Parenting Behaviors When Abusing Substances

- ◆ **Discipline**
 - Inconsistent
 - Punitive
 - Increased disagreements with partner
- ◆ **Physical caretaking of child**
 - Clothing inadequate, inappropriate, dirty
 - Food inadequate or inappropriate
 - Lapses in hygiene
 - Lapses in medical care
 - Inconsistent supervision and concern for safety
- ◆ **Relationship with children**
 - Emotionally disengaged and unresponsive

Child Behavior and Psychological Functioning

Children with substance-abusing parents display deficits in psychological adjustment and behavior throughout their childhood, adolescence, and young adulthood. These deficits have been observed by many researchers, and are summarized in Box 83.¹⁵

Box 83. *Characteristics of Children Whose Parent(s) Abuse Substances*

◆ Psychological functioning

- Poor self-concept
- Low self-esteem
- Anxious
- Depressed
- Preoccupation with bodily dysfunctions without organic cause
- Poor impulse control
- Poor psychological adjustment

◆ Intellectual functioning

- Cognitive deficits
- Poor academic performance

◆ Interpersonal relationships and behavior

- Socially Anxious
- Chronic separation issues (fear abandonment)
- Hyperactive
- Oppositional
- Defiant
- Aggressive
- Conduct problems
- Increased likelihood of substance abuse – use earlier, progress more quickly to advanced stages of addiction.

Risk and Protective Factors for Children of Substance Abusers

All children are not equally affected by having a substance-abusing parent. Box 84 lists the major risk and protective factors that mediate the effects of parental substance abuse.¹⁶

ASSESSMENT METHODS FOR SUBSTANCE ABUSE

Clinical Assessment Instruments

There are a number of clinical screening instruments that use self-report to identify adults with alcohol-related disorders. A recent example is the Rapid Alcohol Problem Screen (RAPS4), which asks the following questions:¹⁷

- Remorse: During the last year have you had a feeling of guilt or remorse after drinking?
- Amnesia: During the last year has a friend or family member ever told you about things you said or did while you were drinking that you could not remember?
- Performance: During the last year have you failed to do what was normally expected from you because of drinking?
- Starter: Do you sometimes take a drink in the morning when you first get up?

Information about the most widely used clinical instruments and recommendations for sets of questions to use for research can be obtained from the National Institute on Alcohol Abuse and Alcoholism (NIAAA, 2003).

Forensic v. Clinical Assessment

The pervasive and dangerous nature of substance abuse makes it imperative to routinely screen for it in every child custody evaluation.¹⁸ The clinical methods of assessment are not adequate for forensic use, however, because people involved in forensic evaluations are not seeking treatment. On the contrary, they are usually highly motivated to hide their substance abuse. This means that in a child custody evaluation, the self-report questions must be

Box 84. *General Risk and Protective Factors for Effects of Parental Substance Abuse on Children*

RISK FACTORS	PROTECTIVE FACTORS
Parental substance abuse	
<ul style="list-style-type: none"> ▪ greater quantity and more frequent use ▪ uses drugs, especially cocaine or crack 	<ul style="list-style-type: none"> ▪ smaller quantity and less frequent use ▪ uses alcohol
Characteristics of substance-abusing parent	
<ul style="list-style-type: none"> ▪ socially isolated ▪ mental illness (besides substance abuse) ▪ high impulsivity ▪ high sensation-seeking ▪ low educational expectations 	<ul style="list-style-type: none"> ▪ extensive social supports ▪ no mental illness ▪ low impulsivity ▪ low sensation-seeking ▪ high educational expectations
Characteristics of family and environment	
<ul style="list-style-type: none"> ▪ both parents abuse substances ▪ marital discord ▪ financially impoverished ▪ domestic violence ▪ distant, hostile relationship with child ▪ parentification (role reversal: child takes care of parent, and sometimes of siblings) 	<ul style="list-style-type: none"> ▪ only one parent abuses substances ▪ harmonious marriage ▪ adequate financial resources ▪ no domestic violence ▪ warm, supportive relationship with child ▪ absence of parentification (no role reversal)
Characteristics of child	
<ul style="list-style-type: none"> ▪ hyperactive ▪ emotionally over-reactive ▪ inattentive ▪ rigid 	<ul style="list-style-type: none"> ▪ normal activity level ▪ calm, easy to comfort ▪ responsive ▪ adaptable

supplemented by a variety of other sources of information, much as in assessing a family for domestic violence.

Informed Consent for Substance Abuse

Federal regulations impose additional standards for breaching the confidentiality of records related to substance abuse. These standards are designed to protect clients, so that their disclosures in drug treatment cannot harm them. The Release of Information consent form for substance abuse must contain the following four types of information, which are also required by the Health Insurance Portability and Accountability Act (HIPAA, 1996):

- To whom information will be released
- Description of type of information to be released
- Statement of how to rescind the consent at any time
- Time limit for use of the information obtained.

In addition, the *report* of the child custody evaluation must contain a statement barring re-release of the information related to substance abuse. This requirement can be met by inserting the following footnote after the heading for substance abuse:¹⁹

This information regarding substance abuse has been obtained from records protected by Federal confidentiality rules (42 CFR part 2). Federal regulations prohibit further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is *not* sufficient for this purpose. The Federal rules also restrict any use of this information to criminally investigate or prosecute any alcohol or drug abuse patient.

Since none of the information gathered in the course of a child custody evaluation can be used in a criminal proceeding, the requirement barring re-release of substance abuse information also applies to the other information in the child custody evaluation.²⁰ For this reason, I have incorporated all of the substance abuse requirements into the standard *Authorization for Release of Information – Child Custody Evaluation* form in Section IV of the CD.

The only caveat for using the *Authorization for Release of Information* for obtaining information about substance abuse is that many drug treatment facilities require you to specify the exact type of drug test or record requested. To satisfy this requirement, be especially meticulous and detailed when filling out section 5 describing the “following information” to be released.

In conjunction with the *Authorization for Release of Information* for specific information, each parent should also review and sign the *Contract and Fee Agreement*. (See Chapter 12 and Section Vb of the CD.) This will provide them with details about the types of tests and procedures to be used during the child custody evaluation.

Interviews – Self-report Questions

During the parent interview, every parent should be asked a series of screening questions for substance abuse. Box 85 lists the alcohol abuse screening questions from pages 5–6 of the *Parent Interview* (in Section VII of the CD). These questions expand on the questions asked on page 5 of the *Parent Questionnaire* (in Section VI of the CD).²¹ In Box 85, questions #1–4 are from the Rapid Alcohol Problems Screen (RAPS4); one positive answer is indicative of alcohol dependence. Questions #5–6 were added for the RAPS4-QF; a positive response to both of these questions is indicative of alcohol dependence.²² Questions #7–8 are from the CAGE, and one positive answer is indicative of alcohol dependence. Thus having only 1 or 2 positive answers to questions #1–8 suggests that the parent being evaluated suffers from alcohol dependence and requires further evaluation regarding this issue.

Box 86 lists the screening questions about drug use from pages 6–8 of the *Parent Interview* (in Section VII of the CD). These questions expand on the questions asked on page 5 of the *Parent Questionnaire* (in Section VI of the CD).

Collateral Sources of Information

Once each parent has been interviewed and proper consent has been obtained, it is useful to ask routine questions about substance abuse in contacts with each collateral source of information. When

substance abuse is a concern in a case, the following sources are apt to have useful information that can serve to corroborate and/or expand on the information provided by each parent.

<p>Box 85. Questions about Alcohol Use – Parent Interview</p>	
<p>RAPS4 1 positive response = alcohol dependence</p>	<ol style="list-style-type: none"> 1. During the last year have you had a feeling of guilt or remorse after drinking? 2. During the last year has a friend or family member ever told you about things you said or did while you were drinking that you could not remember? 3. During the last year have you failed to do what was normally expected from you because of drinking? 4. Do you sometimes take a drink in the morning when you first get up? 5. During the last year have you had five or more drinks on at least one occasion? 6. During the last year did you drink as often as once a month?
<p>RAPS4-QF 2 positive responses = alcohol dependence</p>	

<u>Box 85</u>	
<p>CAGE 1 positive response = alcohol dependence</p>	<p>7. Have you ever felt you should cut down on your drinking? 8. Have other people annoyed you by criticizing your drinking?</p>
<p>EXTRA QUESTIONS To indicate severity and sources for additional information.</p>	<p>9. Have you ever been in an alcohol-related accident or been charged with OUI? 10. Have you ever been in a fight or been arrested because of your drinking? 11. Have you ever attended a self-help group like AA or SMART? Do you attend a regular group? When and where? How often do you attend? What is the name of your sponsor? 12. Have you ever participated in a treatment program for your drinking? When? Where? 13. Does anyone in your family abuse alcohol? Who? What is their drinking pattern?</p>

Box 86. Questions about Drug Use – Parent Interview

HISTORY OF USING SPECIFIC ILLICIT DRUGS

- 1. Have you ever used drugs, other than medication prescribed for you?**
 - a. What type?
 - b. How frequently?
 - c. How much?

If the answer to question #1 is “no,” then ask, “Not even marijuana?”

If the answer to question #1 is “yes,” then ask questions #2-11 about that drug, then continue by asking, “How about [name of next drug on list]?”

Ask questions # 2-11 for each of the following drugs, in this order:²³

Marijuana

Cocaine²⁴

Crack²⁵

Heroin and Barbiturates

Amphetamines²⁶

Methamphetamines²⁷

Hallucinogens²⁸

Ecstasy (MDMA)²⁹

Over-the-counter remedies³⁰

Inhalants³¹

- 2. How frequently do you use [name of drug]?
How much each time?**
- 3. How old were you when you first used [name of drug],
and what were the circumstances of your first use?**
- 4. When was the last time you used [name of drug]?**
- 5. Has your use of [name of drug] changed in the
past year?**

Box 86

HISTORY OF USING SPECIFIC ILLICIT DRUGS, *continued*

6. Have other people criticized your use of [name of drug]?
7. Have you ever felt that you ought to cut down on your use of [name of drug]?
8. Have you ever felt bad or guilty about your use of [name of drug]?
9. What is the greatest quantity of [name of drug] you have possessed at any one time?
10. Have you bought more [name of drug] than you needed, to sell to pay for your use?
11. Do you use [name of drug] alone, with friends, or both?

HISTORY OF DRUG TREATMENT

After asking questions #2-11 for each type of drug, ask questions #12-15.

12. Have you ever attended a self-help program for your drug use, such as Narcotics Anonymous (NA)?
Do you attend a regular group? When and where?
How often do you attend?
What is the name of your sponsor?
13. Have you ever participated in a treatment program for your drug use? When? Where?
14. Does anyone in your family use drugs? Who?
What is their pattern of drug use?
15. Are you required to have drug testing of any kind right now?

◇ Personal physician – Personal physicians often know about their patients' drug use, and can convey this information via interview or written records.

- ◇ Hospital records – Admission, discharge, and treatment summaries often include information about patterns of substance use.
- ◇ Mental health providers – If a previous treatment provider is no longer available, clinic records can be very useful. Look for substance abuse information in summaries at intake, transfer to a new provider, and discharge.
- ◇ Disability applications – Substance use is a routine part of most applications for disability.
- ◇ Department of Motor Vehicles
- ◇ Pharmacy abstracts – Pharmacies routinely provide lists of prescriptions filled for insurance or tax purposes.
- ◇ School – The children’s teachers sometimes observe interactions related to substance abuse.
- ◇ Non-professional collateral contacts – e.g. social contacts, work contacts, and family members.

Physical Testing for Drug Use

If the interviews with parents or collateral sources of information raise issues about ongoing substance abuse by either parent, then it is important to have a physical test done that can detect current substance abuse. As in other areas of investigation, it is necessary to use the same assessment methods with *both* parents, even when only one parent is suspected of currently abusing substances.

Urine Toxicology Test

This is the most common test used for substance use, and the one usually used in custody evaluations. The advantages of the test are accuracy, ease of administration, and ability to detect current use. The disadvantages concern various ways to circumvent the test.

- **Evading urine screens.** Drug users attempt to evade the urine test in three ways. First, they may drink large amounts of water or herbal teas to dilute their urine sample. Labs can usually detect a diluted sample, however, and reject it for analysis.

Another method of evasion is to add a chemical to the urine to mask the presence of any illicit drug. Labs can detect this technique, however, by taking a small amount of the urine sample and adding a known drug to it. If a masking agent is present, that portion of the urine sample will have a negative result despite the presence of the drug.

A third method of evasion is substitution: simply bringing another person's urine to the test, or using one of the synthetic urines on the market. Labs can look for this technique by making sure that the sample is at the proper temperature for urine, and by checking to make sure that the urine sample has blood particles that match the blood type of the person being tested. The labs can also test for synthetic substances. Secure labs avoid this technique by watching people void into the sample container.

There are many web sites that sell chemicals and recommend techniques to "beat" urine tests.³² This proliferation of materials and techniques for evasion makes it imperative for all professionals involved in child custody matters to use only forensically sophisticated and secure drug-testing laboratories. The best labs in any given jurisdiction can be easily located by contacting the department of social services, the probation department, or the appropriate office of the probate and family court.

- **Time frame for urine screens.** Urine specimens voided within 6 hours of drug use have the highest concentration of parent drug and metabolites. Within 48 hours, most of the drug dose has been excreted, so illicit drugs generally have detection times of 2–4 days in analysis of urine.³³ Box 87 shows the average detection times for various illicit drugs, or the amount of time that can elapse since the last use and still have the drug show in the urine test.³⁴

Hair Test

This test is sometimes used in custody disputes because it detects drug use for up to 90 days.

Hair grows at the rate of about $\frac{1}{2}$ inch per month, and $1\frac{1}{4}$ –2 inches of hair are usually used for the drug screen test, so testing locks of hair near the surface of the scalp allows for detection up to three months after a drug is used. If the person being tested is bald, has a shaved head, or severely cropped head hair, the test can be done using other body hair.

Analyzing hair may yield more sensitive results than analyzing urine because the parent drug is often present in greater abundance in the hair. There is relatively low potential for manipulation or evasion of the test. And hair analysis provides longer detection times than does a urine test.

There are three major disadvantages of hair analysis. First, it is still unclear how drugs enter hair. If they enter through sweat or from the environment, false positives could be created if the person's hair absorbed drugs from the environment or from another person's drug-laden sweat.

Second, the relationship between time of hair growth and dose of drug is not clear. Thus the hair test can only measure the presence or absence of a drug, not the amount of the drug used.

Box 87. Drug Detection Times for Urine Tests

SUBSTANCE	DETECTION TIME
DEPRESSANTS	
<ul style="list-style-type: none"> ● Alcohol Beer, wine, liquor Amytal, Nembutal, Seconal, Phenobarbital, Barbs ● Benzodiazepines Ativan, Halcyon, Librium, Roypnol, Valium, Roofies, Tranks, Xanax ● Barbiturates Amytal, Nembutal, Seconal, Phenobarbital, Barbs ● Methaqualone Quaalude, Ludes 	<p>6-12 hrs.</p> <p>up to 30 days</p> <p>2-4 days for short-acting, up to 30 days for long-acting</p> <p>2 weeks</p>
HALLUCINOGENS	
<ul style="list-style-type: none"> ● Marijuana (Cannabis) Pot, Acapulco Gold, Grass, Reefers, Sinsemilla, Thai Sticks, Blunt, Herb, Smoke, Weed ● LSD Acid, Microdot ● Amphetamine variants Methamphetamine (Desoxyn, Crank, Crystal, Glass, Ice, Speed), Ecstasy, MDMA ● Mescaline Buttons, Cactus, Peyote, Mesc ● Hashish Hash ● Phencyclidine PCP, Angel Dust, Hog, Boat ● Anabolic Steroids Testosterone, Stanazolol, Nandrolone 	<p>1-3 days: casual use up to 30 days: chronic use</p> <p>1-2 days</p> <p>2-4 days</p> <p>2-4 days</p> <p>2-77 days</p> <p>2-4 days: casual use up to 30 days: chronic use</p> <p>up to 3 weeks: oral up to 3 months: injected</p>

Box 87	
SUBSTANCE	DETECTION TIME
OPIATES AND MORPHINE DERIVATIVES	
<ul style="list-style-type: none"> ● Heroin Horse, Smack, Diacetylmorphine ● Morphine Roxanol, Duramorph ● Codeine Tylenol w/codeine, Robitussen A-C, Empirin w/codeine, Fiorinal w/codeine ● Methadone Amidone, Dolophine, Methadose ● Opium Laudanum, Paregoric, Dover's Powder 	<p>1-3 days</p> <p>1-3 days</p> <p>1-3 days</p> <p>2-4 days</p> <p>1-3 days</p>
STIMULANTS	
<ul style="list-style-type: none"> ● Amphetamine Biphetamine, Dexedrine, Black Beauties, White Crosses ● Cocaine Coke, Crack, Snow ● Methylphenidate Ritalin ● Nicotine Habitrol patch, Nicorette gum, Nicotrol spray, Prostep patch, Cigars, Cigarettes, Smokeless tobacco, Snuff, Spit tobacco 	<p>2-4 days</p> <p>1-3 days</p> <p>1-2 days</p> <p>4-10 days</p>

And finally, the slow growth of hair makes it impossible to detect recent drug use.³⁵

Saliva Test

Compared with testing urine for illicit drug use, testing saliva has the advantages of greater ease of collection and greater concentrations of the parent drug. The major disadvantage is the possibility of

contamination of the oral cavity when drugs are taken by mouth, smoked, or inhaled through the nose.³⁶

Saliva has relatively short detection times because most drugs disappear within 12–24 hours after administration. While this means that a saliva test cannot be used to detect historical drug use, it also means that it is useful in situations where recent drug use is important (e.g. automobile drivers and accident victims).³⁷ This test is primarily used for workplace and pre-employment testing.

Sweat Test – The Patch

This device is similar to a Band-Aid, and can be worn for a week to test for current use. If the wearer removes the patch, it voids the test. The advantages are ease of use, and the disadvantages are high variability among users and possibility of environmental contamination before application or during removal. This test is seldom used in custody disputes.³⁸

Blood Test

This test is highly intrusive and also expensive, so its use is usually confined to medical diagnosis.

Breath Test

This test can only detect the presence of alcohol within a few hours of use, so it is not useful in custody disputes.

Psychological Tests for Substance Abuse

There is no psychological test to screen for substance abuse. Caldwell (2005) has suggested that the MMPI-2 can be used to assess long-term disposition towards substance abuse.³⁹ There is no way to differentiate between a person in recovery and one who is currently abusing substances, however, and this difference is crucial in child custody cases.

There are a few inventories that ask about symptoms associated with substance abuse, or inquire directly about substance abuse. These instruments do not provide any more information than a good interview, however.⁴⁰

Current Use v. Recovery

The crucial dimensions of substance abuse are current use, and effects on the children. A parent's history of substance abuse is important in predicting future abstinence, and also as a warning sign to look for cognitive deficits and other long-term effects of substance abuse. [Schleuderer and Campagna \(2004\)](#), p. 381) also point out that since the major effects of substance abuse occur immediately after using the substance, an occasional user who uses while caring for children may be more dangerous to the children than an habitual user who is able to abstain when children are present.

TREATMENT AND RECOVERY PROGRAMS

It is important to consider the recovery process used by each person who has abused substances. In addition to participation in detox treatment, most addicts maintain their recovery through participation in a self-help program such as Alcoholics Anonymous (AA) or Narcotics Anonymous (NA).

Another possibility for recovering addicts is Self Management and Recovery Training ([SMART, 2006](#)). SMART is designed to assist with addictions to both a variety of substances (e.g. legal and illegal drugs, foods) and maladaptive behaviors (e.g. gambling addictions and sexual addictions). The programs are based on evolving scientific knowledge, especially cognitive-behavioral therapy, and are used in many in-patient treatment settings. There are facilitated face-to-face meetings and also on-line meetings. SMART emphasizes ways that individuals can regain control over their behavior, rather than encouraging the admission of lack of control over substances and turning oneself over to the control of a higher power, as in AA and NA. SMART is also supportive of partial abstinence, encourages members to use medication and psychotherapy services if needed, and is open to people participating in both 12-step programs and SMART.

PARENTING PLANS FOR SUBSTANCE-ABUSING PARENTS

It is crucial to determine whether each parent has a substance abuse problem, how severe the problem is, and how the parent's addictive behavior affects each child. It may be necessary to have the parenting time supervised, at least initially. Schleuderer and Campagna (2004) suggest using home telephonic breath analysis or video monitoring. Electronically-mediated parenting time may also be useful, as described in Chapter 10.

Notes

1. This description and quotation are from the DSM-IV-TR (APA-med, 2000, p. 199).
2. These statistics on the current prevalence of substance abuse are from the National Center on Addiction and Substance Abuse (NCASA, 2005), the DSM-IV-TR (APA-med, 2000), and Schleuderer & Campagna, 2004. Other people reviewing the research have found similar percentages of children living with a substance-abusing parent (e.g. McMahon & Giannini, 2003).
3. The information in Boxes 78 and 79 on the warning signs for substance abuse is from NCASA (2005, pp. 31–32) and American Academy of Child & Adolescent Psychiatry (AACAP, 2004b, 2006).
4. The information in Box 80 refers to the three stages of alcoholism in women (Einkelstein, Duncan, Derman, & Smeltz, 1990, p. 33). However, the DSM-IV-TR notes that “the clinical course of Alcohol Dependence in males and females is more similar than different” (APA-med, 2000, p. 220). Similar information about the signs of alcoholism can be obtained from National Council on Alcoholism and Drug Dependence, which publishes a 26-question self-test (National Council on Alcoholism and Drug Dependence, 1990).
5. This analysis of women's addictions is from Mayes and Truman, 2002, pp. 330–331.
6. Mayes and Truman (2002, p. 351) discuss these sampling issues.
7. The characteristics of substance-abusing parents listed in Box 81 are based on research summarized by Mayes and Truman, 2002.
8. Many research studies have found a positive relationship between the negative effect on the child and (a) duration of substance abuse, and (b) inter-parental conflict in substance-abusing families (e.g. DHS, 2006; Seilhammer, Jacob, & Dunn, 1993).
9. Mayes and Truman (2002) discuss the issues of social acceptability and legality, pointing out that whereas alcohol is legal, both heroin and cocaine create secondary stress by leading to repeated arrest and incarceration. They also argue that compared with heroin use, cocaine use is more hidden and more frequently associated with criminal activity, prostitution, and repeated incarceration, which in turn exposes the children to increased parental separation and foster placement.

10. The DSM-IV-TR notes that, "When taken repeatedly in high doses by the mother, a number of substances (e.g. cocaine, opioids, alcohol, and sedatives, hypnotics, and anxiolytics) are capable of causing physiological dependence in the fetus and a withdrawal syndrome in the newborn" (APA-med, 2000, p. 207).
11. This information on pre-natal exposure to alcohol, opiates, and cocaine is based on Beniet et al., 2003; NCASA, 2005; Kelley, 2002; and Mayes and Truman, 2002, except where noted otherwise.
12. Larroque and Kaminski (1998) found that in preschool children, if the mother drank 1.5 oz or more of alcohol per day during the pregnancy it caused deficits in psychomotor development, neurological functioning, physical growth, and facial features.
13. Korkman, Autti-Raemoe, Koivulehto, & Granstrom (1998) studied children aged 5–9 who had been exposed to alcohol during the first trimester of pregnancy and found no significant differences from non-exposed controls on measures of attention, receptive language, and cognitive processing.
14. The information about parenting behaviors of substance abusers in Box 82 is based on Barnard and McKeganev, 2004; Fals-Stewart et al., 2004; Mayes and Truman, 2002; McMahon and Giannini, 2003; Ondersma, 2002; and Roosa, Tein, Groppenbacher, Michaels, & Dumka, 1993.
15. The information in Box 83 on characteristics of children with substance-abusing parents is based on Barnard and McKeganev, 2004; Fals-Stewart et al., 2004; Mayes and Truman, 2002; and Williams and Corrigan, 1992.
16. The information in Box 84 on risk and protective factors is based on Barnard and McKeganev, 2004; Brook, Whiteman, Balka, & Coher, 2001; NCASA, 2005; Fals-Stewart et al., 2004; Godsall, Jurkovic, Emshoff, Anderson, & Stanwyck, 2004; Mayes and Truman, 2002; McMahon and Giannini, 2003; Roosa et al., 1993; Seilhamer et al., 1993; Urberg, Goldstein, and Toro, 2005; and Williams and Corrigan, 1992.
17. According to Cherpitel (2002) and Skinstad and Nathan (2003), the RAPS4-QF is more sensitive and gender-neutral than the best-known screening instrument, the CAGE (Ewing, 1984). The RAPS4-QF has added questions about amnesia (black-outs) and performance failure to the topics covered in the CAGE, which are: wanting to Cut down on drinking, others being Annoyed by the person's drinking, feeling Guilty about drinking, and using a morning Eye opener drink to steady the nerves.
18. Schleuderer and Campagna (2004) make this point and then propose a method for screening for all types of substance use/abuse in child custody evaluations.
19. This statement regarding the restrictions on information about substance abuse is adapted from Schleuderer and Campagna (2004, p. 376).
20. See Chapter 5, note 30 for discussion of the prohibition against using information from the child custody evaluation in a criminal proceeding.
21. The questions in Box 85 cover the topics included in both the RAPS4-QF and CAGE screening instruments. Questions #1–6 are from the RAPS4-QF (Cherpitel, 2002, p. 1688), and questions #7–8 are the first two of the four questions on the CAGE (Ewing, 1984, 2004). Questions #3 and #4 on the CAGE are similar to questions #1 and #4 on the RAPS4-QF, and I have used the RAPS4-QF format in my questions #1 and #4. Research has indicated that the CAGE questions are most effective if they are used as part of a general

- health history and should *not* be preceded by questions about how much or how frequently the patient drinks (Steinweg & Worth, 1993).
22. Using a nation-wide sample of 7612 interview respondents, Cherpitel (2002) found that the RAPS4-QF outperformed the CAGE at a cut point of one (one positive answer to questions #1–4 or positive answers to both questions #5 & #6).
 23. Schleuderer & Campagna suggest this order of inquiry, going from the most socially acceptable to the least socially acceptable illicit drugs. They also suggest the use of the incredulous phrase, “Not even marijuana?” and supply some of the specific information about the various drugs which is included in notes 24–30 (2004, pp. 378–379).
 24. Make a note of the parent’s method of administration for cocaine. Injections and freebasing indicate longer-term and heavier use, after the nose has become irritated from snorting the drug.
 25. Crack is a cheaper cocaine-derivative, and is often associated with violence.
 26. Amphetamines include abuse of diet pills and also of ADHD medications such as Adderall and Ritalin.
 27. Methamphetamines are chemically similar to Amphetamines and show up on toxicology screens as Amphetamines. Whereas plain amphetamines cause insomnia, irritability, and loss of appetite, however, methamphetamines are often associated with aggressive and violent behavior. Methamphetamines are known by various names, including Ice, Crystalm, and Crystal Meth. Methamphetamines are “club drugs” typically used by teenagers and young adults at bars, clubs, concerts, and parties (NIDA, 2006a; Schleuderer & Campagna, 2004).
 28. In recent years, hallucinogens have become more popular with adolescents; they include LSD, PCP, and psychedelic mushrooms.
 29. Ecstasy is a “club drug” often used by young adults at dance clubs and all-night dance parties known as “raves.” Other club drugs include LSD, methamphetamine, GHB, ketamine, and Rohypnol. For discussion of club drugs, see NIDA, 2006a; Schleuderer & Campagna, 2004; and Streetdrugs.org, 2005.
 30. Some over-the-counter remedies are abused because they contain significant amounts of alcohol.
 31. According to national government surveys, over 10% of students in the 8th–12th grades use inhalants, and many go on to abuse alcohol and illicit drugs (NSDUH, 2005; NIDA, 2006b). Inhalants are “liquids, sprays, and gases that people sniff or inhale to get high or to make them feel good” and include the following categories and per cent of 12–13 year olds using them: (1) 4.3% – glue, shoe polish, or toluene (a chemical in dyestuffs, gum, explosives, and lacquers); (2) 3.3% – gasoline or lighter fluid; (3) 2.9% – spray paints; (4) 2.1% – correction fluid, degreaser, or cleaning fluid; (5) 1.4% – lacquer thinner or other paint solvents; (6) 1.3% – other aerosol sprays; (7) 1.2% – Amyl Nitrite, “Poppers,” Locker-room odorizers, or “Rush”; (8) 1.1% – Lighter gases (Butane, Propane); (9) 0.3% – Nitrous Oxide or Whippets; and (10) 0.3% – Halothane, Ether, or Other Anesthetics (NSDUH, 2005, p. 1). Inhalants are either “sniffed” from an open container or “huffed” from a rag soaked in the substance. The short-term effects of inhalant intoxication are similar to those of alcohol inebriation: stimulation and loss of inhibition followed by depression. Abuse of inhalants is associated with cognitive impairment, attention deficits, hearing loss, diminished non-verbal intelligence,

- and occasionally death due to suffocation or heart failure (NIDA, 2006b; street-drugs.org, 2006).
32. Some examples of web sites for evading drug screening tests are: Anderson, 2005-2006; Drug Testing and Detox, 2005-2006; How-to-pass-a-drug-test, 2007; Ipassedmydrugtest, 2007; MB detox, 2003b, 2003c; and Ultimate Detox, 2003.
 33. Detection times for drugs of abuse vary by dose, frequency of use, cutoff concentration, and many other factors (Conde, 1997). Nevertheless, it is helpful to know what the average detection times are in order to plan how to evaluate drug abuse in parenting disputes.
 34. The drug detection times shown in Box 87 are based on a combination of sources: Conde, 1997; Drug Testing and Detox, 2005-2006; Ipassedmydrugtest, 2007; MB detox, 2003a; and Schleuderer and Campagna, 2004. Some of the detection times vary considerably in these sources. In cases where there is a discrepancy, I have used the results reported in Conde, 1997, because this monograph is published by the National Institute on Drug Abuse and summarizes the results from empirically-designed studies published in peer-reviewed journals.
 35. In discussing these advantages and disadvantages of hair analysis, Conde (1997) also points out that other advantages of the hair test include the ease of obtaining, storing, and shipping hair; the low risk of disease transmission in handling samples; and the possibility of obtaining a second specimen. Schleuderer and Campagna (2004) report that darker hair and skin are more sensitive to positive reactions than are lighter hair and skin, making the results of hair analysis somewhat unreliable.
 36. Some studies have also found that saliva testing is reliable for detecting methamphetamine and opiates, but not for marijuana, cocaine, and amphetamine (Walsh, Flegel, Crouch, Cangianelli, & Baudys, 2003).
 37. This information on the saliva test is based on Conde, 1997.
 38. This information on the sweat test is based on Conde, 1997; and Schleuderer & Campagna, 2004.
 39. See Chapter 11 for a discussion of the uses of the MMPI-2 in custody evaluations.
 40. Schleuderer and Campagna (2004, p. 380) describe three such tests. The Substance Abuse Subtle Screening Inventory (SASSI) uses self-report of symptoms associated with substance abuse (Miller, 1994) whereas the Michigan Alcohol Screening Test (MAST) (Selzer, 1971) asks directly about alcohol use. There is also an Alcohol Use Inventory (Horn, Wanberg, & Foster, 1987). Schleuderer's conclusion is that "these instruments add very little to a good interview."

23

DOMESTIC VIOLENCE

Domestic violence is a serious problem in the United States.¹ Research indicates that domestic violence occurs in 12 to 55% of all couples, depending on how domestic violence is defined and on whether studies include: (a) only married couples, or (b) dating, unmarried, and married couples combined. These high rates mean that 3.3 to 25 million children are exposed to domestic violence in their homes each year.²

In separating and divorcing couples the rates of intimate-partner abuse reach 40 to 50%,³ and in high-conflict custody disputes the rates of domestic violence are 72% to 80%. More than a third of referrals for child custody evaluations include allegations of domestic violence, and over half of these allegations are supported by the evaluation.⁴

The legal profession has responded by issuing screening devices for attorneys⁵ and bench guides about domestic violence for judges,⁶ while mental health professionals and social scientists have studied the problem extensively and developed special protocols for dealing with domestic violence.⁷

DEFINITION AND TYPES OF DOMESTIC VIOLENCE

Domestic violence refers to an adult directing physical and psychological aggression against another family member, usually their intimate partner. This is done as part of a deliberate campaign to dominate, humiliate, and control the other person.

Types of Abuse

In studying domestic violence, it is important to distinguish among physical, sexual, and psychological forms of abuse:⁸

- **Physical abuse:** using physical force to control an intimate partner by pushing, shoving, slapping, biting, punching, or choking them, throwing objects at them, or by assaulting them with a weapon.
- **Sexual abuse:** using words, actions, or threats to force another to engage in sexual activities against their will.
- **Psychological abuse:** using words or actions to isolate, demean, intimidate, or control an intimate partner. This category often includes property violence such as punching holes in walls, breaking down doors, throwing things, and damaging a partner's possessions. These behaviors are intimidating but do not involve the direct use of physical force against the partner.

Box 88 shows the typical rates of various types of domestic violence allegations in high-conflict custody disputes.⁹ The

Box 88. Types and Frequency of Domestic Violence Allegations

Type of abuse	Average rating of frequency*
◇ Emotional/verbal abuse	4.51
◇ Physical Aggression	3.91
◇ Coercion/threats	3.89
◇ Controlling finances	3.48
◇ Destruction of property	3.25
◇ Isolation	3.16
◇ Stalking	2.41
◇ Forced sex	2.38
◇ Kidnapping children	1.95

* Values rated on a Likert-type scale from 1 (*never*) to 5 (*almost always*).

allegations include almost constant: verbal abuse in 2/3 of the cases, physical aggression and coercion/threats in about 1/3, isolation in 1/15th, and controlling finances in 1/10th.

Severity of Abuse

It is important to distinguish among varying *levels of severity* within each type of abuse. In one population, for instance, 46% of adults reported experiencing a form of *physical aggression* from their partners (threatening or actually throwing or hitting an object; or pushing, slapping, grabbing, or shoving the partner), while only 14% reported some form of *physical violence* by their partners (trying to or actually hitting, biting, or kicking partner; threatening or injuring partner with knife/gun). These acts of physical *aggression* are quite different from these acts of physical violence, so combining them for a 60% rate of domestic *violence* would be misleading.¹⁰

Function or Intent of Violence

It is also important to examine the intent or function of violence in each couple. Whereas *violence* may be a single act, *abuse* is a pattern of recurring actions designed to demean, intimidate, and control the partner.¹¹ Violence that occurs without this intent or function is akin to “common couple aggression.” To underscore the distinction between violence and abuse, it is helpful to use the term *intimate terrorism* to refer to abuse.¹²

Domestic Violence v. Common Couple Aggression

Common Couple Aggression (CCA) is a pattern of relatively mild physical interactions such as pushing/shoving, grabbing, name-calling, threats to leave, throwing objects, slapping, and blocking egress. Unlike domestic violence, there are no serious physical assaults and seldom are there bodily injuries or imminent fear of physical harm. The CCA behaviors occur during arguments and are due to poor conflict resolution skills rather than to a concerted attempt to control or intimidate the partner.

Although either partner may initiate common couple aggression, a woman in a heterosexual relationship is more apt to perceive

herself as a victim and fear bodily injury because of the man's larger size, while the man is less apt to feel like a victim, fear bodily injury, or report the female's aggression to friends, family, or authorities. This leads to disproportionate reporting by female partners (in heterosexual relationships) that may not reflect the actual aggressive acts that occurred.¹³

It is extremely important to differentiate between domestic violence and common couple aggression in custody disputes. As discussed below, perpetrators of substantiated domestic violence cannot have custody in most jurisdictions. Whereas common couple aggression does have to be taken into account in determining the best interests of the child, it does not have specific legal implications for custody.

Stalking

In most areas of the United States, anti-stalking laws prohibit following or harassing someone repeatedly when the activity of the pursuer contains a credible threat of harm. Thus stalking is legally defined as containing three elements: (1) the act, (2) the threat, and (3) the intent. Some statutes classify stalking as a misdemeanor, some classify it as a felony, and others base the classification on prior incidents of stalking or violation of existing protection orders.¹⁴

The common perception of stalking is that of females being harassed by violent male ex-partners. Both men and women engage in stalking behaviors, however. Research suggests that women perceive these behaviors as more threatening when the perpetrator is male, and also that when men are the target of stalking they may be less likely than women to experience fear or intimidation, to label the behavior as stalking, or to turn to the criminal justice system for assistance. After reviewing the research on stalking, Dennison and Thomson (2005) suggest that two essential elements of stalking are (a) the intent to cause fear or harm and (b) the degree of persistence.

In two recent studies, Rosenfeld found that almost a quarter of convicted stalkers were female.¹⁵ The second study found that although 83% of the perpetrators were male and 68% of the victims were female, only 39% of stalking convictions fit the common expectation of an abusive man harassing his ex-girlfriend or ex-wife

through mail, telephone calls, and threats of violence. One quarter of the victims were acquaintances, co-workers, or attorneys, and half of the victims were strangers. The perpetrator's motives were evenly divided between revenge (40%) and romance (40%).

It is sobering to note that one third of the perpetrators in Rosenfeld's study were classified as violent, and 17% of these violent perpetrators engaged in life-threatening acts while stalking. Half of the stalkers also re-offended after their conviction, 80% of these within the first year.

Based on this research, Rosenfeld and Lewis (2005) have identified 9 risk factors for stalking behaviors:

- ◇ Age (under 30 years)
- ◇ Education (less than high school)
- ◇ Substance abuse disorder
- ◇ Criminal history
- ◇ Personality disorder
- ◇ Prior intimate relationship
- ◇ Threatened victim
- ◇ Revenge motivation
- ◇ Psychotic disorder

Unfortunately, a number of these risk factors are often found in high-conflict child custody disputes, suggesting that some form of stalking may occur frequently in these cases.

CAUSES OF DOMESTIC VIOLENCE

Gender Roles

Domestic violence is often seen as a gender issue, a way that men forcefully maintain male dominance (e.g. Bograd, 1988; Kurz, 1998). In heterosexual relationships, intimate violence is attributed to rigid gender roles because men who beat their wives or girlfriends often “engage in a coherent and disciplined rage to defend what they consider to be their rights,” which the men construe to be absolute authority over “their” women (Messerschmidt, 2004, p. 12). The “paradox of masculinity” means that “men as a group have power over women as a group; but, in their subjective experience of the world, men as individuals do not feel powerful” (Caprard, 2004, p. 192). Thus men who feel

powerless may attempt to shore up their fragile sense of masculinity by abusing their women partners.

Mental Illness

Others have suggested that domestic violence is due to mental illness, and proposed a variety of typologies of male batterers. The most widely accepted typology includes the following four types of male batterers, or perpetrators of intimate terrorism:¹⁶

- **Family only (31%)** – These men are largely free of psychopathology, commit the least severe partner violence, and restrict their violence to within the family.
- **Borderlinedysphoric (16%)** – These depressed and angry men commit more severe acts of partner violence and usually commit some generalized violence as well.
- **Low-level antisocial (20%)** – These men have antisocial tendencies and fall between the family-only and generally violent/antisocial batterers in their degree of violence and tendency to be violent in all settings.
- **Generally violent/antisocial (33%)** – These men have more antisocial features, often suffer from substance abuse, commit the most severe acts of partner violence, and are violent both inside and outside the family (having more extensive criminal records than the other three groups). This group is the most apt to continue being violent.

The fourth category, generally violent/antisocial, is the most dangerous and corresponds to the common image of a battering male spouse. Although research has varied in the number of distinguishable subgroups of batterers found, most studies have substantiated the existence of this fourth category.

Interaction of Individual Psychology and Gender Norms

A third approach has considered the psychology of the individual male batterer within the context of male dominance, the norms of masculinity, and homophobia (e.g. [Messerschmidt, 2004](#)). Although this approach integrates theory and data from several academic fields, it still assumes that domestic violence is something that men impose on women in heterosexual relationships. The existence

of same-sex battering belies this assumption, demonstrating that domestic violence is an abuse of power that can happen in any type of intimate relationship, regardless of gender or sexual orientation (Rohrbaugh, 2004b, 2006).

Typology of Battering

Rather than rely on any single theory about the causes of domestic violence, Johnston proposes viewing domestic violence “not as a unitary syndrome with a single underlying cause but rather as behavior arising from multiple sources that may follow different patterns in different families.”¹⁷ After completing two studies involving a total of 140 families with 175 children, Johnston developed five categories of domestic violence:

- **Ongoing or episodic male battering**

In these cases the origin of the violence was the man’s low tolerance for frustration, problems with impulse control, and angry, possessive, or jealous reactions to any perceived threat to his potency, masculinity and proprietary male rights. This category is most similar to the traditional idea of male battering, where the man shows little or no restraint and the woman does nothing to provoke the violence.

Because these men were extremely vulnerable to humiliation yet emotionally dependent on the women they abused, they usually escalated the violence at any threat of separation. The potential for violence remained high long after the actual separation, and some of the men remained obsessed with the women who had left them.

- **Female-initiated violence**

The women who initiated the violence in this category were motivated by their own internal tension, often due to fury in response to the male partner’s passivity or failure to provide for them in some way. Although the women were active, demanding, and emotionally intimidating, the men would eventually respond with physical violence, so the power relations remained essentially the same (i.e. male-dominant). The men were often passive and depressed, and felt ashamed about responding with aggression.

○ **Male-controlled interactive violence**

In these cases, although either partner might initiate the physical aggression, the man's response was to prevail by physically overpowering and dominating the woman. Since this type of physical aggression is a way of resolving interpersonal conflict, the violence is likely to stop once the partners are separated and can no longer provoke each other.

○ **Separation and post-divorce violence**

In these cases, violence occurred in response to the stress of separation, divorce, and litigation. The violence had not happened during the relationship, erupted only a few times during the separation and divorce, and then stopped. Both men and women initiated the violence and were later ashamed of their behavior.

○ **Psychotic and paranoid reactions**

Some of the perpetrators in the first two categories believed that their former partners intended to harm and exploit them. These paranoid distortions of reality occurred as part of a psychosis or were part of a drug-induced dementia. The separation triggered these reactions, which were extremely dangerous because they were very violent, unprovoked, and unpredictable. The victims resembled women with battered-woman syndrome: they were relatively powerless in the relationship and needed special encouragement to take steps to protect themselves and their children. The paranoid conspiracy theories often expanded to include anyone who attempted to help the victim, so that these helpers also needed to take protective measures.

CONTROVERSY REGARDING FEMALE-INITIATED VIOLENCE

Contrary to most of the early research and theorizing about domestic violence, many recent studies have found that both sexes admit to using violence against their intimate partners.¹⁸ The tendency to underestimate women's violence potential exists among all types of professionals and can be attributed to (a) pre-conceptions about gender differences that assume that males

are aggressive and females are passive, and (b) using biased samples from battered women's shelters and court-mandated male treatment groups for assaulters (Dutton, 2005a; Skeem et al., 2005).

The recent research on intimate partner violence indicates that male *and* female abusers have poor communication skills, low self-esteem, are emotionally vulnerable to feelings of rejection, and seek attention and control through violence. Intimate partner violence is also similar to intimate terrorism in being associated with high levels of stress and alcohol use (Babcock, Miller, & Siard, 2003; Frieze, 2005). Frieze (2005) concludes that whereas "intimate terrorism" is perpetrated by men against women, women are also aggressive towards their intimate partners and engage in stalking behaviors as much as men do. She suggests that men can be arranged on a continuum for degree of violence, with intimate terrorists being the most violent group.

DOMESTIC VIOLENCE IN DIFFERENT POPULATIONS

No group is immune to domestic violence. Not only does it occur in all populations, it starts during teen dating (Sousa, 1999), affects both same-sex and opposite-sex couples (Aulivola, 2004; Frieze, 2005; Rohrbaugh, 2004b, 2006), and is particularly destructive to immigrant women because they are afraid to seek help for fear of being deported (Goldman, 1999). Pregnancy is no protection, as 40% of partner abuse begins during pregnancy, with resulting elevations in the risks of injury and complications to the fetus (Jaffe, Lemon, & Poisson, 2003). Although some studies have reported that gender differences and levels of aggression decline with age (Frieze, 2005), other research has found that post-menopausal women are exposed to the same rates of abuse as younger women (Mouton et al., 2004).

EFFECTS OF INTIMATE PARTNER VIOLENCE ON ADULT VICTIMS¹⁹

Both women and men respond to intimate partner violence with increased anxiety, depression, and symptoms of Post Traumatic

Stress Disorder (PTSD).²⁰ These victims are also more likely to use alcohol and drugs. Young women without children who experience intimate partner abuse are more apt to leave the relationship, whereas those with children are more apt to become depressed.

There are some gender differences in the response to partner violence. Regardless of the level of violence, women are more concerned about partner violence than are men and show more negative emotional reactions.

The victim's response also depends on the type of violence. Psychological abuse usually precedes physical abuse, and is often more damaging than physical abuse in relationships where the violence is not severe.²¹

Surprisingly, low-level violence is not always associated with lowered relationship satisfaction, especially for men. Although many young girls leave a relationship after being abused by their partner, some high school students are not particularly upset by relationship violence. Those who are upset tend to fight back and to seek help by talking with the partner or a friend.

CHILDREN'S PERSPECTIVES ON DOMESTIC VIOLENCE

Child Coping Strategies

Mullender and her colleagues (2002) found that children report using a variety of strategies to cope with domestic violence in their homes. While the violence is going on they scream or cry, distract themselves by other activities, or pretend nothing is happening. They often seek comfort from their siblings, and may try to intervene to help the mother. Long-term strategies are more variable and complex, and involve looking to other people for support or developing emotional and cognitive behaviors to compensate for the violence. Examples of these coping strategies are included in Box 89.²²

Effects of Domestic Violence on Witnessing Children

Despite their attempts to cope with domestic violence, children who are witnesses often show various symptoms of trauma. Box 90

Box 89. Children's Coping Strategies for Witnessing Domestic Violence

Short-term strategies – for immediate situation

- **Behavior or frames of mind to deal with the actual incident**
 - *Express emotions:*
 - *Pretend nothing is happening:*
 - *Keep themselves busy*, especially with noisy activities that block out the sound of the attack.
- **Strategies to seek safety or summon help**
 - *Hide*
 - *Flee*
 - *Try to summon help* – call police, tell an adult (relative, friend, neighbor)
- **Mutual sibling support**
 - *Share emotions*
 - *Distract each other*
- **Interventions to protect mother**
 - *Physical intervention*
 - *Protective presence*
 - *Verbal intervention*

Long-term coping strategies

- **Outward-looking strategies**
 - *Talk to someone* – mother, siblings, grandparent
 - *Go to a safe haven* – house of friend or relative
 - *Go to private space* – away from home (garden, park, on street)
 - *Ask adults to intervene* – police, social workers, teachers
 - *Support mother and siblings* – emotionally, or try to remove them from danger
- **Inward-looking strategies**
 - *Cry*
 - *Stay awake to stop the violence*
 - *Be watchful*
 - *Don't talk*
 - *Hide the violence*
 - *Dissociate to pretend the violence is not happening*
 - *Act withdrawn or aggressive*
 - *Cling to mother*

Box 90. Effects of Domestic Violence on Children of Various Ages

BIRTH TO 3 YEARS

Emotional Functioning	Physical / Behavioral	Interpersonal / Relationships	School / Cognitive
Listless Sad	Increased heart rate Crying & distress Disruption in eating & sleeping routines Failure to thrive Developmental delays	Attachment problems Aggressive & violent	

PRESCHOOL, 3 to 5 YEARS

Anxious Negative mood Withdrawn, subdued	Clinging behavior Aggressive acts Lethargic Cruel to animals	Lashes out at playmates & siblings Diminished problem-solving	Cooperative play maintained
--	---	--	-----------------------------

Box 90

PRESCHOOL, 3 to 5 YEARS, continued

<i>Emotional Functioning</i>	<i>Physical / Behavioral</i>	<i>Interpersonal / Relationships</i>	<i>School / Cognitive</i>
Difficulty regulating negative emotions Increased symptoms of trauma & dissociation: hypervigilance, startle response, nightmares	Destroys property Developmental regressions Delayed speech Excessive impulsivity Difficulty self-soothing	Difficult to manage Attachment problems	

ELEMENTARY SCHOOL, 5 to 12 YEARS

Anxious Depressed Irritable Withdrawn Low self-esteem Feels has to be perfect	Aggressive Impulsive, over-active Attentional disorders Lethargic Somatic complaints (body aches, illness with no physical basis)	Bullying Aggressive with siblings, peers, and teachers Ostracized by peers Too sad, anxious, preoccupied to participate in social activities	Difficulty concentrating Poor language skills Less consolidation of memory Defiant with female teachers (especially boys)
--	--	---	---

Box 90

ELEMENTARY SCHOOL, 5 to 12 YEARS, continued

Emotional Functioning	Physical / Behavioral	Interpersonal / Relationships	School / Cognitive
PTSD symptoms: "spacey," fears, obsessive retelling of details, belief in foreshortened future, excessive emotional arousal, hyper-vigilance Suicidal ideation and gestures	Oppositional behavior Destroys property Regression in toilet habits Difficulty self-soothing Avoidant coping style	Heightened fear & worry about those in home Sees self as mother's protector	Poor academic achievement

ADOLESCENCE - MIDDLE AND HIGH SCHOOL, 12 to 18 YEARS

Anxious Depressed Suicide attempts ²⁶ Withdrawn PTSD symptoms – similar to adults Enraged by limit-setting	Aggressive Alcohol/drug use Somatic complaints (body aches, illness with no physical basis) Runs away from home ²⁷ Delinquent behavior ²⁹	Verbal & physical aggression Dating violence Poor social competence Hostile, wary & uneasy Frightened of emotional intimacy Sexual acting out ²⁸ Involved in antisocial peer group	Difficulty concentrating Disrespect for females Poor academic achievement Truancy (wants to stay home to protect victim) Distorted perception of reality
--	---	---	--

summarizes the kinds of effects that result from seeing the violence, and also from only hearing it.²³ The number and severity of a child's symptoms are directly related to the severity of the interparental conflict and the domestic violence.²⁴ There are some gender differences, in that boys tend to become aggressive and violent themselves, whereas girls tend to become passive, clinging, and withdrawn.²⁵ Not *all* children will show these symptoms or behaviors, but professionals working with families in which domestic violence occurs should be on the lookout for these responses in the children.²⁶

Once the witnessing children grow up, the effects continue. When compared with adults who were not exposed to domestic violence as children, these adult children of domestic violence show less positive social adjustment, increased rates of depression, and a continuing distrust of intimate relationships.

Overlap Between Domestic Violence and Child Abuse

Abusers often use threats against the children to control the behaviors of the children's mothers. The threats become a reality at least half the time: in over 50% of the homes where the mother is abused, the children are also physically abused. This finding is consistent with other research which indicates that 50–70% of male batterers abuse their children as well as their female partners.³¹ The overlap between domestic violence and child abuse suggests that the effects of witnessing domestic violence are compounded, or exacerbated, by being subjected to child abuse.

Risk and Protective Factors for Children Witnessing Domestic Violence

Despite the traumatic nature of the experience, many children who have been exposed to domestic violence are well adjusted (Jaffe et al., 2003). This is undoubtedly due to a combination of (a) the child's own coping strategies and (b) protective factors in the child's family situation. Research has found the risk and protective factors listed in Box 91.³²

Box 91. Risk and Protective Factors for Children's Reactions to Domestic Violence

RISK FACTORS	PROTECTIVE FACTORS
Child	
<ul style="list-style-type: none"> ▪ negative self-esteem ▪ tense and introverted ▪ failure in school, poor social adjustment ▪ lack of secure attachment to a non-abusive caretaker ▪ not attached to siblings 	<ul style="list-style-type: none"> ▪ positive self esteem ▪ easy-going and humorous ▪ success in academic, social, or recreational activities ▪ secure attachment to a non-abusive parent or other caretaker ▪ strong emotional bond with siblings
Family	
<ul style="list-style-type: none"> ▪ parental incompetence ▪ parental mental illness ▪ parental substance abuse ▪ family vulnerability – due to poverty, recent immigration, language and cultural barriers, visible minority status, parental disabilities 	<ul style="list-style-type: none"> ▪ parental competence ▪ parental mental health ▪ no parental substance abuse ▪ adequate financial resources, and lack of stigmatizing disadvantages
Community	
<ul style="list-style-type: none"> ▪ lack of community involvement ▪ lack of social support ▪ lack of access to basic resources – housing, economic support, legal assistance, counseling, employment, child care 	<ul style="list-style-type: none"> ▪ alternative role models – supportive relationships with adults who foster autonomy, communication skills, and sense of being listened to and taken seriously ▪ access to resources fostering safety and wellbeing – child protective services, social services, religious organizations, police

EFFECTS OF DOMESTIC VIOLENCE ON PARENTING AND FAMILY DYNAMICS

When compared with non-victimized mothers, victimized mothers report feeling less competent as parents. This effect is particularly strong for abused mothers who become depressed. There is no relationship between domestic violence and observed parenting behaviors, however. Thus domestic violence appears to effect the mothers' emotions and thoughts, rather than their parenting behaviors per se.³³

On the other hand, children of abused mothers tend to treat their mothers in a hostile and emotionally aggressive manner. This suggests that by middle childhood, children begin to identify with the aggressor and treat their mothers in ways that resemble the abusers' treatment of the children's mothers.³⁴

SCREENING FOR DOMESTIC VIOLENCE

Given the pervasive nature of domestic violence, it is essential to screen every case for domestic violence, regardless of whether or not any allegations of domestic violence have been made by the parents or other parties in that case. Screening can be done by asking a series of simple questions when a person first seeks legal or mental health services. Box 92 gives some examples of questions that can be used as part of the standard intake process.³⁵

ASSESSMENT METHODS FOR DOMESTIC VIOLENCE

Domestic violence cannot be assessed in isolation; it must be considered within the overall context of family functioning. Because it is an extremely serious and hotly contested issue, domestic violence must also be assessed using a variety of techniques in order to establish concurrent validity. The more agreement there is among diverse sources of information, the more confident one can be that the information and conclusions are accurate.

Box 92. Questions to Screen New Clients for Domestic Violence

1. Is there anything going on at home that frightens you?
2. Is your [husband, wife, intimate partner] verbally abusive to you? What kind of mean things do they say?
3. Have they kept you isolated from your family and friends?
4. Have they prevented you from having access to any of the family money?
5. Has your [husband, wife, intimate partner] ever pushed, shoved, slapped, hit, or hurt you in some way?
6. Have they ever threatened you?
7. Have they ever forced you to do something sexual that you did not want to do?
8. Have they prevented you from eating or sleeping, or endangered your health in some other way?
9. Have they ever hurt your pets, or destroyed any of your personal things?
10. Have they ever taken the children without permission or threatened to never let them see you again?
11. Have they ever harmed the children physically?
12. Have you ever done any of these things to your [husband, wife, intimate partner]?

One must find out what happened, and when. Do the accounts of the two parents agree on any basic points? How do the parental reports compare with those of the children, other relatives, friends, and neighbors? Do the police and professional providers have information, and if so how does it fit into the scenarios presented by the parents? When all of the information is assembled and compared, it can be used to address three key dimensions of the violence.

First, it is essential to differentiate among the various types and levels of domestic violence. In order to do this, the history and function of the violence must be assessed: Is one partner seeking to intimidate, dominate, and control the other partner, as in intimate terrorism? Or is the violence a spontaneous, basically mutual side-effect of poor conflict resolution skills (common couple aggression)? The frequency and severity of the violence must be assessed as part of this differentiation. Intimate terrorism and common couple aggression are at opposite ends of a continuum of domestic violence, and have very different implications for child custody.

Second, it is important to find out how the violence has affected the children. Were the children present during the violent episodes? What were their reactions? How has the violence affected the children's relationships with each of the parents, and with other relatives, friends, and professionals outside the family?

Third, the evaluator and court must try to predict whether the violence will continue after the couple separates and/or divorces.

Guidelines for Credibility

Austin (2000a) has proposed a six-factor test of credibility to assess the plausibility of domestic violence allegations when there is no legal substantiation of marital violence. When combined with the information in the present volume, Austin's model suggests the following factors:

1. **Objective verification** – medical and police records, including frequency and severity of documented abuse.
2. **Pattern of abuse complaints** – official and unofficial reports to others that predate the custody dispute.

3. **Corroboration by credible others** – neutral parties have more credibility, e.g. medical providers, religious leaders.
4. **Absence of disconfirming verbal reports by credible third parties** – older children, other close relatives who observed the abuse.
5. **Psychological profile and past history of abusive behavior by alleged perpetrator of domestic violence** – using risk factors for re-offending such as those in Box 97.
6. **Psychological status of alleged victim and child** – evidence of reactions in Box 89 in children; of anxiety, depression and PTSD in the adult victim; and of psychological functioning that may distort victim's perceptions.

Austin (2000a, pp. 471–472) provides the following illustrations of three levels of credibility:

- **High credibility:** Objective police reports over several years, confirming reports by neutral third parties, no disconfirming reports by credible third parties, aggressive profile of alleged perpetrator, and normal psychological profile of victim.
- **Low credibility:** No objective data in the form of police reports or medical records, report of abuse surfaced only after custody case started, no corroborating witnesses, disconfirming reports by credible third parties, non-aggressive profile of alleged perpetrator, alleged victim's psychological profile of paranoid disorder, and parental alienation of the children by the alleged victim.
- **Ambiguity on credibility issue:** One police report 10 years earlier without prosecution, corroborating reports only by biased third parties, report by neutral third party of reciprocal verbal abuse, non-aggressive but controlling personality style of alleged perpetrator, unremarkable personality profile of alleged victim, and plan by alleged victim to relocate out of state.

Factors to Consider in Assessment

In assessing allegations of domestic violence, it is important to pay attention to six types of information: (1) the history and personality dynamics of each adult involved (both perpetrator and victim), (2) the pattern of interactions and conflict resolution in the couple, (3) the level of physical dangerousness, (4) the level of economic and psychological coercion, (5) the personalities and behaviors of the children, and (6) the interactions between the family members and the extended family and community.

Characteristics of Perpetrators

Research has found the following characteristics to be risk factors for perpetrating physical aggression.³⁶

- | | |
|---|---|
| ◇ Impulsiveness | ◇ Poor treatment alliance and adherence |
| ◇ Negative emotions | Non-compliance with treatment and medication |
| Anger | Hostility to treatment providers |
| Depression | |
| ◇ Serious mental illness | |
| ◇ Antisocial (pro-criminal) Attitudes | |
| ◇ Substance abuse | ◇ History of physical aggression in a variety of contexts |
| ◇ Poor (or nonexistent) interpersonal relationships | |

Characteristics of Victims

Research has not focused on the personality characteristics of victims, but rather on typical responses to domestic violence. As indicated above, both women and men who are victims of intimate partner abuse experience intense fear, anxiety, depression, and symptoms of Post Traumatic Stress Syndrome. They may also attempt to dull their emotional pain by abusing alcohol and drugs.

Although some victims feel too frightened and ashamed to tell anyone about the abuse, many victims tell friends, relatives, or police and seek medical treatment, counseling, or safety through a restraining order or residence in a battered woman's shelter. Contemporaneous reporting and treatment are valuable sources of information in evaluations.

Conflict Resolution in Couple

Any domestic violence usually becomes evident in the process of investigating the couple's general approach to conflict resolution. It is helpful to begin exploring this issue during the first interview with each parent. Tell them that it is standard procedure to inquire about conflict resolution styles in families, and then ask questions that pinpoint behaviors often found in domestic violence. The questions

should begin as rather general and non-threatening, and then gradually focus on clearly abusive behaviors. These questions are printed on pages 13–20 of the *Parent Interview* in Section VII of the CD accompanying this volume, and cover the topics listed in Box 93 below.

Box 93. *Decision-Making and Conflict Resolution – Parent Interview*

- ◆ **Decision-making style**, as applied to:
 - **Family “chores”**
 - **Children’s issues** – discipline, consequences, corporal punishment
 - **Financial issues**

- ◆ **Conflict management**
 - **Arguments** – frequency; topics; initiator; language used; insults; triggers
 - **Aggressive acts** – throwing; breaking objects; punching walls; slamming doors; leaving other when driving together; waking other to “talk;” first, worst, and most recent incidents
 - **Violent acts** – instigator; use of weapon; effect on victim; occurrence in other relationships; use of alcohol and drugs; first, worst, and most recent incidents
 - **Physical injuries** – description
 - **Telling others** – family member; friend; counselor; minister/priest/rabbi; police; obtain release of information form
 - **Seeking professional help** – facility; outcome; obtain release of information form
 - **Harm to pets**
 - **Forced sex** – unwanted sexual acts; unwanted pornography; sex used as manipulation
 - **Either party fearful** – cause of fear; restraining orders
 - **Threats by either party** – separation/divorce; suicide (threat or attempt); take children
 - **Pattern to fights**
 - **Effect on children** – location during fights; asleep or awake; changes in children’s behavior

Level of Physical Dangerousness

The dangerous nature of the domestic violence is related to (a) the means of access used, (b) the degree of premeditation indicated, and (c) the potential for injury inherent in the act of abuse. Before the violent episode, did the perpetrator live with the victim, or did he/she stalk or break in to gain access to the victim? Did the incident involve a mild assault in the midst of a heated altercation, or did the perpetrator equip her/himself in advance with a weapon or leave multiple threatening messages over a period of hours or days? Box 94 suggests some specific acts that fall on a continuum of potential for injury.³⁷

Level of Psychological and Economic Coercion

Consider the number, frequency, and pervasiveness of psychologically or economically coercive acts. Does the pattern of

Box 94. *Potential for Injury in Domestic Violence – a continuum*

1. Credible threats of physical or sexual assault
2. Malicious destruction of partner's possessions
3. Malicious destruction of children's possessions
4. Threatened or actual harm to pets.
5. Pushing, shoving, or grabbing.
6. Slapping with open hand.
7. Striking with closed hand or fist.
8. Biting or kicking.
9. Blows to head, face, breasts, or genital area.
10. Attempted or actual choking or strangulation.
11. Use of objects to strike the victim.
12. Threats or coercion to force sexual contact.
13. Sadistic infliction of pain.
14. Credible threat or use of knife or firearm.
15. Credible threat or actual abduction of partner.
16. Credible threat or actual abduction of child.

psychological and economic abuse isolate the victim and make them unduly dependent on the perpetrator? If the patterns of coercion in Box 95 are present, investigate whether they are ancillary to acts of physical abuse.³⁸

Personalities and Behaviors of Children

It is important to thoroughly assess the children's personalities and functioning, including their relationships both within and outside

Box 95. *Psychological and Economic Coercion – a continuum*

1. Yells, threatens, swears.
2. Ridicules, criticizes, embarrasses, denigrates.
3. Blames alcohol or drug abuse (and all serious problems) on partner.
4. Isolates partner from family, friends, and employment by:
 - Forbidding contact by phone, mail, or internet
 - Forbidding employment
 - Punishing partner for contacts
 - Demanding constant knowledge of partner's whereabouts
 - Disabling automobile
5. Sabotages friendships and family by:
 - Being unpleasant so others withdraw
 - Threatening family and friends.
6. Withholds access to economic resources by:
 - Forbidding independent access to money
 - Detailed monitoring of money spent
 - Not permitting credit cards or checks.
7. Accuses partner of sexual infidelities.
8. Manipulates child(ren) against victim.
9. Persistent, repeated telephone calling, emailing, following
10. Refuses to leave victim's home or workplace.
11. Stalks
12. Threatens to kidnap child(ren)
13. Threatens to harm self if partner is non-compliant.
14. Threatens to rape or kill partner or child(ren).

the family. Be sure to attend to all of the dimensions included in Box 91 on the protective and risk factors for children's reactions to domestic violence.

The techniques for assessing children outlined in Chapter 13 should yield ample information about whether each child has witnessed domestic violence, and how that experience has affected them.

Family Involvement in Community

The child and parent assessment techniques described in Chapter 13 will provide information about the family's involvement in religious, cultural, educational, and athletic activities in their community.

Sources of Information

As noted above, in assessing allegations of domestic violence it is essential to use a number of overlapping sources of information. The less personal involvement a person has with the family being evaluated, the more neutral and hence credible that person is. The sources of information regarding domestic violence are the same as those for any comprehensive child custody evaluation, with special emphasis on collateral information that can verify personal accounts of abuse.

Parent Questionnaire

The *Parent Questionnaire* (reproduced in Section VI of the CD accompanying this volume) includes questions about a number of issues related to domestic violence: socioeconomic status, employment history, criminal history (including restraining orders), history of therapy and social support services, history of legal and child protective services, and involvement in the community.

Structured Interviews

As explained in Chapter 13, structured interviews provide a more complete, consistent, unbiased, and hence reliable source of information than do unstructured interviews. The *Parent Interview*

reproduced in Section VII of the CD includes a special section on conflict resolution, as described above.

Chapter 13 suggests that the assessment techniques for children should include a mixture of observation, interview, and play techniques. The techniques outlined in that chapter should yield information about the following topics that are relevant to issues of domestic violence.

- Description of family members, especially parents
- Extracurricular activities and religious observance
- Persons they confide in and feel closest to
- Parental discipline
- Alcohol and drug use at home
- Fighting between parents, violence in home
- Three wishes (fantasies about parental reunion, escape, etc)
- Feelings about custody arrangements
- Screening for good and bad touching
- Probe for coaching

Collateral information

Collateral information is crucial to assessing issues related to domestic violence because allegations of abuse must be corroborated by a neutral third party before they can be considered plausible.³⁹ Professionals who have observed or interacted with both parents are particularly useful, along with sources that have witnessed the domestic violence or can document the existence of physical injuries. Pay close attention to the time sequences involved. Did the victim or perpetrator make comments or a formal report to anyone immediately after the abuse occurred? If they sought medical help, how did they account for their injuries? Did the allegations of abuse surface only after the custody dispute began?⁴⁰

Many of the collateral sources of information can provide information about personal characteristics or behavior that frequently accompanies domestic violence. Is there a history of assault and battery, or other indications of problems with impulse control? Is there a history of substance abuse? Are the parents currently abusing drugs or alcohol? Does either parent suffer from major mental illness? Regardless of official diagnosis, is either parent taking medications designed to control paranoia or curb aggressive impulses?

The collateral sources of information can also provide information about the Risk and Protective Factors listed in Box 91. These factors include the child's temperament, success in school and extracurricular activities, and emotional attachments within and outside the family. Is the family particularly vulnerable to stress due to poverty, recent immigration, racial or cultural minority status, or parental disabilities? Do the family members have access to community resources?

Box 96 lists the major sources of collateral information that are important in assessing domestic violence. These sources are the same as those in Box 61 in Chapter 13, but Box 96 organizes them by topics and sources that are particularly important in assessing domestic violence issues.

VIOLENCE RISK ASSESSMENT

Once the existence of domestic violence has been established in a given case, what is the likelihood that the abuse will continue after separation and divorce? The answer to this question is essential for determining (a) whether the child should have contact with the abusive parent, and (b) how such contact should be arranged.

Characteristics of Perpetrators

Several devices have been developed to assess the risk of the perpetrator re-offending. The *Spousal Assault Risk Assessment Guide* (SARA) is a clinical checklist that ensures that pertinent information is considered and weighed by evaluators (Kropp, Hart, Webster, & Eaves, 1999, p. 1). The SARA consists of 20 items divided into four areas: criminal history of assault, psychosocial adjustment, spousal assault history, and severity of alleged/most recent offense. The scores are entered by the evaluating professional, then summed across all items and the resulting profile is rated as "high risk" or "moderate or low risk" as compared with norms based on 2,309 convicted male abusers.⁴³ The SARA User's Manual also provides a "Checklist of Information Sources"

Box 96. Sources of Collateral Information about Domestic Violence

Information about parents

- **Social Service agencies**
 - *Battered women's shelters*
 - *Child Protective Services – Reports and investigations of neglect; case plans*
 - *Child development agencies (e.g. Head Start, Early Intervention)*
 - *Visitation center*
 - *DV specialty units, e.g. Family Justice Center, Victim Rights Law Center*

- **Law Enforcement and Courts**
 - *Local and state police departments: incident reports, daily logs*
 - *CORI (Criminal Offender Record Information)*
 - *CARI (Court Activity Record Information)⁴¹*

- **Medical Treatment**
 - *Hospitals*
 - *Personal physician*
 - *Ancillary providers, e.g. dentist, acupuncturist, chiropractor*

- **Substance Abuse and Mental Health Treatment**
 - *Couples therapists*
 - *Individual counselors or therapists*
 - *Family therapists*
 - *Parent's contact with child therapists*
 - *Detoxification treatment facilities*
 - *Alcoholics Anonymous: signed log of attendance; letter from sponsor*

- **Education, Employment and Military History**
 - *Education – Highest level completed and where; disciplinary history; special needs*
 - *Employment – general evaluation; incidents of aggression; unexplained gaps*
 - *Military – rank and history of assignments; any disciplinary actions; type of discharge*
 - *Disability – Social Security Administration*

Box 96**Information about parents, continued**

- **Religion**
 - *Minister, rabbi, priest, or other officials who have had regular contact with the family*
- **Personal**
 - *Friends/relatives/neighbors*
 - *Personal correspondence: letters; emails; blogs; computer hard drive; journals or diaries; photographs and videos; telephone bills; voicemail messages; credit card bills*

Information about children

- **Medical Treatment**
 - *Pediatrician*
 - *Hospital – emergency room and inpatient treatment : intakes; treatment summaries; discharge plans; prescriptions and medication bottles; letters from medical providers; autopsy reports*
 - *Ancillary providers, e.g. dentist, acupuncturist, chiropractor*
- **Mental Health Treatment**
 - *Individual child counselor or therapist⁴²*
 - *Family therapists*
- **Education**
 - *School – official records; interview teachers, principal, and sometimes guidance counselor*
 - *Daycare – interview provider*
- **Friends/relatives/neighbors**
- **Religious leaders (e.g. minister, rabbi, priest)**

to assist with information-gathering. Preliminary studies indicate that the SARA has adequate reliability and validity (Kropp & Hart, 2000).

The Domestic Violence Screening Instrument (DVSI) is a 12-item checklist which researchers can complete by reviewing state and national data bases and prior court and probation records. The items are similar to the non-clinical portions of the SARA, and the correlation between the DVSI and the SARA is .539. Initial research indicates that the DVSI has significant predictive validity (Williams & Houghton, 2004).⁴⁴

The Domestic Violence Evaluation scale (DOVE) is a two-part, 19-item questionnaire designed to assess and manage the risk of domestic violence during and following participation in divorce mediation (Ellis & Stuckless, 2006). Female victims of domestic violence are asked to indicate how often their partner engaged in each type of behavior, both during the relationship and after separation. These scores are then summed and the total DOVE score is used to place the respondent in a risk category. The DOVE risk categories are then used to assign couples to a variety of Safety Plan Interventions during mediation.

The SARA, DVSI, and DOVE contain similar items, which can be combined into the risk factors for violent re-offending listed in Box 97.⁴⁵

The SARA, DVSI, and DOVE instruments have all been developed using samples of male perpetrators who have been convicted of domestic violence offenses. It is reasonable to assume that these perpetrators have engaged in the most severe acts of domestic violence, which I prefer to call intimate terrorism. In these high-risk groups, the rate of re-offending after separation is about 30%.⁴⁶ The rate of re-offending should be lower for less severe cases of domestic violence. The risk of future physical aggression is extremely low in common couple aggression, which typically ends when the partners are no longer in close proximity to each other.

Restraining Orders

Regardless of the characteristics and intent of the perpetrator, there are ways to increase the safety of the victim and children.

**Box 97. Risk Factors for Domestic Violence
Re-offending – Characteristics of
Perpetrators**

Criminal History (non-DV)

- **Prior non-DV convictions**
- **Prior assault, harassment, menacing**
(of non-family members)

History of Domestic Violence and Abuse

- **Severe domestic violence, including:**
 - *Assaulted physically*
 - *Object used as weapon*
 - *Caused serious physical injury*
 - *Sexually assaulted*
 - *Partner called police because of violence*
 - *Partner left home because of violence*
- **Conditions of DV incident**
 - *Children were present during DV incident*
 - *Victim had restraining order at time of offense*
 - *Perpetrator was under community supervision at time of offense*
- **Previous history of domestic violence**
 - *History of DV-related restraining orders*
 - *History of violating DV restraining orders*
 - *Prior DV treatment*
 - *Denial or minimization of spousal assault history*
 - *Attitudes that condone spousal assault*
- **Psychological abuse of family members**

Box 97**Psychosocial Adjustment**

- **Relationship problems**
 - *Hard to get along with*
 - *Communication deficits*
 - *Angry, blames partner*
 - *Sexual jealousy*
 - *Used violence/abuse to control partner*
- **Emotional dependency**
 - *Threatened to harm/kill self if partner left*
 - *Threatened to harm/kill partner if partner left*

Mental Health and Substance Abuse

- **Mental illness**
 - *Taking medication*
 - *Recent thoughts or intent of killing self or others*
 - *Recent psychotic and/or manic symptoms*
 - *Personality disorder with anger, impulsivity, or behavioral instability*
- **Current or prior alcohol abuse**
- **Current or prior drug use**

Current Situation

- **Unemployed**
- **Recent separation from victim** (within 6 months)
- **Recent escalation in frequency or severity of assault**

The primary method is for the victim to apply for a protection order, which significantly decreases the chance of further violence occurring.⁴⁷

EFFECTS OF DOMESTIC VIOLENCE ON CUSTODY AND PARENTING PLANS

Removing Children from Homes with Domestic Violence

Given that half of wife-abusers also abuse their children, perpetrators of domestic violence are clearly dangerous caregivers. In fact, at least half of the states have legislation specifying that a perpetrator of domestic violence cannot have custody and requiring that the courts consider the issue of domestic violence in determining the best interests of the children, whether through out-of-court settlement or judicial decision.⁴⁸

Failure to protect one's children from domestic violence has long been viewed as an indicator of neglect and/or impaired parental fitness. Many children have been removed from their mother's care simply because the mother has failed to leave an abusive relationship, or has repeatedly been involved with abusive partners. In June, 2000, a group of battered mothers in New York City challenged this practice, resulting in a federal class action suit entitled *Nicholson v. Williams*.⁴⁹

This issue remains controversial, with some writers asserting that the victimized mother should retain custody because (a) the abuser should be punished, not the victim or the children, (b) removing the children from their most positive attachment figure is detrimental to the children, and (c) foster care does not necessarily provide stability and nurturing guidance (e.g. Mullender et al., 2002; H. A. White, 2003). Others, however, assert that further safeguards must be in place before the children are permitted to remain with the mother (e.g. Nowling, 2003).

Precautions for Parenting Time with Abusers

In cases where domestic violence has been substantiated, it is essential to assess whether contact with the abuser would be beneficial for the child. McGill, Deutsch and Zibbell (1999, p. 328) suggest using the following "filter questions" to determine whether and how much access the abuser should have to the child.

1. What is the level of conflict?
2. Was the child a witness?
3. Was the child a victim?
4. What is the parenting capacity of the adults?
5. Is the child currently “caught” in the conflict?
6. What is the current level of the child’s coping skills?

The more recent the abusive incident, the higher the level of interparental conflict, and the more the conflict has involved the children, the more restrictive the abuser’s access should be.

Before contact can be initiated between the abuser and the child, it is necessary to implement a number of safeguards. Chapter 9 discusses the arrangements that are appropriate for various levels of risk, including (a) no-contact exchange, (b) supervision of exchange only, and (c) supervision of parenting time.

NEED FOR REFERRAL AND EXPERT CONSULTATION

Given the complexity of intimate partner abuse, it is preferable for trauma specialists with a forensic background to do custody evaluations that involve these issues. These mental health professionals have the clinical training and experience to evaluate the psychosocial functioning of the parents and children in these troubled families. Unfortunately, there are not enough trauma specialists to do evaluations in the 1/3 of cases that involve domestic violence allegations.

Another approach is for the child custody evaluator to consult with a trauma specialist when issues of domestic violence arise. Many of the organizations in the Resource List at the end of this volume maintain referral lists containing these and other specialists.

Every professional involved with separating and divorcing families should familiarize themselves with the recent research on domestic violence, as well as the laws in their jurisdiction. The probate and family courts in many jurisdictions have responded to this need by arranging workshops on domestic violence. In some jurisdictions, evaluators are required to obtain a certain number of training hours on domestic violence in order to receive court appointments.

Notes

1. Domestic violence is also a serious problem in many other parts of the world, but discussion of these issues is beyond the scope of the present volume.
2. These statistics regarding domestic violence have been reported by a variety of sources (e.g. [A Safe Place, 2003a](#); [Austin, 2000a, 2001](#); [Dalton, 1999](#); [Johnston, 1999](#); [Johnston & Campbell, 1993](#); [Levendosky, Huth-Bocks, Shapiro, & Semel, 2003](#); [Newmark, Harrell, & Salem, 1994](#); [Nowling, 2003](#)). It is difficult to ascertain the exact rates for domestic violence because the victims are very reluctant to come forward, justifiably fearing both retribution by the abuser and misunderstanding and stigmatization by medical, social service, and law enforcement institutions.
3. [Neilson \(2004\)](#) reports that in Canada 40 to 50% of separating and divorcing couples report abuse in the relationships they leave. See the rest of this chapter for the distinction between mutual partner violence (which Neilson refers to as abuse) and domestic violence.
4. These estimates of overall rates of domestic violence in high- conflict custody disputes are based on [Johnston and Roseby, 1997](#). [Bow and Boxer \(2003\)](#) found similar rates of allegations and substantiated allegations in referrals and completed child custody evaluations.
5. A screening device for attorneys ([ABA, 2005](#)) is discussed in the section below on Screening for Domestic Violence.
6. For example, a clear summary of the pertinent issues in domestic violence is contained in the bench guide prepared by the State Justice Institute of the [National Council of Juvenile and Family Court Judges \(Dalton, Drozd, & Wong, 2004\)](#).
7. This chapter summarizes the essential mental health protocols for assessing and treating domestic violence, as well as the major social science research on which they are based.
8. These descriptions of types of abuse are from [Rohrbaugh, 2006](#), p. 291, and are based on definitions developed by [Burke and Follingstad \(1999\)](#). Many researchers have failed to make a distinction among types of abuse, while others have done so and found that psychological aggression and physical aggression often go together. For instance, in a three-year, longitudinal study of 82 newlywed couples, [Frye and Karney \(2006\)](#) recently found that most of the spouses engaged in physical aggression when they were engaging in psychological aggression. For a detailed discussion of psychological abuse, see [O'Leary, 2001](#).
9. The rates for various types of domestic violence allegations discussed in the text and displayed in Box 88 are based on [Bow and Boxer's](#) analysis of referrals for custody evaluations received by a national sample of 115 custody evaluators (2003, p. 1401).
10. These self-reports of physical aggression and physical violence by partners were obtained by [Miller, Greene, Causby, White, & Lockhart \(2001\)](#) when they administered questionnaires to 284 lesbians at a large regional women's music festival. The rates are consistent with the rates [Bow and Boxer \(2003, p. 1401\)](#) obtained from their national sample of child custody evaluators, in which 37% of the referrals included allegations of domestic violence. Among those cases alleging physical aggression in [Bow and Boxer's](#) study, 51% were rated as mild (e.g. threw something, pushed, grabbed), 33% as moderate (e.g. slapped, bit, or kicked), and 16% as severe (e.g. hit with fist, choked, or threatened with a weapon).

11. Neilsen (2004, pp. 418, 426) proposes these definitions of violence and abuse in her discussion of the rate of domestic violence in all separating and divorcing couples in Canada. Hart (1986) made a similar point by differentiating between individual acts of physical violence and battering. Hart defined battering as “that pattern of violent and coercive behaviors whereby a lesbian seeks to control the thoughts, beliefs or conduct of her intimate partner or to punish the intimate for resisting the perpetrator’s control over her. Individual acts of physical violence, by this definition, do not constitute battering” (p. 173).
12. M. P. Johnson (2005a) discusses the definitions of domestic violence, distinguishing among three types: “(a) violence enacted in the service of taking general control over one’s partner (intimate terrorism); (b) violence utilized in response to intimate terrorism (violent resistance); and (c) violence that is not embedded in a general pattern of power and control, but is a function of the escalation of a specific conflict or series of conflicts (situational couple violence)” (2005a, p. 45).
13. Their perception of greater threat may also cause women to escalate from psychological aggression to physical aggression faster than do men. In studying a community sample of 453 couples who had lived together for at least a year and were parenting a 3–7 year old child, O’Leary and Smith (2006) found that the women were more apt than the men to respond to psychological aggression with mild physical aggression.

M. P. Johnson called mutual mild acts of physical aggression “common couple violence” to reflect the belief that they occur more often than wife battering (M. P. Johnson, 1995; M. P. Johnson & Ferrard, 2000). M. P. Johnson and Leone (2005) have renamed the behaviors “situational couple violence” to emphasize the lack of desire to control the partner. I prefer the term “common couple aggression” used by Zibbel (2005) because it reflects the frequent, mutual, and mild nature of the violence. For a discussion of the research and implications of common couple aggression, see Frieze (2005) and Zibbel (2005).

14. Dennison and Thomsen (2005, p. 387) define these three elements of stalking, and also point out that if stalking laws are widened too far, they will include courtship behaviors that both male and female college students engage in when rejected by someone they love.
15. In the first study, Rosenfeld (2003) examined the records of all defendants referred to the Forensic Psychiatry Clinic of Bellevue Hospital between 1/1/1991 and 12/31/1997 whose records reflected stalking or obsessional harassment, and found 147 men (78%) and 42 women (22%). In a second study, Rosenfeld and Lewis (2005) examined the records of 204 individuals who were evaluated for crimes related to stalking or obsessional harassment at the New York City Forensic Psychiatry Clinic between 1/1/1994 and 12/31/1998, and found 170 men (83%) and 34 women (17%).
16. The *family-only*, *dysphoric/angry*, and *generally violent/antisocial* categories were first proposed by Holtzworth-Munroe and Stuart (1994). The fourth category, *low-level antisocial*, was added later (Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000). Although some research reviews have reported that the characteristics of men who batter are quite heterogeneous (e.g., Poorman & Seelau, 2001), this four-part typology has been supported by a number of empirical studies (e.g., Holtzworth-Munroe et al., 2000, 2003; Huss & Langhinrichsen-Rohling, 2006).

17. This quotation is from [Johnston and Campbell, 1993](#), p. 191. In the discussion that follows, the typology of battering is from the same source.
18. The recent studies showing female-initiated partner violence have been reviewed by [Dutton, 2005a, 2005b](#); [Frieze, 2005](#); M. P. [Johnson, 2005a, 2005b](#); and [Skeem et al., 2005](#).
19. There are many studies of the effects of partner violence. For a thoughtful, comprehensive summary, see [Frieze, 2005](#).
20. See the section on PTSD in Chapter 21 for a summary of PTSD symptoms.
21. Frieze (2005) summarizes research which indicates that the impact of psychological abuse is the same or worse than the impact of physical abuse. These results agree with those of a recent study in which Taft et al. (2006) compared the effects of psychological and physical aggression in 145 couples from a community sample, and found that psychological aggression was associated with greater psychological distress, anxiety, and physical health symptoms.
22. In their report of children's coping strategies, Mullender and her English colleagues combined previous research with their own study of 1395 children aged 8 to 16, of whom 52 had lived with violence against their mothers. The information about the various coping mechanisms, which is included in both the text and Box 89, is taken from [Mullender et al., 2002](#), pp. 124–130.
23. The information in the text and in Box 90 on the Effects of Domestic Violence on Children of Different Ages is based on [A Safe Place, 2003a, 2003b, 2003c, 2003d](#); [Drozd, Kuehne, and Walker, 2004](#); [Graham-Bermann, 2002](#); [Jaffe et al., 2003](#); [Levendosky and Graham-Bermann, 2000](#); [Levendosky et al., 2003](#); [Rossman, 2001](#); and [Widom, 2001](#).
24. A number of writers make this point, including [Ayoub et al., 1999](#) and [Zibbell, 2005](#).
25. [Nowling \(2003\)](#) summarizes the gender differences found in earlier research on children's responses to witnessing domestic violence.
26. As [Widom \(2001\)](#) points out, the research on the effects of witnessing domestic violence has had variable results, partly because of methodological difficulties including (a) differentiating between the effects of witnessing verbal abuse and witnessing physical abuse between the parents, and (b) differentiating between the effects of physical child abuse and the effects of witnessing domestic violence between the parents.
27. When compared with boys from non-violent homes, boys from homes with domestic violence are 6 times as likely to commit suicide ([A Safe Place, 2003d](#)).
28. 80% of teen runaways come from homes where domestic violence occurs ([A Safe Place, 2003a, 2003d](#)).
29. Girls from homes with domestic violence are 6.5 times more likely to be sexually assaulted, and more likely to become pregnant as teenagers ([A Safe Place, 2003a](#)).
30. Boys from homes with domestic violence are many times more likely to engage in violence themselves than are boys from non-violent homes, including abuse in a dating relationship (4X), rape as a adult (25X), and domestic violence against an adult partner or their own children (1000X) ([A Safe Place, 2003d](#)).
31. These statistics about the overlap between domestic violence and physical child abuse are from a variety of sources, e.g. [A Safe Place, 2003d, 2003c](#); [Edleson, 2001](#); and [Williams, Boggess, and Carter, 2001](#).

32. The risk and protective factors listed in Box 91 are based on research reported in [Hughes, Graham-Bermann, and Gruber, 2001](#); [Jaffe et al., 2003](#); and [Mullender et al., 2002](#).
33. Some recent research has reported that domestic violence is *positively* related to parenting effectiveness. However, closer inspection shows that these studies rely on mothers' own ratings of parental effectiveness and child attachment. When the actual parenting behaviors of victimized mothers are observed, there is no relationship between domestic violence and observed parenting behaviors. Thus the victimized mothers may be engaging in defensive reporting ([Levendovsky et al., 2003](#)).
34. Aggressive and hostile behavior of children towards their abused mothers is supported by several studies (discussed in [Levendovsky & Graham-Bermann, 2000](#); [Levendovsky et al., 2003](#)).
35. A shorter version of the list of screening questions in Box 92 is recommended by the American Bar Association ([ABA, 2005](#), p. 1). The Gay, Lesbian, Bisexual and Transgender Domestic Violence Coalition (2003, pp. 3–4) has developed a domestic violence screening tool that contains similar questions, but also includes more detailed questions appropriate for an evaluation interview.
36. These characteristics of perpetrators of domestic violence have already been discussed in the previous sections and are similar to the factors discussed by Douglas and Skeem, 2005, p. 349.
37. These issues of access, premeditation, and the continuum of potential for physical injury in Box 94 are all based on Mass. Trial Court, 1994, p. 1.
38. This discussion of psychological and economic coercion, and the continuum of coercion in Box 95, are based on Mass. Trial Court, 1994, p. 2.
39. [Austin \(2000a\)](#) makes this point as part of his 6-factor test of credibility in cases involving allegations of domestic violence.
40. Although some parents do use allegations of domestic violence as a weapon in their custody dispute, others do not report the abuse until they have separated because the abuser has threatened to kill the victim, the children, or him/herself if the victim tells or attempts to leave. Unfortunately, friends are often the first to be told, yet cannot be considered unbiased witnesses or informants. Look for contemporaneous reports to therapists, medical providers, police, or other neutral professionals that can corroborate the reports to friends and family members.
41. Whereas the CORI (Criminal Offender Record Information) contains criminal convictions, the CARI (Court Activity Record Information) contains all court activity regardless of outcome. Thus the CARI is more complete than the CORI. An unofficial (and inadmissible) copy of the CORI can be obtained via the internet. An official (and admissible copy) of the CORI can be obtained through the state office of criminal records; the parent's attorney can do this, or the parent can obtain a certified copy and give it to the custody evaluator. CARI records can be obtained directly from the Probation Office via a court order from the Probate and Family Court. A motion requesting such a court order is included in Section XI of the CD accompanying this volume. Unless the language of the court order specifies that the evaluator may obtain a copy of the CARI, most probation departments will only permit the evaluator to view the CARI, without making a photocopy.
42. As discussed in Chapter 5, before obtaining child/therapist records or conducting interviews with child therapists, an evaluator must have a court order directing

that the child/therapist privilege be waived. This requirement also applies to school guidance counselors if they are licensed mental health providers.

43. In the SARA, each item is rated as absent (0), sub-threshold (1), or present (2), and is also marked if it is judged to be critical. The numerical scores are summed across all items, and these total scores are then compared with a normative sample of 2,309 adult male offenders. Of the offenders, 1,671 men were on probation for offenses related to spousal assault, and 638 men were incarcerated for offenses such as robbery but also had known histories of spousal assault.

The authors of the SARA note that, "The SARA is not a test or scale in the usual sense of these terms . . . ; its purpose is not to provide an absolute or relative measure of risk using cutoff scores or norms. A psychological test of this sort would no doubt be very useful, but the use of such tests is typically restricted under state or provincial law to registered or licensed professionals with graduate-level training in assessment and psychometric theory. The SARA is intended to be accessible – and therefore useful— to the full range of individuals engaged in or affected by spousal assault risk assessments" (Kropp et al., 1999, p. 1). Despite this disclaimer, the SARA User's Manual presents psychometric data (Kropp et al., 1999), and preliminary studies have established adequate reliability and validity for the SARA (e.g., Kropp & Harl, 2000).

44. Williams and Houghton (2004) used the DVSI with 1,465 convicted male domestic violence offenders and successfully predicted re-offending over an 18-month follow-up period.
45. Box 97 includes the risk factors found in the research used to develop and validate the SARA (Kropp & Harl, 2000), the DVSI (Williams & Houghton, 2004) and the DOVE (Ellis & Stuckless, 2006).
46. In the sample of 1,465 domestic violence offenders they used to validate the DVSI, Williams and Houghton (2004) found that during the 18-month follow-up period there was a 29% rate of re-offending for restraining order violations and partner violence combined, compared with a re-offending prevalence of 53% for all types of offenses.
47. When abused women apply for a 2-year protection order, they report significantly lower levels of violence during the subsequent 18 months, regardless of whether the order is actually granted (McFarlane et al., 2004).
48. Levin and Mills (2003) have compiled a survey of state laws regarding child custody and domestic violence. Most state statutes and the American Law Institute define domestic violence as "the infliction of physical injury, or the reasonable fear thereof" (ALI, 2002, §207.7, p. 109), without specifically including emotional or psychological abuse.

In spite of these statutes regarding domestic violence in child custody cases, the courts need to be vigilant regarding perpetrators of domestic violence seeking custody of their children. Neilson (2004, p. 414) summarizes research indicating that fathers who abuse their partners are more apt to seek custody than are other fathers, and that these abusive fathers obtain court-ordered or court-endorsed custody of children at least half of the time.

49. In *Re Nicholson*, 181 F. Supp. 2d 182(2002). This decision was later modified and supplemented, then upheld on appeal and remanded to the lower court. For a discussion of the specifics of the case see Nowling, 2003; White, 2003.

24

CHILD ABUSE AND NEGLECT

RATES AND TYPES OF CHILD ABUSE

Rates

Over one million children are victims of physical abuse or neglect every year, and another 1–3 million witness domestic violence between their adult caregivers. According to the latest nationwide government figures, reports of suspected abuse are made to social service agencies on more than 2.8 million children annually. The prevalence of child abuse has been even higher in studies where community professionals were interviewed, or random samples of young adults were asked about their experiences of abuse.¹

Recent research has focused on child abuse in divorcing families, rather than in the population as a whole. In one study of families referred for child custody counseling or evaluations, for instance, there were allegations of abuse made against one parent in at least half of the families, and half of the allegations were substantiated regardless of the gender of the parent involved. The overall rate of substantiation for all types of child abuse (34%) was the same as for previous studies of the general population, contradicting the idea that parents are more likely to make unfounded allegations of abuse during custody disputes (Johnston et al., 2005).²

On the other hand, during custody disputes mothers do make more allegations of abuse against fathers than fathers do against mothers. There are no overall gender differences in the rates of substantiation,

however, which means that mothers are no more apt to make false allegations than are fathers (Brown, 2003; Johnston et al., 2005).

Earlier research has indicated that approximately 80% of families reach agreement about child custody on their own, while another 11% settle their disputes with professional help such as mediation. It is among the remaining 9% that the most marital conflict and also child abuse occur (Maccoby & Mnookin, 1992).³ Thus the recent research on abuse allegations among high-conflict divorcing families is looking at the rates of allegations and substantiation in families comparable to Maccoby & Mnookin's high-conflict 9%.

Types of Child Abuse

Although children often experience multiple forms of abuse simultaneously, research has identified four distinct types: *physical abuse*, *sexual abuse*, *psychological abuse*, and *neglect*. The national rates for the four types of abuse are listed in Box 98.⁴

Box 98. Types and National Rates of Child Abuse and Neglect		
Type	Number of children	Rate per 1,000 children
ABUSE		
• Physical Abuse	614,100	9.1
• Sexual Abuse	300,200	4.5
• Emotional Abuse	532,200	7.9
TOTAL ABUSE	1,221,800	18.2
NEGLECT		
• Physical Neglect	1,335,100	19.9
• Emotional Neglect	584,100	8.7
• Educational Neglect	397,300	5.9
TOTAL NEGLECT	1,961,300	29.2

PHYSICAL ABUSE AND NEGLECT

Definition and Rate of Neglect

Neglect is the most common form of child maltreatment, comprising 59% of all child victims (Roditti, 2005). It is usually defined as a willful failure to provide the child with the basic physical necessities of life (e.g. food, clothing, shelter, and medical attention), access to education, or essential emotional support (AACAP, 1997). Although national statistics differentiate among physical, emotional, and educational neglect (as shown in Box 98), many studies treat neglect as one-dimensional and examine it together with physical abuse. For example, the research-derived risk factors shown in Box 99 are the same for both physical abuse and neglect.

Separating neglect from abuse has led to the startling realization that neglect is the most lethal form of child maltreatment. More children die from neglect than from abuse, with 35.6% of all child fatalities related to neglect versus 26.3% of all child fatalities resulting from abuse.⁵ This means that 2/3 of all child fatalities are due to maltreatment rather than to illness or accidents.

Definition and Rate of Physical Abuse

The specific definitions used to identify cases of physical abuse vary, but they usually involve two criteria: *harm* and *endangerment*, as in the following description.

Physical abuse [is] present when a child younger than 18 years of age has experienced an *injury* or *risk of injury* as a result of having been hit with a hand or other object or having been kicked, shaken, thrown, burned, stabbed, or choked by a parent or parent-surrogate.⁶

As Box 98 shows, when physical abuse is examined alone it affects about 1% of all children. Physical abuse usually occurs in combination with the various forms of neglect, however, and these combined rates are 21.3 cases per 1000 children, or approximately 2% of all children.

Gender Differences in Physical Abuse and Neglect

There are no dramatic gender differences in rates of suffering physical abuse or neglect (Brown, 2003; Kuehnle, Coulter, &

Box 99. Risk Factors for Physical Abuse and Neglect of Children

Parent Characteristics

- History of abuse as child¹²
- Impaired intellectual functioning¹⁴
- Age 18-30 years¹⁵
- Substance Abuse¹⁶
- Mental illness (especially depression)¹⁷
- Antisocial personality characteristics¹⁸
 - irresponsibility, limited capacity for empathy, lack of concern for welfare of others, hostile and critical behavior, chronic irritability, hyper-reactive to parent/child interactions
- Chronic or acute illness, or psychosomatic symptoms
- Single parent¹³
- Less than high school education
- Social skill deficiencies – poor anger management & financial control, emotionally over-reactive
- Belief in corporal punishment
- Unplanned or unwanted pregnancy
- Closely spaced children
- Known to child protective services
- Not biologically related to child

Family Functioning

- Inconsistent and aversive child-rearing practices, including more punitive, critical, and aggressive child-management techniques²⁰
- Limited parental attention or positive emotion
- Marital discord
- Low parental social support – few relationships outside of family unit
- Parents perceive child behavior as more negative, defiant, and threatening¹⁹
- Parents have unrealistic expectations for children
- Coercive parent-child interactions²¹
- Domestic violence²²
- Sibling abuse²³
- Low family cohesion and emotional expressiveness

Box 99	
Environmental Stressors	
<ul style="list-style-type: none"> ▪ Poverty²⁴ ▪ Violent neighborhood²⁵ 	<ul style="list-style-type: none"> ▪ Male unemployment
Child Characteristics	
<ul style="list-style-type: none"> ▪ Age – under 6 years²⁶ ▪ Premature ▪ Twin ▪ Unkempt ▪ Hyperactive 	<ul style="list-style-type: none"> ▪ Chronic illness²⁷ ▪ Delayed development ▪ Mental retardation ▪ Previous severe injury ▪ Poor health care

Firestone, 2000), although the long-term effects of the abuse may be greater for females than for males (Thompson, Kingree, & Desai, 2004).⁷

Both men and women physically abuse and neglect children, but the rates are higher for men. For instance, Brown (2003) found the following rates for substantiated abusers:⁸

Father	61 %
Mother	8 %
Other family member	<u>31 %</u>
Total	100 %

The higher rates for male abusers are partially due to child abuse perpetrated by non-biologically-related males such as stepfathers, mother's boyfriends, and other male members of the household. This finding is consistent with the finding that children living with single parents are 77% more likely to suffer abuse or neglect, often by the mother's live-in boyfriend.⁹

Risk Factors for Physical Abuse and Neglect

There are no psychological profiles of abusive families, and no factors that can predict abuse when taken by themselves. That is,

“risk factors are warning signs and not necessarily predictors in individual cases” (Kuehnle et al., 2000, p. 385). The presence of *multiple risk factors* does increase the likelihood of abuse, however. Box 99 lists the risk factors for physical abuse and neglect that have been found in many studies using different populations.¹⁰

There are striking similarities among the parental characteristics for substance abuse, domestic violence, and child abuse and neglect displayed in Boxes 81, 97, and 99, respectively.¹¹ The vulnerabilities of these family systems are similar: poverty, lack of education, social isolation, high rates of mental illness, and lack of access to community activities and resources. The parents tend to have histories involving neglect and abuse, and to be punitive, hostile, emotionally withdrawn, and coercive with their children. And the most endangered children are those who are over-active, defiant, or have some type of special need. Thus substance abuse, domestic violence, and child abuse and neglect are all problems that occur with alarming frequency among the most vulnerable family systems and the most vulnerable children in the United States.

Effects of Physical Abuse and Neglect

There have been many empirical studies of maltreated children, who are more apt to have the characteristics listed in Box 100 than are children who have not been maltreated.²⁸ This does not mean that every child will have these responses to maltreatment, or that only children with these characteristics have been maltreated. In other words, the effects listed in Box 100 are not diagnostic symptoms to be used in individual cases; they are simply effects to watch out for in dealing with maltreated children.

SEXUAL ABUSE

Sexual abuse of a child can be defined as when “a person uses power or authority over a child to involve the child in sexual activity [such as] fondling of the child’s genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger, or other object, or exposure of a child to pornography.”³¹

Box 100. *Effects of Child Physical Abuse and Neglect*

◆ **Medical problems**

- Failure to thrive
- Early developmental delays
- Neurological impairment
- Serious physical injuries – loss of consciousness, broken bones, third-degree burns, skin markings, scars, and long-term disabilities²⁹
- Cigarette smoking
- Drug and alcohol abuse

◆ **Psychological functioning**

- Poor self-image and low self-esteem
- Anxious and fearful, perceive others as hostile
- Feelings of sadness, or other symptoms of depression
- PTSD symptoms – e.g. flashbacks, abuse-repetitive behaviors, trauma-specific fears³⁰
- Suicidal thoughts
- Feelings of anger and rage, poor anger modulation
- Flash backs, nightmares

◆ **Intellectual functioning**

- Poor attention span
- Cognitive or intellectual deficits
- Language deficits – in both receptive and expressive areas
- School behavior problems
- Academic failure

Box 100

- ◆ **Interpersonal relationships and behavior**
 - Inability to trust or love others
 - Fear of new relationships or activities
 - Aggressive, disruptive, and sometimes illegal behavior
 - Sexual acting out
 - Passive, withdrawn, clingy behavior
 - Deficiencies in social-cognitive skills –
perspective taking, generating social solutions,
understanding appropriate responses to
interpersonal situations
 - Passive, withdrawn, clingy behavior

Although child sexual abuse is more apt to occur in families where there is some other form of dysfunction or abuse (e.g. domestic violence, substance abuse, or physical child abuse), it is an extremely complex problem that should be examined separately. Therefore, Chapter 25 is devoted to the topic of child sexual abuse.

PSYCHOLOGICAL MALTREATMENT

Definition

Empirical research suggests that all forms of child abuse and neglect cause psychological experiences that, in turn, are responsible for the long-lasting effects of the abuse. Even if emotional abuse or neglect occurs alone, it causes negative effects that are at least as severe as those caused by physical forms of abuse. Thus psychological abuse is “a unifying concept that embodies many of

the most significant components of child abuse and neglect" (Hart, Brassard, Binggeli, & Davidson, 2002, p. 79).

Current theoreticians and researchers prefer the term *psychological maltreatment* to the term *psychological abuse* because the former term can include both the psychological reactions of the victim and the abusive actions of the perpetrator. For example, the American Professional Society on Abuse of Children (APSAC) has developed the following definition of psychological maltreatment:³²

- *Psychological maltreatment* means a repeated pattern of caregiver behavior or extreme incident(s) that convey to children that they are worthless, flawed, unloved, unwanted, endangered, or only of value in meeting another's needs.
- Acts of psychological maltreatment include:
 - a. Spurning
 - b. Terrorizing
 - c. Isolating
 - d. Exploiting/corrupting
 - e. Denying emotional responsiveness,
 - f. Mental health, medical, and educational neglect.

Box 101 includes examples of these six types of psychological maltreatment.³³

Effects of Psychological Maltreatment

As the core component of child abuse and neglect, psychological maltreatment causes a wide range of negative effects. Research suggests that the most devastating negative impact is caused by psychologically unavailable mothers who deny emotional responsiveness by spurning, rejecting, criticizing, and threatening the child with punishment and physical abuse. Preschool children who experience these parental behaviors are apt to become school-age children who feel unloved, inadequate, and angry. These parental behaviors are also some of the most powerful predictors of juvenile delinquency in adolescence (Hart et al., 2002).

Box 102 lists the effects of some of the most common forms of psychological maltreatment.³⁴

Box 101. *Examples of Six Types of Psychological Maltreatment*

1. SPURNING – Verbal and nonverbal caregiver acts that reject and degrade a child.

- Belittling, degrading, and other nonphysical forms of overt hostility or rejection.
- Shaming and/or ridiculing the child for showing normal emotions such as affection, grief, or sorrow.
- Consistently singling out one child to criticize and punish, perform most of the household chores, or receive fewer rewards.
- Public humiliation

2. TERRORIZING – Caregiver behavior that threatens or is apt to physically hurt, kill, abandon, or place the child and their loved ones and objects in recognizably dangerous situations.

- Placing a child in unpredictable, chaotic, or dangerous circumstances.
- Setting rigid or unrealistic expectations with the threat of loss, harm, or danger if they are not met.
- Threatening or perpetrating violence against the child or their loved ones or objects.

3. ISOLATING – Caregiver acts that consistently deny opportunities for the child to meet their needs for interacting or communicating with peers or adults inside or outside the home.

- Confining the child or placing unreasonable limitations on the child's freedom of movement within his or her environment.
- Placing unreasonable limitations or restrictions on social interactions with peers or adults in the community.

Box 101**4. EXPLOITING/CORRUPTING – Caregiver acts that encourage the child to develop self-destructive, antisocial, criminal, deviant, or other maladaptive behaviors.**

- Modeling, permitting, or encouraging antisocial behavior (e.g. prostitution, performance in pornographic media, initiation of criminal activities, substance abuse, violence to or corruption of others).
- Modeling, permitting, or encouraging developmentally inappropriate behavior (e.g. parentification, infantilization, living the parent's unfulfilled dreams).
- Encouraging or coercing abandonment of developmentally appropriate autonomy through extreme over-involvement, intrusiveness, or dominance (e.g. allowing little or no opportunity or support for child's views, feelings, and wishes; micromanaging child's life).
- Restricting or interfering with cognitive development

5. DENYING EMOTIONAL RESPONSIVENESS – Caregiver acts that ignore the child's attempts and needs to interact, and show no emotion in interactions with the child

- Being detached and uninvolved through either incapacity or lack of motivation.
- Interacting only when absolutely necessary.
- Failing to express affection, caring, and love for the child.

6. MENTAL HEALTH, MEDICAL AND EDUCATIONAL NEGLECT– Unwarranted caregiver acts that ignore, refuse to allow, or fail to provide the necessary treatment for the mental health, medical, and educational problems or needs of the child.

- Ignoring the need for, failing or refusing to provide treatment for serious emotional/behavioral problems, physical health problems or educational problems, or needs of the child.

Box 102. *Impact of Psychological Maltreatment on Children*

TYPE OF MALTREATMENT	EFFECT ON CHILD
<p>♦ Denying emotional responsiveness</p>	<ul style="list-style-type: none"> ▪ Most devastating of all types, and more detrimental than physical abuse ▪ Negative expectations, feelings of anger, aggression—from age 9 through adolescence,
<p>♦ Spurning and terrorizing</p>	<ul style="list-style-type: none"> ▪ Preschool children grow into aggressive school-age children who have low self-esteem and feel inadequate and angry ▪ Assaultive and delinquent behavior in adolescence
<p>♦ Denying emotional responsiveness and terrorizing, combined</p>	<ul style="list-style-type: none"> ▪ Emotional instability ▪ Substance abuse ▪ Aggression and criminality
<p>♦ Denying emotional responsiveness and spurning, combined</p>	<ul style="list-style-type: none"> ▪ Impaired self-esteem ▪ Emotionally unresponsive ▪ Emotionally unstable ▪ Aggressive ▪ Negative worldview ▪ Criminal activities ▪ Psychiatric problems, especially depression & anxiety

Box 102	
TYPE OF MALTREATMENT	EFFECT ON CHILD
<p>♦ All types of psychological maltreatment, combined</p>	<ul style="list-style-type: none"> ▪ Anxiety, depression, low-self-esteem, negative life views, suicidal ideation ▪ Emotional instability and problems with impulse control, emotional unresponsiveness, substance abuse, and eating disorders ▪ Social competency problems and antisocial functioning – attachment problems, self-isolating behaviors, low empathy, dependency, aggressive and violent behavior, delinquency or criminality

CORPORAL PUNISHMENT

Corporal punishment is defined as using physical force to correct or control someone's behavior. It is also called chastisement, castigation, physical punishment, correction by force, and sometimes caning, beating, judicial and penal whipping, and for children, spanking. Parental use of corporal punishment is quite common in the United States today. Although corporal punishment usually decreases after children reach 8 years of age, 20% of all teenagers are still being physically punished by their parents (Finkelhor & Hashima, 2001).³⁵

State legal statutes distinguish between physical assault or abuse and corporal punishment, which the statutes define as the use of "reasonable" force in an appropriate manner (Gershoff, 2002). Most child abuse researchers, on the other hand, view corporal punishment and potentially abusive techniques as part of a

continuum of physical acts towards children. For example, McGillivray defines corporal punishment as “assault with the intent to cause pain and humiliation in order to correct behavior” (2004, p. 135).

Extensive research has shown that in the short-term, corporal punishment does cause immediate compliance. Over an extended period of time, however, children who experience even mild corporal punishment show increased levels of aggression, antisocial and delinquent behaviors, poor parent/child relationships, and mental health problems, along with decreased levels of moral internalization. As adults, these children are more apt to be aggressive, abuse their spouse or child, engage in criminal and antisocial behavior, and have mental health problems than are adults who did not experience corporal punishment as children (Gershoff, 2002).

It is particularly concerning that parents who have physically abused their children report that as many as 2/3 of the abusive incidents began as attempts to change the child’s behavior or to “teach them a lesson” (Gershoff, 2002, p. 542).³⁶

There are some gender differences in corporal punishment, in that fathers are twice as likely as mothers to become abusive in the context of inappropriate punishment, and boys are more likely to be victimized than are girls (Trocmé & Durrant, 2003).

ASSESSMENT METHODS

The assessment methods for physical abuse and neglect are essentially the same as for all comprehensive child custody evaluations, with special attention to the four types of risk factors listed in Box 99:³⁷

Parent Characteristics

Are there indications of instability, such as many residential moves, transient live-in partners, or frequent (especially unexplained) changes in employment? Do either of the parents have histories of child abuse or mental illness? Are there unplanned pregnancies and closely-spaced children?

Examine any previous child maltreatment reports for the severity and timing of the abuse. Did the parent take responsibility for any confirmed allegations of neglect or abuse, and engage in services to improve their parental functioning? Be sure to check medical and criminal records for problems related to substance abuse, domestic violence, and other difficulties that co-vary with child abuse.

Family Functioning

Obtain detailed information about the parent/child relationships and consider how emotionally engaged the parent is with each child. For children who are verbal, interviews can yield a wealth of information about the family relationships. (See Chapter 13 for child interviewing methods.) Observe each parent with each child, and use repeat observations if needed. Be alert for the types of psychological maltreatment described in Box 101.

What kind of discipline does the parent use? Does the parental self-report match the observations of parent/child interactions?

What kind of childcare does the parent use? Interview any other adult who lives in the home or is a frequent visitor, and observe them with the children if possible. (Remember, non-biological adult males are frequent perpetrators of child abuse.)

Environmental Stressors

Poverty and dangerous neighborhoods do not make parents unfit. Do consider how the parents are handling these stressors, however, and to what extent they are able to buffer the effects of the stressors on the child. If either parent is unemployed, consider the timing of the loss of employment relative to the other events in the family.

Child Characteristics

Look for characteristics that make the child more vulnerable to abuse, as listed in Box 99. Pay special attention to disabilities, special needs, and behavioral problems. How do the parents manage these challenging aspects of their child? Are the parents aware of the various community, government, and medical resources they could utilize?

Consider the child characteristics that may reflect child abuse, as listed in Box 100. Although these child characteristics are not symptoms of child abuse, they do suggest that there are some serious problems in the child and/or the family. Compare the pattern of child difficulties with the other information related to possible child abuse.

Examine the child's medical records carefully for indications of abuse, and interview the health care providers if there are any questions. During interviews and observations, it is useful to simply ask the child and the caretakers, "What caused this mark here?"³⁸

Collateral Sources of Information

Collateral sources of information are essential in investigating issues related to child abuse. Perpetrators of child abuse, like perpetrators of domestic violence, are not eager to reveal these problems. Obtain parental permission to obtain records from primary care physicians, hospitals, mental health providers, social service agencies, and staff at the child's school. Each of these professionals may have direct observations related to the presence of child abuse and its risk factors.

Child Abuse Potential Inventory (CAP)

This 160-item self-report inventory, which is discussed in Chapter 11, has excellent psychometric properties (Milner, 1986, 1994). By matching scores with those of parents who have abused their children, the CAP assesses parental *potential* or risk for child abuse rather than actual child abuse. Elevated CAP scores match not only the scores of child abusers, however, but also the scores of parents who have a disabled or special needs child. CAP scores need to be considered in conjunction with other indicators of parental risk for child abuse.

Multiples Sources of Information

As in any other area of a child custody evaluation, it is necessary to have multiple sources of information regarding child abuse. In order to conclude that child abuse has occurred, several sources should concur regarding the type, timing, and circumstances of the abuse.

The overall pattern of information must also be consistent with the presence of child abuse, including the parental characteristics, the family functioning, the child's characteristics and functioning, and the parent/child relationships. Although all of the risk factors in Box 99 and the child effects in Box 100 will not be present in any one family, there should be a pattern that is consistent with these general research findings.

Notes

1. [Kolko \(2002\)](#) reports these national prevalence rates, based on studies done in 1998 by the U.S. Department of Health and Human Services and the Third National Incidence Study (NIS-3) done in 1993. The same rates and types of abuse are also described by [Edleson, 2001](#), and [Kuehnle et al., 2000](#).
2. This study included all of the families (120) referred for custody counseling or a child custody evaluation in the San Francisco Bay area over a 13-year period (1989–2002). At least one allegation of abuse or neglect was made against the mother in 56% of the families and against the father in 77% of the families. Multiple allegations of abuse were made against the mother in 32% of the cases and against the father in 59% of the cases. The rates of substantiation were the same for mothers (52%) and fathers (51%). In about 1/4 of these cases, abuse allegations were substantiated for both mother and father in the same family ([Johnston et al., 2005](#)).
3. [Maccoby and Mnookin \(1992\)](#) studied 1,100 families who filed for divorce in the San Mateo and Santa Clara counties in California between 9/84 and 4/85 and had at least one child less than 16 years of age. The researchers examined court records and conducted three telephone interviews with each family over a three-year period.
4. The rates and types of child abuse listed in Box 98 are based on the Third National Incidence Study (NIS-3) in 1993, which [Dubowitz and Black \(2002\)](#) argue has been the most successful attempt to circumvent the limitations of relying on reported cases of child abuse. Using reports to child protective services nationwide, last aggregated by the U.S. Department of Health and Human Services in 1998, [Kolko \(2002\)](#) lists the following percentages of reports by type: physical abuse 22.7%, sexual abuse 11.5%, psychological abuse 6.0%, and neglect 53.5%.
5. The more lethal nature of child neglect as compared with child abuse is emphasized by both [Kuehnle et al., 2000](#), and [Roditti, 2005](#). Roditti also supplies these statistics from the 2003 report of the U.S. Department of Health and Human Services.
6. Kolko provides this quote from the Third National Incidence Study of Child Abuse and Neglect (NIS-3) (emphasis added). This definition is essentially the same as the one used by both the National Child Abuse and Neglect Data System ([Kolko, 2002](#)) and the Department of Human Services ([T. Brown, 2003](#)).
7. The lack of gender differences applies to physical abuse and neglect. There are gender differences in sexual abuse, where girls are at greater overall risk,

and girls are more often abused by family members whereas boys are more often abused by individuals outside the family (Kuehnle et al., 2000).

8. T. Brown (2003) examined the results of two large Australian studies whose data was collected by the courts in 1994–1996 and 1998–2000. See DHS (2006) for a description of these Australian studies.
9. For more information about mother's single status as a risk factor for abuse, see note 13.
10. Notes 11–27 below provide additional information about specific elements of Box 99. Where no specific source is noted, the information in Box 99 is based on reviews of the literature done by Dubowitz & Black, 2002; C. F. Johnson, 2002; Kolko, 2002, and Kuehnle et al., 2000.
11. The risk factors and parental characteristics for substance abuse, domestic violence, and child abuse are drawn from separate (albeit somewhat overlapping) bodies of research, as indicated in the reference citations for each of these topics.
12. The mechanisms for intergenerational transmission of child abuse are not well known, although research has shown that early experiences of physical punishment and abuse are associated with abusing one's own children as an adult (Kolko, 2002; Milner and Chilamkurti, 1991). Nevertheless, researchers have estimated that only 30% of abused children become abusive parents (Kaufman & Zigler, 1987). We do not know how the 70% of non-abusive parents with personal histories of child abuse overcome their own abusive histories, but research has shown that the development of a realistic understanding of one's own maltreatment history is associated with strong parenting skills in mothers (Kuehnle et al., 2000).
13. National statistics indicate that children living with single parents are at a 77% greater risk of physical abuse, 87% greater risk of physical neglect, and 220% greater risk of educational neglect, and are also 80% more likely to suffer serious injury from their maltreatment. However, low-income, single-status parents are also in closer contact with social service agencies, which increases their overall likelihood of being reported for child abuse (Kuehnle et al., 2000).
14. Although superior intellectual functioning is not associated with superior parenting skills, impaired intellectual functioning can interfere with essential parenting functions, especially when a child has special needs (Kuehnle et al., 2000). High-risk mothers have also been found to have other neuropsychological problems such as limitations in conceptual ability, cognitive flexibility, and problem-solving (Kolko, 2002).
15. Age at conception for mothers is one of the most consistent risk factors for child maltreatment, although it overlaps with single status, poverty, and lack of education. In the mid-twenties and younger age groups, non-biologically-related men are more apt to be perpetrators of child abuse than are either of the biological parents. This is particularly true for sexual abuse, where these non-biologically-related men are responsible for 20–40% of the cases of child sexual abuse (Kuehnle et al., 2000, p. 373).
16. As discussed in Chapter 22, parental substance abuse is associated with all forms of child maltreatment, domestic violence, and development of substance abuse problems in the children.
17. Although parental mental illness is consistently related to child abuse, only a small percentage of abusive parents suffer from serious psychiatric illness. Parental depression is of particular concern, however, because it may be an

antecedent as well as a result of living in a violent family and maltreating one's child (Kuehnle et al., 2000, p. 373).

18. The custody evaluator needs to assist the court in determining whether and to what extent a parent's behaviors are due to a personality disorder or to a social skills deficit (Kuehnle et al., 2000, p. 372).
19. This tendency to view the child in a more hostile, negative way is associated with other characteristics of cognitive style in abusive parents, including a tendency to attribute responsibility for failure to the child but responsibility for success to themselves (Kolk, 2002, p. 27).
20. These inconsistent and aversive parenting practices have been observed in many studies (Kolk, 2002; Kuehnle, 2002).
21. Coercive parent/child interactions are, in turn, associated with heightened conflict, decreased family cohesion, and the presence of domestic violence (Kolk, 2002).
22. As discussed in Chapter 23, domestic violence, substance abuse, and child abuse often occur together in families.
23. Nation-wide studies have indicated that physical and sexual abuse by siblings is more common than parent-child or spousal violence (Kuehnle et al., 2000). This makes it imperative to investigate the nature of all sibling relationships, especially before an out-of-home placement with a sibling is considered.
24. The National Center on Child Abuse and Neglect has found that children from low income (under \$15,000/year) families are 22 times more likely to be reported as physically abused or neglected than are children from higher income (\$30,000/year and above) families. These same low-income children are also 22 times more likely to be seriously injured by abuse or neglect, 18 times more likely to be sexually abused, and 56 times more likely to be educationally neglected (Sedlak & Broadhurs, 1996). The fact that this connection between poverty and child maltreatment is also found in self-report studies suggests that the connection is not due simply to lower-income families being subjected to more scrutiny by social service agencies (Kuehnle et al., 2000, pp. 374–375).
25. Research indicates that chronic exposure to community violence is associated with children's behavior problems, although a stable family context can mitigate the effects of exposure to a violent environment (Kuehnle et al., 2000).
26. One half of the child physical abuse and neglect cases reported to state authorities involve children under 6 years of age (Kuehnle et al., 2000) and more severe injuries are reported for very young children (Kolk, 2002). In fact 90% of children killed by parents and caretakers are under 4 years of age (Kuehnle et al., 2000). The effect of age is dramatically different for child sexual abuse, where the risk increases as the child develops and prepubescent girls (aged 7–12) are at greatest risk for sexual abuse.
27. Having a disability multiplies the risk of abuse by 1.5 to 8.5, depending on the nature of the disability (Kuehnle et al., 2000; Wilson, 2004). Children with multiple handicaps experience both more severe and more long-lasting physical and sexual abuse than do children with a single disability, and also experience a longer duration (but not greater severity) of neglect than children with no disability or only one disability (Kuehnle et al., 2000).
28. The effects listed in Box 100 are based on summaries of the empirical research provided by The American Academy of Child & Adolescent Psychiatry (AACAP, 2004a); Erickson and Egeland, 2002; and Kolk, 2002.

29. The NIS-3 study found that 20–35% of maltreated children (nearly 50,000 children) had suffered from serious injuries causing long-term impairment (Kolk, 2002).
30. According to two recent studies, one third of maltreated children develop symptoms of Post Traumatic Stress Disorder (Kolk, 2002).
31. This succinct definition of child sexual abuse is from the largest Australian state child protection service (T. Brown, 2003, p. 368).
32. This definition of psychological maltreatment is included in the *Guidelines for the Psychosocial Evaluation of Suspected Psychological Maltreatment in Children and Adolescents* published by the American Professional Society on the Abuse of Children (APSAC) in 1995 (Hart et al., 2002, p. 79).
33. The examples of psychological maltreatment in Box 101 are adapted from the APSAC guidelines, as reprinted in Hart et al., 2002, p. 82.
34. The information in Box 102 is based on Hart et al.'s (2002) summary of the research on psychological maltreatment.
35. In a nationwide Canadian sample, Trocmé & Durrant (2003) found that severe corporal punishment is an unusual form of physical abuse and that only 8% of the victims were under 4 years of age, whereas in other forms of physical abuse children under 6 are most at risk.
36. Similarly, Trocmé & Durrant (2003) report that most reported child abuse incidents begin as physical punishment.
37. This four-factor approach to the assessment of child abuse is essentially the same as that recommended by Kuehnle et al., 2000, pp. 381–384. For clarity, I am using factor labels that match those in Box 99, whereas Kuehnle et al. refer to “parent, environment, child, and parent-child relationship” factors.
38. In addition to the presence of risk factors involving the child and the caretaker, C. F. Johnson (2002, p. 253) points out that it is important to note where bruises are located on the child’s body. Bruises on the shins, hips, back of the head, forehead, and chin are usually accidental, whereas high-suspicion areas for bruises include the ears, chest and torso, groin, back, buttocks, and backs of the legs.

25

CHILD SEXUAL ABUSE

INTRODUCTION

This chapter is not intended as a guide to doing sexual abuse evaluations. These complex evaluations should be done only by a mental health professional who specializes in child and adolescent sexual abuse.¹

On the other hand, all mental health and legal professionals need to know about the types of sexually abusive behaviors, risk factors, psychological impact, and evaluation techniques for allegations of child sexual abuse. Attorneys need the information in order to make requests for expert consultation and evaluation as needed. Judges need the information to appoint custody evaluators, assess the adequacy of reports of evaluations, and make custody decisions that are sensitive to allegations of sexual abuse. And child custody evaluators need to be able to screen evaluations for sexual abuse issues, and make referrals to trauma/sexual abuse specialists as needed.

DEFINITION OF SEXUAL ABUSE

The exact definition of sexual abuse varies from study to study and from state to state. Most legal definitions are similar to the one quoted in Chapter 24:

Sexual abuse occurs when “a person uses power or authority over a child to involve the child in sexual activity [such as] fondling of the child’s genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger, or other object, or exposure of a child to pornography” (T. Brown, 2003, p. 368).

Box 103 lists the behaviors that are usually included in a definition of sexual abuse, such as the one used in California (Cal. Pen. Code, 2006). In Box 103 the types of sexual maltreatment are listed in order from (1) least serious, with no physical contact; to (5) most serious, with penile penetration.²

Faller points out that the levels of seriousness reflect a professional perspective. A child may experience a “non-serious” incident of abuse as quite traumatic, however, as in the following example.³

... a 12-year-old girl may be quite overwhelmed by her father telling her that she has nicer breasts than her mother and that he wants to touch them. No sexual contact takes place, and therefore the behavior falls into the least serious category, but the child’s relationship with her father is greatly damaged. (Faller, 2003, p. 22)

In recent years the rate for the first category (non-contact sexual abuse) has soared due to cybersex, or virtual sex. In a nationwide interview survey of 1,500 internet users aged 10–17 in 2005, 35% had experienced unwanted exposure to sexual material in the past year, 13% had received a sexual solicitation, 9% had been sexually harassed online, and 4% had received solicitations to make offline sexual contact (Wolak, Mitchell, & Finkelhor, 2006). These figures represent increases from a similar survey done in 2000 (Finkelhor, Mitchell, & Wolak, 2000).

RATES OF CHILD SEXUAL ABUSE

Untold numbers of both girls and boys are sexually abused. In retrospective studies, 27% of women and 16% of men report having been sexually abused as children (Finkelhor, Hotaling, Lewis, &

Box 103. Types and Examples of Child Sexual Abuse

1. Non-contact sexual abuse

- **Sexual comments to the child**
 - 30 year old man meets a 12-year-old through a chat room and asks her/him to meet for “hot sex.”
- **Exposure of the intimate parts** (genitals, anus, breast) – “**flashing**”
 - Older cousin asks girl if she has ever seen a penis, shows her how he can cause an erection by rubbing it.
- **Voyeurism – “peeping”**
 - Mother’s boyfriend removes bathroom door so he can watch her 13- and 14-year-old daughters toileting
- **Fetishism** – (having a sexual fixation on clothing or body parts)
 - Grandfather takes his 12-year-old granddaughter’s underpants from the laundry hamper and uses them to masturbate.
- **Obscene phone calls**
 - Adolescent boy next door calls 13-year-old girl and invites her to “suck my dick.” (He later masturbates while recollecting phone call.)

2. Fondling

- **Offender touches the child’s intimate parts** (breasts, genitals, buttocks)
 - Stepfather massages 7-year-old’s genital area while wrestling with her.
- **Offender induces child to touch offender’s own intimate parts**
 - Mother persuades her 11-year-old daughter to caress mother’s body and rub her vagina when they sleep in the same bed.
- **Fondling can be on top or beneath clothing.**

3. Penetration with object or finger

- **Offender places finger in victim’s anus or vagina**
 - Day care provider inserts finger in anus of 2-year-old while changing diaper.
- **Offender induces child to place finger in offender’s anus or vagina**
 - Mother requires her 6-year-old son to put four fingers in her vagina and move them in and out.
- **Offender places object in victim’s anus or vagina**
 - Father puts crayons in daughter’s vagina in the course of play, takes photograph of this.

Box 103**3. Penetration with object or finger, *continued***

- **Offender induces child to place an object in offender's anus or vagina**
 - Stepfather requires his 6-year-old stepdaughter to put a vibrator up his anus.

4. Oral sex

- **Tongue kissing**
 - Five-year-old French-kisses his grandmother. He tells her that his mom does this to him.
- **Kissing, licking, or biting other parts of the body**
 - Seven-year-old describes how her uncle kisses her all over her body when he gives her a bath.
- **Breast sucking, kissing, licking, biting**
 - Eleven-year-old states that her grandfather sucks on her breasts and bites her nipples. He has told her that this will make them grow.
- **Cunnilingus** (licking, kissing, biting, or sucking the vagina, or placing the tongue in the vaginal opening)
 - Nine-year-old says that her mom's boyfriend sucked her "wee-wee" and put his tongue inside. She says it felt weird.
- **Fellatio** (licking, kissing, sucking, or biting the penis)
 - Four-year-old describes a child-care provider sucking his penis and calling this the "baby game."
- **Analingus** (licking the anal opening)
 - Brothers, ages 5 and 7, are caught by foster mother engaging in analingus. They tell her their mom's friend taught them this, that it's called "licking buttoholes" and it tickles
- **The offender may inflict these acts on the victim, or require the victim to do them to the offender.**

5. Penile penetration

- **Vaginal intercourse** (penis in the vagina)
 - Thirteen-year-old girl asserts that her mother's boyfriend, over several months, gradually put his penis farther and farther into her vagina until he achieved complete penetration.
- **Anal intercourse** (penis in the anus)
 - A four-year-old girl pulled down her pants, bent over, and spread her buttocks, stating that's where her cousin poked her and that he put grease on her butt first.
- **Offender usually penetrates the victim.**

Adapted from Faller, 2003, pp. 20-21

Smith, 1990). National prevalence studies estimate the lifetime rates of child sexual abuse as 6–62% for females and 3–31% for males (Kuehnle, 1996).

Recent incidence studies suggest that 88,000 to 300,000 children and adolescents are sexually abused in the United States each year.⁴ It is impossible to know exactly how many children are sexually abused, however, because many children do not tell anyone about the abuse.⁵ Once children do disclose their abuse, however, they are likely to maintain their allegations during a formal assessment (London, Bruck, Ceci, & Shuman, 2005).⁶

At least 2% of child custody disputes include allegations of sexual abuse,⁷ and about one third of these allegations are substantiated.⁸

The perpetrators of sexual abuse are almost always men (80–95%), although some reports indicate that one quarter to one third are actually adolescent boys.⁹ Girls are more apt to be abused by a family member, while boys are more at risk from familiar adults outside the family.

RISK FACTORS FOR OCCURRENCE OF CHILD SEXUAL ABUSE

Box 104 summarizes the research on risk factors for child sexual abuse, which indicates that girls are victims of child sexual abuse at a rate three or four times that of boys, and that non-biologically-related males under age 26 are the most frequent perpetrators. Disabled children and prepubescent girls (aged 7–12) are the most frequent victims.

For girls, the peak age of onset for sexual abuse is 7–8 years. Male sexual abuse typically starts before puberty as well, but does not continue as long as for girls. For both genders, the sexual abuse usually continues over a series of incidents.

This research only examines the most common characteristics of sexual abuse across the entire population. Child molesters target children of both sexes, and child sexual abuse can occur in any family regardless of socioeconomic status or family structure. The risk factors simply indicate areas of greater vulnerability for

Box 104. Risk Factors for Occurrence of Child Sexual Abuse	
Perpetrator	
<ul style="list-style-type: none"> ▪ Male¹¹ ▪ History of abuse as child¹³ ▪ Age under 26 years¹⁴ 	<ul style="list-style-type: none"> ▪ Relationship to child¹² <ul style="list-style-type: none"> ◦ Female victims: father or father-substitute ◦ Male victims: outside of family
Family and Environment	
<ul style="list-style-type: none"> ▪ Poverty¹⁵ 	<ul style="list-style-type: none"> ▪ Single mother¹⁶
Child	
<ul style="list-style-type: none"> ▪ Female¹⁷ ▪ Age – 7-12 years¹⁹ 	<ul style="list-style-type: none"> ▪ Disabled or special needs¹⁸ ▪ Living apart from biological parent²⁰

child sexual abuse, where professionals should be particularly vigilant.¹⁰

PSYCHOLOGICAL IMPACT OF CHILD SEXUAL ABUSE

Long-term Effects of Child Sexual Abuse

Sexual abuse is emotionally devastating for children, who feel angry, betrayed, confused, and frightened by the abuse. About 2/3 of these child victims develop the long-term emotional and physical reactions shown in Box 105.²¹ These reactions have been studied by examining children shortly after the abuse, and by doing retrospective studies with adult survivors of child sexual abuse.

It is important to note that many of the reactions to child sexual abuse in Box 105 are quite similar to children's reactions to domestic violence (Box 90) and physical abuse and neglect

Box 105. Common Effects of Child Sexual Abuse**◆ Physiological effects**

- Early development of secondary sexual characteristics in girls
- Heightened levels of stress-related hormones in girls
- Somatic complaints

◆ Psychological functioning

- Anxious and fearful, perceive others as hostile
- Feelings of sadness, or other symptoms of depression
- PTSD symptoms – e.g. general agitation and behavioral disorganization, flashbacks, abuse-repetitive behaviors, trauma-specific fears, nightmares, hypervigilance, sense of guilt & shame
- Inflexible, difficulty with changes
- Sleep problems
- Multiple emotional problems – heightened emotional reactivity to social interactions, easily distractible, compulsive compliance
- Gender and identity problems
- Fear of using bathroom or shower

◆ Interpersonal relationships and behavior

- History of running away from home with no discernable cause
- Sexualized conduct (beyond norm for peers)
- Conduct disorder
- Increased risk of abusing own child in adulthood

(Box 100). This is because many children are subjected to multiple traumas in childhood. The effects of these three sources of trauma are similar and cumulative, so children who experience multiple traumas over an extended period of time are at greater risk of developing emotional problems during their lifetimes.²²

Risk and Resilience in Response to Child Sexual Abuse

What determines whether a child will show symptoms of emotional distress after being sexually assaulted? The empirical research suggests that the nature of the assault, the identity of the perpetrator, and the non-abusing parent's response to the child's initial disclosure are crucial (Kendall-Tackett, Williams, & Finkelhor, 1993; Webster, 2001; Wilcox, Richards, & O'Keeffe, 2004). The risk factors for emotional response to child sexual abuse are summarized in Box 106 and discussed below.

The most upsetting assaults involve penetration, whether oral, anal, or vaginal. More frequent assaults also cause more distress. And the greater the amount of force used during the assault, the greater the victim's emotional distress. Threats of violence are particularly distressing because they intensify the child's perception of betrayal by the perpetrator, who is often a known and trusted adult. In addition to physical threats, some perpetrators instill fear in the child as a way to maintain secrecy. The perpetrator may attempt to make the child feel responsible for the sexual contact by saying that if others found out, the child would be punished or even removed from the home for being "bad," or that others would be angry and jealous because the child got to have a "special relationship" with the perpetrator.

The closer the emotional relationship between the perpetrator and the victim, the more upsetting the sexual abuse is apt to be. This factor is related to gender differences in patterns of sexual abuse: since girls are more apt to be abused by family members than are boys, one could expect them to be more emotionally distressed by the abuse. On the whole, however, the research on gender differences in emotional response to child sexual abuse is inconclusive.

Box 106. *Risk Factors for Emotional Distress in Victims of Child Sexual Abuse*

Sexual Assault

- Use of force or threat
- Penetration (oral, anal, or vaginal)
- Frequency and duration of abuse

Perpetrator

- Emotionally close to victim

Child

- Perception of abuse - Blame self or environment, not abuser
- Negative outlook or coping style

Response to disclosure

- Non-abusing parent disbelieves or is angry at child

Unclear factors

- Child's age at time of abuse
- Child's gender
- Number of perpetrators
- Time elapsed between end of abuse and assessment

If the non-abusing parent is warm and reassuring when they find out about the sexual abuse, it helps the child understand that the abuse was not the child's fault. The child's shame and sense of guilt are intensified if the parent does not believe the child, or is angry, aggressive, and blames the child for the disruption in family life caused by the legal investigation.

Finally, the research is equivocal regarding the effect of the child's age at the time of the assault. [Kendal-Tackett et al. \(1993\)](#) reported that children who are older at the time of evaluation are distressed, but point out that this may be due to older children having experienced a longer period of abuse than younger children.

Webster (2001) reports that the younger the child is at the time of the sexual assault, the greater the probability that the child will experience long-term disruption in emotional and social functioning.

In addition to these factors, there is the matter of the child's personality and outlook. Children who have a negative outlook or coping style fare worse, while children who blame the perpetrator for the abuse, rather than themselves or the circumstances, are less emotionally distressed later on. These findings regarding child personality factors are reminiscent of the growing debate concerning the emotional resilience of adult survivors of sexual abuse or other trauma. For instance, Bonanno (2004) has recently challenged the assumption that most adults exposed to loss or trauma develop PTSD or other debilitating symptoms. He argues that adult resilience is common, and is enhanced by personality characteristics such as "hardiness," "self-enhancement," "repressive coping," and the use of "positive emotion and laughter" (pp. 25–26). Similar personality characteristics may be typical of the 1/3 of sexually abused children who do not show symptoms of intense, long-lasting emotional distress after being assaulted.

Common Indicators of Sexual Abuse in Children

Standardized behavior rating scales cannot be used to identify sexually abused children because over one fourth of these children show no significant behavior problems on these scales (Kendall-Tackett et al., 1993; Kuehnle, 1996). Symptom checklists that emphasize sexualized behavior problems also cannot be used because recent research has indicated that problematic sexualized behaviors are not necessarily due to child sexual abuse.²³ These behaviors are correlated with a lack of inhibition that can be caused by many things other than sexual abuse, including (a) stress from physical abuse and witnessing domestic violence, and (b) family boundary issues such as the child witnessing intercourse either in vivo or through the media, access to internet pornography, and access to sexually explicit television shows and videos. These boundary issues, in turn, are related to the family's size, living space, neighborhood, and parental attitudes about sexuality; and

the child's age, level of sexual interest, and time spent in daycare (Friedrich, 2005; T. C. Johnson, 2005).

Recent reviews of the research literature have concluded that there are no psychological symptom markers for child sexual abuse (Sbraga & O'Donohue, 2003). Because there is no personality profile for victims of sexual abuse, no personality assessment devices can provide definitive evidence that sexual abuse has occurred (Weiner, 2005).²⁴

CONTROVERSIES REGARDING CHILD SEXUAL ABUSE

Child Memory and Testimony

Public awareness and debate about child sexual abuse led to the recent controversy about children's abilities to recall and accurately report past experiences.²⁵ The results of this extensive body of research are summarized in Chapter 13, and indicate that children as young as 3 or 4 show accurate recall and reporting *as long as appropriate interviewing techniques are used*²⁶.

There has also been some concern about whether children will deny sexual abuse in order to protect the perpetrator, especially if the perpetrator is a parent.²⁷ If children do engage in deliberate deception, this cannot be assessed by using the standard scales designed to detect deception.²⁸

Child Sexual Abuse Accommodation Syndrome (CSAAS)

In doing clinical work with children who had suffered sexual abuse, Summit (1983) coined the term "Child Sexual Abuse Accommodation Syndrome" (CSAAS) to describe the five most common reactions of children: (1) secrecy, (2) helplessness, (3) entrapment and accommodation, (4) delayed, unconvincing disclosure, and (5) retraction. As Summit (1992) later clarified, his intent was to increase awareness of how children respond to sexual assault so that child reports would not be discounted. Summit insisted that CSAAS did not describe a diagnosis or a disorder, nor was it a scientific instrument with established reliability and validity. Thus

the CSAAS was intended “not to prove a child was molested but to rebut the myths which prejudice endorsement of delayed or inconsistent disclosure” (1992, p. 160).

Since Summit’s original publication regarding the CSAAS, researchers have found that children do delay their disclosure and many recant (e.g. Sorensen & Snow, 1991),²⁹ so that disclosing child sexual abuse has come to be described as a gradual process rather than a one-time event (e.g. Faller, 2003; Kuehnle, 1996).

Unfortunately, a number of mental health professionals have used the CSAAS as the basis for their “expert testimony” regarding the veracity of a specific child’s disclosure of sexual abuse (Mason, 1998). Many legal and mental health professionals have criticized this practice, warning that the CSAAS does not meet the *Daubert* standards (e.g. Fisher & Whiting, 1998; Kovera & Borgida, 1998; Mason, 1998; McCann et al., 2003).

EVALUATION TECHNIQUES FOR ALLEGED CHILD VICTIMS

Because there are no standardized instruments that are sensitive to child sexual abuse (Kuehnle & Kirkpatrick, 2005), the assessment focuses on child interviews, supplemented by parent interviews and collateral information.

Child Interviews

There are six central factors that influence the accuracy of reports given by children from 3 to 13 years of age:³⁰

1. Children’s tendency to be reticent and uncommunicative with unfamiliar adults,
2. Children’s lack of familiarity with having adults ask them for information that the adult does not already know,
3. Children’s poorer linguistic skills,
4. Very young children (under 3 or 4) having a poorer memory for events,
5. Children’s tendency to forget information more quickly than adults,

6. Children's tendency to acquiesce to leading questions in order to please adults and protect themselves from embarrassment.

In order to assess the child's veracity, [Kuehnle \(1996\)](#), p. 161) recommends attending to the following eight criteria:

1. timing and circumstances of disclosures
2. language congruent with developmental level
3. quantity and quality of details
4. appropriateness of sexual knowledge based on developmental level
5. repetition over time: internal and external consistency
6. description of offender behavior
7. plausibility of abuse
8. emotional reaction of the child during the interview

These characteristics of the child's report must be observed in the course of carefully designed interviews. Several experts in this area have proposed interview protocols that take into account the particular challenges of interviewing child victims of sexual abuse (e.g. [Faller, 2003](#); [Kuehnle, 1996](#); [Kuehnle & Kirkpatrick, 2005](#); [Poole & Lamb, 1998](#); [Yuille, Hunter, Joffe, & Zaparniuk, 1993](#)). Many of these general recommendations apply to all child interviews in a forensic setting, and are included in the discussion of child interviews in Chapter 13 of this volume.

Others have discussed particular methods for enhancing the effectiveness of the child interview regarding sexual abuse, including: (a) a narrative elaboration technique ([Camparo, Wager, & Saywitz, 2001](#)), (b) using cues, props, and context ([Pipe et al., 1993](#)), (c) cognitive questioning techniques ([Geiselman, Saywitz, & Bornstein, 1993](#)), and (d) considering the effect of interviewer gender on child responses ([Lamb & Garretson, 2003](#)).

In order to evaluate the adequacy of a court-ordered assessment of child sexual abuse, attorneys and judges must consider what interview method was used. And before a mental health professional attempts to evaluate a child who is a potential victim of sexual abuse, they must become proficient with the more detailed and specialized methods recommended for interviewing victims of child sexual abuse.

Controversy Regarding Anatomically Detailed Dolls (ADD)

In clinical settings, dolls have been used for many years in working with young children who have limited cognitive and verbal skills. The assumption has been that doll play reflects the child's inner feelings and responses to events such as sexual abuse. In sexual abuse assessment, "anatomically detailed dolls" (ADD) were introduced, equipped with features such as anal and vaginal orifices, penises, pubic hair, and breasts (Koocher et al., 1995).

After reviewing 16 sets of published guidelines for using the dolls in child interviews, Everson and Boat (1994; see also Boat & Everson, 1993) identified seven major uses: as comforter, icebreaker, anatomical model, demonstration aid, memory stimulus, diagnostic screen, and diagnostic test. They also reviewed the research in order to address the four major criticisms of the use of ADD in sexual abuse evaluations, namely:

1. There is no commonly accepted, standard protocol for the use of the anatomical dolls.

As a result, it is difficult to judge whether a particular evaluator's procedures meet acceptable standards.

2. Available norms on how sexually abused and nonabused children respond to and interact with anatomical dolls are inadequate.

Without such norms, a given child's behavior with the dolls is impossible to interpret.

3. Anatomical dolls are, by their nature, suggestive and sexually overstimulating.

As a result, the dolls induce normal, nonabused children to have sexual fantasies and to engage in sex play that is likely to be misinterpreted as evidence of sexual abuse.

4. The use of anatomical dolls promotes interviewer error and misuse.

Specifically, use of anatomical dolls encourages leading or suggestive lines of questioning, overinterpretation of the child's play, shortcuts in the evaluation process, and overreliance on a single tool. (Everson & Boat, 1994, p. 114)

Everson and Boat found that the research supported three of the criticisms: There were no standard protocols; no standardized norms; and interviewers did tend to use the dolls in a leading and overly suggestive manner, and then to over-interpret the child's behavior with the dolls as indicative of sexual abuse. Everson and Boat concluded that the dolls should not be used *alone* to diagnose child sexual abuse, but that they could be useful as an icebreaker and aid to communication with the child. This conclusion is similar to the one reached by [Koocher et al. \(1995\)](#), who said that although "AD dolls are not a psychological test with predictive (or postdictive) validity per se," "AD dolls can still provide a useful communication tool in the hands of a trained professional interviewer..." (p. 218).

Concern about using ADD has deepened. For instance, Poole & Lamb conclude that "AD dolls are not a psychological test for 'diagnosing' abuse;" they "may not increase the amount of information that children report;" and they require the child to use the dolls as a symbolic representation of themselves and the perpetrator, a cognitive ability which is usually lacking in preschool children and older children whose communication difficulties are due to cognitive impairment (1998, pp. 186, 192). Poole and Lamb note that all of the functions identified by [Everson and Boat \(1994\)](#) could be suggestive "if the dolls were introduced repeatedly, prematurely, or in combination with inappropriate questions" (p. 190). [Kuehnle \(1996\)](#) agrees, proposing that the dolls only be used cautiously as an interview aid with children over 3 years of age.

Growing awareness of problems with anatomical dolls has presumably caused the dramatic decline in usage, from 80–90% of mental health professionals in 1991 to 20% of child custody evaluators in 2002.³¹

EVALUATION TECHNIQUES FOR ALLEGED PERPETRATORS

There is little research and theoretical literature regarding ways to evaluate parents who have been accused of sexually assaulting their own children. Perhaps this is because the focus in child custody evaluations has been on protecting the child by assessing how likely it is

that child sexual abuse has occurred, and then preventing or carefully supervising the child's contact with the adult who is thought to have sexually abused them. Few professionals who specialize in child custody issues have focussed on ways to rehabilitate a confirmed sexual offender and reintegrate them into the family.³²

As Sachsenmaier points out, "There is no particular pattern of psychological variables, lifestyle variables, or any other variables that can say whether a person is or is not a sex offender" (2005, p. 58). Sachsenmaier then proposes an evaluation protocol that includes the range of information and general approach listed in Box 108, plus a discussion of specialized instruments such as the Multiphasic Sex Inventory, the Able Assessment for Sexual Interest, and assessment of sexual arousal through penile plethysmography (also called phallometry).³³

If the court is considering reunification of a child with their sexually abusing parent, it is important to assess how likely the parent is to abuse the child again. Research reviews indicate that "incest offenders reoffend (recidivate) at a lower rate than do other types of child molesters" (Hewitt, 1999, p. 247). Hewitt also summarizes the research and guidelines on recidivism, which suggest that sexual offenders at lowest risk to reoffend are those who:

- Had no prior criminal record,
- Had a single young child victim,
- Used no force in the offense,
- Had adequate romantic relationships or close friendships in the past or currently,
- Had no substance abuse problems,
- Had not been a sexual abuse victim themselves,
- Would be in their late 20s or older,
- Are not psychopathic,
- Are employed or have stable employment history,
- Are of at least average intelligence,
- Show no deviant arousal patterns,
- Are among those who admit to their offense. (Hewitt, 1999, p. 248)

PARENTING PLANS FOR FAMILIES WITH SEXUAL ABUSE/BOUNDARY VIOLATIONS

Sexual abuse evaluations are more likely to be inconclusive in custody/visitation disputes than they are in other situations. This is due to the young age of many victims, the fact that the children's

accounts may be contaminated by multiple evaluations, and the evaluator's concern that the children may have been pressured to say they were sexually abused when they were not (Faller, 2003, p. 270).

When evaluators cannot tell whether a child has been sexually abused, it is difficult to know whether and how to arrange contact between the child and the alleged perpetrator. Hewitt (1999, pp. 253–266) has proposed a therapeutic reunification plan with the following steps:

1. Meet with custodial parent
 - a. Review the plan for reunification
 - b. Begin supportive relationship with custodial parent
 - c. Discuss the parent's anxieties around the child's visits with the alleged perpetrator
 - d. Take a history of the child, including the history of the sexual allegations and the child's current status
 - e. Remove the parent from the investigative role; all concerns are to be referred to the therapist for investigation
 - f. Create a list of acceptable and unacceptable touching
2. Meet with child
 - a. Inform the child about the plan for reunification
 - b. Explain that the focus will be on child safety not evaluations of abuse
 - c. Begin supportive relationship with child.
 - d. Create list of acceptable and unacceptable touching.
3. Meet with custodial parent and child
 - a. Observe the child's relationship with the custodial parent
 - b. Encourage custodial parent to express support for visitation
 - c. Have custodial parent and child share lists of touch
4. Meet with alleged abuser
 - a. Explain plan for reunification
 - b. Take history of alleged abuser, listen to their version of the allegations and their feelings about the allegations and about reunification.
 - c. Refer alleged abuser for therapy.
 - d. Create list for acceptable and unacceptable touching, review list for appropriateness and compare it with the other two lists.

- e. Ask alleged abuser to sign agreement to child's list of touch
 - f. Plan first visitation meeting, in therapist's office
5. Meet with child
- a. Plan first visitation meeting; child creates list of rules
 - b. Review lists of touch created by alleged offender, custodial parent, and child
 - c. Discuss any new allegations of abuse that may surface due to proximity of visit and supportive relationship with child.
Report all new allegations and await court's determination of whether the visitation should go forward.
6. Initial meeting between child and alleged offender
- a. Announce rules, establish comfort level
 - b. Alleged offender reassures child by saying he/she is not angry, does not blame child, and wants to work with child
 - c. Child and parent review their lists of touch
 - d. Alleged offender rules out secrecy – gives child permission to tell about any inappropriate touching, wherever it may occur
7. Follow-up with custodial parent and child
- a. Meet with parent, who shares anxieties and concerns, and documents any new emotional or behavior problems in child.
 - b. Meet with child, to hear reactions and pace future meetings to accommodate child's tolerance for parent/child contact.
8. Supervise series of meetings between child and alleged perpetrator, in therapist's office
9. Transition contact to supervised visitation center –
Review center's notes; proceed accordingly:
- a. No problems – proceed to step 10
 - b. Problems – letter to court, which will initiate:
 - i. Change to less frequent supervised visitation, or
 - ii. Suspend visits
10. Introduce contact outside of supervised visitation center
Short visits to nearby park, MacDonald's, etc; arrive and leave from visitation center.
Review center's notes; if no problems proceed to step 11.
11. Introduce unsupervised visitation

Hewitt's plan includes monitoring progress by meeting periodically with the child alone or the custodial parent and child together. If the child develops problems, or the reunifying parent is uncooperative and/or violates the rules for the visits, visitation is suspended.

Box 107. Clinically-Derived Risk Factors for Reunification of Children with their Parents Accused of Sexual Abuse

LOW RISK	HIGH RISK
Parent	
<ul style="list-style-type: none"> ▪ Fully cooperative ▪ Respectful ▪ Able to put child's needs first ▪ Aware of the child's reactions and emotional needs ▪ Capable of empathy ▪ Accept responsibility for their behavior ▪ Not controlling and dictatorial of child ▪ Able to wait for the child to lead ▪ Aware of and respectful toward the touch rules that have been agreed to 	<ul style="list-style-type: none"> ▪ Minimize or deny their own involvement in the child's allegation ▪ Project anger onto others ▪ Accept no responsibility for their behavior ▪ Are domineering, insensitive, impulsive, explosive, angry, or demeaning ▪ Display no empathy ▪ Unable to give up narcissistic focus ▪ History of antisocial behavior ▪ Uncontrolled chemical dependency status ▪ Consistently display poor boundaries with child relative to feelings or touch ▪ Have sexualized interactions with the child although no specific sexual abuse is seen ▪ Argue and are unable to control anger ▪ Often create difficult situations with the therapeutic manager in the child's presence

Box 107	
LOW RISK	HIGH RISK
Child	
<ul style="list-style-type: none"> ▪ Older ▪ Is clear about own boundaries and capable of stating them ▪ Has sufficient ability to verbalize ▪ Capable of recognizing problems and talking about them ▪ Assertive and confident in voicing own views and concerns despite some adult opposition 	<ul style="list-style-type: none"> ▪ Younger, or older child with characteristics below: <ul style="list-style-type: none"> ◦ Passive ◦ Dependent ◦ Withdrawn ◦ Anxious ◦ Fearful ◦ Powerless ◦ Unable to articulate concerns ◦ Unable to recognize problem behavior, much less report it. <p style="text-align: right; font-size: small;">Adapted from Hewitt, 1999, pp. 266-268</p>

Successful reunification can take anywhere from 6 weeks to 3 or 4 years.³⁴

Hewitt has also analyzed the risk factors for the outcome of reunification, which are presented in Box 107.³⁵

COURT ORDERS FOR SEXUAL ABUSE EVALUATIONS

When the court has a case involving child sexual abuse, it is essential to have an evaluation done by an experienced mental health expert who specializes in child and adolescent sexual abuse. Behnke and Connell (2005) suggest that it is also helpful to use a detailed court order that outlines the range and sources of information sought by the court. The components for such a court order are outlined in Box 108.³⁶

Box 108. *Components of a Court Order for Evaluation of Child Sexual Abuse*

1. Range of information to be reviewed, at discretion of evaluator

A. Government agencies: child protective services, police, social security, courts

- i. Reports and investigations of incidents of child abuse through CPS
- ii. All police incident reports (including domestic disturbance calls to party's present or previous residence)

B. Child: school, daycare, medical, and psychotherapy records³⁶

- i. Anecdotal notes of behavioral issues
- ii. Medical records from birth to present
- iii. School performance, including timing of any changes
- iv. Information about emotional and behavioral issues that are often related to abuse

C. Alleged perpetrator: medical, employment, psychotherapy, military, and criminal records; drug testing; correspondence; computer

- i. Criminal records, court activity records, and local police records
- ii. Driving record
- iii. Medical records including primary care, psychotherapy, substance abuse treatment, and hospitalizations
- iv. Prior CPS records
- v. Phone records, correspondence, photographs
- vi. Grounds for military discharge, loss of job, or disability application
- vii. Drug testing done during the process of the current evaluation
- viii. Hard drive of personal computer, to be analyzed by a forensic computer expert if needed

D. Other parent: same range of information as for alleged perpetrator

E. Other records: any other documents evaluator may request

2. Parties to include in assessment

A. Each parent

B. Stepparent, or either parent's live-in romantic partner

C. Involved relatives such as grandparents, uncles, and aunts

D. Child

E. Anyone else at evaluator's discretion

Box 108**3. Nature and number of interviews or observations****A. Multiple, separate interview/testing sessions with each adult party and the child.**

The evaluator may consider alternating the adults, and completing the adult sessions before meeting the child in order to understand the parent's concerns about the evaluation.

B. At least one parent/child observation session for each parent, to be conducted at the evaluator's office, the parental home, or other location determined by the evaluator.

- i. The parents shall cooperate in adjusting parenting time to accommodate the observation sessions in such a way that each parent shall have a significant period of contact with the child prior to the parent/child observation.
- ii. If the evaluator decides it is necessary, the parent/child observations should be supervised by a neutral supervisor chosen by the evaluator.

C. Telephone or in-person interviews with professionals

to be chosen by the evaluator, recommended to include:

- i. Child's pediatrician, child psychotherapist, and teachers/day care providers
- ii. CPS investigator, and police investigator if there are repeated incident reports (especially police department domestic violence specialist if applicable)

D. Telephone or in-person interviews with non-professionals if needed, to be chosen by the evaluator, such as:

- i. Community members having contact with the child and/or parents, including but not limited to scout leaders, religious leaders, and neighbors
- ii. Family members who have information pertinent to the evaluation.

4. Recording and storage of information**A. Interviews of the child shall be electronically recorded, either by audiotape or videotape³⁷****B. All information obtained in the course of this evaluation shall be retained by the evaluator,**

- i. The information is to include but not be limited to:
 - a. Correspondence and records received from the parties, agencies, professionals, non-professionals, and the internet, whether these are received in written, faxed, or electronic form
 - b. Interviews recorded on audiotape or videotape
 - c. Information obtained via the internet
- ii. The information may be stored on paper, on computer disk, or in electronic form.

Box 108**5. Working agreement between court and court-appointed evaluator****A. The evaluator has discretion regarding the use of assessment instruments,**

keeping in mind the need for relying upon instruments with demonstrated reliability and validity. It is understood that the results of testing may, at best, generate hypotheses that the evaluator and/or court may find useful in developing recommendations and plans designed to ensure the child's safety and best interests.

B. Should the evaluator lack expertise in evaluating children for whom there is suspicion of child sexual abuse, assessing alleged perpetrators of child sexual abuse, or assessing any other matters at issue in this case, it is expected that the evaluator will

- i. make known this limitation, and
- ii. refer the portion of the assessment for which experience is lacking to an experienced evaluator with expertise in that area, or
- iii. obtain consultation sufficient to enable the evaluator to do an adequate assessment.

C. The court does not expect the evaluator to determine whether the alleged sexual abuse occurred; that is a matter for the court to determine. The court seeks the evaluator's opinion about:

- i. the relative strength of support for the finding that abuse occurred;
- ii. and all considerations that raise doubt,
- iii. based on:
 - a. the relevant research regarding base rates of emotional reactions and behaviors for children of this age and for children whose parents are divorcing;
 - b. interview or questioning techniques that may have affected the child's statements;
 - c. and other issues that may have raised concern on the part of the accusing or accused parent.

D. The court seeks a careful examination of all of the relevant history, chronology of events, application of the research to the data available in this case, and an informed opinion about data that tend to support and data that tend to refute the notion that sexual abuse has occurred.

Box 108**5. Working agreement between court and court-appointed evaluator, continued**

E. By agreeing to accept this appointment, the evaluator agrees to provide an assessment that essentially comports with these parameters. If it is the evaluator's opinion that substantial change in this order must be made in order to allow the evaluator to maintain an appropriate standard of practice:

- i. The appointed evaluator should notify the court, in writing, of the recommended changes before proceeding with the evaluation.
- ii. When the court has reviewed the proposed changes, the evaluator will be informed whether the court is modifying the order to embrace the recommended changes or withdrawing the appointment.
- iii. During the conduct of the assessment, if the evaluator determines that a change in procedures, in variance with the order, is clinically or forensically indicated, then the evaluator should proceed with the change in procedures and complete the assessment. In the written report, the evaluator should then include an explanation for the change.

GUIDELINES FOR EVALUATING SEXUAL ABUSE IN CHILDREN

The general approach and structure of all comprehensive child custody evaluations is the same, regardless of whether or not there are allegations of sexual abuse. There are additional requirements for doing sexual abuse evaluations, however, including electronic recording of child interviews and special interviewing techniques.

All professionals who work with families where child sexual abuse is suspected or confirmed should become familiar with these additional requirements, which are discussed in the following guidelines, books, and articles focused on evaluations of child sexual abuse.³⁹

- ◇ American Academy of Child & Adolescent Psychiatry (AACAP)
Policy statement: Guidelines for the clinical evaluation of child and adolescent sexual abuse (1990)

Practice parameters for the forensic evaluation of children and adolescents who may have been physically or sexually abused (1997)

- ◇ American Professional Society on the Abuse of Children (APSAC).

Practice Guidelines: Psychosocial evaluation of suspected sexual abuse in children (2nd ed.)(1997)

Practice Guidelines: Investigative interviewing in cases of alleged child abuse (2002)

- ◇ Faller, K.C., *Understanding and assessing child sexual maltreatment* (2003).
- ◇ Kuehnle, K. *Assessing allegations of child sexual abuse* (1996).
- ◇ Poole, D.A. & Lamb, M. E. *Investigative interviews of children* (1998).
- ◇ Articles by Behnke & Connell, 2005; Bow, Quinnell, Zaroff, & Assemany, 2002; Kuehnle, 2002; Kuehnle & Kirkpatrick, 2005; and Sachsenmaier, 2005.

Qualified mental health professionals who want to conduct evaluations involving child sexual abuse should also attend specialized training, which can be located through the *Resources* section at end of this volume.

Notes

1. The American Academy of Child & Adolescent Psychiatry (AACAP) makes this requirement clear when it states that, "Persons doing evaluation [for sexual abuse in children and adolescents] must be professionals with special skills and experience in child and adolescent sexual abuse, and evaluations ideally should be performed under the direction of an experienced child and adolescent psychiatrist or psychologist" (AACAP, 1990, p. 1).
2. The types and examples of child sexual abuse in Box 103 are adapted from Faller, 2003, pp. 20–21. Faller notes that although this list represents the most common types of sexual abuse which are included in most laws regarding sexual abuse, it is not all-inclusive. Some of the omitted behaviors are: (1) frottage, where the offender obtains gratification from contact between his genitals and the child's skin or clothing, (2) acts where the offender requires the child to do things to the child's own body, such as making the child undress, touch him- or herself, or to put a finger or object in the child's own anus or vagina, (3) interfemoral (dry or vulvar) intercourse, where the penis goes between the victim's upper thighs, and (4) attempted sexual acts (p. 22).
3. Faller notes that another example of the importance of victim perception is oral-genital sex, which is conceptualized as less serious than penile penetration.

Oral sex can be very intrusive, however, and the victims may experience it as more disgusting than intercourse (Faller, 2003, p. 22).

4. Ménard and Ruback (1999) report the figure of 88,000 children sexually abused annually, based on the U.S. Department of Health and Human Services report for 1999; they also point out that this figure underestimates the number of abuse victims in the U.S. because most victims of sexual abuse do not report their abuse to authorities. Webster (2001) uses 1996 data from the National Center of Child Abuse and Neglect to report that over 300,000 children and adolescents are sexually abused annually.
5. Kuehnle and Kirkpatrick (2005) point out that current research shows low reporting rates by child victims of sexual abuse. A review of retrospective studies also indicates that 60–70% of adults who claim to have been victims of child sexual abuse do not recall making a disclosure during their childhood, and only 10–18% recall that their cases were reported to the authorities (London et al., 2005).
6. In reviewing the research on child disclosure, London et al. (2005) also found that the rate of reporting child sexual abuse is *not* related to (a) demographic variables, (b) severity of the sexual abuse, (c) the method of coercion used by the perpetrator, or (d) violence in the family.
7. Kuehnle and Kirkpatrick (2005) report on preliminary studies that have found that 1–2% of custody disputes involve an allegation of child sexual abuse, but suggest that this “appears to be a gross underestimate of the actual occurrence of CSA [Child Sexual Abuse] allegations embedded in contested CCC [Contested Custody Cases]” (p. 9). On the other hand, Finkelhor and Hashima (2001) summarize national statistics that suggest that approximately 2% of children aged 0–17 are sexually abused each year (without regard to their family status). Since the data collected by Johnston et al. (2005) suggest that parents in custody disputes make allegations of sexual abuse at the same rates as other parents, the estimate of an overall incidence rate of 2% for sexual abuse allegations in child custody disputes may be reasonably accurate.
8. Johnston et al. (2005) found a substantiation rate of 31% for allegations of child sexual abuse, which fell in the mid-range of previous substantiation rates for CSA of 23% (Bala & Schumar, 1999), 42–49% (Thoennes & Tjader, 1990), and 45% (T. C. Brown, 2003).
9. Finkelhor et al. (1990) reported that 80–95% of sexual abuse perpetrators were male, while the Third National Incidence Study of Child Abuse and Neglect (NIS-3; see Sedlak & Broadhurs, 1996, p. 11) found that 89% of child sexual abuse perpetrators were male and 12% were female. Brown (2003) reports that in British studies one quarter to one third of the perpetrators are male juveniles
10. The risk factors in Box 104 are taken from a number of studies and reviews of the research literature, as indicated in notes 11–20 below.
11. See note 9 above.
12. Girls are at greater risk of being abused by a member of their own family, whereas boys are at greater risk of being sexually abused by an individual outside of the family (Kuehnle et al., 2000; Finkelhor et al., 1990). T. Brown (2003) notes that in one large British study, 4–5% of girls reported having been sexually abused by a father or father-substitute in the family.
13. Kuehnle et al. (2000) summarize a variety of studies that indicate that (1) about half of the perpetrators of child sexual abuse have a history of physical

- abuse as children, and that (2) when compared with non-abused children, physically and sexually abused children are more than four times as likely to be arrested as an adult for a sex crime.
14. Men under 26 years of age who are not genetically related to the child constitute 20–40% of the perpetrators of child sexual abuse (Kuehnle et al., 2000; Sedlak & Broadhurst, 1996). T. Brown (2003) reports that in British studies one quarter to one third of the perpetrators are male juveniles.
 15. The latest incidence figures for the U.S. (NIS-3, 1993; see Sedlak & Broadhurst, 1996) indicate that children living in families with annual incomes under \$15,000 are 18 times more likely to experience sexual abuse than are children living in families with annual incomes over \$30,000.
 16. Given that non-biologically-related males under age 26 are the most frequent perpetrators of child sexual abuse (Kuehnle et al., 2000), girls living with their unmarried mothers are particularly at risk of being abused by the mother's boyfriends.
 17. Girls have consistently been found to be at greater risk for being sexually abused than boys (Kuehnle et al., 2000), with some studies showing the female to male ratio for victims of child sexual abuse to be 3:1 (Sedlak & Broadhurst, 1996) or 4:1 (Webster, 2001).
 18. As indicated in Chapter 24 (note 27), children with special needs are subject to more severe and longer-lasting sexual abuse than other children.
 19. Although the NIS-3 found that the incidence of sexual abuse peaked at age 3 and then remained flat at older ages, a number of other studies have found that the risk of sexual abuse increases as the child develops, and that prepubescent girls (ages 7–12) are at the greatest risk (Kuehnle, 1996; Kuehnle et al., 2000, p. 377).
 20. Kuehnle et al. (2000) summarize research indicating that children living apart from their biological mothers are three times as likely to be sexually abused as children living with their biological mothers, while children whose fathers were absent during their early years are more apt to be sexually abused by those uninvolved fathers.
 21. The reactions to child sexual abuse listed in Box 105 are taken from several research studies and surveys of the literature (Berliner & Elliott, 2002; DiLillo, Tremblay, & Peterson, 2000; Kendall-Tackett et al., 1993; Kuehnle, 1996; Webster, 2001).
 22. Webster (2001) discusses this cumulative effect of trauma, noting that in one study only 8% of adult survivors of child sexual abuse who were treated in an outpatient mental health facility reported sexual abuse as their only childhood trauma; that is, 92% reported multiple childhood traumas.
 23. For instance, Silovsky and Nied (2002) examined sexual behavior problems in a group of preschool children and found that 62% did not have substantiated histories of sexual abuse, 47% had experienced physical abuse, 58% had witnessed violence between their parents, and 11% had no known history of abuse or witnessing domestic violence.
 24. With specific reference to the Rorschach, Weiner adds that, "At the most, then, the RIM may provide clues to distressing preoccupations with morbidity and sexuality and thereby prompt investigation of whether sexual abuse may have occurred. Under no circumstances, however, do Rorschach findings by themselves warrant an inference that such abuse has probably occurred" (2005, p. 108).

25. [Lyon \(1999\)](#) discusses the media coverage of sexual abuse, public outrage, social science research on child memory, and resulting legal and policy issues.
26. A recent study also found that children who are 5–6 years old can recall and accurately report on emergency medical procedures that happened 5 years previously if they were 2 years old at the time of the emergency. Those who were only one year old at the time of the emergency, however, either did not recall the event or confused it with other events ([Peterson & Parsons, 2005](#)).
27. [Talwar, Lee, Bala, & Lindsay, \(2004\)](#) found that most children 3–11 years old told the truth about parental transgressions even if the parent told the child not to tell and was present during the interview. It is difficult to know whether these results would generalize from this mild parental transgression (breaking a puppet) to sexual abuse, however, since many children fear that they will be punished for disclosing sexual abuse.
28. [Blandon-Gittlin, Pezdek, Rogers, & Brodie, 2005](#), had 94 children aged 9–12 describe either a true or a fabricated event that was familiar or unfamiliar to them. The interviews were transcribed and then rated for veracity using the Criterion-Based Content Analysis (CBCA) of the Statement Validity Assessment (SVA) technique, which the authors describe as the most widely-used veracity assessment technique worldwide. The CBCA scores were significantly related to age, and were more closely related to the familiarity of the event than to the veracity of the child's account. In other words, the CBCA was not useful as a credibility assessment tool.
29. For example, [Sorensen and Snow \(1991\)](#) interviewed 116 children who had already been confirmed as having been sexually abused. 72% denied the abuse when they were initially questioned, 22% recanted after they did disclose (and 93% of those who recanted reaffirmed their abuse allegations over time), and 4% never disclosed. The researchers concluded that disclosure of sexual abuse is a process rather than an event, and has three main phases: denial, tentative disclosure, and active disclosure. [Faller \(2003\)](#) and [Kuehnle \(1996\)](#) both support this characterization of the disclosure of child sexual abuse as a process rather than an event.
30. These six factors are listed by [Kuehnle and Kirkpatrick \(2005\)](#), and many are also discussed in the section on child memory in Chapter 13 of this volume.
31. [Poole and Lamb \(1998\)](#), p. 186 report that state-wide and nation-wide studies showed rates of ADD usage to be 68% among child protection workers in 1988, 92% among professionals in 1991, and 62% among law enforcement professionals and 80% among mental health professionals in 1992. These rates are dramatically higher than the 21% of child custody evaluators using ADD to do assessments of child sexual abuse in 2002 ([Bow and Quinnell, 2002](#)).
32. Two exceptions are T. C. [Johnson \(2005\)](#) and [Hewitt \(1999\)](#), who discuss ways to reintegrate the alleged sex offender into the family when the sexual abuse is not substantiated but the evaluation indicates that there are boundary violations in the home. See discussion in the section below.
33. Others have proposed similar protocols for evaluating those accused of sexually molesting children (e.g. ATSA, 2004; Quinsey & Lalumière, 2001)
34. T. C. Johnson has proposed a similar therapeutic approach to reunification which involves using "a neutral therapist to work with the children and both sets of parent during alternate sessions" (2005, p. 123). Johnson suggests that this approach is particularly useful when the evaluation found boundary violations

- or other issues in the family. These problems “can be modified [through the therapeutic intervention] before relaxing the monitoring requirements or while decreasing the monitoring and increasing visitation” (p. 122).
35. Hewitt points out that, “these lists [of risk factors in Box 107] have been drawn from clinical experience; they are not the product of factor analysis coming from research. They may be modified pending the outcome of research” (1999, pp. 266–268).
 36. The material in Box 108 is adapted from Behnke and Connell, 2005, pp. 131–133, except for the addition of: correspondence, drug testing, treatment for substance abuse, and forensic analysis of a personal computer in section 1.C; and the addition of section 3.D and section 4. Other writers have also indicated that sexual abuse evaluations should include the materials and procedures listed in Box 108 (e.g. Kuehnle & Kirkpatrick, 2005; Sachsenmaier, 2005), although they have not discussed the need to include the information in a detailed court order appointing the evaluator.
 37. As noted in Chapter 5, a special court order is usually required before even a court-ordered evaluator can obtain a child’s psychotherapy records, which are protected by client/therapist privilege. In some courts, including the psychotherapist records in the order of appointment may satisfy this requirement.
 38. As Kuehnle and Kirkpatrick point out, “While there is disagreement among professionals on whether forensic child interviews should be electronically recorded (e.g. audiotape, videotape), there is agreement that electronic recording offers the most accurate method of documenting specific questions and answers, as well as documenting the tone of the interview and the skill of the interviewer” (2005, p. 18). This documentation is essential in evaluations of child sexual abuse, where it is important to observe the tone, inflection, and exact wording of both interviewer questions and child answers.
 39. See the Reference List for details of publication.

RESOURCES

REFERENCE BOOKS

Family Law

Garner, B.A. (Ed. In Chief) (2005). *Black's Law Dictionary (8th Abridged Ed.)*. St. Paul, MN: Thomson/West.

An extensive, detailed list of key terms with particularly clear definitions

Katz, S. N. (2003). *Family Law in America*. NY: Oxford University Press.

This well-organized book is written for a professional audience. It covers the basic principles of contemporary family law and focuses on legal practice as well as legal scholarship

Larsen, S. & Bourdeau, J. (1997). *Legal research for beginners*. NY: Barron's.

This concise guide contains an outline of the legal system, examples of how to transform a problem into a legal issue, detailed instructions about how to search for cases and other legal information, and a guide to interpreting your findings.

Psychology, Behavioral Science, and Medicine

VandenBos, G. R. (Ed. in Chief) (2007). *APA dictionary of psychology*. Washington, DC: American Psychological Association.

This comprehensive dictionary provides thorough, clear definitions of the major terms, concepts, theories, and psychometric measures in psychology.

Wolman, B. B. (1989). *Dictionary of behavioral science (2nd Ed.)*. NY: Academic Press.

This short dictionary provides clear, concise definitions of the key terms, concepts, theories, assessment devices, and techniques of most of the behavioral sciences, including psychology, psychiatry, biochemistry, psychopharmacology, neurology, genetics, endocrinology, neurosurgery, and traditional and non-Freudian psychoanalysis.

American Psychiatric Association (2000). *Diagnostic and statistical manual of mental disorders* (4th ed., Text Revision) (DSM-IV-TR). Washington, DC: Author.

This manual provides a description of all aspects of currently-recognized psychiatric disorders, including: diagnostic criteria; prevalence; etiology; differential diagnosis; familial patterns; culture, age, and gender features; and usual course.

Rothenberg, M. A. & Chapman, C. F. (2000). *Dictionary of medical terms for the nonmedical person* (4th ed.). Hauppauge, NY: Barron's Educational Series.

This concise medical dictionary contains a unique set of appendices; the ones that are particularly useful for custody evaluators are: diagrams of the various parts and systems of the human body, positional and directional terms, common abbreviations used in medicine, table of managed care terms, and table of commonly prescribed drugs by trade names and by generic names. This information can be essential in deciphering medical records.

Interviewing techniques

Poole, D. A. & Lamb, M. E. (1998). *Investigative interviews of children: A Guide for helping professionals*. Washington, DC: American Psychological Association.

This guide summarizes developmental issues that affect the use of children as witnesses and then suggests ways to structure and conduct child interviews in order to improve the accuracy of the information obtained. This guide will be useful to all child custody evaluators, even those with previous experience in working with children in non-forensic settings.

JOURNALS

Journal of Child Custody. NY: The Haworth Press.

Family Court Review. Malden, MA: Blackwell.

Journal of Forensic Psychology.

Journal of Forensic Psychiatry.

Law and Human Behavior. The Netherlands: Kluwer Academic/Plenum.

Professional Psychology: Research and Practice. Washington, DC: American Psychological Association.

Psychology, Public Policy, and Law. Washington, DC: American Psychological Association.

TRAINING PROGRAMS AND WORKSHOPS

- American Academy of Forensic Psychology (AAFP).

As the training division of the American Board of Forensic Psychology (ABFP), AAFP offers training seminars in all aspects of forensic psychology. A list of current workshops is available at <http://www.abfp.com/workshops.asp>

- Association of Family and Conciliation Courts (AFCC).

List of current conferences, workshops, and seminars for custody evaluators at all levels of expertise and experience. Available at <http://www.afccnet.org/training/index.asp>

- American Law Institute/American Bar Association (ALI/ABA).

Home page at <http://www.ali-aba.org/>

- American Professional Society on the Abuse of Children (APSAC).

Comprehensive 40-hour clinics on child forensic interviewing, highlighting interviewing techniques useful to the child custody evaluator. Available at http://apsac.fmhi.usf.edu/services/services_clinics.asp

- Massachusetts Association of Guardians ad Litem (MAGAL).

List of current conferences, workshops, and seminars for child custody evaluators at all levels of expertise and experience. Available at <http://www.magalinc.org/events.asp>

- Specialized Training Services.

A for-profit provider of forensic seminars and training materials for legal and mental health professionals. Available at <http://www.specializedtraining.com/index.htm>

PROFESSIONAL ASSOCIATIONS

American Academy of Child & Adolescent Psychiatry (AACAP)

Home page at <http://www.aacap.org/>

American Academy of Matrimonial Lawyers (AAML)

Home page at <http://www.aaml.org/>

American Association for Marriage and Family Therapy (AAMFT)

Home page at http://www.aamft.org/index_nm.asp

American Bar Association (ABA)

Home page at <http://www.abanet.org/>

American Board of Forensic Psychology (ABFP)

As part of the American Board of Professional Psychology, the ABFP is responsible for certification of forensic psychologists through the diplomate process. ABFP can be reached at <http://www.abfp.com>

American Professional Society on the Abuse of Children (APSAC)

Home page at <http://apsac.fmhi.usf.edu/>

American Psychology-Law Society (Division 41 of the American Psychological Association).

Home page at <http://www.ap-ls.org/>

Association of Family and Conciliation Courts (AFCC)

Home page at <http://www.afccnet.org/>

International Association of Collaborative Professionals (IACP)

Home page at <http://www.collaborativepractice.com>

Massachusetts Association of Guardians Ad Litem (MAGAL)

Home page at <http://www.magalinc.org/>

Massachusetts Collaborative Law Council (MCLC)

Home page at <http://www.massclc.org>

National Organization of Forensic Social Work (NOFSW)

Home page at <http://www.nofsw.org>

Supervised Visitation Network (SVN)

Home page at <http://www.svnetwork.net/index.html>

PROFESSIONAL GUIDELINES FOR CHILD CUSTODY DISPUTES AND EVALUATIONS

- American Academy of Child and Adolescent Psychiatry. (1997). Practice parameters for child custody evaluation. *Journal of American Academy of Child and Adolescent Psychiatry*, 36(10suppl). Available from <http://www.aacap.org/page.www?section=Summaries&name=Summary+of+the+Practice+Parameters+for+Child+Custody+Evaluation>
- * American Academy of Matrimonial Lawyers (AAML). (2000). *Bounds of advocacy: Goals for family lawyers* (Rev. ed.). Chicago, IL: AAML. Available from http://www.aaml.org/files/public/Bounds_of_Advocacy.htm
- American Academy of Psychiatry and the Law (AAPL). (1995). *Ethical guidelines for the practice of forensic psychiatry*. Bloomfield, CT: Author. Available from <http://www.aapl.org/ethics.htm>
- American Psychiatric Association (APA-med), Task Force on Clinical Assessment in Child Custody. (1988). *Child Custody Consultation, Revised Version*. Arlington, VA: Author. Available from http://www.psych.org/edu/other_res/lib_archives/archives/tfr/tfrchildcustody1988.pdf
- American Psychological Association (APA). (1985). *Standards for educational and psychological testing*. Washington, DC: Author.
- * American Psychological Association (APA), Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior*, 15(6), 655–665.
- American Psychological Association (APA). (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47, 1597–1611. Available at <http://www.apa.org/ethics/code1992.html>
- American Psychological Association (APA). (1993). *Record keeping guidelines*. Washington, DC: Author.
- * American Psychological Association (APA), Committee on Professional Practice and Standards. (1994). Guidelines for child custody evaluations in divorce proceedings. *American Psychologist*, 49, 677–680. Available at <http://www.apa.org/practice/childcustody.html>
- American Psychological Association (APA). (2002). *Ethical principles of psychologists and code of conduct*. Washington, D.C.: Author. Available at <http://www2.apa.org/ethics/code2002.doc>
- * Association of Family and Conciliation Courts (AFCC), Task Force for Model Standards of Practice for Child Custody Evaluation. (2006, May). *Model standards of practice for child custody evaluation*. Madison, WI: Author. Available at http://www.afcnet.org/resources/standards_practice.asp
Also available at AFCC (2007), *Family Court Review*, 45(1), 70–91.

STATE GUIDELINES AND STATUTES FOR CHILD CUSTODY EVALUATIONS

- California Rules of Court 5.220 (2005). *Court-ordered child custody evaluations*. Retrieved September 2, 2005 from <http://www.courtinfo.ca.gov/rules/titlefive/title5-1-284.htm>

- Georgia Psychological Association. (1990). *Recommendations for psychologists' involvement in child custody cases*. Atlanta, GA: Author.
- Judicial Council of California. (1999). *Uniform standards of practice for court ordered child custody evaluations*. San Francisco: Author.
- Commonwealth of Massachusetts (Mass.), The Trial Court, Probate and Family Court Department. (2005). *Standards for Category F Guardian ad litem investigators*. Boston, MA: Author. Available at <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/galstandards02145.pdf>
- Louisiana State Board of Social Work Examiners. (1998). *Guidelines for child custody evaluations*. Available at <http://www.labswe.org/child.htm>
- Metropolitan Denver Interdisciplinary committee on Child Custody. (1989). *Guidelines for child custody evaluations*. Denver, CO: Author.
- Nebraska Psychological Association. (1986). *Guidelines for child custody evaluations*. Lincoln, NE: Author.
- New Jersey State Board of Psychological Examiners. (1993). *Speciality guidelines for psychologists in custody/visitation evaluations*. Newark, NJ: Author.
- North Carolina Psychological Association. (draft, 1993). *Child custody guidelines*. Unpublished manuscript.
- Oklahoma Psychological Association. (1988). *Ethical guidelines for child custody evaluations*. Oklahoma City, OK: Author.
- Pennsylvania Psychological Association, Clinical Division/Task Force on Child Custody Evaluation. (1991). *Roles for psychologists in child custody disputes*. Unpublished manuscript.

Notes

- * These guidelines are reproduced in the CD accompanying this volume.

REFERENCES

- Abidin, R. R. (1990). *Parenting stress index* (3rd ed.). Odessa, FL: Psychological Assessment Resources.
- Ackerman, M. J. (1995). *Clinician's guide to child custody evaluations*. NY: Wiley.
- Ackerman, M. J. (2001). *Clinician's guide to child custody evaluations* (2nd ed.). NY: Wiley.
- Ackerman, M. J. (2005a). The Ackerman-Schoendorf Scales for Parental Evaluation of Custody (ASPECT): A review of research and update. *Journal of Child Custody*, 2(1/2), 179–193.
- Ackerman, M. J. (2005b). Transfusion maybe, laid to rest, no: A response to the Mary Connell review of the Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT). *Journal of Child Custody*, 2(1/2), 211–214.
- Ackerman, M. J. (2006). *Clinician's guide to child custody evaluations* (3rd ed.). NY: Wiley.
- Ackerman, M. J., & Ackerman, M. C. (1997). Custody evaluation practices: A survey of experienced professionals (Revisited). *Professional Psychology: Research and Practice*, 28(2), 137–145.
- Ackerman, M. J., Ackerman, M. C., Steffen, L. J., & Kelley-Poulos, S. (2004). Psychologists' practices compared to the expectations of family law judges and attorneys in child custody cases. *Journal of Child Custody*, 1(1), 41–60.
- Ackerman, M. J., & Kelley-Poulos, S. (2001). *Child custody evaluations practices: A survey of family law attorneys*. Unpublished doctoral dissertation, Wisconsin School of Professional Psychology, Milwaukee. As discussed by Ackerman (Ackerman, 2006; Ackerman et al., 2004).
- Ackerman, M. J., & Schoendorf, K. (1992). *ASPECT: Ackerman-Schoendorf Scales for Parent Evaluation of Custody*. Los Angeles: Western Psychological Services.
- Ackerman, M. J., & Steffen, L. J. (2001). Child custody evaluation practices: A survey of family law judges. *American Journal of Family Law*, 15(1), 12–23.
- Ahern, K. (2003). At-risk children: A demographic analysis of the children of clients attending mental health community clinics. *International Journal of Mental Health Nursing*, 12, 223–228.
- Ahrons, C. (2004). *We're still family: What grown children have to say about their parents' divorce*. NY: Perennial Currents.
- Ainsworth, M. D. S., Blehar, M. C., Waters, E., & Wall, S. (Eds.). (1978). *Patterns of attachment: A psychological study of the strange situation*. Hillsdale, NJ: Erlbaum.
- Amato, P. R. (2000). The consequences of divorce for adults and children. *Journal of Marriage and the Family*, 62(4), 1269–1287.

- Amato, P. R. (2001). Children of divorce in the 1990s: An update of the Amato and Keith (1991) meta-analysis. *Journal of Family Psychology, 15*(3), 355–370.
- Amato, P. R. (2005). The impact of family formation change on the cognitive, social, and emotional well-being of the next generation. *The Future of Children, 15*(2), 75–96.
- Amato, P. R., & Gilbreth, J. G. (1999). Nonresident fathers and children's well-being: A meta-analysis. *Journal of Marriage and the Family, 61*(3), 557–573.
- Amato, P. R., & Keith, B. (1991). Parental divorce and the well-being of children: A meta-analysis. *Psychological Bulletin, 110*(1), 26–46.
- Amato, P. R., & Sobolewski, J. M. (2001). The effects of divorce and marital discord on adult children's psychological well being. *American Sociological Review, 66*(6), 900–921.
- American Academy of Child & Adolescent Psychiatry (AACAP). (1990). Policy statement: Guidelines for the clinical evaluation of child and adolescent sexual abuse. Retrieved July 18, 2005, from <http://www.aacap.org/publications/policy/Ps22.htm>
- American Academy of Child & Adolescent Psychiatry (AACAP). (1997). Practice parameters for the forensic evaluation of children and adolescents who may have been physically or sexually abused. *Journal of the American Academy of Child and Adolescent Psychiatry, 36*(3), 423–444.
- American Academy of Child & Adolescent Psychiatry (AACAP). (1999, June). Policy statement: Gay, lesbian, and bisexual parents. Retrieved July 18, 2005, from <http://www.aacap.org/publications/policy/ps46.htm>
- American Academy of Child & Adolescent Psychiatry (AACAP). (2004a, July). Facts for families: Child abuse – The hidden bruises. Retrieved December 27, 2006, from <http://www.aacap.org/page.ww?section=Facts+for+Families&name=Child+Abuse+The+Hidden+Bruises>
- American Academy of Child & Adolescent Psychiatry (AACAP). (2004b, July). Facts for families: Teens: Alcohol and other drugs. Retrieved December 27, 2006, from <http://www.aacap.org/page.ww?section=Facts+for+Families&name=Teens%3A+Alcohol>
- American Academy of Child & Adolescent Psychiatry (AACAP). (2006). Glossary of symptoms and illnesses: Alcohol and drug abuse. Retrieved December 27, 2006, from <http://www.aacap.org/page.ww?section=Glossary+of+Symptoms+and+Illnesses&name=Alcohol>
- American Academy of Matrimonial Lawyers (AAML). (1997). *Proposed model relocation act*. Chicago, IL: Author. Retrieved October 28, 2006, from http://www.aaml.org/files/public/Bounds_of_Advocacy.htm
- American Academy of Matrimonial Lawyers (AAML). (2000). *Bounds of advocacy: Goals for family lawyers* (Rev. ed.). Chicago, IL: Author. Retrieved October 27, 2006, from http://www.aaml.org/files/public/Bounds_of_Advocacy.htm
- American Academy of Matrimonial Lawyers (AAML). (2005). *Protecting your children during divorce: A model parenting plan and guidelines*. Chicago, Ill: Author. Available for purchase from AAML at <http://www.aaml.org>
- American Academy of Pediatrics (ACP), Committee on Psychosocial Aspects of Child and Family Health. (2002a). Coparent or second-parent adoption by same-sex parents. *Pediatrics, 109*(2), 339–340. Retrieved October 4, 2006, from www.pediatrics.org
- American Academy of Pediatrics (ACP), Committee on Psychosocial Aspects of Child and Family Health. (2002b). Technical report: Coparent or second-parent

- adoption by same-sex parents. *Pediatrics*, 109(2), 341–344. Retrieved October 4, 2006, from www.pediatrics.org
- American Academy of Psychiatry and the Law (AAPL). (1995). *Ethical guidelines for the practice of forensic psychiatry*. Bloomfield, CT: Author. Retrieved February 15, 2007, from <http://www.aapl.org/ethics.htm>
- American Bar Association (ABA), Commission on Domestic Violence. (2005). *Tool for attorneys to screen for domestic violence*. Retrieved August 30, 2006, from <http://www.abanet.org/domviol/home.html>
- American Bar Association (ABA). (2006). *Chart 6: Third-party visitation*. Retrieved October 6, 2006, from <http://www.abanet.org/family/familylaw/FLQvisitation06.pdf> 2006–04–14
- American Law Institute (ALI). (2002). *Principles of the law of family dissolution: Analysis and recommendations*. Newark, NJ: Matthew Bender/Lexis Nexis.
- American Professional Society on the Abuse of Children (APSAC). (1997). *Guidelines for psychosocial evaluation of suspected sexual abuse in young children* (2nd ed.). Chicago: Author.
- American Professional Society on the Abuse of Children (APSAC). (2002). *Practice Guidelines: Investigative interviewing in cases of alleged child abuse*. Chicago: Author
- American Psychiatric Association (APA-med), Task Force on Clinical Assessment in Child Custody. (1988). *Child custody consultation, revised version*. Arlington, VA: Author. Available at http://www.psych.org/edu/other_res/lib_archives/archives/tfrr/tfrrchildcustody1988.pdf
- American Psychiatric Association (APA-med). (1994). *Diagnostic and statistical manual of mental disorders* (4th ed.), commonly referred to as “DSM-IV.” Washington, DC: Author.
- American Psychiatric Association (APA-med). (2000). *Diagnostic and statistical manual of mental disorders* (4th ed., text revision), commonly referred to as “DSM-IV-TR.” Arlington, VA: Author.
- American Psychological Association (APA). (1985). *Standards for educational and psychological testing*. Washington, DC: Author.
- American Psychological Association (APA), Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior*, 15(6), 655–665.
- American Psychological Association (APA). (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47, 1597–1611. Retrieved October 1, 2005, from <http://www.apa.org/ethics/code1992.html>
- American Psychological Association (APA). (1993). *Record keeping guidelines*. Washington, DC: Author.
- American Psychological Association (APA), Committee on Professional Practice and Standards. (1994). Guidelines for child custody evaluations in divorce proceedings. *American Psychologist*, 49, 677–680. Retrieved October 1, 2005, from <http://www.apa.org/practice/childcustody.html>
- American Psychological Association (APA), Committee on Professional Practice and Standards. (1998). *Guidelines for psychological evaluations in child protection matters*. Washington, DC: Author. Retrieved October 1, 2005, from <http://www.apa.org/practice/childprotection.html>
- American Psychological Association (APA). (2002). *Ethical principles of psychologists and code of conduct*. Washington, DC: Author. Retrieved October 1, 2005, from <http://www2.apa.org/ethics/code2002.doc>

- American Psychological Association (APA), Public Interest Directorate. (2005). *Guidelines for psychotherapy with lesbian, gay, & bisexual clients*. Retrieved July 30, 2005, from <http://www.apa.org/pil/lgbcl/guidelines.html>
- Anderson, L. E. (2005–2006). *Detox your body, get clean and pass any drug test*. Retrieved January 3, 2007, from <http://www.drugtestingsecrets.com/>
- Andre, K. (2005, September/October). Parental alienation syndrome: Its time has come. *The California Psychologist*. Retrieved December 7, 2005, from <http://www.questx.com/pas/pashascome.html>
- Arnold, D. S., O'Leary, S. G., Wolff, L. S., & Acker, M. M. (1993). The parenting scale: A measure of dysfunctional parenting in discipline situations. *Psychological Assessment*, 5(2), 137–144.
- A Safe Place. (2003a). *Domestic violence: All children*. Waukegan, Ill: Lake County Crisis Center. Retrieved November 27, 2006, from <http://www.asafeplaceforhelp.org/childreviolence.html>
- A Safe Place. (2003b). *Effects on children who live with domestic violence*. Waukegan, Ill: Lake County Crisis Center. Retrieved November 27, 2006, from <http://www.asafeplaceforhelp.org/childreneffects.html>
- A Safe Place. (2003c). *Effects on child witnesses of domestic violence – Part 2*. Waukegan, Ill: Lake County Crisis Center. Retrieved November 27, 2006, from <http://www.asafeplaceforhelp.org/childwitnesses2.html>
- A Safe Place. (2003d). *Effects on child witnesses of domestic violence – Part 3*. Waukegan, Ill: Lake County Crisis Center. Retrieved November 27, 2006, from <http://www.asafeplaceforhelp.org/childwitnesses3.html>
- Association for the Treatment of Sexual Abusers (ATSA). (2004). *ATSA standards and guidelines*. Beaverton, OR: Author. Available at www.atsa.com/pubSoT.html
- Association of Family and Conciliation Courts (AFCC), Task Force on Parenting Coordination. (2003). Parenting coordination: Implementation issues: April 30, 2003. *Family Court Review*, 41(4), 533–564.
- Association of Family and Conciliation Courts (AFCC), Task Force on Parenting Coordination. (2006). Guidelines for parenting coordination, May 2005. *Family Court Review*, 44(1), 164–181. Guidelines are also available at <http://www.afccnet.org/pdfs/AFCC2GuidelinesforParentingCoordination2.pdf>
- Association of Family and Conciliation Courts (AFCC), Task Force for Model Standards of Practice for Child Custody Evaluation. (2007). Model standards of practice for child custody evaluation. *Family Court Review*, 45(1), 70–91. Original version approved by AFCC Board in May 2006, available from http://www.afccnet.org/resources/standards_practice.asp
- Association of Family and Conciliation Courts, Massachusetts Chapter (AFCC-MA). (2005). *Planning for shared parenting: A guide for parents living apart*. Boston, MA: Author.
- Atkinson, J. (2006). Overview of law of relocation in the 50 states. In American Bar Association, Section of Family Law, *Relocation: The debate*. Washington, DC: ABA 2006 Spring CLE Conference. Retrieved October 15, 2006, from www.abanet.org/family/newsletters/2006/Relocation50States.pdf
- Aulivola, M. (2004). Outing domestic violence: Affording appropriate protections to gay and lesbian victims. *Family Court Review*, 42(1), 162–177.
- Austin, W. G. (2000a). Assessing credibility in allegations of marital violence in the high-conflict child custody case. *Family and Conciliation Courts Review*, 38(4), 462–477.

- Austin, W. G. (2000b). A forensic psychology model of risk assessment for child custody relocation law. *Family and Conciliation Courts Review*, 38(2), 192–207.
- Austin, W. G. (2000c). Relocation law and the threshold of harm: Integrating legal and behavioral perspectives. *Family Law Quarterly*, 34(1), 63–82.
- Austin, W. G. (2000d). Risk reduction interventions in the child custody relocation case. *Journal of Divorce & Remarriage*, 33(1/2), 65–73.
- Austin, W. G. (2001). Partner violence and risk assessment in child custody evaluations. *Family Court Review*, 39(4), 483–496.
- Austin, W. G. (2002). Guidelines for utilizing collateral sources of information in child custody evaluations. *Family Court Review*, 40(2), 177–184.
- Austin, W. G., & Kirkpatrick, H. D. (2004). The investigation component in forensic mental health evaluations: Considerations for parenting time assessments. *Journal of Child Custody*, 1(2), 23–46.
- Ayoub, C. C., Deutsch, R. M., & Maraganore, A. (1999). Emotional distress in children of high-conflict divorce: The impact of marital conflict and violence. *Family and Conciliation Courts Review*, 37(3), 297–314.
- Babcock, J. C., Miller, S. A., & Siard, C. (2003). Toward a typology of abusive women: Differences between partner-only and generally violent women in the use of violence. *Psychology of Women Quarterly*, 27(2), 153–161.
- Bacon, B. L., & McKenzie, B. (2004). Parent education after separation/divorce: Impact of the level of parental conflict on outcomes. *Family Court Review*, 42(1), 85–98.
- Bailey, M. (1999). Supervised access: A long-term solution? *Family and Conciliation Courts Review*, 37(4), 478–486.
- Bala, N. (2005). Tippins and Wittmann asked the wrong question: Evaluators may not be “experts,” but they can express best interests opinions. *Family Court Review*, 43(2), 554–562.
- Bala, N., & Schuman, J. (1999). Allegations of sexual abuse when parents have separated. *Canadian Family Law Quarterly*, 17, 191–243.
- Banyard, V. L., Williams, L. M., & Siegel, J. A. (2003). The impact of complex trauma and depression on parenting: An exploration of mediating risk and protective factors. *Child Maltreatment*, 8(4), 334–349.
- Barber, J. S. (2001). Ideational influences on the transition to parenthood: Attitudes toward childbearing and competing alternatives. *Social Psychology Quarterly*, 64(2), 101–127.
- Barnard, M., & McKeganey, N. (2004). The impact of parental problem drug use on children: What is the problem and what can be done to help? *Addiction*, 99(5), 552–559.
- Bartlett, K. T. (1984). Rethinking parenthood as an exclusive status: The need for legal alternatives when the premise of the nuclear family has failed. *Virginia Law Review*, 70(5), 879–964.
- Baumrind, D. (1971). Current patterns of parental authority. *Developmental Psychology Monographs*, 4(1, Pt. 2), 1–103.
- Baures v. Lewis, 770 A.2d 214 (N.J., 2001).
- Bauserman, R. (2002). Child adjustment in joint-custody versus sole-custody arrangements: A meta-analytic review. *Journal of Family Psychology*, 16(1), 91–102.
- Becker, D. (2000). When she was bad: Borderline personality disorder in a posttraumatic age. *American Journal of Orthopsychiatry*, 70(4), 422–432.
- Behnke, D. K., & Connell, M. (2005). Child custody evaluations in cases involving sexual abuse: A view from the bench. *Journal of Child Custody*, 2(3), 121–136.

- Bell, S. M. (1970). The development of the concept of object as related to infant-mother attachment. *Child Development*, 41(2), 291–311.
- Benjamin, G. A., & Gollan, J. K. (2003). *Family evaluation in custody litigation: Reducing the risks of ethical infractions and malpractice*. Washington, DC: American Psychological Association.
- Benjet, C., Azar, S.T., & Kuersten-Hogan, R. (2003). Evaluating the parental fitness of psychiatrically diagnosed individuals: Advocating a functional-contextual analysis of parenting. *Journal of Family Psychology*, 17(2), 238–251.
- Berg v. Berg, No. 2005-002, (NH Sup. C. Oct. 18, 2005). Retrieved Oct. 27, 2005, from <http://www.courts.state.nh.us/supremelopinions/2005/berg112.htm>
- Berliner, L., & Elliott, D. M. (2002). Sexual abuse of children. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC Handbook on child maltreatment* (2nd ed., pp. 55–78). Thousand Oaks, CA: Sage.
- Beyer, P. (1996). *The development and preliminary validation of the Life Satisfaction in Children Scale: Post divorce*. Unpublished doctoral dissertation, Wisconsin School of Professional Psychology, Milwaukee, WI. Described in Ackerman, 2005a.
- Biederman, J., Faraone, S. V., & Monuteaux, M. C. (2002). Impact of exposure to parental attention-deficit hyperactivity disorder on clinical features and dysfunction in the offspring. *Psychological Medicine*, 32(5), 817–827.
- Birigen, Z., Greve-Spees, J., Howard, W., Leith, D., Tanner, L., Moore, S., et al. (2002). Commentary on Warshak's "Blanket restrictions: Overnight contact between parents and young children." *Family Court Review*, 40(2), 204–207.
- Birnbaum, R., & Alaggia, R. (2006). Supervised visitation: A call for a second generation of research. *Family Court Review*, 44(1), 119–134.
- Black, D., Gates, G., Sanders, S., & Taylor, L. (2000). Demographics of the gay and lesbian population in the United States: Evidence from available systematic data sources. *Demography*, 37(2), 139–154.
- Blackburn, M. L. (2000). Welfare effects on the marital decisions of never-married mothers. *The Journal of Human Resources*, 35(1), 116–142.
- Blaisure, K. R., & Geasler, M. J. (2000). The divorce education intervention model. *Family and Conciliation Courts Review*, 38(4), 501–513.
- Blandon-Gitlin, I., Pezdek, K., Rogers, M., & Brodie, L. (2005). Detecting deception in children: An experimental study of the effect of event familiarity on CBCA ratings. *Law and Human Behavior*, 29(2), 187–197.
- Boat, B. W., & Everson, M. D. (1993). The use of anatomical dolls in sexual abuse evaluations: Current research and practice. In G. S. Goodman, & B. L. Bottoms (Eds.), *Child victims, child witnesses: Understanding and improving testimony* (pp. 47–69). NY: Guilford.
- Bock, J. D. (2000). Doing the right thing? Single mothers by choice and the struggle for legitimacy. *Gender and Society*, 14(1), 62–86.
- Bograd, M. (1988). Feminist perspectives on wife abuse: An introduction. In K. Yllö & M. Bograd (Eds.), *Feminist perspectives on wife abuse* (pp. 11–26). Newbury Park, CA: Sage.
- Bonanno, G. A. (2004). Loss, trauma, and human resilience: Have we underestimated the human capacity to thrive after extremely aversive events? *American Psychologist*, 59(1), 20–28.
- Booth, A., & Amato, P. R. (2001). Parental predivorce relations and offspring postdivorce well-being. *Journal of Marriage and the Family*, 63(1), 197–212.

- Bow, J. N., & Boxer, P. (2003). Assessing allegations of domestic violence in child custody evaluations. *Journal of Interpersonal Violence, 18*(2), 1394–1410.
- Bow, J. N., Flens, J. R., Gould, J. W., & Greenhut, D. (2005). An analysis of administration, scoring, and interpretation of the MMPI-2 and MCMI-II/III in child custody evaluations. *Journal of Child Custody, 2*(4), 1–22.
- Bow, J. N., & Quinnell, F. A. (2001). Psychologists' current practices and procedures in child custody evaluations: Five years after American Psychological Association Guidelines. *Professional Psychology: Research and Practice, 32*(3), 261–268.
- Bow, J. N., & Quinnell, F. A. (2002). A critical review of child custody evaluation reports. *Family Court Review, 40*(2), 164–176.
- Bow, J. N., & Quinnell, F. A. (2004). Critique of child custody evaluations by the legal profession. *Family Court Review, 42*(1), 115–127.
- Bow, J. N., Quinnell, F. A., Zaroff, M., & Assemany, A. (2002). Assessment of sexual abuse allegations in child custody cases. *Professional Psychology: Research and Practice, 33*(6), 566–575.
- Bowlby, J. (1969/1999). *Attachment and loss* (2nd ed). NY: Basic Books.
- Braver, S. L., Ellman, I. M., & Fabricus, W. V. (2003). Relocation of children after divorce and children's best interests: New evidence and legal considerations. *Journal of Family Psychology, 17*(2), 206–219.
- Braver, S. L., Griffin, W. A., & Cookston, J. T. (2005). Prevention programs for divorced nonresident fathers. *Family Court Review, 43*(1), 81–96.
- Braver, S. L., & O'Connell, D. (1998). *Divorced dads: Shattering the myths*. NY: Tarcher/Putnam.
- Bray, J. H. (1991). Psychosocial factors affecting custodial and visitation arrangements. *Behavioral Sciences and the Law, 9*(4), 419–437.
- Bricklin, B. (1989). *Perception of relationship test manual*. Furlong, PA: Village Publishing.
- Bricklin, B. (1990a). *Bricklin perceptual scales manual*. Furlong, PA: Village Publishing.
- Bricklin, B. (1990b). *Parent awareness skills survey manual*. Furlong, PA: Village Publishing.
- Bricklin, B. (1995). *The custody evaluation handbook: Research-based solutions and applications*. NY: Brunner/Mazel.
- Bricklin, B., & Elliott, G. (1997). *Parent perception of child profile manual*. Furlong, PA: Village Publishing.
- Brodsky, S. L. (1991). *Testifying in court: Guidelines and maxims for the expert witness*. Washington, DC: American Psychological Association.
- Brodsky, S. L. (1999). *The expert witness: More maxims and guidelines for testifying in court*. Washington, DC: American Psychological Association.
- Brodsky, S. L. (2004). *Coping with cross-examination and other pathways to effective testimony*. Washington, DC: American Psychological Association.
- Brodzinsky, D. M. (1993). On the use and misuse of psychological testing in child custody evaluations. *Professional Psychology: Research and Practice, 24*(2), 213–219.
- Brook, J. S., Whiteman, M., Balka, E. B., & Cohen, P. (2001). Parent drug use, parent personality, and parenting. *Journal of Genetic Psychology, 156*(2), 137–151.
- Brown, S. L. (2000). The effect of union type on psychological well-being: Depression among cohabitators versus marrieds. *Journal of Health and Social Behavior, 41*(3), 241–255.

- Brown, T. (2003). Fathers and child abuse allegations in the context of parental separation and divorce. *Family Court Review*, 41(3), 367–380.
- Bruch, C. S. (2001). Parental alienation syndrome: Getting it wrong in child custody cases. *Family Law Quarterly*, 35, 527–552.
- Brunts, J. (2001, September 14). New in custody arena: “Virtual visitation” (video-link visits for divorced parents). *Chicago Daily Law Bulletin*, 147(181), 1.
- Buie, J. (2004a, March 30). *Virtual visitation*. Retrieved June 22, 2006, from <http://www.virtualfamiliesandfriends.com/>
- Buie, J. (2004b, June 15). *Visitation rights are becoming high-tech*. *Washington Post*, C10. Retrieved June 22, 2006, from <http://www.washingtonpost.com:Visitation Rights Are Becoming High-Tech>
- Bumpass, L., & Lu, H-H. (2000). Trends in cohabitation and implications for children’s family contexts in the United States. *Population Studies*, 54(1), 29–41.
- Burke, L. K., & Follingstad, D. R. (1999). Violence in lesbian and gay relationships: Theory, prevalence, and correlational factors. *Clinical Psychology Review*, 19(5), 487–512.
- Burton, W. C. (1998). *Burton’s legal thesaurus* (3rd ed.). NY: McGraw-Hill.
- Butcher, J. N., Graham, J. R., Ben-Porath, Y. S., Tellegen, A., Dahlstrom, W. G., & Kaemmer, B. (2001). *Minnesota Multiphasic Personality Inventory-2: Manual for administration, scoring, and interpretation* (rev. ed.). Minnesota: University of Minnesota Press.
- Caldwell, A. B., Jr. (2005). How can the MMPI-2 help child custody examiners? *Journal of Child Custody*, 2(1/2), 83–117.
- California Penal Code (Cal. Pen. Code). (2006). *Section 11164–11174.3 Child Abuse and Neglect Reporting Act*. January 21, 2007, from <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=42987914425+2+0+0&WAISac>
- California Rules of Court (Cal. R. Ct.). (2005a). *Rule 5.220. Court-ordered child custody evaluations*. Retrieved September 2, 2005, from <http://www.courtinfo.ca.gov/rules/titlefive/title5-1-284.htm>
- California Rules of Court (Cal. R. Ct.). (2005b). *Rule 5.225. Education, training, and experience standards for court-appointed child custody investigators and evaluators*. Retrieved September 2, 2005, from <http://www.courtinfo.ca.gov/rules/titlefive/title5-1-285.htm>
- California Rules of Court (Cal. R. Ct.). (2005c). *Rule 5.230. Domestic violence training standards for court-appointed child custody investigators and evaluators*. Retrieved September 2, 2005, from <http://www.courtinfo.ca.gov/rules/titlefive/title5-1-286.htm>
- Calloway, G. C. (2005). The Rorschach: Its use in child custody evaluations. *Journal of Child Custody*, 2(1/2), 143–157.
- Camparo, L. B., Wagner, J. T., & Saywitz, K. J. (2001). Interviewing children about real and fictitious events: Revisiting the narrative elaboration procedure. *Law and Human Behavior*, 25(1), 63–80.
- Capraro, R. L. (2004). Why college men drink: Alcohol, adventure, and the paradox of masculinity. In M. S. Kimmel, & M. A. Messner (Eds.), *Men’s lives* (6th ed., pp. 190–203). Boston: Pearson.
- Carruba v. Moskowitz, No. 17157 (Ct. S. C. 2005). *Connecticut Law Journal* 7/26/05. Retrieved December 19, 2005, from <http://www.jud.state.ct.us/external/supapp/Cases/AROCr/CR274/274CR104.pdf>
- Cartwright, G. F. (1993). Expanding the parameters of parental alienation syndrome. *American Journal of Family Therapy*, 21(3), 205–212.

- Cavallero, L. (2000). A family snapshot: The brief, focused evaluation. *Family Advocate*, 23(1), 40–42.
- Cherlin, A. J. (2001). New developments in the study of nonmarital childbearing. In L. L. Wu, & B. Wolfe (Eds.), *Out of wedlock: Causes and consequences of nonmarital fertility* (pp. 390–402). New York: Russell Sage Foundation.
- Cherlin, A. J. (2005). American marriage in the early twenty-first century. *Future of Children*, 15(2), 33–55. Retrieved September 15, 2005, from http://www.futureofchildren.org/usr_doc/03_FOC_15-2_fall05_Chерlin.pdf
- Cherpitel, C. J. (2002). Screening for alcohol problems in the U. S. general population: Comparison of the CAGE, RAPS4, and RAPS4-QF by gender, ethnicity, and service utilization. *Alcoholism: Clinical and Experimental Research*, 26(11), 1686–1691.
- Chess, S., & Thomas, A. (1984). *Origins and evolution of behavior disorders: From infancy to early adult life*. NY: Brunner/ Mazel.
- Chiancone, J. (2001). Parental abduction: A review of the literature. *Juvenile Justice Literature Review*, Dec. 2001, 1–22. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Retrieved Sept. 30, 2005, from <http://www.ncjrs.gov/pdffiles1/ojdp/182788.pdf>
- Cicchetti, D., Rogosch, F. A., & Toth, S. L. (1998). Maternal depressive disorder and contextual risk: Contributions to the development of attachment insecurity and behavior problems in toddlerhood. *Development and Psychopathology*, 10, 283–300.
- Clark, B. K. (1995). Acting in the best interest of the child: Essential components of a child custody evaluation. *Family Law Quarterly*, 29(1), 19–38.
- Clarke-Stewart, K. A., Goosens, F. A., & Allhusen, V. D. (2001). Measuring infant-mother attachment: Is the Strange Situation enough? *Social Development*, 10(2), 143–169.
- Clawar, S. S., & Rivlin, B. V. (1991). *Children held hostage: Dealing with programmed and brainwashed children*. Chicago, IL: American Bar Association Family Law Section.
- Clingempeel, W. G., & Reppucci, N. D. (1982). Joint custody after divorce: Major issues and goals for research. *Psychological Bulletin*, 91(1), 102–127.
- Coates, C. (2003). *Learning from divorce*. New York: Jossey-Bass.
- Coates, C.A., Deutsch, R., Starnes, H., Sullivan, M. J., & Sydlík, B. (2004). Parenting coordination for high-conflict families. *Family Court Review*, 42,(2) 246–262.
- Cole, P. M., Woolger, C., Power, T. G., & Smith, K. D. (1992). Parenting difficulties among adult survivors of father-daughter incest. *Child Abuse & Neglect*, 16(2), 239–249.
- Colman, A. M. (2003). *Oxford dictionary of psychology*. NY: Oxford University Press.
- Commonwealth of Massachusetts (Comm. Mass.). (2005a). *General laws of Massachusetts: Chapter 208: Section 31A*. Retrieved September 21, 2005, from <http://www.mass.gov/legis/laws/mgl/208-31a.htm>
- Commonwealth of Massachusetts (Comm. Mass.). The Trial Court, Probate and Family Court Department. (2005b). *Standards for Category F Guardian ad litem investigators*. Boston, MA: Author. Retrieved on August 5, 2005, from <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/galstandards02145.pdf>
- Commonwealth v. Lamb, 365 Mass 265, 270 (1974).

- Condie, L. O. (2003). *Parenting evaluations for the court: Care and protection matters*. NY: Kluwer Academic/Plenum.
- Cone, E. J. (1997). New developments in biological measures of drug prevalence. *NIDA Monograph 167*, pp. 108–129. Retrieved January 3, 2007, from http://www.drugabuse.gov/pdf/monograph167/108-129_Cone.pdf-12-03-1997
- Connell, M. (2005). Review of "The Ackerman-Schoendorf Scales for Parent Evaluation of Custody" (ASPECT). *Journal of Child Custody*, 2(1/2), 195–209.
- Cookston, J. T., Braver, S. L., Sandler, I., & Genalo, M. T. (2002). Prospects for expanded parent education services for divorcing families with children. *Family Court Review*, 40(2), 190–203.
- Coontz, S. (1992). *The way we never were: American families and the nostalgia trap*. NY: Random House.
- Cooperstein, M. A. (1999). Multidimensional diagnosis and causality: Identifying and treating posttraumatic stress disorder. *American Psychotherapy Association Newsletter*, 2(5), 3,6. Retrieved November 23, 2005, from <http://members.tripod.com/allanpsych/>
- Cummings, E. M., & Davies, P. T. (1994). Maternal depression and child development. *Journal of Child Psychology & Psychiatry*, 35(1), 73–112.
- Dahir, V. B., Richardson, J. T., Ginsburg, G. P., Gatowski, S. I., Dobbin, S. A., & Merlino, M. L. (2005). Judicial application of *Daubert* to psychological syndrome and profile evidence: A research note. *Psychology, Public Policy, and Law*, 11(1), 62–82.
- Dalton, C. (1999). When paradigms collide: Protecting battered parents and their children in the family court system. *Family and Conciliation Courts Review*, 37(3), 273–296.
- Dalton, C., Drozd, L. M., & Wong, Hon. F. Q. F. (2004). *Navigating custody and visitation evaluations in cases with domestic violence: A judge's guide*. Reno, NV: State Justice Institute, National Council of Juvenile and Family Court Judges. Retrieved February 9, 2007, from <http://www.afccnet.org/pdfs/BenchGuide.pdf>
- Darlington, Y. (2001). "When all is said and done": The impact of parental divorce and contested custody in childhood on young adults' relationships with their parents and their attitudes to relationships and marriage. *Journal of Divorce and Remarriage*, 35(3/4), 23–42.
- DeMers, A. T. (2006, July-August). ASPPB explores short-term practice certificate. *The National Psychologist*, 15(4), 3.
- Dennison, S. M., & Thomson, D. M. (2005). Criticisms or plaudits for stalking laws? What psycholegal research tells us about proscribing stalking. *Psychology, Public Policy, and Law*, 11(3), 384–406.
- Department of Human Services, Australia (DHS). (2006). *What is child abuse* (Department of Human Services Community Care Web site). Retrieved February 9, 2007, from <http://www.hnb.dhs.vic.gov.au/children/ccdnav.nsf>
- Dessau, H. L. (2005). A short commentary on Timothy M. Tippins and Jeffrey P. Wittmann's "Empirical and ethical problems with custody recommendations: A call for clinical humility and judicial vigilance." *Family Court Review*, 43(2), 266–269.
- DiLillo, D., Tremblay, G. C., & Peterson, L. (2000). Linking childhood sexual abuse and abusive parenting: The mediating role of maternal anger. *Child Abuse & Neglect*, 24(6), 767–779.

- Dillon, P. A., & Emery, R. E. (1996). Divorce mediation and resolution of child custody disputes: Long-term effects. *American Journal of Orthopsychiatry*, 66(1), 131–140.
- DOMA - federal Defense of Marriage Act. (1996). Publ. L. No. 104-199, 1996. For discussion see Granda & Levi, 2006.
- Domestic Violence Visitation Task Force of the Probate and Family Court Department of the Massachusetts Trial Court. (1994). *Domestic violence visitation risk assessment*. Madison, WI: Association of Family and Conciliation Courts.
- Dominus, S. (2005). The fathers' crusade. *The New York Times Magazine*, May 8, 2005, 24, 26–33, 50, 56, 58.
- Dotterweich, D., & McKinney, M. (2000). National attitudes regarding gender bias in child custody cases. *Family and Conciliation Courts Review*, 38(2), 208–223.
- Douglas, K. S., & Skeem, J. L. (2005). Violence risk assessment: Getting specific about being dynamic. *Psychology, Public Policy, and Law*, 11(3), 347–383.
- Drozd, L. M., Kuehnle, K. & Walker, L. E. A. (2004). Safety first: A model for understanding domestic violence in child custody and access disputes. *Journal of Child Custody*, 1(2), 75–103.
- Drozd, L. M., & Olesen, L. M. (2004). Is it abuse, alienation, and/or estrangement? A decision tree. *Journal of Child Custody*, 1(3), 65–106.
- Drug Testing & Detox (2005–2006). *About tests*. Retrieved January 3, 2007, from http://www.drug-testing-detox.com/about_tests.php?tab=2
- Dubowitz, H., & Black, M. (2002). Neglect of children's health. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC Handbook on child maltreatment* (2nd ed., pp. 269–292). Thousand Oaks, CA: Sage.
- Dunn, J. (2004). Annotation: Children's relationships with their nonresident fathers. *Journal of Child Psychology and Psychiatry*, 45(4), 659–671.
- Dunn, J., Cheng, H., O'Connor, T. G., & Bridges, L. (2004). Children's perspectives on their relationships with their nonresident fathers: Influences, outcomes and implications. *Journal of Child Psychology and Psychiatry*, 45(3), 553–566.
- Dunn, J., Davies, L. C., O'Connor, T.G., & Sturgess, W. (2001). Family lives and friendships: The perspectives of children in step-, single-parent, and nonstep families. *Journal of Family Psychology*, 15(2), 272–287.
- Dunn, J. H., Flory, B. E., & Berg-Weger, M. (2004). An exploratory study of supervised access and custody exchange services: The children's experience. *Family Court Review*, 42(1), 60–73.
- Dutton, D. G. (2005a). Domestic abuse assessment in child custody disputes: Beware the domestic violence research paradigm. *Journal of Child Custody*, 2(4), 23–42.
- Dutton, D. G. (2005b). On comparing apples with apples deemed nonexistent: A reply to Johnson. *Journal of Child Custody*, 2(4), 53–64.
- Edin, K. (2000). What do low-income single mothers say about marriage? *Social Problems*, 47(1), 112–133.
- Edleson, J. L. (2001). Studying the co-occurrence of child maltreatment and domestic violence in families. In S. A. Graham-Bermann, & J. L. Edleson, (Eds.), *Domestic violence in the lives of children: The future of research, intervention, and social policy* (pp. 91–110). Washington, DC: American Psychological Association.
- Ellis, C. (2006). Internet visitation (Virtual visitation) FAQ. *The Distance Parent*. Retrieved June 22, 2006, from <http://www.distanceparent.org/inetvisit.php>

- Ellis, D., & Stuckless, N. (2006). Domestic violence, DOVE, and divorce mediation. *Family Court Review*, 44(4), 658–671.
- Elrod, L. D. (2006). States differ on relocation. *Family Advocate*, 28(4), 10–11. Retrieved October 15, 2006, from www.abanet.org/family/advocate/2804RelocationChart.pdf
- Emery, R. E. (1994). *Renegotiating family relationships: Divorce, child custody, and mediation*. NY: Guilford.
- Emery, R. E. (2005). Parental alienation syndrome: Proponents bear the burden of proof. *Family Court Review*, 43(1), 8–13.
- Emery, R. E., Laumann-Billings, L., Waldron, M. C., Sbarra, D. A., & Dillon, P. (2001). Child custody mediation and litigation: Custody, contact, and coparenting 12 years after initial dispute resolution. *Journal of Consulting and Clinical Psychology*, 69(2), 323–332.
- Emery, R. E., Matthews, S. G., & Wyer, M. M. (1991). Child custody mediation and litigation: Further evidence on the differing views of mothers and fathers. *Journal of Consulting and Clinical Psychology*, 59(3), 410–418.
- Erard, R. E. (2005). What the Rorschach can contribute to child custody and parenting time evaluations. *Journal of Child Custody*, 2(1/2), 119–142.
- Erikson, E. H. (1968). *Identity: Youth and crisis*. NY: Norton.
- Erikson, E. H. (1993). *Childhood and society*. NY: Norton.
- Erickson, M. F., & Egeland, B. (2002). Child neglect. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC Handbook on child maltreatment* (2nd ed., pp. 3–20). Thousand Oaks, CA: Sage.
- Estin, A. L. (2004). Embracing tradition: Pluralism in American family law. *Maryland Law Review*, 63, 540–630. Retrieved October 21, 2005, from LexisNexisAcademic.
- Etaugh, C., & Bridges, J. (2006). *Women's lives: A topical approach*. Boston: Allyn & Bacon/Pearson.
- Everson, M. D., & Boat, B. W. (1994). Putting the anatomical doll controversy in perspective: An examination of the major uses and criticisms of the dolls in child sexual abuse evaluations. *Child Abuse and Neglect*, 18(2), 113–129.
- Ewing, C. P. (2003). Expert testimony: Law and practice. In A. M. Goldstein (Ed.), *Handbook of psychology, forensic psychology* (vol. 11, pp. 55–66). NY: Wiley.
- Ewing, J. A. (1984). Detecting alcoholism: The CAGE questionnaire. *Journal of the American Medical Association*, 252(14), 1905–1907.
- Ewing, J. A. (2004). *CAGE Questionnaire*. Retrieved January 2, 2007, from <http://www.lifewisewa.com/pdfs/102695.pdf>
- Exner, J. E. (2001). *A Rorschach workbook for the Comprehensive System* (5th ed.). Asheville, NC: Rorschach Workshops.
- Exner, J. E. (2002). A new nonpatient sample for the Rorschach Comprehensive System: A progress report. *Journal of Personality Assessment*, 78(3), 391–404.
- Exner, J. E. (2003). *The Rorschach: A comprehensive system: Basic foundations and principles of interpretation*, Vol. I (4th ed.). NJ: Wiley.
- Fabricus, W. V., & Braver, S. L. (2003). Non-child support expenditures on children by nonresidential divorced fathers: Results of a study. *Family Court Review*, 41(3), 321–336.
- Fabricus, W. V., & Hall, J. A. (2000). Young adults' perspectives on divorce: Living arrangements. *Family and Conciliation Courts Review*, 38(4), 446–462.
- Faller, K. C. (1998a). The parental alienation syndrome: What is it and what data support it? *Child Maltreatment*, 3(2), 100–115.
- Faller, K. C. (1998b). Response to Gardner. *Child Maltreatment*, 3(4), 312–313.

- Faller, K. C. (2003). *Understanding and assessing child sexual maltreatment* (2nd ed.). Thousand Oaks, CA: Sage.
- Fals-Stewart, W., Kelley, M. L., Fincham, F. D., Golden, J., & Logsdon, T. (2004). Emotional and behavioral problems of children living with drug-abusing fathers: Comparisons with children living with alcohol-abusing and non-substance-abusing fathers. *Journal of Family Psychology, 18*(2), 319–330.
- Family Law Reporter. (1974). *Desk guide to the uniform marriage and divorce act*. Washington, DC: Bureau of National Affairs.
- Federal Rules of Evidence* (FRE; *Fed. R. Evid.*) Article VII. Retrieved June 28, 2007, from <http://judiciary.house.gov/media/pdfs/printers/108th/leid2004.pdf>
- Fines, B. G. (2006, October). Parent's right to instruct children in religious beliefs concerning polygamy. *AFCC Bi-Monthly E-Newsletter, 1*(5), 1. Available at http://www.afccnet.org/resources_professionals.asp#eNEWS
- Finkelhor, D., & Hashima, P. Y. (2001). The victimization of children and youth: A comprehensive overview. In S. O. White (Ed.), *Handbook of youth and justice* (pp. 49–78). NY: Kluwer Academic/Plenum.
- Finkelhor, D., Hotaling, G., Lewis, I. A., & Smith, C. (1990). Sexual abuse in a national survey of adult men and women: Prevalence, characteristics, and risk factors. *Child Abuse & Neglect, 14*, 19–28.
- Finkelhor, D., Mitchell, K. J., & Wolak, J. (2000). *Online victimization: A report on the nation's youth*. Washington, DC: National Center for Missing and Exploited Children. Retrieved January 22, 2007, from http://www.ncmec.org/en_US/publications/NC62.pdf
- Finkelstein, N., Duncan, S. A., Derman, L., & Smeltz, J. (1990). *Getting sober, getting well: A treatment guide for caregivers who work with women*. Cambridge, MA: Women's Alcoholism Program of CASPAR.
- Fisher, C. B., & Whiting, K. A. (1998). How valid are child sexual abuse validations? In S. J. Ceci & H. Hembrooke (Eds.), *Expert witnesses in child abuse cases: What can and should be said in court* (pp. 159–184). Washington, DC: American Psychological Association.
- Fisher, R. W., Ury, W., & Patton, B. (1991). *Getting to yes: Negotiating agreement without giving in*. NY: Houghton Mifflin.
- Fishman, D. (2003). Background on the "psycholegal lexis proposal": Exploring the potential of a systematic case study database in forensic psychology. *Psychology, Public Policy, and Law, 9*(3/4), 267–274.
- Flens, J. R. (2005). The responsible use of psychological testing in child custody evaluations: Selection of tests. *Journal of Child Custody, 2*(1/2), 3–29.
- Flory, B. E., Dunn, J., Berg-Weger, M., & Milstead, M. (2001). An exploratory study of supervised access and custody exchange services. *Family Court Review, 39*(4), 469–482.
- Folberg, J., & Taylor, A. (1984). *Mediation: A comprehensive guide to resolving conflicts without litigation*. San Francisco: Jossey-Bass.
- Freeman, R., Abel, D., Cowper-Smith, M., & Stein, L. (2004). Reconnecting children with absent parents: A model for intervention. *Family Court Review, 42*(3), 439–459.
- Freeman, R. B., & Waldfogel, J. (2001). Dunning delinquent dads: The effects of child support enforcement policy on child support receipt by never married women. *Journal of Human Resources, 36*(2), 207–225.
- Friedrich, B. (2005). Correlates of sexual behavior in young children. *Journal of Child Custody, 2*(3), 41–55.

- Frieze, I. H. (2005). Female violence against intimate partners: An introduction. *Psychology of Women Quarterly*, 29(3), 229–237.
- Frye, N. E., & Karney, B. R. (2006). The context of aggressive behavior in marriage: A longitudinal study of newlyweds. *Journal of Family Psychology*, 20(1), 12–20.
- Galatzer-Levy, R. M., & Kraus, L. (Eds.). (1999). *The scientific basis of child custody decisions*. NY: Wiley.
- Gallager, K. A. (2000). Parents in distress: A state's duty to provide reunification services to mentally ill parents. *Family and Conciliation Courts Review*, 38(2), 234–259.
- Garb, H. N., Wood, J. M., Nezworski, M. T., Grove, W. M., & Stejskal, W. J. (2001). Toward a resolution of the Rorschach controversy. *Psychological Assessment*, 13(4), 433–448.
- Garber, B. D. (2004). Parental alienation in light of attachment theory: Consideration of the broader implications for child development, clinical practice, and forensic process. *Journal of Child Custody*, 1(4), 49–76.
- Gardner, R. A. (1992). *The parental alienation syndrome*. Cresskill, NJ: Creative Therapeutics, Inc.
- Gardner, R. A. (1998a). Letter to the Editor [In response to Faller 1998]. *Child Maltreatment*, 3(4), 309–312.
- Gardner, R. A. (1998b). *The parental alienation syndrome* (2nd ed.). Cresskill, NJ: Creative Therapeutics, Inc.
- Gardner, R. A. (1999a). Differentiating between parental alienation syndrome and bona fide abuse-neglect. *American Journal of Family Therapy*, 27(2), 97–107.
- Gardner, R. A. (1999b). Family therapy of the moderate type of parental alienation syndrome. *American Journal of Family Therapy*, 27(3), 195–212.
- Gardner, R. A. (2001a, May 31). *Basic facts about the parental alienation syndrome*. Retrieved January 15, 2006, from http://www.gardner.com/refs/pas_intro.html
- Gardner, R. A. (2001b). Should courts order PAS children to visit/reside with the alienated parent? A follow-up study. *American Journal of Forensic Psychology* 19(3), 61–106. Retrieved January 15, 2006, from <http://www.rgardner.com/refs/ar8.html>
- Gardner, R. A. (2002). Parental alienation syndrome vs. parental alienation: Which diagnosis should evaluators use in child-custody disputes? *American Journal of Family Therapy*, 30(2), 93–115.
- Gardner, R. A. (2003a). *Differential diagnosis of the three levels of parental alienation syndrome (PAS)* *Children* (Rev. 4.2, 1/13/03). Retrieved January 15, 2006, from <http://www.rgardner.com/refs/pastable.pdf>
- Gardner, R. A. (2003b). *Differential diagnosis of the three levels of parental alienation syndrome (PAS)* *Alienators*. Retrieved January 15, 2006, from <http://www.rgardner.com/refs/pastable.pdf>
- Gardner, R. A. (2003c). *Differential management and treatment of the three levels of parental alienation syndrome (PAS)* *Alienators* for each of the child's symptom levels. Retrieved January 15, 2006, from <http://www.rgardner.com/refs/pastable.pdf>
- Gardner, R. A. (2003d). Does DSM-IV have equivalents for the parental alienation syndrome (PAS) diagnosis? *American Journal of Family Therapy*, 31(1), 1–21.

- Gardner, R. A. (2004). Commentary on Kelly and Johnston's "The alienated child: A reformulation of parental alienation syndrome." *Family Court Review*, 42(4), 611–621.
- Garfinkel, I., McLanahan, S., & Wallerstein, J. (2004). Visitation and child support guidelines: A comment on Fabricus and Braver. *Family Court Review*, 42(2), 342–349.
- Garner, B. A. (Ed.). (2005). *Black's law dictionary: Abridged eighth edition*. St. Paul, MN: Thomson/West.
- Garon, R. J., Donner, D. S., & Peacock, K. (2000). From infants to adolescents: A developmental approach to parenting plans. *Family and Conciliation Courts Review*, 38(2), 168–191.
- Garrity, C., & Baris, M. (1994). *Caught in the middle: Protecting the children of high-conflict divorce*. NY: Lexington Books.
- Gartrell, N., Banks, A., Reed, N., Hamilton, J., Rodas, C., & Deck, A. (2000). The national lesbian family study: 3. Interviews with mothers of five-year-olds. *American Journal of Orthopsychiatry*, 70(4), 542–548.
- Gatowski, S. I., Dobbin, S. A., Richardson, J. T., Ginsburg, G. P., Merlino, M. L., & Dahir, V. (2001). Asking the gatekeepers: A national survey of judges on judging expert evidence in a post-*Daubert* world. *Law and Human Behavior*, 25(5), 433–458.
- Gay and Lesbian Advocates and Defenders in Boston (GLAD). (1999). *Protecting families: Standards for child custody in same-sex relationships*. Retrieved September 30, 2002, from <http://www.colage.org/files/custody.pdf>
- Gay, Lesbian, Bisexual and Transgender Domestic Violence Coalition (GBLTDVC). (2003). *Intimate partner abuse screening tool: For gay, lesbian, bisexual and transgender (GLBT) relationships*. Boston: Author.
- Geasler, M. J., & Blaisure, K. R. (1998). 1998 nationwide survey of court-connected divorce education programs. *Family and Conciliation Courts Review*, 37(1), 36–63.
- Geelhoed, R. J., Blaisure, K. R., & Geasler, M. J. (2001). Status of court-connected programs for children whose parents are separating or divorcing. *Family Court Review*, 39(4), 393–404.
- Geiselman, R. E., Saywitz, K. J., & Bornstein, G. K. (1993). Effects of cognitive questioning techniques on children's recall performance. In G. Goodman, & B. L. Bottoms (Eds.), *Child victims, child witnesses: Understanding and improving testimony* (pp. 71–93). NY: Guilford.
- Gelfand, D. M., & Teti, D. M. (1990). The effects of maternal depression on children. *Clinical Psychology Review*, 10(3), 329–353.
- Gerard, A. B. (1994). *Parent-child relationship inventory (PCRI): Manual*. Los Angeles, CA: Western Psychological Services.
- Gerhardt, C. A., Vannatta, K., McKellop, M. H., Zeller, M., Taylor, J., Passo, M., et al. (2003). Comparing parental distress, family functioning, and the role of social support for caregivers with and without a child with juvenile rheumatoid arthritis. *Journal of pediatric psychology*, 28(1), 5–15.
- Gershoff, E. T. (2002). Corporal punishment by parents and associated child behaviors and experiences: A meta-analytic and theoretical review. *Psychological Bulletin*, 128(4), 539–579.
- Gifis, S. H. (1996). *Law dictionary*. Hauppauge, NY: Barron's Educational Series.
- Glassman, J. B. (1998). Preventing and managing board complaints: The downside risk of custody evaluation. *Professional Psychology: Research and Practice*, 29(2), 121–124.

- Godsall, R. E., Jurkovic, G. J., Emshoff, J., Anderson, L., & Stanwyck, D. (2004). Why some kids do well in bad situations: Relation of parental alcohol misuse and parentification to children's self-concept. *Substance Use & Misuse, 39*(5), 789–809.
- Goelman, D. M. (2004). Shelter from the storm: Using jurisdictional statutes to protect victims of domestic violence after the Violence Against Women Act of 2000. *Columbia Journal of Gender and Law, 13*(1), 101–168.
- Goldman, M. (1999). The Violence Against Women Act: Meeting its goals in protecting battered immigrant women? *Family and Conciliation Courts Review, 37*(3), 375–392.
- Goldstein, J. A. (2005). Is there a “religious question” doctrine? Judicial authority to examine religious practices and beliefs. *Catholic University Law Review, 54*(2), 497–552.
- Goldstein, J., Solnit, A. J., Goldstein, S., & Freud, A. (1996). *The best interests of the child: The least detrimental alternative*. NY: The Free Press.
- Golombok, S., Perry, B., Burston, A., Murray, C., Mooney-Somers, J., & Stevens, M. (2003). Children with lesbian parents: A community study. *Developmental Psychology, 39*(1), 20–33.
- Goodman, M., Bonds, D., Sandler, I., & Braver, S. (2004). Parent psychoeducational programs and reducing the negative effects of interparental conflict following divorce. *Family Court Review, 42*(2), 263–279.
- Gordon, R., & Peek, L. A. (1989). *The custody quotient: Research manual*. Dallas, TX: Wilmington Institute.
- Gottfried, S. (2002). Virtual visitation: The wave of the future in communication between children and non-custodial parents in relocation cases. *Family Law Quarterly, 36*(3), 475–486.
- Gottlieb, M. C. (2003). Introduction to the special issue: *Troxel v. Granville*: What about the children? *Family Court Review, 41*(1), 8–13.
- Gould, J. W. (1998). *Conducting scientifically crafted child custody evaluations*. Thousand Oaks, CA: SAGE.
- Gould, J. W. (1999a). Scientifically crafted child custody evaluations: Part One: A model for interdisciplinary collaboration in the development of psycholegal questions guiding court-ordered child custody evaluations. *Family and Conciliation Courts Review, 37*(1), 64–73.
- Gould, J. W. (1999b). Scientifically crafted child custody evaluations: Part Two: A paradigm for forensic evaluation of child custody determination. *Family and Conciliation Courts Review, 37*(2), 159–178.
- Gould, J. W. (2004). Evaluating the probative value of child custody evaluations: A guide for forensic mental health professionals. *Journal of Child Custody, 1*(1), 77–96.
- Gould, J. (2005). Use of psychological tests in child custody assessment. *Journal of Child Custody, 2*(1/2), 49–69.
- Gould, J. W. (2006). *Conducting scientifically crafted child custody evaluations* (2nd ed.). Sarasota, FL: Professional Resource Press.
- Gould, J. W., & Bell, L. C. (2000). Forensic methods and procedures applied to child custody evaluations: What judges need to know in determining a competent forensic work product. *Juvenile and Family Court Journal, 51*(3), 21–29.
- Gould, J. W., Kirkpatrick, H. D., Austin, W. G., & Martindale, D. A. (2004). Critiquing a colleague's forensic advisory report: A suggested protocol for application to child custody evaluations. *Journal of Child Custody, 1*(3), 37–64.

- Gould, J. W., & Lehrmann, Hon. D. H. (2002). Evaluating the probative value of child custody evaluations. *Juvenile and Family Court Journal*, 53(2), 17–30.
- Gould, J. W., & Martindale, D. A. (2005). A second call for clinical humility and judicial vigilance: Comments on Tippins and Wittmann (2005). *Family Court Review*, 43(2), 253–259.
- Gould, J. W., & Martindale, D. A. (in press). *The art and science of child custody evaluations*. NY: Guilford.
- Gould, J. W., & Stahl, P. M. (2000). The art and science of child custody evaluations: Integrating clinical and forensic mental health models. *Family and Conciliation Courts Review*, 38(3), 392–414.
- Gould, J. W., & Stahl, P. M. (2001). Never paint by the numbers: A response to Kelly and Lamb (2000), Solomon and Biringen (2001), and Lamb and Kelly (2001). *Family Court Review*, 39(4), 372–376.
- Gould-Saltman, D. (2005). Testing, one, two, three, testing, D: An attorney perspective. *Journal of Child Custody*, 2(1/2), 71–81.
- Graham-Bermann, S. A. (2001). Designing intervention evaluations for children exposed to domestic violence: Applications of research and theory. In S. A. Graham-Bermann, & J. L. Edleson, (Eds.), *Domestic violence in the lives of children: The future of research, intervention, and social policy* (pp. 237–268). Washington, DC: American Psychological Association.
- Graham-Bermann, S. A. (2002). Child abuse in the context of domestic violence. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid, (Eds.), *The APSAC handbook on child maltreatment* (2nd ed., pp. 119–130). Thousand Oaks, CA: Sage.
- Granda, M., & Levi, J. L. (2006). Will marriage be an option? In K. Triantafyllou (Ed.), *Representing nontraditional families* (2nd ed., pp. 369–394). Boston: Massachusetts Continuing Legal Education.
- Greif, G. L., & Hegar, R. L. (1993). *When parents kidnap: The families behind the headlines*. NY: The Free Press.
- Greenberg, L. R., & Gould, J. W. (2001). The treating expert: A hybrid role with firm boundaries. *Professional Psychology: Research and Practice*, 32(5), 469–478.
- Greenberg, S. A., & Shuman, D. W. (1997). Irreconcilable conflict between therapeutic and forensic roles. *Professional Psychology: Research and Practice*, 28(1), 50–57.
- Greene, R. L. (2000). *The MMPI-2: An interpretive manual* (2nd ed.). Boston: Allyn & Bacon.
- Grisso, T. (2005). Commentary on “Empirical and ethical problems with custody recommendations:” What now? *Family Court Review*, 43(2), 223–228.
- Groze, V. (1991). Adoption and single parents: A review. *Child Welfare*, 70(3), 321–332. Retrieved October 13, 2006, from <http://links.ebscohost.com.ezpl.harvard.edu>
- Grych, J. H. (2005). Interparental conflict as a risk factor for child maladjustment: Implications for the development of prevention programs. *Family Court Review*, 43(1), 97–108.
- Grych, J. H., & Fincham, F. D. (1990). Marital conflict and children’s adjustment: A cognitive-contextual framework. *Psychological Bulletin*, 108(2), 267–290.
- Grych, J. H., & Fincham, F. D. (1992). Interventions for children of divorce: Toward greater integration of research and action. *Psychological Bulletin*, 111(3), 434–454.

- Gunnoe, M. L., & Braver, S. L. (2001). The effects of joint legal custody on mothers, fathers, and children controlling for factors that predispose a sole maternal versus joint legal award. *Law and Human Behavior, 25*(1), 25–43.
- Gunnoe, M. L., & Hetherington, E. M. (2004). Stepchildren's perceptions of noncustodial mothers and noncustodial fathers: Differences in socioemotional involvement and associations with adolescent adjustment problems. *Journal of Family Psychology, 18*(4), 555–563.
- Haberman, P. S. (2005). Before death, we must part: Relocation and protection for domestic violence victims in volatile divorce and custody situations. *Family Court Review, 43*(1), 149–163.
- Hagen, J. L. (1987). Proceed with caution: Advocating joint custody. *Social Work, January–February 1987*, 26–30.
- Hagen, M. A., & Castagna, N. (2001). The real numbers: Psychological testing in custody evaluations. *Professional Psychology: Research and Practice, 32*(3), 269–271.
- Haine, R. A., Sandler, I. N., Wolchik, S. A., Tein, J.-Y., & Dawson-McClure, S. R. (2003). Changing the legacy of divorce: Evidence from prevention programs and future directions. *Family Relations, 52*(4), 397–405.
- Hamilton, B. E., Ventura, S. J., Martin, J. A., & Sutton, P. D. (2005). Preliminary births for 2004. Hyattsville, MD: National Center for Health Statistics. Retrieved October 29, 2005, from http://www.cdc.gov/ncha/products/pubs/pubdl/hestats/prelim_births/prelim_births04.htm
- Hammer, H., Finkelhor, D., & Sedlak, A. J. (2002). Children abducted by family members: National estimates and characteristics. *National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMAART)*, October 2002, 1–11. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. Retrieved Sept. 30, 2005, from <http://www.ncjrs.gov/pdffiles1/ojdp/196466.pdf>
- Hammer, H., Finkelhor, D., Sedlak, A. J., & Porcellini, L. E. (2004). National estimates of missing children: Selected trends, 1988–1999. *National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children (NISMAART)*, December 2004, 1–8. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Retrieved September 30, 2005, from <http://www.ncjrs.gov/pdffiles1/ojdp/206179.pdf>
- Hans, J. D. (2002). Stepparenting after divorce: Stepparents' legal position regarding custody, access, and support. *Family Relations, 51*(4), 301–307.
- Hans, S. L., Auerbach, J. G., Styr, B., & Marcus, J. (2004). Offspring of parents with schizophrenia: Mental disorders during childhood and adolescence. *Schizophrenia Bulletin, 30*(2), 303–315.
- Hart, B. (1986). Lesbian battering: An examination. In K. Lobel (Ed.), *Naming the violence: Speaking out about lesbian battering* (pp. 173–189). Seattle, WA: The Seal Press.
- Hart, S. N., Brassard, M. R., Binggeli, N. J., & Davidson, H. A. (2002). Psychological maltreatment. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC Handbook on child maltreatment* (2nd ed., pp. 79–103). Thousand Oaks, CA: Sage.
- Haskins, R., McLanahan, S., & Donahue, E. (2005, Fall). The decline in marriage: What to do. *The Future of Children, Policy Brief*, Fall 2005, pp. 1–7. Princeton, NJ: The Brookings Institution. Retrieved September 14, 2005, from http://www.futureofchildren.org/usr_cod/03_FOC_15-2_fall05_Cherlin.pdf

- Hazlewood, M. E. (2004). The new Texas ad litem statute: Is it really protecting the best interests of minor children? *St. Mary's Law Journal*. Retrieved May 22, 2005, from http://www.lexis-nexis.com.ezp2.harvard.edu/universe/document?_m=4a34b34b22dbe06cd
- Health Insurance Portability and Accountability Act (HIPAA). (1996). Publication L. No. 104–191.
- Heilbrun, K. (1992). The role of psychological testing in forensic assessment. *Law and Human Behavior*, 16(3), 257–272.
- Heilbrun, K. (2001). *Principles of forensic mental health assessment*. New York, NY: Kluwer Academic/Plenum.
- Heilmann, R. W. (2000). A community-based parent education program for separating parents. *Family and Conciliation Courts Review*, 38(4), 514–524.
- Heinze, M. C., & Grisso, T. (1996). Review of instruments assessing parenting competencies used in child custody evaluations. *Behavioral Sciences and the Law*, 14, 293–313.
- Herman, G. (2005). Father seeks “virtual visitation” with daughter. *Wisconsin Law Journal*, June 22, 2005. Retrieved June 22, 2006, from <http://www.wislawjournal.com/archive/2005/0706/herman-070605.html>
- Herman, J. L. (1992). *Trauma and recovery*. NY: Basic Books.
- Hess, A. K. (1998). Accepting forensic case referrals: Ethical and professional considerations. *Professional Psychology: Research and Practice*, 29(2), 109–114.
- Hetherington, E. M., Bridges, M., & Insabella, G. M. (1998). What matters? What does not? Five perspectives on the association between marital transitions and children's adjustment. *American Psychologist*, 53(2), 167–184.
- Hetherington, E. M., & Kelly, J. (2002). *For better or for worse: Divorce reconsidered*. NY: Norton.
- Hewitt, S. K. (1999). *Assessing allegations of sexual abuse in preschool children*. Thousand Oaks, CA: Sage.
- Hinsie, L. E., & Campbell, R. J. (1970). *Psychiatric dictionary* (4th ed.). NY: Oxford University Press.
- Hirasawa, K. R. (2006). Are parents acting in the best interests of their children when they make medical decisions based on their religious beliefs? *Family Court Review*, 44(2), 316–329.
- Hirshfeld-Becker, D. R., & Biederman, J. (2002). Rationale and principles for early intervention with young children at risk for anxiety disorders. *Clinical Child and Family Psychology Review*, 5(3), 161–172.
- Hirshfeld-Becker, D. R., Biederman, J., Faraone, S. V., Segool, N., Buchwald, J., & Rosenbaum, J. F. (2004). Lack of association between behavioral inhibition and psychosocial adversity factors in children at risk for anxiety disorders. *American Journal of Psychiatry*, 161(3), 547–555.
- Hofferth, S. L., & Anderson, K. G. (2003). Are all dads equal? Biology versus marriage as a basis for paternal involvement. *Journal of Marriage and Family*, 65(1), 213–232.
- Holtzworth-Munroe, A., Meehan, J. C., Herron, K., Rehman, U., & Stuart, G. L. (2000). Testing the Holtzworth-Munroe and Stuart Typology. *Journal of Consulting and Clinical Psychology*, 68(6), 1000–1019.
- Holtzworth-Munroe, A., Meehan, J. C., Herron, K., Rehman, U., & Stuart, G. L. (2003). Do subtypes of maritally violent men continue to differ over time? *Journal of Consulting and Clinical Psychology*, 71(4), 728–740.

- Holtzworth-Munroe, A., & Stuart, G. L. (1994). Typologies of male batterers: Three subtypes and the differences among them. *Psychological Bulletin*, *116*(3), 476–497.
- Horn, J. L., Wanberg, K. W., & Foster, F. M. (1987). *Alcohol use inventory*. Minneapolis, MN: National Computer Systems.
- Horwath, J. (1999). Inter-agency practice in suspected cases of Munchausen Syndrome by Proxy (Fictitious Illness by Proxy): Dilemmas for professionals. *Child and Family Social Work*, *4*, 109–118.
- Horvath, L. S., Logan, T. K., & Walker, R. (2002). Child custody cases: A content analysis of evaluations in practice. *Professional Psychology: Research and Practice*, *33*(6), 557–565.
- How-to-pass-a-drug-test. (2007). *Home page*. Retrieved January 3, 2007, from <http://landing.domainsponsor.com/index.mas?epl=01030073VFAXVE0D1gVVRBeVwM>
- Hubbard, G. (1996). *Validity study of the parent-child relationship inventory for determining child custody*. Unpublished doctoral dissertation, Wisconsin School of Professional Psychology, Milwaukee, WI. Described in Ackerman (2005a).
- Hughes, H. M., Graham-Bermann, S. A., & Gruber, G. (2001). Resilience in children exposed to domestic violence. In S. A. Graham-Bermann, & J. L. Edleson, (Eds.), *Domestic violence in the lives of children: The future of research, intervention, and social policy* (pp. 67–90). Washington, DC: American Psychological Association.
- Hunsley, J., Lee, C. M., & Wood, J. M. (2003). Controversial and questionable assessment techniques. In S. O. Lilienfeld, S. J. Lynn, & J. M. Lohr, *Science and pseudoscience in clinical psychology* (pp. 39–76). NY: Guilford Press.
- Huss, M. T., & Langhinrichsen-Rohling, J. (2006). Assessing the generalization of psychopathy in a clinical sample of domestic violence perpetrators. *Law and Human Behavior*, *30*(5), 571–586.
- Hynan, D. J. (1998). Interviewing children in custody evaluations. *Family and Conciliation Courts Review*, *36*(4), 466–478.
- Hynan, D. J. (2003). Parent-child observations in custody evaluations. *Family Court Review*, *41*(2), 214–223.
- Hysjulien, C., Wood, B., & Benjamin, G. A. H. (1994). Child custody evaluations: A review of methods used in litigation and alternative dispute resolution. *Family and Conciliation Courts Review*, *32*(4), 466–489.
- In re Marriage of Burgess, 913 P.2d 473 (California, 1996)
- Insabella, G. M., Williams, T., & Pruett, M. K. (2003). Individual and coparenting differences between divorcing and unmarried fathers. *Family Court Review*, *41*(3), 290–306.
- Ipastedmydrugtest. (2007). Drug detection times. Retrieved January 3, 2007, from http://www.ipastedmydrugtest.com/drug_detection_times.asp
- Jaffe, P. G., Lemon, N. K. D., & Poisson, S. E. (2003). *Child custody and domestic violence: A call for safety and accountability*. Thousand Oaks, CA: Sage.
- Jellum, L. (2004). Parents know best: Revising our approach to parental custody agreements. *Ohio State Law Journal*, *65*(3), 615–656.
- Jennings, S. (2005). Autism in children and parents: Unique considerations for family court professionals. *Family Court Review*, *43*(4), 582–595.
- Johnson, C. F. (2002). Physical abuse: Accidental versus intentional trauma in children. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny,

- & T. A. Reid (Eds.), *The APSAC handbook on child maltreatment* (2nd ed., pp. 249–268). Thousand Oaks, CA: Sage.
- Johnson, M. P. (1995). Patriarchal terrorism and common couple violence: Two forms of violence against women. *Journal of Marriage and the Family*, 57(2) 283–294.
- Johnson, M. P. (2005a). Apples and oranges in child custody disputes: Intimate terrorism vs. situational couple violence. *Journal of Child Custody*, 2(4), 43–52.
- Johnson, M. P. (2005b). A brief reply to Dutton. *Journal of Child Custody*, 2(4), 65–68.
- Johnson, M. P., & Ferraro, K. J. (2000). Research on domestic violence in the 1990s: Making distinctions. *Journal of Marriage and the Family*, 62(4), 948–963.
- Johnson, M. P., & Leone, J. M. (2005). The differential effects of intimate terrorism and situational couple violence: Findings from the National Violence Against Women Survey. *Journal of Family Issues*, 26(3), 322–349.
- Johnson, T. C. (2005). Young children's problematic sexual behaviors, unsubstantiated allegations of child sexual abuse, and family boundaries in child custody disputes. *Journal of Child Custody*, 2(4), 111–126.
- Johnston, J. R. (1994). Final report of stage 1, part B: Identification of risk factors—The interview study. In *Prevention of parent or family abduction through early identification of risk factors*, Report to the Office of Juvenile Justice and Delinquency Prevention, edited by L. Girdner and J. Johnston. Washington, DC: American Bar Association Center on Children and the Law. Cited in Chiancone, 2001 and Gould, 1998.
- Johnston, J. R. (1995). Research update: Children's adjustment in sole custody compared to joint custody: Families and principles for custody decision making. *Family and Conciliation Courts Review*, 33(4), 415–425.
- Johnston, J. R. (1999). Response to Clare Dalton's: "When paradigms collide: Protecting battered parents and their children in the family court system." *Family and Conciliation Courts Review*, 37(4), 422–428.
- Johnston, J. R. (2000). Building multidisciplinary professional partnerships with the court on behalf of high-conflict divorcing families and their children: Who needs what kind of help? *University of Arkansas at Little Rock Law Review*, 22(3), 453–479.
- Johnston, J. R. (2003). Parental alignments and rejection: An empirical study of alienation in children of divorce. *Journal of the American Academy of Psychiatry & Law*, 31(2), 158–170.
- Johnston, J. R., & Campbell, L. E. G., (1993). A clinical typology of interparental violence in disputed-custody cases. *American Journal of Orthopsychiatry*, 63(2), 190–199.
- Johnston, J. R., & Girdner, L. K. (2001). Family abductors: Descriptive profiles and family interventions. *Juvenile Justice Bulletin*, January 2001, 1–8. Washington, DC: Office of Juvenile Justice and Delinquency Prevention. Retrieved September 30, 2005, from <http://www.ncjrs.gov/pdffiles1/ojdp/182788.pdf>
- Johnston, J. R., & Kelly, J. B. (2004a). Commentary on Walker, Brantley, and Rigsbee's (2004) "A critical analysis of parental alienation syndrome and its admissibility in the family court." *Journal of Child Custody*, 1(4), 77–89.
- Johnston, J. R., & Kelly, J. B. (2004b). Rejoinder to Gardner's "Commentary on Kelly and Johnston's 'The alienated child: A reformulation of parental alienation syndrome.'" *Family Court Review*, 42(4), 622–628.
- Johnston, J. R., Lee, S., Olesen, N. W., & Walters, M. G. (2005). Allegations and substantiations of abuse in custody-disputing families. *Family Court Review*, 43(2), 283–294.

- Johnston, J. R., & Roseby, V. (1997). *In the name of the child: A developmental approach to understanding and helping children of conflicted and violent divorce*. NY: The Free Press.
- Johnston, J. R., & Straus, R. B. (1999). Traumatized children in supervised visitation: What do they need? *Family and Conciliation Courts Review*, 37(2), 135–158.
- Johnston, J. R., Walters, M. G., & Friedlander, S. (2001). Therapeutic work with alienated children and their families. *Family Court Review*, 39(3), 316–333.
- Johnston, J. R., Walters, M. G., & Olesen, N. W. (2005a). Clinical ratings of parenting capacity and Rorschach protocols of custody-disputing parents: An exploratory study. *Journal of Child Custody*, 2(1/2), 159–178.
- Johnston, J. R., Walters, M. G., & Olesen, N. W. (2005b). Is it alienating parenting, role reversal or child abuse?: A study of children's rejection of a parent in child custody disputes. *Journal of Emotional Abuse*, 5(4), 191–218.
- Kauffman, J. (2006). Same-sex coparent adoptions. In K. Triantafyllou (Ed.), *Representing nontraditional families* (2nd ed., pp. 125–180). Boston: Massachusetts Continuing Legal Education.
- Kaufman, J., & Zigler, E. (1987). Do abused children become abusive parents? *American Journal of Orthopsychiatry*, 57, 186–192.
- Kavanagh, M. M. (2004). Rewriting the legal family: Beyond exclusivity to a care-based standard. *Yale Journal of Law and Feminism*, 16(1), 83–143.
- Keilin, W. G., & Bloom, L. J. (1986). Child custody evaluation practices: A survey of experienced professionals. *Professional Psychology: Research and Practice*, 17(4), 338–346.
- Kelly, J. B. (1996). A decade of divorce mediation research: Some answers and questions. *Family and Conciliation Courts Review*, 34(3), 373–385.
- Kelly, J. B., & Emery, R. E. (2003). Children's adjustment following divorce: Risk and resilience perspectives. *Family Relations*, 52(4), 352–262.
- Kelly, J. B., & Johnston, J. R. (2001). The alienated child: A reformulation of parental alienation syndrome. *Family Court Review*, 39(3), 249–266.
- Kelly, J. B., & Johnston, J. R. (2005). Commentary on Tippins and Wittmann's "Empirical and ethical problems with custody recommendations: A call for clinical humility and judicial vigilance." *Family Court Review*, 43(2), 233–241.
- Kelly, J. B., & Lamb, M. E. (2000). Using child development research to make appropriate custody and access decisions for young children. *Family and Conciliation Courts Review*, 38(3), 297–311.
- Kelly, J. B., & Lamb, M. E. (2003). Developmental issues in relocation cases involving young children: When, whether, and how? *Journal of Family Psychology*, 17(2), 193–205.
- Kelly, R. F., & Ward, S. L. (2002). Allocating custodial responsibilities at divorce: Social science research and the American Law Institute's *Approximation Rule*. *Family Court Review*, 40(3), 350–370.
- Kelley, S. J. (2002). Child maltreatment in the context of substance abuse. Psychological maltreatment. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC handbook on child maltreatment* (2nd ed., pp. 105–117). Thousand Oaks, CA: Sage.
- Kendall-Tackett, K. A., Williams, L. M., & Finkelhor, D. (1993). Impact of sexual abuse on children: A review and synthesis of recent empirical studies. *Psychological Bulletin*, 113(1), 164–180.

- Kirkland, K., & Kirkland, K. L. (2001). Frequency of child custody evaluation complaints and related disciplinary action: A survey of the Association of State and Provincial Psychology Boards. *Professional Psychology: Research and Practice, 32*(2), 171–174.
- Kirkland, K., McMillan, E. L., & Kirkland, K. L. (2005). Use of collateral sources in child custody evaluations. *Journal of Child Custody, 2*(4), 95–109.
- Kirkpatrick, H. D. (2004). A floor, not a ceiling: Beyond guidelines – An argument for minimum standards of practice in conducting child custody and visitation evaluations. *Journal of Child Custody, 1*(1), 61–75.
- Kitzman, K. M., & Emery, R. E. (1994). Child and family coping one year after mediated and litigated child custody disputes. *Journal of Family Psychology, 8*(2), 150–159.
- Klimes-Dougan, B., Free, K., Ronsaville, D., Stilwell, J., Welsh, C. J., & Radke-Yarrow, M. (1999). Suicidal ideation and attempts: A longitudinal investigation of children of depressed and well mothers. *Journal of the American Academy of Child and Adolescent Psychiatry, 38*(6), 651–659.
- Kline, M., Tschann, J. M., Johnston, J. R., & Wallerstein, J. S. (1989). Children's adjustment in joint and sole physical custody families. *Developmental Psychology, 25*(3), 430–438.
- Knox, D., Sturdivant, L., Zusman, M. E., & Sandie, A. P. (2000). Single motherhood: College student views. *College Student Journal, 34*(4), 585–588.
- Kolko, D. J. (2002). Child physical abuse. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC handbook on child maltreatment* (2nd ed., pp. 21–54). Thousand Oaks, CA: Sage.
- Koocher, G. P., Goodman, G. S., White, C. S., Friedrick, W. N., Sivan, A. B., & Reynolds, C. R. (1995). Psychological science and the use of anatomically detailed dolls in child sexual abuse assessments. *Psychological Bulletin, 118*(2), 199–222.
- Korkman, M., Autti-Rämo, I., Koivulehto, H., & Granström, M. (1998). Neuropsychological effects at early school age of fetal alcohol exposure of varying duration. *Child Neuropsychology, 4*(3), 199–212.
- Kovera, M. B., & Borgida, E. (1998). Expert scientific testimony on child witnesses in the age of Daubert. In S. J. Ceci & H. Hembrooke (Eds.), *Expert witnesses in child abuse cases: What can and should be said in court* (pp. 185–215). Washington, DC: American Psychological Association.
- Kraus, M. B. (2005). Planning is important even when life doesn't go the way we plan. *Family Court Review, 43*(4), 607–611.
- Krauss, D. A., & Sales, B. D. (2001). The child custody standard: What do twenty years of research teach us? In S. O. White (Ed.), *Handbook of youth and justice* (pp. 411–435). NY: Kluwer Academic/Plenum.
- Kropp, P. R., & Hart, S. D. (2000). The Spousal Assault Risk Assessment (SARA) Guide: Reliability and validity in adult male offenders. *Law and Human Behavior, 24*(1), 101–118.
- Kropp, P. R., Hart, S. D., Webster, C. D., & Eaves, D. (1999). *SARA: Spousal assault risk assessment guide: User's Manual*. North Tonawanda, NY: Multi-Health Systems, Inc. Available through MHS at www.mhs.com.
- Kuehne, K. (1996). *Assessing allegations of child sexual abuse*. Sarasota, FL: Professional Resources Press.
- Kuehne, K. (2002). Child sexual abuse evaluations. In A. M. Goldstein, & I. B. Weiner (Eds.), *Comprehensive handbook of psychology, volume eleven: Forensic psychology* (pp. 437–460). NY: Wiley.

- Kuehnle, K., Coulter, M., & Firestone, G. (2000). Child protection evaluations: The forensic stepchild. *Family and Conciliation Courts Review*, 38(3), 368–391.
- Kuehnle, K., Greenberg, L. R., & Gottlieb, M. C. (2004). Incorporating the principles of scientifically based child interviews into family law cases. *Journal of Child Custody*, 1(1), 97–114.
- Kuehnle, K., & Kirkpatrick, H. D. (2005). Evaluating allegations of child sexual abuse within complex child custody cases. *Journal of Child Custody*, 2(3), 3–39.
- Kumpfer, K. L., & Alvarado, R. (2003). Family-strengthening approaches for the prevention of youth problem behaviors. *American Psychologist*, 58(6/7), 457–465.
- Kurdek, L. A. (1994). The nature and correlates of relationship quality in gay, lesbian, and heterosexual cohabiting couples: A test of individual difference, interdependence, and discrepancy models. In B. Greene, & G. M. Herek (Eds.), *Lesbian and gay psychology: Theory, research, and clinical applications* (pp. 133–155). Thousand Oaks, CA: Sage.
- Kurdek, L. A. (1995). Lesbian and gay couples. In A. R. D'Augelli, & C. J. Patterson (Eds.), *Lesbian, gay, and bisexual identities over the lifespan: Psychological perspectives* (pp. 243–261). NY: Oxford University Press.
- Kurz, D. (1998). Old problems and new directions in the study of violence against women. In R. K. Bergen (Ed.), *Issues in intimate violence* (pp. 197–208). Thousand Oaks, CA: Sage.
- LaFortune, K. A., & Carpenter, B. N. (1998). Custody evaluations: A survey of mental health professionals. *Behavioral Sciences and the Law*, 16(2), 207–224.
- La Greca, A. M. (Ed.) (1990). *Through the eyes of the child: Obtaining self-reports from children and adolescents*. Boston: Allyn & Bacon.
- Lamb, M. E. (2000). The history of research on father involvement: An overview. *Marriage & Family Review*, 29(2), 23–42.
- Lamb, M. E. (2002). Placing children's interests first: Developmentally appropriate parenting plans. *Virginia Journal of Social Policy & the Law*, 10(1), 98–119.
- Lamb, M. E., & Garretson, M. E. (2003). The effects of interviewer gender and child gender on the informativeness of alleged child sexual abuse victims in forensic interviews. *Law and Human Behavior*, 27(2), 157–171.
- Lamb, M. E., & Kelly, J. B. (2001). Using the empirical literature to guide the development of parenting plans for young children: A rejoinder to Solomon and Biringen. *Family Court Review*, 39(4), 365–371.
- Lamb, M. E., Orbach, Y., Sternberg, K. J., Hershkowitz, I., & Horowitz, D. (2000). Accuracy of investigators' verbatim notes of their forensic interviews with alleged child abuse victims. *Law and Human Behavior*, 24(6), 699–708.
- Lambda Legal Defense and Education Fund (Lambda). (2000). *A historic victory: Civil unions for same-sex couples: What's next!*. Retrieved October 5, 2006, from <http://www.lambdalegal.org/cgi-bin/iowa/news/fact.html?record=659>
- Lambda Legal Defense and Education Fund (Lambda). (2005). Overview of state adoption laws. Retrieved October 5, 2006, from <http://www.lambdalegal.org/cgi-bin/iowa/documents/record2.html?record=1923>
- Lampel, A. K. (1996). Children's alignment with parents in highly conflicted custody cases. *Family and Conciliation Courts Review*, 34(2), 229–239.
- Lampel, A. K. (2002). Assessing for alienation and access in child custody cases: A response to Lee and Olesen. *Family Court Review*, 40(2), 232–235.
- Lande, J., & Herman, G. (2004). Fitting the forum to the family fuss: Choosing mediation, collaborative law, or cooperative law for negotiating divorce cases. *Family Court Review*, 42(2), 280–291.

- Larroque, B., & Kaminski, M. (1998). Prenatal alcohol exposure and development at preschool age: Main results of a French study. *Alcoholism: Clinical and Experimental Research*, 22(2), 295–303.
- Laumann-Billings, L., & Emery, R. E. (2000). Distress among young adults from divorced families. *Journal of Family Psychology*, 14(4), 671–687.
- Lebow, J. (2003). Integrative family therapy for disputes involving child custody and visitation. *Journal of Family Psychology*, 17(2), 181–192.
- Lee, S. M., & Olesen, N. W. (2001). Assessing for alienation in child custody and access evaluations. *Family Court Review*, 39(3), 282–298.
- LeVasseur, A. (2004). Virtual visitation: How will courts respond to a new and emerging issue? *Quinnipiac Probate Law Journal*, 17(3–4), 362–382.
- Levendosky, A. A., & Graham-Bermann, S. A. (2000). Behavioral observations of parenting in battered women. *Journal of Family Psychology*, 14(1), 80–94.
- Levendosky, A. A., Huth-Bocks, A. C., Shapiro, D. L., & Semel, M. A. (2003). The impact of domestic violence on the maternal-child relationship and preschool-age children's functioning. *Journal of Family Psychology*, 17(3), 275–287.
- Levin, A., & Mills, L. G. (2003). Fighting for child custody when domestic violence is at issue: Survey of state laws. *Social Work*, 48(4), 463–470.
- Levine, B. (1996). Divorce and the modern family: Providing in loco parentis stepparents standing to sue for custody of their stepchildren in a dissolution proceeding. *Hofstra Law Review*, 25(1), 315–353.
- Lilienfeld, S. A., Lynn, S. J., & Lohr, J. M. (2003). Science and pseudoscience in clinical psychology: Initial thoughts, reflections, and considerations. In S. O. Lilienfeld, S. J. Lynn, & J. M. Lohr (Eds.), *Science and pseudoscience in clinical psychology* (pp. 1–14). NY: Guilford Press.
- Litz, B. T. (2005). Has resilience to severe trauma been underestimated? *American Psychologist*, 60(3), 262.
- London, K., Bruck, M., Ceci, S., & Shuman, D. W. (2005). Disclosure of child sexual abuse: What does the research tell us about the ways that children tell? *Psychology, Public Policy, and Law*, 11(1), 194–226.
- Los Angeles Superior Court (2005). *Family law – Custody and visitation: What is a fast track evaluation?* Retrieved August 5, 2005, from http://www.lasuperiorcourt.org/familylaw/cv-fast_track_evaluation.htm
- Louisiana State Board of Social Work Examiners (Louisiana). (1998). *Guidelines for child custody evaluations*. Retrieved September 2, 2005, from <http://www.labswe.org/child.htm>
- Lowenstein, L. F. (2002). Joint custody and shared parenting: Are courts listening? *Family Therapy*, 29(2), 101–108.
- Lussier, G., Deater-Deckard, K., Dunn, J., & Davies, L. (2002). Support across two generations: Children's closeness to grandparents following parental divorce and remarriage. *Journal of Family Psychology*, 16(3), 363–376.
- Lyon, T. D. (1999). The new wave in children's suggestibility research: A critique. *Cornell Law Review*, 84(4), 1004–1087.
- Maccoby, E. E., & Mnookin, R. H. (1992). *Dividing the child: Social and legal dilemmas of custody*. Cambridge, MA: Harvard University Press.
- Main, M. (1996). Introduction to the special section on attachment and psychopathology: 2. Overview of the field of attachment. *Journal of Consulting and Clinical Psychology*, 64(2), 237–243.
- Maldonado, S. (2005). Beyond economic fatherhood: Encouraging divorced fathers to parent. *University of Pennsylvania Law Review*, 153(3), 921–1010.

- Malia, S. E. C. (2005). Balancing family members' interests regarding stepparent rights and obligations: A social policy challenge. *Family Relations*, 54(2), 298–319.
- Manning, W. D. (1995). Cohabitation, marriage, and entry into motherhood. *Journal of Marriage and the Family*, 57(1), 191–200.
- Manning, W. D. (2001). Childrearing in cohabiting unions: Racial and ethnic differences. *Family Planning Perspectives*, 33(5), 217–223.
- Markan, L. K., & Weinstock, D. K. (2005). Expanding forensically informed evaluations and therapeutic interventions in family court. *Family Court Review*, 43(3), 466–480.
- Market House Books (2004). *Bantam medical dictionary* (5th ed.). NY: Bantam Dell.
- Mart, E. G. (2002). Munchausen's Syndrome (Factitious Disorder) by Proxy: A brief review of its scientific and legal status [Abstract]. *Scientific Review of Mental Health Practice*, 1(1). Retrieved November 10, 2006, from <http://www.srmhp.org/0101/munchausens-syndrome.html>
- Martin, A. (1993). *The lesbian and gay parenting handbook: Creating and raising our families*. NY: Harper Collins.
- Martindale, D. A. (2003). *Troxel v. Granville*: A nonjusticiable dispute. *Family Court Review*, 41(1), 88–91.
- Martindale, D. A. (2004). Integrity and transparency: A commentary on record keeping in child custody evaluations. *Journal of Child Custody*, 1(1), 31–40.
- Martindale, D. A. (2005). Confirmatory bias and confirmatory distortion. *Journal of Child Custody*, 2(1/2), 31–48.
- Martindale, D. A., & Gould, J. W. (2004). The forensic model: Ethics and scientific methodology applied to custody evaluations. *Journal of Child Custody*, 1(2), 1–22.
- Maryland Legal Assistance Network (2005). Reached a visitation impasse? Consider "virtual visitation" as part of the solution. Updated Jan. 20, 2005. Retrieved June 22, 2006, from http://www.peoples-law.org/family/divorce/Custody/Virtual/virtual_visitatio.htm
- Marzano-Lesnevich, M., & Laterra, S. A. (2001). The argument against virtual visitation. *New Jersey Law Journal*, 164(9), 779.
- Mason, M. A. (1998). Expert testimony regarding the characteristics of sexually abused children: A controversy on both sides of the bench. In S. J. Ceci, & H. Hembrooke (Eds.), *Expert witnesses in child abuse cases: What can and should be said in court* (pp. 217–234). Washington, DC: American Psychological Association.
- Massachusetts Trial Court, Domestic Violence Visitation Task Force of the Probate and Family Court Department (1994). *Domestic violence visitation risk assessment*. Madison, WI: Association of Family and Conciliation Courts.
- Maxwell, J. (1999). Mandatory mediation of custody in the face of domestic violence. *Family and Conciliation Courts Review*, 37(3), 335–355.
- Mayes, L. C., & Truman, S. D. (2002). Substance abuse and parenting. In M. H. Borstein (Ed.), *Handbook of parenting: Social conditions and applied parenting* (Vol. 4, pp. 329–359). Mahwah, NJ: Erlbaum.
- MB detox. (2003a). Detection times. Retrieved January 3, 2007, from <http://www.mbdetox.com/category28/default.html>
- MB detox. (2003b). Test Info. Retrieved January 3, 2007, from <http://www.mbdetox.com/category29/default.html>

- MB detox. (2003c). Urine drug test – Detox pills. Retrieved January 3, 2007, from <http://www.mbdetox.com/category24/default.html>
- McCann, J. T., Flens, J. R., Campagna, V., Colman, P., Lazzaro, T., & Conner, E. (2001). The MCMI-III in child custody evaluations: A normative study. *Journal of Forensic Psychology Practice, 1*, 27–44.
- McCann, J. T., Shindler, K. L., & Hammond, T. R. (2003). The science and pseudoscience of expert testimony. In S. O. Lilienfeld, S. J. Lynn, & J.M. Lohr, (Eds.), *Science and pseudoscience in clinical psychology* (pp. 77–108). NY: Guilford.
- McFarlane, J., Malecha, A., Gist, J., Watson, K., Batten, E., Hall, I., et al. (2004). Protection orders and intimate partner violence: An 18-month study of 150 Black, Hispanic, and White women. *American Journal of Public Health, 94*(4), 613–618.
- McGill, J. C., Deutsch, R. M., & Zibbell, R. A. (1999). Visitation and domestic violence: A clinical model of family assessment and access planning. *Family and Conciliation Courts Review, 37*(3), 315–334.
- McGillivray, A. (2004). Child physical assault: Law, equality and intervention. *The Manitoba Law Journal, 30*(2), 133–169.
- McMahon, T. J., & Giannini, F. D. (2003). Substance-abusing fathers in family court: Moving from popular stereotypes to therapeutic jurisprudence. *Family Court Review, 41*(3), 337–353.
- Medoff, D. (2003). The scientific basis of psychological testing: Considerations following *Daubert*, *Kumho*, and *Joiner*. *Family Court Review, 41*(2), 199–213.
- Melton, G. B., Petrla, J., Poythress, N. G., & Slobogin, C. (1997). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (2nd ed.) NY: Guilford Press.
- Ménard, K. A., & Ruback, R. B. (2003). Prevalence and processing of child sexual abuse: A multi-data-set analysis of urban and rural counties. *Law and Human Behavior, 27*(4), 385–402.
- Menno, J. V. (2003). View from the bench. *Family Court Review, 41*(3), 362–366.
- Messerschmidt, J. (2004). Varieties of “real men.” In M. S. Kimmel, & M. A. Messner (Eds.), *Men's lives* (6th ed., pp. 3–20). Boston: Pearson.
- Merriam-Webster (1996). *Merriam-Webster's dictionary of law*. Springfield, MA: Author.
- Miller, D. H., Greene, K., Causby, V., White, B. W., & Lockhart, L. L. (2001). Domestic violence in lesbian relationships. In E. Kaschak (Ed.), *Intimate betrayal: Domestic violence in lesbian relationships* (pp. 107–127). NY: Haworth.
- Miller, G. A. (1994). *The substance abuse subtle screening inventory-2*. Spencer, IN: Spencer Evening World.
- Millon, T., Davis, R., & Millon, C. (1997). *Millon multiphasic personality inventory-III: Manual* (2nd ed.). Minneapolis: National Computer Systems.
- Milner, J. (1986). *The child abuse potential inventory: Manual* (2nd Ed.). Webster, NC: Psytec.
- Milner, J. S. (1994). Assessing physical child abuse risk: The child abuse potential inventory. *Child Psychology Review, 14*(6), 547–583.
- Milner, J. S., & Chilamkurti, C. (1991). Physical abuse: Perpetrator characteristics. *Journal of Interpersonal Violence, 6*(3), 345–366.
- Milot, L. (2001). Restitching the American marital quilt: Untangling marriage from the nuclear family. *Virginia Law Review, 87*(4), 701–728.

- Missouri, 93rd General Assembly. (2006). Senate Bill No. 1058. Retrieved June 21, 2006, from <http://www.internetvisitation.org>
- Monks, M. H., Ordóñez, H. A. M., Turley, D. M., & Zupcowska, P. F. (2006). Planning and drafting legal instruments for nontraditional families. In Triantafyllou, K. (Ed.), *Representing nontraditional families* (2nd ed., pp. 1–123). Boston: Massachusetts Continuing Legal Education.
- Montgomery, L. M., Cupit, B. E., & Wimberley, T. K. (1999). Complaints, malpractice, and risk management: Professional issues and personal experiences. *Professional Psychology: Research and Practice*, 30(4), 402–410.
- Morgan, L. W. (2005). Relocation of custodial parent: Standards and burden of proof: State by state survey. *Family Law Reader*, Oct. 2005, pp. 1–39. Retrieved June 21, 2006, from <http://www.famlawconsult.com/reader.html>
- Morrissey, S. (2002, March). The new neighbors: Domestic relations law struggles to catch up with changes in family life. *ABA Journal*, 88, 37–41.
- Mouton, C. P., Rodabough, R. J., Rovi, S. L. D., Hunt, J. L., Talamantes, M. A., Brzyski, R. G., et al. (2004). Prevalence and 3-year incidence of abuse among post-menopausal women. *American Journal of Public Health*, 94(4), 605–612.
- Mowbray, C. T., Bybee, D., Oyserman, D., Allen-Meares, P., MacFarlane, P., & Hart-Johnson, T. (2004). Diversity of outcomes among adolescent children of mothers with mental illness. *Journal of Emotional and Behavioral Disorders*, 12(4), 206–221.
- Mullender, A., Hague, G., Imam, U., Kelly, L., Malos, E., & Regan, L. (2002). *Children's perspectives on domestic violence*. Thousand Oaks, CA: Sage.
- Murphy, L. L., Plake, B. S., Impara, J. C., & Spies, R. A. (Eds.). (2002). *Tests in print VI*. Lincoln, Neb.: Buros Institute of Mental Measurements, University of Nebraska-Lincoln.
- Murphy, R. (2004). Is the turn toward collaborative law a turn away from justice? *Family Court Review*, 42(3), 460–470.
- Murray, H. A. (1943). *Thematic apperception test manual*. Cambridge, MA: Harvard University Press.
- Musick, K. (2002). Planned and unplanned childbearing among unmarried women. *Journal of Marriage and Family*, 64(4), 915–929.
- Myers, J. E. B. (2002). The legal system and child protection. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC handbook on child maltreatment* (2nd ed., pp. 305–327). Thousand Oaks, CA: Sage.
- National Center on Addiction and Substance Abuse at Columbia University (NCASA). (2005, March). *Family matters: Substance abuse and the American family*. [NCASA White Paper]. NY: Author. Retrieved November 22, 2006, from http://www.casacolumbia.org/Absolutenm/articlefiles/380-family_matters_report.pdf
- National Council on Alcoholism and Drug Dependence (NCADD). (1990). *What are the signs of alcoholism?* (Rev. ed.), [Brochure]. Retrieved November 22, 2006, from <http://www.ncadd.org/pubs/signs2.html>
- National Institute on Alcohol Abuse and Alcoholism (NIAAA), Task Force on Recommended Alcohol Questions. (2003). *Recommended sets of alcohol consumption questions*. Retrieved December 27, 2006, from <http://www.niaaa.nih.gov/Resources/ResearchResources/TaskForce.htm>
- National Institute on Drug Abuse (NIDA), National Institutes of Health. (2006a). Drugs of abuse and related topics – Club drugs. *NIDA Home*. Retrieved January 3, 2007, from <http://www.nida.nih.gov/drugpages/clubdrugs.html>

- National Institute on Drug Abuse (NIDA), National Institutes of Health. (2006b). Inhalants. *NIDA InfoFacts*, May 2006, pp. 1–4. Retrieved January 3, 2007, from <http://www.drugabuse.gov>
- National Survey on Drug Use and Health (NSDUH). (2005). Inhalant use and delinquent behaviors among young adolescents. *The USDUH Report*, March 17, 2005, pp. 1–3. Washington, DC: Substance Abuse and Mental Health Services Administration (SAMHSA). Retrieved January 3, 2007, from <http://www.oas.samhsa.gov/2k5/inhale/inhale.pdf>
- Neff, R., & Cooper, K. (2004). Parental conflict resolution: Six-, twelve-, and fifteen-month follow-ups of a high-conflict program. *Family Court Review*, 42(1), 99–114.
- Neilson, L. C. (2004). Assessing mutual partner-abuse claims in child custody and access cases. *Family Court Review*, 42(3), 411–438.
- New Hampshire, State of; Judicial Branch (2006). *Parenting plan*. Retrieved July 24, 2006, from http://www.nh.gov/judiciary/forms/nhjb_2064-fs.pdf
- Newmark, L., Harrell, A., & Salem, P. (1994). *Domestic violence and empowerment in custody and visitation cases: An empirical study on the impact of domestic abuse*. Madison, WI: Association of Family and Conciliation Courts.
- Nicholson, J. M., Phillips, M. E., Peterson, C. C., & Battistutta, D., (2002). Relationship between the parenting styles of biological parents and stepparents and the adjustment of young adult stepchildren. *Journal of Divorce and Remarriage*, 36(3/4), 57–76.
- Nims, J. P. (2004). *NIMS Observational Checklist (NOC)*. North Tonawanda, NY: Multi-Health Systems, Inc. Available for purchase at <https://www.mhs.com/>
- Nock, S. L. (1998). The consequences of premarital fatherhood. *American Sociological Review*, 63(2), 250–263.
- Nowling, M. M. (2003). Protecting children who witness domestic violence: Is *Nicholson v. Williams* an adequate response? *Family Court Review*, 41(4), 517–526.
- O'Connell, M. E. (2003). The riddle of *Troxel*: Is grandma the state? *Family Court Review*, 41(1), 77–87.
- O'Connor, T. G., Caspi, A., DeFries, J. C., & Plomin, R. (2003). Genotype-environment interaction in children's adjustment to parental separation. *Journal of Child Psychology and Psychiatry*, 44(6), 849–856.
- Ogg, E. (2006, June 22). Virtual togetherness. *Daily Breeze*. Retrieved June 22, 2006, from <http://www.dailybreeze.com/today/articles/3205926.html>
- Ohio, 126th General Assembly (2006). Senate Bill No. 341. Retrieved June 21, 2006, from http://www.legislature.state.oh.us/bills.cfm?ID=126_SB_341
- O'Leary, K. D. (2001). Psychological abuse: A variable deserving critical attention in domestic violence. In K. D. O'Leary, & R. D. Maiuro, (Eds.), *Psychological abuse in violent domestic relations* (pp. 3–27). NY: Springer.
- O'Leary, S. G., & Smith, A. J. S. (2006). Precipitants of partner aggression. *Journal of Family Psychology*, 20(2), 344–347.
- Ondersma, S. J. (2002). Predictors of neglect within low-SES families: The importance of substance abuse. *American Journal of Orthopsychiatry*, 72(3), 383–391.
- Orel, N. A., Groves, P. A., & Shannon, L. (2003). *Positive Connections: A programme for children who have a parent with a mental illness*. *Child and Family Social Work*, 8(2), 113–122.

- O'Shea, B. (2003). Factitious disorders: The baron's legacy. *International Journal of Psychiatry in Clinical Practice*, 7(1), 33–39.
- Otto, R. K., Edens, J. F., & Barcus, E. H. (2000). The use of psychological testing in child custody evaluations. *Family and Conciliation Courts Review*, 38(3), 312–340.
- Park, R. J., Senior, R., & Stein, A. (2003). The offspring of mothers with eating disorders. *European Child & Adolescent Psychiatry*, 12(Supplement 1), 110–119.
- Parkinson, L. (2000). Mediating with high-conflict couples. *Family and Conciliation Courts Review*, 38(1), 69–76.
- Parkinson, P., Dashmore, J., & Single, J. (2005). Adolescents' views on the fairness of parenting and financial arrangements after separation. *Family Court Review*, 43(3), 429–444.
- Parnell, T. F. (2002). Munchausen by proxy syndrome. In J. E. B. Myers, L. Berliner, J. Briere, C. T. Hendrix, C. Jenny, & T. A. Reid (Eds.), *The APSAC handbook on child maltreatment* (2nd ed., pp. 131–138). Thousand Oaks, CA: Sage.
- Patel, D. (2005). Super-sized kids: Using the law to combat morbid obesity in children. *Family Court Review*, 43(1), 164–177.
- Patel, P., Wheatcroft, R., Park, R. J., & Stein, A. (2002). The children of mothers with eating disorders. *Clinical Child and Family Psychology Review*, 5(1), 1–19.
- Patterson, C. J. (1994). Children of the lesbian baby boom: Behavioral adjustment, self-concepts, and sex role identity. In B. Greene, & G. M. Herek (Eds.), *Lesbian and gay psychology: Theory, research, and clinical applications* (pp. 156–175). Thousand Oaks, CA: Sage.
- Patterson, C. J. (1995). Lesbian and gay parenting. *APA Online: American Psychological Association*. Retrieved October 29, 2005, from <http://www.apa.org/pilparent.html>
- Patterson, C. J. (2000). Family relationships of lesbians and gay men. *Journal of Marriage and Family*, 62(4), 1052–1069.
- Patterson, C. J., & Redding, R. E. (1996). Lesbian and gay families with children: Implications of social science research for policy. *Journal of Social Issues*, 52, 29–50.
- Patterson, G. R., & Fisher, P. A. (2002). Recent developments in our understanding of parenting: Bidirectional effects, causal models, and the search for parsimony. In M. H. Bornstein (Ed.), *Handbook of parenting: Social conditions and applied parenting* (vol. 4, pp. 59–88). Mahwah, NJ: Erlbaum.
- Paulson, A. (2006, March 30). Divorced parents get high-tech link to kids. *Christian Science Monitor*. Retrieved June 21, 2006, from <http://www.csmonitor.com/2006/0330/p01s02-ussc.htm>
- Pearson, J., & Thoennes, N. (2000). Supervised visitation: The families and their experiences. *Family and Conciliation Courts Review*, 38(1), 123–142.
- Pedro-Carroll, J. L. (2005). Fostering resilience in the aftermath of divorce: The role of evidence-based programs for children. *Family Court Review*, 43(1), 52–64.
- Pedro-Carroll, J., Nakhnikian, E., & Montes, G. (2001). Assisting children through transition: Helping parents protect their children from the toxic effects of ongoing conflict in the aftermath of divorce. *Family Court Review*, 39(4), 377–392.
- Perryman, H. P. (2005). Parental reactions to the disabled child: Implications for family court. *Family Court Review*, 43(4), 596–606.

- Peterson, C., & Parsons, B. (2005). Interviewing former 1- and 2-year olds about medical emergencies 5 years later. *Law and Human Behavior, 29*(6), 743–754.
- Pipe, M., Gee, S., & Wilson, C. (1993). Cues, props, and context: Do they facilitate children's event reports? In G. Goodman, & B. L. Bottoms (Eds.), *Child victims, child witnesses: Understanding and improving testimony* (pp. 25–45). NY: Guilford.
- Poole, D. A., & Lamb, M. E. (1998). *Investigative interviews of children*. Washington, DC: American Psychological Association.
- Poorman, P. B., & Seelau, S. M. (2001). Lesbians who abuse their partners: Using the FIRO-B to assess interpersonal characteristics. In E. Kaschak (Ed.), *Intimate betrayal: Domestic violence in lesbian relationships* (pp. 7–105). NY: Haworth.
- Pope, K. S., Butcher, J. N., & Seelen, J. (2000). *The MMPI, MMPI-2 & MMPI-A in court: A practical guide for expert witnesses and attorneys* (2nd ed.). Washington, DC: American Psychological Association.
- Poynter, D. (1997). *Expert witness handbook: Tips and techniques for the litigation consultant* (2nd ed.). Santa Barbara, CA: Para Publishing.
- Poythress, N. (1981). *Conflicting postures for mental health expert witnesses: Prevailing attitudes of trial court judges*. Unpublished manuscript on file with the Department of Training and Research, Center for Forensic Psychiatry, P.O. Box 2060, Ann Arbor, MI 48106. Data re-analyzed and reported by Melton et al., 1997.
- Pruett, M. K., Ebling, R., & Insabella, G. (2004). Critical aspects of parenting plans for young children: Interjecting data into the debate about overnights. *Family Court Review, 42*(1), 39–59.
- Pruett, M. K., Nangle, B., & Bailey, C. (2000). Divorcing families with young children in the court's family services unit: Profiles and impact of services. *Family and Conciliation Courts Review, 38*(4), 478–500.
- Pruett, M. K., Williams, T. Y., Insabella, G., & Little, T. D. (2003). Family and legal indicators of child adjustment to divorce among families with young children. *Journal of Family Psychology, 17*(2), 169–180.
- Quinnell, F. A., & Bow, J. N. (2001). Psychological tests used in child custody evaluations. *Behavioral Sciences and the Law, 19*(4), 491–501.
- Quinsey, V. L., & Lalumière, M. (2001). *Assessment of sexual offenders against children (2nd ed.): The APSAC study guides 1*. Thousand Oaks, CA: Sage.
- Raley, R. K. (2001). Increasing fertility in cohabiting unions: Evidence for the second demographic transition in the United States? *Demography, 38*(2), 59–66.
- Raley, R. K., & Wildsmith, E. (2004). Cohabitation and children's family instability. *Journal of Marriage and Family, 66*(1), 210–219.
- Reitman, D., Rhode, P. C., Hupp, S. D. A., & Altobello, C. (2002). Development and validation of the Parental Authority Questionnaire—Revised. *Journal of Psychopathology and Behavioral Assessment, 24*(2), 119–127.
- Reynolds, S. E. (2006). International parental child abduction: Why we need to expand custody rights protected under the Child Abduction Convention. *Family Court Review, 44*(3), 464–483.
- Ricci, I., Depner, C. E., & Cannata, K. V. (1992). Profile: Child custody mediation services in California Superior Courts. *Family and Conciliation Courts Review, 30*(2), 229–242.
- Ricciuti, H. N. (2004). Single parenthood, achievement, and problem behavior in White, Black, and Hispanic children. *Journal of Educational Research, 97*(4), 196–206.

- Rice, J. K. (1994). Reconsidering research on divorce, family life cycle, and the meaning of family. *Psychology of Women Quarterly*, 18(4), 559–584.
- Riggs, S. A. (2003). Implications of attachment theory for judicial decisions regarding custody and third-party visitation. *Family Court Review*, 41(1), 39–53.
- Riggs, S. A. (2005). Is the approximation rule in the child's best interests? A critique from the perspective of attachment theory. *Family Court Review*, 43(3), 481–493.
- Rind, B., Tromovitch, P., & Bauserman, R. (1998). A meta-analytic examination of assumed properties of child sexual abuse using college samples. *Psychological Bulletin*, 124(1), 22–53.
- Roditti, M. G. (2005). Understanding communities of neglectful parents: Child caregiving networks and child neglect. *Child Welfare*, 134(2), 277–296.
- Rohner, R. P., & Veneziano, R. A. (2001). The importance of father love: History and contemporary evidence. *Review of General Psychology*, 5(4), 382–405.
- Rohrbaugh, J. B. (1979). *Women: Psychology's puzzle*. NY: Basic Books.
- Rohrbaugh, J. B. (1989). Choosing children: Psychological issues in lesbian parenting. *Women and Therapy*, 8(1/2), 51–64.
- Rohrbaugh, J. B. (1992). Lesbian families: Clinical issues and theoretical implications. *Professional Psychology: Research and Practice*, 23(6), 467–473.
- Rohrbaugh, J. B. (2000). Lesbian/gay family dissolution. *MAGAL News: The Newsletter of the Massachusetts Association of Guardians ad Litem, Inc.*, 5(4), 5–7.
- Rohrbaugh, J. B. (2004a). Managing parental contact in abusive divorcing families. *Divorce Center Briefs*, Fall 2004, 1–4.
- Rohrbaugh, J. B. (2004b). Power and control dynamics in same-gender relationships. *AFCC Newsletter*, Massachusetts Chapter, Fall 2004.
- Rohrbaugh, J. B. (2006). Domestic violence in same-gender relationships. *Family Court Review*, 44(2), 287–299.
- Roosa, M. W., Tein, J., Groppenbacher, N., Michaels, M., & Dumka, L. (1993). Mothers' parenting behavior and child mental health in families with a problem drinking parent. *Journal of Marriage and the Family*, 55(1), 107–118.
- Rosenbaum, J. F., Biederman, J., Hirshfeld-Becker, D. R., Kagan, J., Snidman, N., Friedman, D., et al., (2000). A controlled study of behavioral inhibition in children of parents with panic disorder and depression. *American Journal of Psychiatry*, 157(12), 2002–2010.
- Rosenfeld, B. (2003). Recidivism in stalking and obsessional harassment. *Law and Human Behavior*, 27(3), 251–265.
- Rosenfeld, B., & Lewis, C. (2005). Assessing violence risk in stalking cases: A regression tree approach. *Law and Human Behavior*, 29(3), 343–357.
- Rossmann, B. B. R. (2001). Longer term effects of children's exposure to domestic violence. In S. A. Graham-Bermann, & J. L. Edleson (Eds.), *Domestic violence in the lives of children: The future of research, intervention, and social policy* (pp. 35–66). Washington, DC: American Psychological Association.
- Rothenberg, M. A., & Chapman, D. F. (2000). *Dictionary of medical terms for the nonmedical person* (4th ed.). Hauppauge, NY: Barron's Educational Series.
- Rotman, Hon. A. S. (2005). Commentary on "Empirical and ethical problems with custody recommendations:" A call for new family court priorities. *Family Court Review*, 42(3), 242–245.
- Rotman, Hon. A. S., Tompkins, R., Schwartz, L. L., & Samuels, M. D. (2000). Reconciling parents' and children's interests in relocation: In whose best interest? *Family and Conciliation Courts Review*, 38(3), 341–367.

- Sachsenmaier, S. J. (2005). Complex child custody evaluations: Evaluating the alleged incestuous parent. *Journal of Child Custody*, 2(3), 57–97.
- Santosky v. Kramer, 455 U.S. 745 (1982).
- Saposnek, D. T. (2005). Editorial preface to special Issue on special needs children in the family court. *Family Court Review*, 43(4), 563–565.
- Saposnek, D. T., Perryman, H., Berkow, J., & Ellsworth, S. (2005). Special needs children in family court cases. *Family Court Review*, 43(4), 566–581.
- Sarkisian v. Benjamin, 62 Mass. App. Ct. 741 (2005)
- Sattler, J. M. (1998). *Clinical and forensic interviewing of children and families: Guidelines for the mental health, education, pediatric, and child maltreatment fields*. San Diego: Jerome M. Sattler, Publisher, Inc.
- Saywitz, K., & Camparo, L. (1998). Interviewing child witnesses: A developmental perspective. *Child Abuse & Neglect*, 22(8), 825–843.
- Sbraga, T. P., & O'Donohue, W. (2003). Post hoc reasoning in possible cases of child sexual abuse: Symptoms of inconclusive origins. *Clinical Psychology: Science and Practice*, 10(3), 320–334.
- Schepard, A. (2005). Mental health evaluations in child custody disputes (Editorial Note). *Family Court Review*, 42(3), 187–190.
- Schleuderer, C., & Campagna, V. (2004). Assessing substance abuse questions in child custody evaluations. *Family Court Review*, 42(2), 375–383.
- Schmier, P. M. (2004). Parents with mental illness [Letter]. *Social Work*, 49(3), 522–524.
- Schoendorf, S. (2001). *A correlation study of parental custody index (PCI) of the Ackerman-Schoendorf Scales for Parental Evaluation of Custody-Short Form (ASPECT-SF) and selected scales from the Minnesota Multiphasic Personality Inventory-2 (MMPI-2)*. Unpublished doctoral dissertation, Wisconsin School of Professional Psychology, Milwaukee, WI. Described in Ackerman (2005a).
- Schreier, H. A. (2002). Forensic issues in Munchausen by Proxy. In D. H. Schetky, & E. P. Benedek, (Eds.), *Principles and practice of child and adolescent forensic psychiatry* (pp. 161–169). Washington, DC: American Psychiatric Publishing.
- Schutz, B. M., Dixon, E. B., Lindenberger, J. C., & Ruther, N. J. (1989). *Solomon's sword: A practical guide to conducting child custody evaluations*. San Francisco: Jossey-Bass.
- Schwartz, C. D. (2004). Pro se divorce litigants: Frustrating the traditional role of the trial court judge and court personnel. *Family Court Review*, 42(4), 655–672.
- Schwartz, L. L. (2003). A nightmare for King Solomon: The new reproductive technologies. *Journal of Family Psychology*, 17(2), 229–237.
- Scott, E. S. (1992). Pluralism, parental preference, and child custody. *California Law Review*, 80(3), 615–672.
- Sedlak, A. J., & Broadhurst, D. D. (1996). *Executive summary of the third national incidence study of child abuse and neglect*. Washington, DC: Child Welfare Information Gateway, U. S. Department of Health and Human Services. Retrieved January 20, 2007, from <http://www.childwelfare.gov/pubsl/statsinfo/nis3.cfm>
- Seem, S. J. (2004). Comment: The impact of No Child Left Behind on post-divorce custody modification. *University of Chicago Legal Forum*, 625. Retrieved on May 22, 2005, from Lexis Nexis Academic at <http://web.lexis-nexis.com.ez2.harvard.edu/universel/printdoc>
- Seifert, M. (2004). Note: Sibling visitation after adoption: The implications of the Massachusetts sibling visitation statute. *Boston University Law Review*, 84(5), 1467–1492.

- Seilhamer, R. A., Jacob, T., & Dunn, N. J. (1993). The impact of alcohol consumption on parent-child relationships in families of alcoholics. *Journal of Studies on Alcohol*, March, 189–198.
- Self Management and Recovery Training (SMART). (2006). *Introduction to SMART Recovery*. Retrieved December 27, 2006, from <http://www.smartrecovery.org/intro/>
- Seltzer, J. A. (1991). Relationships between fathers and children who live apart: The father's role after separation. *Journal of Marriage and the Family*, 53(1), 79–101.
- Seltzer, J. A. (2000). Families formed outside of marriage. *Journal of Marriage and the Family*, 62(4), 1247–1268.
- Selzer, M. L. (1971). The Michigan Alcoholism Screening Test : The quest for a new diagnostic instrument. *American Journal of Psychiatry*, 127(12), 1653–1658.
- Shear, L. E. (2004). When form fails to follow function: Benjamin and Gollan's *Family Evaluation in Custody Litigation*. *Journal of Child Custody*, 1(1), 127–141.
- Shefts, K. R. (2002). Virtual visitation: The next generation of options for parent-child communication. *Family Law Quarterly*, 36(2), 303–327.
- Shepp v. Shepp, 906 A.2d 1165 (Pa. 2006). Retrieved October 27, 2006, from <http://westlaw@westlaw.com>
- Shuman, D. W. (2002). The role of mental health experts in custody decisions: Science, psychological tests, and clinical judgment. *Family Law Quarterly*, 36(1), 135–162.
- Shuman, D. W., Cunningham, M. D., Connell, M. A., & Reid, W. H. (2003). Interstate forensic psychology consultations: A call for reform and proposal of a model rule. *Professional Psychology: Research and Practice*, 34(3), 233–239.
- Shuman, D. W., & Sales, B. D. (1998). The admissibility of expert testimony based upon clinical judgment and scientific research. *Psychology, Public Policy, and Law*, 4(4), 1226–1252.
- Shuman, D. W., & Sales, B. D. (1999). The impact of *Daubert* and its progeny on the admissibility of behavioral and social science evidence. *Psychology, Public Policy, and Law*, 5(1), 3–15.
- Sigle-Rushton, W., & McLanahan, S. (2002). The living arrangements of unmarried mothers. *Demography*, 39(3), 415–433.
- Silovsky, J. F., & Niec, L. (2002). Characteristics of young children with sexual behavior problems: A pilot study. *Child Maltreatment*, 7(3), 187–197.
- Silverman, W. K., Cerny, J. A., Nelles, W. B., & Burke, A. E. (1988). Behavior problems in children of parents with anxiety disorders. *Journal of the American Academy of Child and Adolescent Psychiatry*, 27(6), 779–784.
- Simon, R. I., & Shuman, D. W. (1999). Conducting forensic examinations on the road: Are you practicing your profession without a license? *Journal of the American Academy of Psychiatry and the Law*, 27(1), 75–82.
- Skaftte, D. (1985). *Child custody evaluations: A practical guide*. Beverly Hills: Sage.
- Skeem, J., Schubert, C., Stowman, S., Beeson, S., Mulvey, E., Gardner, W., et al., (2005). Gender and risk assessment accuracy: Underestimating women's violence potential. *Law and Human Behavior*, 29(2), 173–186.
- Skinner, D. A., & Kohler, J. K. (2002). Parental rights in diverse family contexts: Current legal developments. *Family Relations*, 51(4), 293–300.
- Skinstad, A. H., & Nathan, P. E. (2003). Diagnosis and treatment of substance abuse: Straight talk. *The Register Report*, 29 (Fall 2003),

- 14–19. Washington, DC: National Register of Health Service Providers in Psychology.
- Slobogin, C. (2003). Pragmatic forensic psychology: A means of “scientizing” expert testimony from mental health professionals? *Psychology, Public Policy, and Law*, 9(3/4), 275–300.
- Smith, T. (2006, June 22). When an ex moves, do the kids go, too? *NPR Morning Edition*. Retrieved June 22, 2006, from <http://www.npr.org>
- Society for Personality Assessment, Official Statement by the Board of Trustees. (2005). The status of the Rorschach in clinical and forensic practice. *Journal of Personality Assessment*, 85(2), 219–237.
- Solomon, J., & Biringen, Z. (2001). Another look at the developmental research: Commentary on Kelly and Lamb’s “Using child development research to make appropriate custody and access decisions for young children.” *Family Court Review*, 39(4), 355–364.
- Sorensen, T., & Snow, B. (1991). How children tell: The process of disclosure in child sexual abuse. *Child Welfare*, 70(1), 3–15.
- Sousa, C. A. (1999). Teen dating violence: The hidden epidemic. *Family and Conciliation Courts Review*, 37(3), 356–374.
- Spies, R. A., & Plake, B. S. (Eds.). (2005). *The sixteenth mental measurements yearbook*. Lincoln, Neb: Buros Institute of Mental Measurements, University of Nebraska-Lincoln.
- Stacey, J., & Biblarz, T. J. (2001). (How) does the sexual orientation of parents matter? *American Sociological Review*, 66(2), 159–183.
- Stahl, P. M. (1994). *Conducting child custody evaluations: A comprehensive guide*. Thousand Oaks, CA: Sage.
- Stahl, P. M. (1999). *Complex issues in child custody evaluations*. Thousand Oaks, CA: Sage.
- Stahl, P. M. (2005). The benefits and risks of child custody evaluators making recommendations to the court: A response to Tippins and Wittmann. *Family Court Review*, 43(2), 260–265.
- Stasky, W. P. (2002). *Family law* (5th ed.). Albany, NY: Delmar/ West/Thomson Learning.
- Steinweg, D. L., & Worth, H. (1993). Alcoholism: The keys to the CAGE. *American Journal of Medicine*, 94(5), 520–523.
- Stern, N., & Oehme, K. (2003–2004). Toward a coherent approach to tort immunity in judicially mandated family court services. *Kentucky Law Journal*, 92(2), 373–438.
- Steward, M. S., Bussey, K., Goodman, G. S., & Saywitz, K. J. (1993). Implications of developmental research for interviewing children. *Child Abuse and Neglect*, 17(1), 25–37.
- Stolberg, A. L., Volenik, A., Henderson, S. H., Smith, K. C., van Schaick, K. B., Macie, K. M., et al., (2002). Denied visitation, its impact on children’s psychological adjustment, and a nationwide review of state code. *Journal of Divorce & Remarriage*, 36(3/4), 1–19.
- Stoltz, J. M., & Ney, T. (2002). Resistance to visitation: Rethinking parental and child alienation. *Family Court Review*, 40(2), 220–231.
- Stone, W. L., & Lemaneck, K. L. (1990). Developmental issues in children’s self-reports. In A. M. La Greca (Ed.), *Through the eyes of the child: Obtaining self-reports from children and adolescents* (pp. 18–56) Boston: Allyn & Bacon.
- Storrow, D. M. (2002, September). Motions to strike portions of guardian ad litem reports. In Massachusetts Bar Institute, *12th Annual Family Law Conference*:

- Massachusetts Continuing Legal Educations Publications* (pp. 546–549). Boston, MA.
- Streetdrugs.org. (2005). Club drugs & raves. ©Publishers Group. Retrieved January 3, 2007, from <http://www.streetdrugs.org/clubdrugs.htm>
- Streetdrugs.org. (2006). *Inhalants*. ©Publishers Group. Retrieved January 3, 2007, from <http://www.streetdrugs.org/inhalants.htm>
- Sullivan, M. J. (2004). Ethical, legal, and professional practice issues involved in acting as a psychologist parent coordinator in child custody cases. *Family Court Review*, 42(3), 576–582.
- Sullivan, M. J., & Kelly, J. B. (2001). Legal and psychological management of cases with an alienated child. *Family Court Review*, 39(3), 299–315.
- Summit, R. C. (1983). The child sexual abuse accommodation syndrome. *Child Abuse & Neglect*, 7(2), 177–193.
- Summit, R. C. (1992). Abuse of the child sexual abuse accommodation syndrome. *Journal of Child Sexual Abuse*, 1(4), 153–163.
- Supervised Visitation Network (2003–2004). Standards and guidelines for supervised visitation practice. Mission statement of the Supervised Visitation Network as Adopted by the Membership April 14, 2000. Retrieved June 2, 2006, from <http://www.svnetwork.net/StandardsAndGuidelines.html>
- Taft, D.T., O'Farrell, T. J., Torres, S. E., Panuzio, J., Monson, C. M., Murphy, M., et al. (2006). Examining the correlates of psychological aggression among a community sample of couples. *Journal of Family Psychology*, 20(4), 581–588.
- Talwar, V., Lee, K., Bala, N., & Lindsay, R. C. L. (2004). Children's lie-telling to conceal a parent's transgression: Legal implications. *Law and Human Behavior*, 28(4), 411–435.
- Tavris, C. (2003). The widening scientist-practitioner gap: A view from the bridge. In S. O. Lilienfeld, S. J. Lynn, & J. M. Lohr (Eds.), *Science and pseudoscience in clinical psychology* (pp. ix–xvii). NY: Guilford.
- Taylor, H., & Baker, D. (1997). Employment, parity and single parenthood: Their impact on health in pregnancy. *Journal of Reproductive & Infant Psychology*, 15(3/4), 221–237.
- Tebes, J. K., Kaufman, J. S., Adnopoz, J., & Racusin, G. (2001). Resilience and family psychosocial processes among children of parents with serious mental disorders. *Journal of Child and Family Studies*, 10(1), 115–136.
- Tesler, P. H. (2004). Collaborative family Law. *Pepperdine Dispute Resolution Law Journal*, 4, 317. Retrieved October 21, 2005, from LexisNexisAcademic at <http://web.lexis-nexis.com.ezp2.harvard.edu/universe/document?>
- Teti, D. M., & Candelaria, M. A. (2002). Parenting competence. In M. H. Bornstein (Ed.), *Handbook of parenting: Social conditions and applied parenting* (vol. 4, pp. 149–180). Mahwah, NJ: Erlbaum.
- Thoennes, N., & Pearson, J. (1999). Supervised visitation: A profile of providers. *Family and Conciliation Courts Review*, 37(4), 460–477.
- Thoennes, N. & Tjaden, P. G. (1990). The extent, nature, and validity of sexual abuse allegations in child custody/visitation disputes. *Child Abuse and Neglect*, 14(2), 151–163.
- Thomas, K. (2002, February 6). "Virtual visitation" gains acceptance. *USA Today*. Retrieved June 22, 2006, from <http://www.USA TODAY.com>
- Thompson, D. A. R. (2004). Movin' on: Parental relocation in Canada. *Family Court Review*, 42(3), 398–410.

- Thompson, M. P., Kingree, J. B., & Desai, S. (2004). Gender differences in long-term health consequences of physical abuse of children: Data from a nationally representative survey. *American Journal of Public Health, 94*(4), 599–604.
- Tippins, T. M., & Wittmann, J. P. (2005a). Empirical and ethical problems with custody recommendations: A call for clinical humility and judicial vigilance. *Family Court Review, 43*(2), 193–222.
- Tippins, T. M., & Wittmann, J. P. (2005b). A third call: Restoring the noble empirical principles of two professions. *Family Court Review, 43*(2), 270–282.
- Toews, M. L., & McKenry, P. C. (2001). Court-related predictors of parental cooperation and conflict after divorce. *Journal of Divorce and Remarriage, 35*(1/2), 57–73.
- Townsend, S. S. (2003). Fatherhood: A judicial perspective: Unmarried fathers and the changing role of the family court. *Family Court Review, 41*(3), 354–361.
- Triantafyllou, K. (2006). Representing the LGBT client in a traditional divorce. In K. Triantafyllou (Ed.), *Representing nontraditional families* (2nd ed., pp. 353–368). Boston: Massachusetts Continuing Legal Education.
- Trocme, N., & Durrant, N. (2003). Physical punishment and the response of the Canadian child welfare system: Implications for legislative reform. *Journal of Social Welfare and Family Law, 25*(1), 39–56.
- Tucker, M. A., & Fox, R. A. (1995). Assessment of families with mildly handicapped and nonhandicapped preschoolers. *Journal of School Psychology, 33*(1), 29–37.
- Tye, M. C. (2003). Lesbian, gay, bisexual, and transgender parents: Special considerations for the custody and adoption evaluator. *Family Court Review, 41*(1), 92–103.
- Ultimate Detox. (2003). *Drug detection times in urine*. Retrieved January 3, 2007, from <http://www.ultimatedetox.co.uk/drug-testing-advice-information/drug-detection-times.htm>
- Uniform Marriage and Divorce Act (UMDA)*. §402 (National Conference of Commissioners on Uniform State Laws 1979).
- U. S. Council of Econ. Advisers on the Changing American Family. (2000, September). 2000 Annual Report (Excerpt). *Population and Development Review, 26*(3), 617–628.
- U. S. House of Representatives, Committee on the Judiciary (H.R.). (2004). *Federal rules of evidence*. Washington, DC: U. S. Government Printing Office. Retrieved on August 1, 2005, from <http://judiciary.house.gov/medial/pdfs/printers/108th/evid2004.pdf>
- U. S. Dept. of Health & Human Services. (2004, June 2). *Fatherhood initiative*. Retrieved May 18, 2006, from <http://fatherhood.hhs.gov/index.shtml>
- Upchurch, D. M., Lillard, L. A., & Panis, C. W. A. (2002). Nonmarital childbearing: Influences of education, marriage, and fertility. *Demography, 39*(2), 311–329.
- Urberg, K., Goldstein, M. S., & Toro, P. A. (2005). Supportive relationships as a moderator of the effects of parent and peer drinking on adolescent drinking. *Journal of Research on Adolescence, 15*(1), 1–19.
- Vandenbos, G. R. (Ed. in Chief). (2007). *APA dictionary of psychology*. Washington, DC: American Psychological Association.
- Van Krieken, R. (2005). The 'Best Interests of the Child' and parental separation: On the 'civilizing of parents.' *The Modern Law Review Limited 2005, 68*(1), 25–48.

- Vasquez, M. J. T. (2003). *Troxel v. Granville*: Impact on ethnic minority families. *Family Court Review*, 41(1), 54–59.
- Vestal, A. (1999). Mediation and parental alienation syndrome: Considerations for an intervention model. *Family and Conciliation Courts Review*, 37(4), 487–503.
- Wainright, J. L., & Patterson, C. J. (2002, August). *Psychosocial adjustment of adolescents raised by same-sex couples*. Paper presented at the American Psychological Association, Chicago.
- Wainright, J. L., Russell, S. T., & Patterson, C. J. (2004). Psychosocial adjustment, school outcomes, and romantic relationships of adolescents with same-sex parents. *Child Development*, 75(6), 1886–1898.
- Walker, L. E. A., Brantley, K. L., & Rigsbee, J. A. (2004a). A critical analysis of parental alienation syndrome and its admissibility in the family court. *Journal of Child Custody*, 1(2), 47–74.
- Walker, L. E. A., Brantley, K. L., & Rigsbee, J. A. (2004b). Response to Johnston and Kelly critique of PAS article. *Journal of Child Custody*, 1(4), 91–97.
- Wallerstein, J. S., & Blakeslee, S. (1989). *Second chances: Men, women, and children a decade after divorce*. (Repub. 2004). Boston: Houghton Mifflin.
- Wallerstein, J. S., & Blakeslee, S. (1995). *The good marriage: How and why love lasts*. Boston: Houghton Mifflin.
- Wallerstein, J. S., & Kelly, J. B. (1976). The effects of parental divorce: Experiences of the child in later latency. *American Journal of Orthopsychiatry*, 46(2), 256–269.
- Wallerstein, J. S., & Kelly, J. B. (1980). *Surviving the breakup: How children and parents cope with divorce*. N.Y.: Basic Books.
- Wallerstein, J. S., Lewis, J. M., & Blakeslee, S. (2000). *The unexpected legacy of divorce: The 25 year landmark study*. N.Y.: Hyperion.
- Wallerstein, J. S., & Tanke, T. J. (1996). To move or not to move: Psychological and legal considerations in the relocation of children following divorce. *Family Law Quarterly*, 30(2), 305–332.
- Walsh, J. M., Flegel, R., Crouch, D. J., Cangianelli, L., & Baudys, J. (2003). An evaluation of rapid point-of-collection oral fluid drug-testing devices. *Journal of Analytical Toxicology*, 27(7), 429–439.
- Wang, J. L. (2004). The difference between single and married mothers in the 12-month prevalence of major depressive syndrome, associated factors and mental health service utilization. *Social Psychiatry & Psychiatric Epidemiology*, 39(1), 26–32.
- Warshak, R. A. (1996). Gender bias in child custody decisions. *Family and Conciliation Courts Review*, 34(3), 396–409.
- Warshak, R. A. (2000a). Blanket restrictions: Overnight contact between parents and young children. *Family and conciliation courts review*, 38(4), 422–445.
- Warshak, R. A. (2000b). Social science and children's best interests in relocation cases: *Burgess revisited*. *Family Law Quarterly*, 34(1), 83–113.
- Warshak, R. A. (2002). Who will be there when I cry in the night? Revisiting overnights – A rejoinder to Biringen et al. (2002). *Family Court Review*, 40(2), 208–219.
- Warshak, R. A. (2003). Bringing sense to parental alienation: A look at the disputes and the evidence. *Family Law Quarterly*, 37(2), 273–301.
- Webster, R. E. (2001). Symptoms and long-term outcomes for children who have been sexually assaulted. *Psychology in the Schools*, 38(6), 532–547.
- Weiner, I. B. (2001). Advancing the science of psychological assessment: The Rorschach inkblot method as exemplar. *Psychological Assessment*, 13(4), 423–432.

- Weiner, I. B. (2005). Rorschach assessment in child custody cases. *Journal of Child Custody, 2*(3), 99–119.
- Weinstock, D. K., & Markan, L. K. (2006). Training custody evaluators: Formalizing training to assert minimal competency. *Journal of Child Custody, 3*(2), 1–21.
- Weisman, R. (2006, July 31). Hub sets citywide WiFi plan. *Boston Globe*, pp. A1, B3.
- Weissman, H. N. (1991). Child custody evaluations: Fair and unfair professional practices. *Behavioral Sciences and the Law, 9*(4), 469–476.
- Weitzman, J. (2004). Use of the one-way mirror in child custody reunification cases. *Journal of Child Custody, 1*(4), 27–48.
- Weitzman, L. (1985). *The divorce revolution: The unexpected social and economic consequences for women and children in America*. N.Y.: Free Press.
- White, B. T. (2001). Muddling through the murky waters of *Troxel*: Will grandparent visitation statutes sink or swim? *Family Court Review, 39*(1), 104–120.
- White, H. A. (2003). Refusing to blame the victim for the aftermath of domestic violence: *Nicholson v. Williams* is a step in the right direction. *Family Court Review, 41*(4), 527–532.
- White, L., & Gilbreth, J. G. (2001). When children have two fathers: Effects of relationships with stepfathers and noncustodial fathers on adolescent outcomes. *Journal of Marriage and Family, 63*(1), 155–167.
- White, L., & Rogers, S. J. (2000). Economic circumstances and family outcome: A review of the '1990s. *Journal of Marriage and the Family, 62*(4), 1035–1051.
- Whiteside, M. F. (1998). Custody for children age 5 and younger. *Family and Conciliation Courts Review, 36*(4), 479–502.
- Whiteside, M. F., & Becker, B. J. (2000). Parental factors and the young child's postdivorce adjustment: A meta-analysis with implications for parenting arrangements. *Journal of Family Psychology, 14*(1), 5–26.
- Widom, C. S. (2001). Child abuse and neglect. In S. O. White (Ed.), *Handbook of youth and justice* (pp. 31–47). NY: Kluwer Academic/Plenum.
- Wilcox, D. T., Richards, F., & O'Keeffe, Z. C. (2004). Resilience and risk factors associated with experiencing childhood sexual abuse. *Child Abuse Review, 13*(5), 338–352.
- Willemsen, E., Andrews, R., Karlin, B., & Willemsen, M. (2005). The ethics of the child custody process: Are the American Law Institute's guidelines the answer? *Child and Adolescent Social Work Journal, 22*(2), 183–211.
- Williams, J. R. J. (2001). Should judges close the gate on PAS and PA? *Family Court Review, 39*(3), 267–281.
- Williams, K. R., & Houghton, A. B. (2004). Assessing the risk of domestic violence reoffending: A validation study. *Law and Human Behavior, 28*(4), 437–455.
- Williams, O. B., & Corrigan, P. W. (1992). The differential effects of parental alcoholism and mental illness on their adult children. *Journal of Clinical Psychology, 48*(3), 406–413.
- Williams, O. J., Boggess, J. L., & Carter, J. (2001). Fatherhood and domestic violence: Exploring the role of men who batter in the lives of their children. In A. S. Graham-Bermann, & J. L. Edleson, (Eds.), *Domestic violence in the lives of children: The future of research, intervention, and social policy* (pp. 157–188). Washington, DC: American Psychological Association.
- Wilson, R. F. (2004). Mental health and the law [Introduction to special issue on Justice, ethics, and interdisciplinary teaching and practice]. *Washington*

- University Journal of Law & Policy*, 14, 315–325. Retrieved January 9, 2006, from *HeinOnline*.
- Winstock, Z., Sherer, M., & Enosh, G. (2004). The effect of divorce on personal and familial images: The adolescent's perspective. *Journal of Child Custody*, 1(3), 19–35.
- Wolak, J., Mitchell, K., & Finkelhor, D. (2006). Online victimization of youth: Five years later. Washington, DC: National Center for Missing and Exploited Children. Retrieved January 22, 2007, from http://www.ncmec.org/en_US/publications/NC167.pdf
- Wolchik, S. A., Sandler, I. N., Winslow, E., & Smith-Daniels, V. (2005). Programs for promoting parenting of residential parents: Moving from efficacy to effectiveness. *Family Court Review*, 43(1), 65–80.
- Wolman, B. B. (1989). *Dictionary of behavioral science* (2nd ed.). NY: Academic Press.
- Wu, Z. (1995). The stability of cohabitation relationships: The role of children. *Journal of Marriage and the Family*, 57(1), 231–236.
- Wu, Z. (1996). Childbearing in cohabitational relationships. *Journal of Marriage and the Family*, 58(2), 281–292.
- Young, S. A. (2004–2005). A presumption for supervised visitation in Texas: Understanding and strengthening family code section 153.004(e). *Texas Technical Law Review*, 37, 327–356. Retrieved January 11, 2006, from <http://heinonline.org.ezp1.harvard.edu>
- Yuille, J. C., Hunter, R., Joffe, R., & Zaparniuk, J. (1993). Interviewing children in sexual abuse cases. In G. Goodman & B. L. Bottoms (Eds.), *Child victims, child witnesses: Understanding and improving testimony* (pp. 95–146). NY: Guilford.
- Zabin, L. S., Huggins, G. R., Emerson, M. R., & Cullins, V. E. (2000). Partner effects on a woman's intention to conceive: "not with this partner." *Family Planning Perspectives*, 32(1), 39–45.
- Zahn-Waxler, C., Duggal, S., & Gruber, R. (2002). Parental psychopathology. In M. H. Bornstein (Ed.), *Handbook of parenting: Social conditions and applied parenting* (Vol. 4, pp. 295–327). Mahwah, NJ: Erlbaum.
- Zeldin, E. A. (2006). Dissolution of domestic partnerships and same-sex marriages. In K. Triantafillou (Ed.), *Representing nontraditional families* (2nd ed., pp. 181–240). Boston, MA: Massachusetts Continuing Legal Education.
- Zibbell, R. A. (2005). Common couple aggression: Frequency and implications for child custody and access evaluations. *Family Court Review*, 43(3), 454–465.
- Zibbell, R. A. (2006). *Critical cases in Massachusetts family law for E & F guardians ad litem: A mental health professional's perspective on how appellate law informs GAL investigations and evaluations*. Framingham, MA: Author. Sponsored by Massachusetts Chapter of Association of Family and Conciliation Courts (AFCC) and Massachusetts Association of Guardians Ad Litem (MAGAL). Available from MAGAL at P.O. Box 304, Franklin, MA 02038.
- Zirogiannis, L. (2001). Evidentiary issues with parental alienation syndrome. *Family Court Review*, 39(3), 334–343.

GLOSSARY*

abduction, *n.* The act of taking, retaining, or concealing a child in violation of the custody or visitation rights of another parent or family member. Also called *parental kidnapping* and *custodial interference*.

adjudge, *v.* 1. To rule upon. 2. To award judicially. See *adjudicate*.

adjudicate, *v.* 1. To settle a case by the decision of a judge. 2. To adjudge.

adversarial model of legal practice, *n.* A model for resolving disputes through litigation where the parties and their respective counsel are adversaries or opponents and the judge is the impartial decision-maker.

affect, *n.* As used by mental health professionals, a feeling, emotion, or mood. See also *flat affect*.

affidavit (af-e-day-vit), *n.* A voluntary statement written and sworn to before a notary public or other officer authorized to administer oaths.

alternative dispute resolution, *n.* A method for resolving disputes without litigation, such as arbitration, mediation, collaborative law, or cooperative law.

allopathy, *n.* A system of medicine based on the idea that opposites cure, using treatments (e.g. drugs, compresses) that

*The definitions in this Glossary were developed by combining information from legal, medical, and behavioral science sources such as [Burton, 1998](#); [Colman, 2003](#); [Garnel, 2005](#); [Gifts, 1996](#); [Hinsie & Campbell, 1970](#); [Hunsley et al., 2003](#), pp. 66–67; [Market House Books, 2004](#); [McCann et al., 2003](#), pp. 103–104; [Medoff, 2003](#); Merriam-Webster, [1996](#); [Rothenberg & Chapman, 2000](#); [Stahl, 1994](#), pp. 155–158; [Vandenbos, 2007](#); and [Wolman, 1989](#).

cause a condition opposite to that affecting the ill person. This is now the dominant approach to medicine in the U.S. Cf. *homeopathy*.

amenorrhea, *n.* The absence or cessation of the menstrual flow.

amicus attorney, *n.* An attorney appointed to assist the court.

approximation rule, *n.* The assumption that children should live with the parent who did the most pre-divorce caretaking. In most jurisdictions this rule has been replaced by the Best Interests Standard. Also called the *Approximation Standard*.

appeals court, *n.* See *court*.

arbitration, *n.* A method of dispute resolution, agreed on by the disputing parties, which uses one or more impartial third parties whose decision is generally binding. Many jurisdictions do not permit the use of binding arbitration in custody cases, however.

attachment, *n.* The relationship between children and their primary caregivers, which emerges during the children's second six months of life and continues to develop throughout early childhood. Cf. *bonding*.

attorney, *n.* 1. A legal agent who is authorized to transact business for another. 2. A person who practices law. Cf. *counsel*; *lawyer*; *amicus attorney*; *attorney ad litem*.

attorney ad litem, *n.* An attorney appointed to advocate and represent the interests of a party, including a child.

attorney work product privilege, *n.* The federal rule (Fed. R. Civ. P. 26.b.3) protecting an attorney's work product from discovery. See *work product*.

behavioral science, *n.* The organized and systematic study of human behavior through psychology, psychiatry, biochemistry, psychopharmacology, neurology, genetics, endocrinology, neurosurgery, and psychoanalysis.

best interests of the child, *n.* The predominant standard for determining child custody, defined by the Uniform Marriage and Divorce act of 1979. See chapter 3 for the history and definition of this standard.

blended family, *n.* A stepfamily consisting of two parents and their children from previous relationships.

bonding, *n.* A parent's psychological tie to the infant, which develops during the first few days of the infant's life and requires no particular response from the child. Cf. *attachment*.

bonding evaluation, *n.* The evaluation of the parent/child relationship in a care and protection matter. Cf. *parenting evaluation*.

care and protection matter, *n.* A case where the state has assumed temporary or permanent responsibility for a child whose parents have been found unfit.

CARI, *Abbr.* See *Court Activity Record Information*.

case law, *n.* Law based on court decisions in previous cases, rather than on legislation.

child alienation, *n.* A child's hostile and rejecting attitude towards a parent that may be caused by the other parent's deliberate attempt to interfere with the parent/child relationship.

child expert, *n.* In collaborative law, a mental health professional who meets with both divorcing parents to help them understand the needs of the children.

civil court, *n.* See *court*.

code, *n.* A systematic collection of laws, rules, and regulations regarding a given subject.

collaborative law, *n.* A method of non-litigating dispute resolution where each party has an attorney who signs a disqualification agreement which requires that they withdraw from the case if it goes to court.

collateral information, *n.* Information obtained from third-party sources who are familiar with an individual or family in a given case.

collateral sources, *n.* Also called *collateral witnesses*, or simply *collaterals*. See *collateral information*.

common couple aggression, *n.* A pattern of relatively mild, mutual physical altercations that is distinguished from domestic violence by the fact that there are no serious assaults, bodily injuries, or fear of physical harm, and neither party is making a concerted attempt to control or intimidate the other. Cf. *domestic violence*.

conciliation court, *n.* See *family conciliation court* under *court*.

conduct disorder, *n.* A psychiatric disorder where someone consistently ignores age-appropriate norms and violates the basic rights of others by stealing, lying, arson, running away from home, truancy, fighting, and cruelty to animals.

confidentiality, *n.* 1. The restriction against dissemination of certain information. 2. An aspect of certain protected relationships, such as that between lawyer and client, psychotherapist and patient, or spouses, which prohibits the dissemination of information to anyone outside of that relationship.

confirmatory bias, *n.* The inadvertent selection of information to support an initial hypothesis or belief. Also called *confirmation bias*.

confirmatory distortion, *n.* The deliberate selection and skewed interpretation of data to support a favored hypothesis. (See [Martindale, 2005](#), p. 33).

conflict of interest, *n.* A real or seeming incompatibility between one's private interests and one's public or professional duties.

contempt, *n.* Defiance of a court order, or disruptive behavior in court.

contingent fee, *n.* A fee whose payment depends on the outcome of a case. Also called *contingency fee*.

cooperative law, *n.* A method of non-litigating dispute resolution similar to collaborative law, but without the disqualification agreement.

co-parenting, *n.* The manner in which two separate (often divorced) people parent a child together. Hetherington & Kelly (2002) identified the following types of co-parenting:

- (1) **conflicted co-parenting** – parents exchange nasty, angry comments in front of the children and wrangle constantly about the parenting schedules.
- (2) **cooperative co-parenting** – parents discuss children's problems, coordinate household rules, and adapt parenting schedules to meet children's needs.
- (3) **parallel co-parenting** – parents avoid contact and coordination, but do not interfere with each other.

corporal punishment, *n.* Physical punishment inflicted on a person's body.

correlation, *n.* The degree of statistical relationship between two variables such that when one variable changes the other one does also. See also *research method, correlational*.

- (1) **negative or inverse correlation.** When one variable increases, the other variable decreases. The strongest negative correlation is -1.00.
- (2) **positive correlation.** When one variable increases, the other variable also increases. The strongest positive correlation is +1.00.

CORI, *Abbr.* See *Criminal Offender Record Information*.

counsel, *n.* 1. Advice or assistance given by an attorney. 2. One or more attorneys who represent a given client. Cf. *attorney; lawyer*.

court, *n.* 1. A unit of the judicial branch of government. 2. A session of such a court. 3. The place where the court holds its sessions. 4. A judge or judges acting in their official capacity. There are two types of courts: **trial courts** which ascertain the facts of a case and then apply the law to those facts, and **appellate courts (appeals courts)** which determine whether the correct legal principles were applied by the trial court. Trial courts are usually divided into four types:

- (1) **civil courts.** These courts hear disputes related to the common law and civil statutes.
- (2) **criminal courts.** These courts hear prosecutions under the criminal laws.
- (3) **family or matrimonial courts.** These courts hear divorce proceedings as well as adoptions and other family matters. Also called **family conciliation court**.
- (4) **probate or surrogate courts.** These courts hear matters related to the estates of deceased and incompetent persons.

Court Activity Record Information, *n.* A written record of all criminal charges and court activity for a given individual, available to an evaluator by court order through the Probation Department of the Probate and Family Court. Abbr. CARI. Cf. *CORI*

court order, *n.* See *order*.

criminal court, *n.* See *court*.

Criminal Offender Record Information, *n.* A written record of all offenses for which a defendant was found guilty, available to

individuals and their attorneys through state government websites for Criminal History Systems Boards. Abbr. CORI. Cf *CARI*.

cross-examination, *n.* See *examination*.

cross-sectional method, *n.* See *research method, cross-sectional*.

cross-sectional study, *n.* See *research method, cross-sectional*.

custodial interference, *n.* 1. Used by some states to refer to parental abduction, family abduction, or kidnapping. 2. Interference with a court order of visitation or access.

custody, *n.* In family law, the care or control of a child that is awarded by a court to one or more adults. Types of child custody include:

- (1) **Legal custody** – Responsibility for and control of decisions regarding the child.
- (2) **Physical custody** – The right to have the child live with the (physical) custodial parent.
- (3) **Sole custody** – One parent is responsible for the decisions (legal custody) regarding the child, or the child's legal residence is with that parent only (physical custody).
- (4) **Joint custody** – The two parents share the decision-making (legal custody) and/or the child lives in both parental homes (physical custody). Also called *shared custody*.
- (5) **Shared custody** – See *joint custody*.
- (6) **Divided custody** – Each parent has exclusive decision-making responsibility and exclusive physical custody part of the time, with visitation rights in the other parent.
- (7) **Split custody** – The children are divided between households so that each parent has physical custody of at least one of the children and the other parent has visitation/parenting time with the non-custodial child(ren).

custody evaluation, *n.* A professional assessment of a family done to gather information needed by the court, so that the court can make a decision regarding child custody. A custody evaluation is usually initiated by court order.

Daubert standard, *n.* A legal standard derived from the U. S. Supreme Court ruling in *Daubert v. Merrell Dow Pharmaceuticals*,

509 U.S. 579 (1993), which requires that expert testimony consist of scientific, technical, or specialized knowledge based on an appropriate scientific method. This is the current standard in most U.S. jurisdictions.

declaration, *n.* In law, a formal statement of facts. When a declaration is notarized, it is similar to an *affidavit*.

decree, *n.* A court's final decision or judgment.

de facto (di fak-toh, *also* dee or day), *adj.* Existing but not formally or legally recognized. Cf. *de jure*.

de jure (di juur-ee, *also* dee or day), *adj.* Existing by right of law.

delusion, *n.* A false belief that is obstinately maintained despite overwhelming evidence contradicting it.

deposition (dep-e-zish-en), *n.* A witness's out-of-court testimony which is given under oath, written down by a court reporter, and later used in court for discovery purposes.

direct examination, *n.* See *examination*.

discovery, *n.* In litigation, the compulsory disclosure of information that is requested by an opposing party (or the court) before the trial.

discoverable, *adj.* Any information or materials that are subject to pretrial discovery.

disposition, *n.* 1. A court's final settlement or determination of a motion or case. 2. The transfer of something to the care or ownership of another person, usually by deed or will.

dispositive, *adj.* 1. Being a deciding factor in a judicial decision. 2. Related to the disposition of property by will or deed.

dissolution, *n.* The act or process of ending something. In family law, the termination of a marriage by divorce.

divided custody, *n.* See *divided custody* under *custody*.

divorce coach, *n.* In collaborative law, a mental health professional who meets with a parent to help them cope with the emotional issues involved in their separation or divorce.

domestic violence, *n.* A pattern of relatively severe physical and/or verbal violence directed at one's domestic partner or spouse, as part of a concerted attempt to control or intimidate the other person. Cf. *common couple aggression*.

effect size, *n.* In scientific research, effect size refers to the difference in scores between sample groups or variables

empirical evidence, *n.* The findings or results of empirical research.

empirical research, *n.* Research that follows the requirements for rigorous scientific investigation including testable hypotheses, control groups, appropriate statistical analysis, and repeated self-correcting research published in peer-reviewed journals.

escrow account, *n.* A bank account with monies held in trust for another person or purpose. In custody evaluations and litigation, a bank account for professional fees; at the conclusion of the work, the monies will either be (a) turned over to the professional in payment for services rendered, or (b) be returned to the client.

estoppel (*e-stop-el*), *n.* 1. A bar that prevents someone from asserting a claim or right that contradicts what they have said or done before or what has been legally established as true. 2. An affirmative defense that alleges good-faith reliance on a misleading misrepresentation and an injury or detrimental change in position resulting from that reliance.

evaluation, psychiatric, *n.* Diagnostic evaluation of a mental patient in order to plan a course of treatment. The examination usually relies primarily on history-taking and diagnostic interviewing, with occasional use of neurological or psychological testing.

evaluation, psychological, *n.* Term used interchangeably with psychiatric evaluation, but psychological evaluations are usually performed by psychologists and often place more emphasis on the patient's psychosocial history and context, are more apt to involve psychological testing, and are less apt to focus on medical conditions and medication.

evidence, *n.* Documents, testimony, or tangible objects that are expected to prove or disprove an alleged fact. There are many types of evidence including:

- (1) **admissible evidence**. Evidence that is relevant and appropriate for the court to receive (e.g. not privileged, based on hearsay, or unfairly prejudicial).
- (2) **circumstantial evidence**. Evidence that is not based on personal observation or knowledge, but instead infers the

occurrence of one event on the basis of observing other events or circumstances.

- (3) **corroborating evidence.** Evidence that supplements and strengthens inferences based on other, separate evidence.
- (4) **expert evidence.** Evidence provided by an expert witness about a scientific, technical, professional, or other specialized issue.
- (5) **hearsay evidence.** See hearsay.
- (6) **probative evidence.** Evidence that tends to prove or disprove something that is being disputed in court.
- (7) **substantive evidence.** Evidence offered to prove a factual issue.

examination, *n.* In law, the formal questioning of a witness under oath. Types of examination include:

- (1) **direct examination** – The initial questioning of a witness in court, done by the party calling the witness.
- (2) **cross-examination** – The questioning of a witness who has already testified, done by an opposing attorney who seeks to clarify information or to discredit the witness's testimony, knowledge, or credibility.
- (3) **redirect examination** – A second direct examination, done after a cross-examination to rebut or to clarify testimony from the cross-examination.

examination, neurological, *n.* Examination of a patient to determine the presence and extent of damage to the nervous system.

examination, psychometric, *n.* A series of psychological tests administered to assess cognitive abilities or various special abilities such as manual skill, vocational aptitudes and interests, and personality characteristics.

ex parte (eks pah-tee), *adj.* Done for the benefit of one party alone, without notice to or information from anyone adversely interested; usually applied to communications between one counsel and the court when opposing counsel is not present. In the context of child custody evaluations, the prohibition against ex parte communications is usually interpreted to mean that the evaluator should not communicate with only one parent's attorney without the other parent's attorney receiving the same communication.

expert evidence, *n.* See *evidence*.

expert testimony, *n.* See *expert witness* under *witness*.

expert witness, *n.* See *witness*.

fact witness, *n.* See *witness*.

falsifiability, *adj.* The extent to which a theory or hypothesis can be expressed in terms that can be subjected to empirical investigation, thus making it accessible to refutation (falsification).

family court, *n.* See *court*.

family law, *n.* Body of law dealing with family issues such as divorce, adoption, child custody and support, paternity, guardianship, child abuse and neglect, domestic violence, and juvenile delinquency

Federal Rules of Evidence. A set of legal rules governing the admissibility of evidence at trials in federal courts. *Abbr.* Fed. R. Evid.; FRE

Fed. R. Evid., *abbr.* Federal Rules of Evidence.

fiduciary (fi -*do*-sheer-er-ee), *n.* A person who is required to act for the benefit of another in everything included in the scope of their relationship.

finding of fact, *n.* A determination resulting from judicial or administrative inquiry as to a fact supported by the evidence in a case. Often shortened to *finding*.

fitness, *n.* See *parental fitness*.

flat affect, *n.* A disturbance of emotionality in which there is a general lack of emotional reaction, or a failure to react appropriately to emotionally-tinged stimuli. The affect-flattened patient is often described as bleak, dull, colorless, flat, uninvolved, or removed. Flat affect is usually found in the Schizophrenic range of disorders. Also called *flattened affect*.

forensic psychiatry, *n.* Application of psychiatry to legal questions, such as diminished responsibility and fitness to stand trial.

forensic psychology, *n.* Application of the practices and scientific principles of psychology to legal issues and court proceedings.

FRE, *abbr.* Federal Rules of Evidence.

friendly-parent rule, *n.* A judicial preference for parental cooperation which specifies that if joint custody is not awarded, sole

custody should be awarded to the parent who is more likely to facilitate the non-custodial parent's relationship with the child.

frivolous, *adj.* Lacking a legal basis or legal merit; not serious or reasonably purposeful.

Frye Standard, *n.* A legal standard which requires that scientific testimony can only be admitted when it is based on scientific principles and techniques that are generally accepted in that scientific field.

GAL, *abbr.* guardian ad litem.

guardian, *n.* One who has the legal authority and duty to care for the person or property of another. A court may appoint a guardian for either all purposes or for specific purposes. Such a court-appointed guardian usually has quasi-judicial immunity for their activities as a guardian.

(1) **guardian ad litem** (ad li-tem), abbreviated as **GAL**. A guardian appointed by the court to appear in a lawsuit on behalf of an incompetent or minor party. In many states, child custody evaluators are appointed as guardians ad litem.

(2) **special guardian**. A guardian who has special or limited powers over the ward's person or estate.

hallucination, *n.* A perceptual experience (visual, auditory, or tactile) that has no basis in external stimulation.

hearing, *n.* A judicial session where evidence and arguments are presented for the purpose of deciding issues of fact and law. Cf. *trial*

hearsay, *n.* Testimony based on what others have said rather than on what a witness has observed or knows personally.

(1) **hearsay rule**. The rule that testimony is only admissible if it is open to cross-examination, unless certain exceptions apply.

(2) **double hearsay**. A hearsay statement that contains further hearsay statements within it, as when an evaluator quotes someone such as a psychiatrist or teacher who reports things a child said to them. Also called *multiple hearsay*; *hearsay within hearsay*; *totem pole hearsay*.

high-conflict families, *n.* Families that engage in repeated litigation and are characterized by poor communication, mutual

anger and distrust, frequent incidents of verbal and/or physical abuse, and an inability to focus on the children's needs.

homeopathy, *n.* A system of medicine based on the idea of like curing like, using minute amounts of a remedy that would cause the disease being treated if they were given in large doses. Cf. *allopathy*.

hypervigilance, *n.* An exaggerated attention and alertness to stimuli, usually seen as a symptom of anxiety.

hypothetical question, *n.* A device whereby a trial attorney solicits the opinion of an expert witness based on suppositions treated as established facts. Informally referred to as "a hypothetical."

impartiality, *n.* Freedom from bias in word, action, or appearance. In the context of child custody evaluations, impartiality also includes a commitment to assist all parties as opposed to any one individual.

impeach, *v.* 1. To charge a public official with a crime or misconduct. 2. To challenge the credibility of a witness. 3. To challenge the authenticity or accuracy of a document.

impound, *v.* To place something in the custody of the police or the court. In the context of child custody evaluations, this often means to restrict access to a document.

informed consent, *n.* A person's agreement to participate in a procedure, made with full knowledge of the process and risks involved.

in loco parentis, *adv.* [Latin: in the place of a parent]. Acting as a temporary caretaker of a child by taking on the responsibilities of a legal parent.

inter alia, *adv.* [Latin: among other things].

interdict (in-ter-dikt), *v.* To forbid, prohibit, or restrain.

joint custody, *n.* See *custody*.

judgment, *n.* A court's final decision regarding a matter or case.

judicial immunity, *n.* A judge's immunity from civil liability arising from the performance of judicial duties.

junk science, *n.* See *pseudoscience*.

Lamb Warning, *n.* A short statement regarding confidentiality/privilege issues, named after a Massachusetts case by that name (Comm. Mass. v. Lamb, 1974).

lawyer, *n.* Someone who is licensed to practice law. When referring to a lawyer working on a specific case, the term *attorney* or *counsel* is usually used.

least detrimental alternative, *n.* The term used by Goldstein et al. (1996) to refer to the psychological parent standard for custody determination.

legal custody, *n.* See *custody*.

Likert scale, *n.* A type of attitude scale where a number of statements are given, and the respondents indicate their feelings about each statement on a scale from 1 (strongly agree) to 3 or 5 (strongly disagree). [Named after American sociologist and economist Rensis Likert, who introduced the scale in 1932.]

literature review, *n.* A summary of the theory and empirical research about a given topic, including conclusions about general findings and trends. Cf. *research review* and *meta-analysis*.

longitudinal method, *n.* See *research method, longitudinal*.

longitudinal study, *n.* See *research method, longitudinal*.

matrimonial court, *n.* See *court, family or matrimonial*.

mediation (mee-dee-ay-shon), *n.* A method of nonbinding dispute resolution that uses an impartial, objective third party to reach a mutually agreeable solution without resorting to the court system.

meta-analysis, *n.* A statistical technique for summarizing trends across a large number of research studies by calculating the effect size for each study and then analyzing the results as a single data set. Cf. *research review* and *literature review*.

method, *n.* See *research method*.

motion, *n.* A written or oral application to a judge or court requesting a specific ruling or court order. See Chapter 6 for a discussion of the types of motions commonly used by court-appointed custody evaluators, which may include:

- (1) **Motion for additional instructions** – to clarify the scope of the evaluation when the court appointment is not sufficiently specific.
- (2) **Motion for clarification** – also used to clarify the scope of the evaluation.
- (3) **Motion for expansion of scope of evaluation** – to request permission to address new issues that have arisen during the evaluation.
- (4) **Motion for contempt for non-participation** – when a party refuses to participate in a court-ordered evaluation.
- (5) **Motion for access to previous reports** – when there have been previous evaluations in a case.
- (6) **Motion for access to court records** – to obtain copies of Court Activity Record Information (CARI) reports.
- (7) **Motion for appointment of GAL to evaluate waiver of patient-therapist privilege** – to gain access to child psychotherapy records.
- (8) **Motion for extension of time** – when the custody evaluator cannot meet the court deadline for the report.
- (9) **Motion for more hours** – to request more hours when doing a state-pay evaluation.
- (10) **Motion for payment** – to request payment for court testimony in a state-pay evaluation.
- (11) **Motion to compel payment** – when a party does not pay for an evaluator's court-ordered services.
- (12) **Motion to quash a subpoena** – to request that the court nullify an inappropriate subpoena.
- (13) **Motion in limine** – made by an attorney to exclude evidence or the testimony of an individual

ne exeat, *n.* A court order preventing a person from leaving or removing a child from the jurisdiction of the court or the state.

nesting, *n.* A joint custody arrangement where the children remain in the marital home and the parents move in and out.

no-fault divorce, *n.* A divorce granted without either party having to prove fault or marital misconduct by the other; usually granted on the grounds of separation or irretrievable breakdown of the marriage.

non-custodial parent, *n.* A parent who does not have sole or primary custody of their child.

norms, *n.* In behavioral science, data obtained from a comparison group that is representative of the population to which the individual being tested belongs. See *external validity* under *validity*.

order, *n.* A written direction or command issued by a competent administrative authority such as a judge or a court. In family law there are many types of court orders, including but not limited to:

- (1) **consent order**. An agreement between the parties that takes the form of a court order.
- (2) **ex parte order**. An order issued in response to the application of one party without the other party being notified.
- (2) **final order**. A court order that leaves nothing further to be determined in that case.
- (3) **interim order**. A temporary court order that takes effect until something else happens in a case.
- (3) **restraining order**. A court order prohibiting family violence, such as harassing, threatening, and sometimes merely contacting another specified person; usually used in cases of domestic violence.
- (4) **separation order**. A court order granting a married person's motion for a legal separation.

parens patriae (**par-enz pay-tree-ee** or **pa-tree-i**). *n.* A doctrine wherein the state is obligated to act as provider of protection to those unable to care for themselves.

parent, *n.* The lawful mother or father or someone. In present usage the term denotes more than responsibility for conception and birth, including the following non-biological categories of parenthood:

- (1) **adoptive parent**. A parent by virtue of legal adoption.
- (2) **foster parent**. Someone who cares for and rears a child despite the absence of blood ties or legal ties.
- (3) **surrogate parent**. An adult who carries out the role of a parent by court appointment or the voluntary assumption of parental responsibility.
- (4) **de facto parent**. A person functioning as a child's parent even though not formally or legally recognized as such.

- (5) **parent by estoppel**. A person who is adjudged to be a child's parent because they have fulfilled the functions of a parent in the past while engaged in a good-faith reliance on a misleading representation of their parenthood.

parental deference standard, *n.* A standard for determining custody that defers to the parental agreement regarding custody unless it would be harmful to the child.

parental fitness, *n.* A parent's ability to take adequate care of their children.

parental rights, *n.* A parent's legal right to make all decisions regarding the care of their child, including issues related to living situation, education, discipline, religion, medical treatment, and control of the child's earnings and property.

parentify, *v.* To expect a child to behave in ways appropriate for parents.

parenting coordinator, *n.* A court-appointed lawyer or mental health professional whose task is to assist the post-separation/divorce couple in implementing their court-ordered parenting plan.

parenting evaluation, *n.* The evaluation of a parent's ability to take care of their children, done in care and protection matters.

parenting style, *n.* The typical manner in which parents discipline and interact with their children. Hetherington and Kelly (2002) have delineated four major parenting styles:

- (1) **authoritative parenting** – firm, consistent discipline combined with verbal controls and emotional warmth.
- (2) **permissive parenting** – inconsistent and lax discipline combined with emotional warmth.
- (3) **authoritarian parenting** – harsh, rigid, sometimes physical discipline combined with emotional coldness and insensitivity.
- (4) **disengaged, neglectful parenting** – focused on the parent's own needs and responding to the child's demands with irritation or withdrawal.

parenting time, *n.* The time a parent, especially a non-custodial parent, spends with his/her child. In many jurisdictions this term is replacing the traditional term *visitation*.

party, *n.* The person bringing or responding to a lawsuit.

pendency, *n.* The continued, undecided, or undetermined state of a legal matter.

petition, *n.* A formal written request made to an official person or court.

physical custody, *n.* See *custody*.

posttraumatic stress disorder, *n.* A disorder resulting from experiencing or witnessing an event where there is a threat to life, safety, or bodily integrity. Symptom clusters focus on (a) painful re-experiencing of the trauma, (b) diminished emotional and physical responsiveness, and (c) chronic physiological arousal. *Abbr.* PTSD.

premorbid, *adj.* Occurring before disease or before diagnosis of disease.

presumption, *n.* In legal usage, the assumption that a given conclusion or outcome follows from an existing fact. There are many types of presumptions, including:

- (1) **conclusive [non-rebuttable] presumption**. A presumption that cannot be overcome by any argument or consideration.
- (2) **rebuttable presumption**. A presumption that may be overcome through the introduction of contrary evidence.

primary caretaker, *n.* The parent who is primarily responsible for taking care of a child through physical, medical, nutritional, educational, and disciplinary activities.

privilege, *n.* The legal exemption from certain duties or obligations. There are many types of privilege, including:

- (1) **judicial privilege**. Protection from charges of defamation arising from any statement made in the course of a judicial proceeding by a judge, juror, party, witness, or advocate.
- (2) **testimonial privilege**. A right not to disclose information in a judicial proceeding that overrides a witness's duty to disclose any relevant information known to them.

pro se, *adv. & adj.* [Latin] For oneself; without an attorney.

pro se, *n.* A person representing themselves in a court proceeding, without the assistance of counsel.

probate, *n.* The judicial determination that a will is valid.

probate court. See *court*.

probative (pro-ba-tive), *adj.* Tending to prove or disprove something.

professional malpractice, *n.* Negligence, misconduct, or incompetence in the performance of a professional service.

projective test, *n.* In psychological usage, projective tests present ambiguous stimuli and the examinee is assumed to respond in a manner that reveals unconscious feelings or personality characteristics.

pseudoscience, *n.* Research that fails to follow the rigorous methods of empirical investigation. Also called *junk science*.

psychiatrist, *n.* A physician who specializes in the diagnosis and treatment of mental disorders.

psychiatry, *n.* A medical specialty that utilizes information from a variety of scientific disciplines related to mental health, such as biochemistry, endocrinology, genetics, neurology, psychopathology, psychopharmacology, and psychology, as well as drawing on the theory of psychoanalysis and the research and theories of sociology and anthropology.

psychological examination, *n.* See *examination, psychological*.

psychological parent, *n.* An adult who fulfills the functions of a parent and has a parental emotional relationship with a child, regardless of the adult's biological or legal relationship to the child.

psychological test, *n.* A common term for a *psychometric examination*; also called *psychological testing*.

psychologist, *n.* A person trained in the scientific study and application of psychology. Most psychologists teach and do research in colleges and universities, while others apply the principles and knowledge of psychology in a variety of settings such as hospitals, mental health clinics, schools, prisons, businesses, and the court system.

psychology, *n.* The scientific principles and study of human behavior

psychometric examination, *n.* See *examination, psychometric*.

PTSD, *abbr.* Posttraumatic Stress Disorder.

quasi-judicial act, *n.* A judicial act performed by an official who is not a judge.

quasi-judicial immunity, *n.* Immunity from civil liability that is extended to an official who is not a judge but is performing judicial acts.

quash. (kwahsh), *v.* To annul, make void, or terminate, as in “quash a subpoena,” “quash an indictment,” or “quash proceedings.”

redirect examination, *n.* See *examination.*

rehabilitation, *n.* In care and protection matters, the removal of the deficits in parenting abilities.

reliability, *n.* The degree to which results are consistent on repetition of an experiment, procedure, or psychometric instrument. There are several types of reliability:

- (1) **test-retest reliability.** The degree of consistency between the results of different administrations of the same test to the same individual.
- (2) **interrater reliability.** The degree to which different administrators agree in their scoring of the same test data.
- (3) **split-half or internal consistency reliability.** When a test is divided into two halves, the degree to which the individual test items are correlated with one another.

remand, *v.* 1. To send a case back to its court of origin for further action or deliberation. 2. To send a person back into custody.

replicate, *v.* 1. To copy, duplicate, or repeat. 2. In behavioral science, to obtain the same results by repeating an experiment or other research procedure.

research, *n.* 1. In behavioral science, a systematic and objective attempt to discover the causes and effects of various human characteristics and behaviors by direct observation and assessment of people. 2. An investigation that attempts to uncover the facts pertaining to a specific problem or phenomenon by examining documents, published research results, and other pre-existing evidence.

research method, *n.* An approach to studying various aspects of human behavior or other issues. The following behavioral science approaches are essential to assessing research pertaining to separation, divorce, and child custody.

- (1) **cross-sectional.** Measuring the same variable in several groups of people, usually of different ages, at the same time in order to infer how people change on that variable over time.

- (2) **longitudinal**. Measuring the same variable in the same participants repeatedly over an extended period of time, usually to examine developmental issues.
- (3) **correlational**. Measuring two variables in the same participants to see if they co-vary, i.e. to see if one variable is correlated with the other. Causality cannot be inferred from correlation; it is impossible to know which variable is causing the other, or if a third unknown variable is causing the changes in both measured variables.

research review, *n.* A summary of empirical studies about a given topic, including conclusions about general findings and research trends. Cf. *literature review* and *meta-analysis*.

restraining order, *n.* *restraining order* under *order*.

retainer, *n.* An advance payment of fees for professional services to be performed in the future.

sample, *n.* In behavioral science research, a subgroup of individuals selected for study from a larger population in order to make inferences about the characteristics of the population. Some of the main types of samples and sampling issues are:

- (1) **random sample**. A sample chosen in a random manner such that each member of the larger population has an equal chance of being selected.
- (2) **representative sample**. A sample that adequately reflects the characteristics of the population from which it is drawn.
- (3) **convenience sample**. A non-random sample chosen because of its accessibility rather than because it is representative of the larger population.
- (4) **sampling bias**. Any characteristics of a sample that make it non-representative of the larger population.
- (5) **sampling errors**. Errors in making inferences from research, caused by the fact that the sample does not adequately represent the population from which it is drawn.

settlement, *n.* An agreement between litigants that ends a dispute or lawsuit.

sole custody, *n.* See *custody*.

special master, *n.* The term used in California to refer to a parenting coordinator.

ss, *abbr.* Used in a legal document to indicate a subdivision, as for a particular county of a state.

standardization, *n.* In psychometrics, the process of establishing norms and uniform procedures for administration and scoring in order to minimize any unique aspects of the testing situation and assessor.

statute, *n.* A law enacted by a legislative body.

stipulation, *n.* A voluntary agreement between litigants.

subpoena (se-**pee**-na), *n.* An order to appear as a witness at a judicial proceeding, subject to a penalty of contempt for failure to comply. Types of subpoenas include:

- (1) **subpoena ad testificandum** – Subpoena ordering a witness to appear and testify.
- (2) **subpoena duces tecum** – Subpoena ordering a witness to appear and bring specified materials or documents.

subpoena, *v.* To command someone via subpoena to appear before a court or hearing, or to produce certain documents.

summons, *n.* A written notification to appear in court as a defendant, as a witness, or for jury duty.

supervised visitation, *n.* Parenting time/visitation ordered to occur only in the presence of a professional supervisor or another designated person.

surrogate court, *n.* See *probate court* under *court*.

temporary restraining order, *n.* See *restraining order* under *order*.

tender years doctrine, *n.* The previous presumption that mothers should be awarded custody of children under 7 years old, unless the mother was unfit. Also called the *tender years presumption*.

termination of parental rights, *n.* The legal ending of a parent's rights, privileges, and responsibilities regarding their child. This frees the child for adoption and ends the parent's visitation rights.

trial, *n.* A formal adversarial proceeding in which there is a judicial examination of evidence and determination of legal claims and rights. Cf. *hearing*.

trial court, *n.* See *court*.

trier of fact, *n.* The judge or jury responsible for evaluating legal evidence, establishing facts, and rendering a verdict in civil and criminal trials. Also called *factfinder*, *finder of fact*, or *trier*.

ultimate issue, *n.* The main point to be decided in a case.

Uniform Marriage and Divorce Act, *n.* An act passed by the U.S. Congress in 1979 which includes a definition of the factors to be considered in determining the best interests of the child. *Abbr.* UMDA.

validation, *n.* The process of establishing the objective accuracy of a proposition or measuring instrument.

validity, *n.* A test's accuracy, or ability to provide a true measurement of the phenomenon being assessed. There are a number of types or ways to demonstrate validity, including:

- (1) **construct validity**. The degree to which a test measures behavior that shows evidence of a theoretical concept or characteristic. Construct validity can be demonstrated by:
 - (a) **convergent validity**, where the scores on one test are correlated with scores on another test that is designed to assess the same construct or characteristic. In custody evaluations, convergent validity is also provided by using multiple independent sources of information (e.g. interviews, observations, record review, test data) to arrive at a conclusion.
 - (b) **discriminant validity**, where the scores on one test are *not* correlated with scores on another test designed to assess an incompatible construct or characteristic, so that the scores are shown to discriminate between the two constructs.
- (2) **content validity**. A measure of how well items of a test correspond to the behavior that the test purports to measure or predict.
- (3) **criterion validity**. An independent, external measure of what a test is devised to measure. Criterion validity can take two forms:
 - (a) **concurrent validity**. Correlating a person's score on a test with their performance on a task that the test presumably measures. The two measures must be taken at the same time.

- (b) **predictive validity.** The degree to which a test measures what it is designed to measure and can hence predict that behavior.
- (4) **external validity.** The degree to which results generalize to other circumstances or conditions. External validity also requires that a test have norms so that an individual's test results can be compared with those of a comparison group.
- (5) **face validity.** A variant of content validity which assesses how obvious a test's purpose is to the test-taker.
- (6) **factorial validity.** Correlation of a test with a factor or portion of the test derived by factor analysis.
- (7) **incremental validity.** Extent to which a test provides information beyond that provided by a test already in use.
- (8) **internal validity.** A way to assess the validity of a measuring device by checking for high correlations between (a) scores on various sub-items and (b) the total test score.
- visitation, n.** The time a non-custodial parent spends with his/her child. In many jurisdictions this term is being replaced by the term *parenting time*. Types of visitation include:
- (1) **supervised visitation** – A professional (or neutral third party) monitors the visit in order to ensure that the parent acts in an appropriate manner.
 - (2) **virtual visitation** – The parent and child contact each other via electronic means (usually through computer), e.g. email, instant messaging, or web cam,
- voir dire (vwahr deer), n.** A preliminary examination to test the competence of a witness or the qualifications of a prospective juror.
- witness, n.** Someone who provides testimony or information to the court. There are many types of witnesses, including:
- (1) **fact witness.** Anyone who testifies to things they have observed or have direct knowledge of; fact witnesses are not allowed to express opinions.
 - (2) **expert witness.** A witness who is qualified by education, training, experience, knowledge, or skill to provide a scientifically-based, technical, or other specialized opinion about the evidence or a fact issue.
- work product, n.** Materials (including notes, opinions, theories, and conclusions) that an attorney uses to prepare for litigation.
- work product privilege, n.** See *attorney work product privilege*.

ABOUT THE AUTHOR

Joanna Bunker Rohrbaugh, Ph.D., is a trauma specialist who has been on the faculty of the Department of Psychiatry at the Harvard Medical School for over twenty years. In addition to her teaching and clinical supervision, she has a private clinical and forensic psychology practice. Dr. Rohrbaugh has a B.A. from Brown University and a Ph.D. in Personality and Developmental Psychology from Harvard University. She is a board member for the Massachusetts Chapter of the Association of Family and Conciliation Courts (AFCC).

INDEX

- Abduction and parental kidnapping
 - abductors, characteristics of, 441–444
 - court interventions and parenting plans, 444–450
 - definitions and rates, 439–440
 - effect on abducted child, 452–453
 - effect on left-behind parent, 453
 - risk factors for, 450–451
 - standards for resolution of custody disputes and, 43–56
- Abusive families and parenting time, *see* Supervision of parenting time
- Academic achievement, effect of divorce on child's, 124
- Activism
 - psychotherapy and, 18
 - custody evaluation, avoided in, 19–20
- Adolescent
 - disengagement from family, 152
 - response to high-conflict divorce, 148–150
- Adoption
 - 2nd parent, *see* Same-sex parents
- Advocacy
 - attorney and, 10
 - compared to impartiality, 110
 - custody evaluation, avoided in, 19–20
 - psychotherapy and, 17
- Age, *see* Child development and response to divorce
- Alienation, parental
 - causes of, 404–410
 - description and rates of, 399–400
 - compared with denied visitation, 400–401
 - compared with estrangement, 404
 - gender differences in, 401–404
 - effects on child, 410–412
 - methods for assessment of, 289–290, 416–426
 - parental alienation syndrome (PAS), 413–416
 - parent/child relationships and, 405–406
 - remedies for, 427–434
 - risk factors for, 407–409
- Alternative dispute resolution (ADR), 57–58
 - See also* Collaborative law; Cooperative Law; Mediation
- American Academy of Forensic Psychology (AAFP), 27 (n. 28), 621
- American Law Institute, 48, 56 (n. 13), 79–80 (n. 5)
- Approximation standard, *see* Standards for resolution of custody disputes
- Arbitrator, 10–11
- Areas of assessment in CCE, 33
- Association of Family and Conciliation Courts (AFCC), 621
- Asthma and allergies, child, 459–460
- Attachment in childhood
 - abused children and, 55 (n. 11), 155
 - assessment of, 146–150, 154 (n. 32)
 - attachment figures, criteria for identifying, 147
 - attachment figures, hierarchy of, 46
 - contrasted with bonding, 55 (n. 7)
 - multiple attachments, 46–47
 - overnights and, 179
 - phases of, 146–147
 - research on, 154 (n. 32)
 - relocation and, 384–385
 - Strange Situation as measure of, 154 (n. 32)
 - types of, 55 (n. 10)
- Attention Deficit/Hyperactivity Disorder (ADHD), *see* Disabilities, child; Mental Illness in parents
- Attorney
 - advocacy v. impartiality, 110
 - amicus attorney, 10

- attorney ad litem, 10, 24
- attorney/client privilege, 10
- collaborative v. adversarial models of practice, 10
- counsel, usage contrasted with, 80 (n. 12)
- guidelines for practice, 24 (n. 2), CD section XIIb
- role defined, 10
- Authoritarian parenting style, 133
- Authoritative parenting style, 132–133
- Autism, *see* Disabilities, child; Mental illness in parents
- Avoidant attachment, 147

- Basic trust, 145–146, 154 (n. 30)
 - See also* Attachment in childhood, phases of
- Best interests of child, *see* Standards for resolution of custody disputes
- Biographical description of CCE, 12
- Birth rates, by family type, 150 (n. 5)
- Blended families, *see* Family, structure of
- Bonding
 - bonding evaluation, 35
 - contrasted with attachment, 55 (n. 7)
- Brief, focused evaluation, 31

- California Attachment Procedure (CAP), 154 (n. 32)
 - See also* Attachment in childhood, assessment of
- Care and protection evaluations, general, 33–35
 - referral questions in, 35
 - court appointments and, 82 (n. 20)
 - description and purpose, 35
 - legal standards for custody in, 35, 40–41 (n. 9)
- Case management, forms for, CD section IIa
- Child abuse
 - allegations in custody disputes, 569–570
 - assessment methods for, 582–585
 - Child Abuse Potential Inventory (CAP), 235–236, 584
 - child characteristics, 583–384
 - collateral sources of information, 584
 - environmental stressors, 583
 - family functioning, 583
 - multiple sources of information, 584–585
 - parent characteristics, 582–583
 - corporal punishment, 581–582
 - definition, types, and rates, 569–571
 - domestic violence and, 543
 - gender differences in, 571
 - parental kidnapping and, 445–446
 - physical abuse and neglect
 - definition and rates, 571
 - effects on children, 574
 - gender differences in, 571–574
 - risk factors for, 572–573
 - psychological maltreatment
 - definition and types, 576–577
 - effects on child, 576–581
 - reporting, 27 (n. 22), 74
 - sexual abuse, *see* Sexual abuse of child
 - Child custody disputes
 - rates and types of resolution, 47–48, 150 (n. 2)
 - Child custody evaluation (CCE)
 - access to report, 75–76
 - access to evaluator notes, 76–77
 - collateral sources for, *see* Collateral sources for CCE
 - conclusions, type of, 17–19
 - confidentiality & consent in
 - consent warnings in, 70–73, 270–271, 317–318
 - release of information forms for
 - collaterals, 267–268, CD section IV
 - statement in report of CCE, 73, 284
 - contents/areas of assessment, 33, 252–260, 276–277
 - contract and fee agreement for, 70, 268–269, CD section Vb
 - court appoint of evaluator for, 67, 247, 249–250, CD Section I
 - criticisms of, 37–40
 - discovery in, 88
 - forensic model for, 36–37
 - guidelines for, 29–41, CD section XII
 - home visits, 305, 309–313
 - interviews, adult, 279–283
 - interviews, child, 283–302, 600–601
 - models of, 4
 - non-compliance with, 86–88, 271, CD section XI
 - observations of parent/child interactions, 292–304
 - parents
 - equity in data collection, 275–276
 - interview for, 277–279, CD section VII

- introductory letter for, 266, CD
 - section III
 - questionnaire for, 268, 273, CD
 - section VI
 - payment for and cost of, 77–79, 268, CD
 - section IIb
 - psychological testing in, 313–314
 - See also Psychological tests
 - purpose of, 3, 18, 251–252
 - rates of, 150 (n. 2)
 - recommendations in, 107–115, 346
 - See also Ultimate issue, general record keeping, 263–266, 272
 - referrals for, 249–251
 - report of, *see* Report of child custody evaluation
 - reviewing, *see* Reviewing child custody evaluations
 - risks for evaluator, 66–67, 251
 - structure of evaluation, 277
 - time needed for, 260–263
 - types of, 31–33
- Child custody evaluator (CCE)
- court appointment of, 67, 247, 249–250, CD Section I
 - contract and fee agreement for, 70, 268–269, CD section Vb
 - CV and brief description of background, 267
 - deposition of, 89–90
 - duration of appointment, 88
 - immunity and, 67
 - motion for re-appointment, 88
 - risks for, 66–67, 251
 - role compared to psychotherapist, 13, 15–19
 - role defined, 12, 24 (n. 1), 105 (n. 11)
 - training and certification of, 12, 22–24, 27 (n. 27)
 - training programs for, 3, 621
- Child development and response to divorce
- academic achievement following divorce, 124
 - adolescent (13–18 yrs), 128, 149–150
 - age and developmental tasks, 123–129
 - age and effect of witnessing domestic violence, 538–543
 - age and response to divorce, 124–131, 144–150
 - circumstances of parental separation, effect of, 131–135
 - concerns of children following divorce, 144–150
 - conduct following divorce, 124
 - early school-age child (6–9 yrs), 148
 - fathers, effects of loss of contact, 135–136
 - finances following divorce, effect of, 132
 - gender and response to divorce, 129
 - infants and toddlers (0–3 yrs), 145–147
 - loss of relationships following divorce, 135–136
 - mentors, importance of following divorce, 136, 375
 - middle school/pre-teen (10–12 yrs), 148–149
 - parental behaviors, protective and risk factors for child, 134–135
 - parental conflict and effect on child, 130–131
 - parenting plans and, 122–123
 - peers, effect of, 137
 - preschool child (3–5 yrs), 147–148
 - psychological adjustment following divorce, 124, 129
 - psychological functioning of parents, effect of, 139
 - race and response to divorce, 130
 - response to separation/divorce
 - by age, 123–124, 125–128
 - by area of functioning affected, 124, 129
 - factors creating risk or resilience, 129–131
 - self-concept and self-esteem after divorce, 129
 - siblings, effect of divorce on, 137
 - school following divorce, 138, 148–149
 - social skills after divorce, 129
 - stepfamilies, role of, 137–138
 - See also Family, structure of temperament, effect of child's, 138
- Child development evaluation, 31
- Child expert
- consultation agreement for, CD
 - section Vc
 - role defined, 20
- Child forensic interview, 31, 283–292, 600–601
- Child sexual abuse, *see* Sexual abuse of child
- Children of divorce
- as adults, 139
 - in childhood, *see* Child development and response to divorce
 - number in U. S., 150 (n. 1)
- Children with disabilities, *see* Disabilities, child
- Collaborative law
- divorce coaching and, 20

- child expert and, 21
- defined, 57
- Collateral sources for CCE, general, 314–318
 - child abuse and, 584–585
 - confidentiality issues and, 315–316
 - criteria for choosing, 314
 - domestic violence and, 554–555
 - interview forms and letters for, CD section VIII
 - methods and steps in data collection for, 318–319
 - types of, 316
- Collateral sources for CCE, professionals and institutions
 - letters to, CD section VIIIa
 - release of information form for, CD section IV
 - teachers: letter, questions, and interview, CD section VIIIa
- Collateral sources for CCE, non-professionals
 - consent form for, CD section VIIIb
 - interview form for, CD section VIIIb
 - letter to, CD section VIIIb
 - questions to send to, CD section VIIIb
- Common couple aggression, *see* Domestic violence
- Communications among professionals, 63–65
 - attorneys, 62–64
 - court staff, 65
 - judges, 65
 - parents representing themselves, 65–66
 - professional associations, 66
- Complaints, 90, CD section XI d
- Comprehensive evaluation, 32
- Confidentiality
 - custody evaluations and lack of, 16, 69–73
 - child expert and, 21
 - child psychotherapy and privilege, 73–74, 82 (n. 27, 28)
 - court orders and consent, 70
 - consent warnings, general, 70–73
 - adults, elements in, 71
 - children, simplified warning for, 72
 - report of CCE, statement in, 73, 282
 - divorce coaching and, 20
 - lamb warning, 82 (n. 26)
 - mediation and, 11
 - parenting coordination and lack of, 14
 - privacy, protection of in CCE, 74–75
 - privilege, contrasted with, 26 (n. 19), 70
 - psychotherapy and, 16, 26 (n. 19)
 - release of information, authorization for, CD section IV
 - substance abuse and, 513–514
 - visitation centers, lack of confidentiality, 166
- Conflict in family, *see* High conflict family
- Conflicted co-parenting, 134–135
- Consultant to attorneys, mental health professional
 - attorney-client privilege, 20
 - attorney work-product privilege, 20
 - contract and fee agreement for, CD section V d
 - contrasted to custody evaluator, 105 (n. 11)
 - court testimony and, 105 (n. 11)
 - multiple roles, avoiding, 27 (n. 24)
 - release of information form for, CD section IV
 - role defined, 19–20
- Contract and fee agreement
 - child custody evaluation, 70, 268–269, CD section V
- Cooperative co-parenting, 135
- Cooperative law, 57
- Co-parenting styles, 134–135
- Corporal punishment, 581–582
- Court Orders
 - appointment of CCE, 78, CD section I
 - evaluation of sexual abuse, 608–612
 - informed consent and, 70
- Court testimony in CCE, *see* Testifying in court
- Criminal proceedings, forensic evaluations and, 83 (n. 30)
- Criminal records, 103 (n. 1)
- Curriculum vita, forensic, 101–103
- Custody commissioner, *see* Parenting coordinator
- Custody decisions
 - appeal to higher court, 56 (n. 15)
 - finality of, 52
 - modification of, 52, 54
- Custody disputes
 - duration of, 153 (n. 27)
 - emotional reasons for, 140, 144
 - rates of, 104 (n. 5), 119–120, 153 (n. 27)
 - resolution of, methods and rates, 153 (n. 27)
 - See also* Standards for resolution of custody disputes
- Custody evaluator, *see* child custody evaluator
- Custody, sole v. joint
 - criteria for joint, 177

- effects on children, 176
- effects on children of divorce as adults, 176
- effects on parents, 176
- parenting plans and, 174–177
- research on, 175–177

- Daubert* standard, *see* Scientific testimony
- De facto parent, 45, 54–55 (n. 5)
- Declarations, 85–86, 89
 - list of in CCE, 89
 - non-participation, 85
 - nonpayment, 85–86
 - samples of, CD section XIb
- Deposition of CCE, 89–90, 104 (n. 4)
- Depression, *see* Mood disorders, under
 - Mental illness in parents
 - parents, in response to divorce, 139
- Disabilities, child
 - parental reactions to, 457–459
 - parenting plans and, 463–465
 - types of disabilities, 459–466
 - asthma and allergies, 459–460
 - attention deficit/hyperactivity disorder (ADHD), 465
 - autism, 460–462, 463–464
 - learning disabilities, 466
 - mental retardation, 462, 465
 - psychological and behavioral disorders, 466–467
- Discovery for evaluator materials, 88
- Disengaged/neglectful parents, 133–134
- Dispute assessment, 31–32
- Diversity
 - family structure and, 361–382
 - sensitivity to, 59, 61
- Divorce
 - circumstances of initial separation, 131–132
 - dynamics of “divorce impasse,” 140, 144
 - rates of, 119–120
 - effect on child, *see* Child development and response to divorce
 - financial effects of, 122, 132
- Divorce coach
 - role defined, 20
 - payment for services, 20, 27 (n. 25)
- Domestic violence
 - assessment methods for, 545–554
 - collateral information, 554–555
 - factors to consider, 547–550
 - guidelines for credibility, 547–548
 - key questions to answer, 547
 - parent interview, 549, CD section VII
 - parent questionnaire, 549, CD section VI
 - sources of information, 553–555
 - causes of, 533–536
 - child abuse and, 543
 - child witnesses of
 - coping strategies, 538–539
 - effects on, by age of child, 540–542
 - personalities and behaviors of, 552–553
 - risk and protective factors for, 543–544
 - conflict resolution and, 551
 - consultation and referral, need for, 562
 - dangerous cases, screening out, 65–66, 81 (n. 17)
 - definition, types, and frequency of, 529–533
 - common couple aggression, 531–532
 - physical abuse, 530
 - psychological abuse, 530, 551–552
 - sexual abuse, 530
 - stalking, 532–533
 - family dynamics and parenting, effects on, 545
 - female-initiated violence, 536–537
 - function or intent of, 531
 - parental kidnapping and, 439–442
 - parenting plans and, 561–562
 - parenting time, supervised, 156, 158–159
 - perpetrators
 - characteristics of, 549, 555, 558–560
 - physical dangerousness, level of, 551
 - re-offending, risk factors for, 559–560
 - population and age differences in, 537
 - relocation and, 383–395
 - risk assessment for physical injury, 551–552
 - screening for, 545–546
 - severity, levels of, 531
 - victims of, 537–538, 545, 549
 - violence risk assessment, 555–561
- Early school-age child (6–9 yrs), 148
- Electronically-mediated parenting time, general 181–185
 - activities in use of, 182–183
 - advantages, disadvantages, and risks of, 183–184
 - equipment required for, 207 (n. 12)
 - factors to consider in use of, 185
 - language for parenting agreement, 185
 - legislation and, 184–185
 - resources for parents and professionals, 186
 - types of, 181

- Emergency case stabilization, 40 (n. 3)
- Empirical evidence
importance of, 4
- Estrangement, parent/child, *see* Alienation, parental
- Ethical issues in custody evaluations, 9–27
- Evidence, types of, 91
- Ex parte communications, 63–64
CCE and attorneys, 63–64
CCE and judges, 65
- Expert Witness, *see* Testifying in court
- Extended families, *see* Family, structure of
- Family
definition, legal v. psychological, 376–377
divorce, rates of, 119–120
fathers, role and involvement of, 120–123
high conflict, 139–144
structure of
blended/stepfamilies, 137–138, 371–374
changing, 119–120, 362–363
diversity in, 361–382
extended families, 152 (n. 19), 375
never-married parents, 150 (n. 5, 6), 363–364
same-sex parents, 366–371
See also High conflict family
- Family court advisor, *see* Parenting coordinator
- Fast track evaluation, 29, 31
- Fathers
financial involvement, 122
involvement after separation/divorce, 122–123, 131–132
parenting time, 122–123
roles changing, 120–121
- Federal Rules of Evidence, *see* Scientific Testimony
- Finances, *see* Divorce
- Friendly parent rule, *see* Standards for resolution of custody disputes
- Frye Standard, *see* Scientific testimony
- Gender
bias in custody standards, 52, 56 (n. 13)
bias in custody decisions, 61–62
differences in
child abuse, 571, 573
mental illness, types and rates of, 476–478
non-custodial parent's activities, 135–136
parental alienation behaviors, 401–404
parental kidnapping, 439–442
perception of physical v. financial caretaking, 55 (n. 9)
response to divorce, 129
sibling relationships, 137
social involvement, 152 (n. 22)
substance abuse, 500–505
domestic violence and, 533–534
imbalance in co-parenting, 51–52
parenting coordinator and, 186
roles and approximation standard, 55 (n. 12)
General Electric Co. v. Joiner, 104 (n. 8)
- Grandparents
importance following divorce, 152 (n. 21)
See also Extended families, under Family, structure of
- Guidelines for CCE, 29–41, CD section XII
- Health Insurance and Portability Act (HIPAA), 26 (n. 19)
- High conflict family
conflict between parents, effect on children, 130–131
conflict levels and parental functioning, 139–141
description of, 139–140
dynamics of “divorce impasse,” 140, 144
effect of divorce on children, 144–150
mediation with, 79 (n. 1)
parenting time and, 155–167
risk assessment and, 157–158
- Home visits, 309–312
- Immunity, quasi-judicial
court-appointed CCE and, 67
defined, 81–82 (n. 19)
function v. label, 81–82 (n. 19)
parenting coordinator and, 26 (n. 16)
- Impartiality
attorney, 62
child custody evaluator, 17–18, 37, 62–64
conflicts of interest and, 61
definition, 27 (n. 21), 58–59
expert witness, 21–22
judge, 11, 62
mediator, 11–12
parenting coordinator, 12, 14
- Income levels, *see* Divorce
- Infants and toddlers, 145–146
See also Child development and response to divorce
- Insurance payments
custody evaluation, 13

- mental health evaluation, 19
- psychotherapy, 13, 16
- Interstate forensic consultation, 69
- Interviews, adult
 - alcohol use and, 515–516
 - drug use and, 517–518
 - order and number, 280
 - purpose, 277
 - recording methods, 276
 - techniques for, 279
- Interviews, child
 - accuracy of child reports in, 284–289
 - arrangements for, 291–292
 - corroboration of information obtained in, 290
 - need for, 283
 - techniques for, 292–308, 600–601
 - topics for, 283
 - wishes about custody in, 291–292
- Intimate partner violence, *see* Domestic violence
- Joint custody
 - as presumption in custody standards, 52
 - research on, 174–177
- Judge
 - role of, 11
 - impartiality and, 11
- Junk science, *see* Pseudoscience
- Kidnapping, parental, *see* Abduction and parental kidnapping
- Kumho Tire Co., Ltd. v. Carmichael*, 104 (n. 8)
- Learning disabilities, child, 466
- Least detrimental alternative, *see* Standards for resolution of custody disputes
- Legal standards for child custody decisions, *see* Standards for resolution of custody disputes
- Licensing board complaints, 67–68
- Med-arbiter, *see* Parenting coordinator
- Mediation
 - defined, 57
 - mediator, role of, 11–12
- Mental health evaluator, 19
- Mental illness in parents
 - domestic violence and, 534
 - gender ratios and prevalence for various types, 477
 - effects on child, general, 473–476
 - interventions for children, 493–494
 - types of
 - anxiety disorders, 482–483
 - attention deficit hyperactivity disorders (ADHD), 491
 - autism, 487
 - eating disorders, 487–488
 - factitious disorder by proxy, 493
 - mental retardation, 491–492
 - mood disorders, 479–481
 - personality disorders, 489–491
 - post traumatic stress disorder (PTSD), 483–485
 - schizophrenia, 485–486
- Mental retardation, *see* Disabilities, child; Mental illness in parents
- Mentors for children of divorce, 136
- Middle school/pre-teen (10–12 yrs), 148–149
- Modification of custody, *see* Standards for resolution of custody disputes
- Motions by CCE, 86–88
 - access to court records, 86
 - access to previous reports, 86
 - additional hours, 87
 - additional instructions, 86
 - appointment of GAL to evaluation waiver of patient/therapist privilege, 87
 - clarification of scope of evaluation, 86
 - common motions by CCE, 89
 - compel payment, 87
 - contempt for non-participation, 86
 - extension of time, 87
 - payment, 87
 - quash a subpoena, 77, 87–88
 - samples of, CD section XIc
- Multiple roles in child custody cases
 - guidelines for avoiding, 27 (n. 24)
- Never-married parents
 - changes in attitude towards, 364–365
 - education, race, and SES factors, 363–364
 - effects of single parenthood, 365–366
 - no-contact exchange of children, *see* Parenting plans
 - See also* Family, structure of
- No Child Left Behind Act, 52
- Non-custodial (non-residential) parents
 - gender differences in, 135–136

- Observation of parent/child interactions, 292–304
- Opinions regarding custody requirements for, 20, 22
- Overnights, general, 177, 179–180
factors to consider in, 185
research on effects of, 179
- Parallel co-parenting, 135
- Parent
legal definitions of
by estoppel, 54–55 (n. 5)
de facto, 45, 54 (n. 5)
same-sex parents and, 366–367
legal v. psychological, 376–377
psychological, 45–47, 54 (n. 5)
psychological functioning of, 139
- Parental conflict
characteristics of, 170–172
duration of severe, 25 (n. 10)
effect on child, 130–131
effect on parental functioning, 139–143
parenting plans and, 170–172
types of, 130–131
- Parental deference, *see* Standards for resolution of custody disputes
- Parental fitness, *see* Standards for resolution of custody disputes;
Parenting evaluation
- Parental kidnapping
standards for resolution of custody disputes and, 43
See also Abduction and parental kidnapping
- Parenting
bi-directional nature of, 152 (n. 18)
co-parenting styles, 135
domestic violence and, 545
effects of level of conflict on, 141–143
functions of, 47
observing parent/child interactions, 292
parent/child relationships, characteristics of, 416–417
risk and protective factors for children of divorce, 134–135
strengths and weaknesses in, 303–304
types of, 132–135
- Parenting coordinator, general, 12–15
approach of, 187
authority figure as, 187
charges for services, 26 (n. 14)
confidentiality and, 14
domestic violence and, 14, 25 (n. 13)
gender of, 187
impartiality and, 17
judicial immunity and, 26 (n. 16)
risks for, 15
role defined, 12–15
psychopathology in parents and, 187
special master as, 15, 25 (n. 11)
terms for, 25 (n. 9, 11)
training requirements, 15, 26 (n. 15)
- Parenting education programs, 196–204
- Parenting evaluation, 35
- Parenting plans
abduction and parental kidnapping and, 444–450
abusive and high-conflict families and, 155–167, 186
changes over time, 169–170
children's wishes and, 172, 174
domestic violence and, 561–562
electronically-mediated parenting time, 181–185
factors to address in, 188–193
no-contact exchange, 157
overnights, 177, 179–180
parental conflict, characteristics of, 170–172
relocation and long-distance contact, 392–395
samples of, CD section IX
schedules for living arrangements, 192–196
sexual abuse of child and, 604–607
sole v. joint custody, 174–177
substance abuse and, 525
supervision, level of, 156–159
visitation center, 157, 158–166
- Parenting referee, *see* Parenting coordinator
- Parenting time
term for, 207 (n. 13)
- Payment arrangements and rates
child custody evaluation (CCE), 16, 77–79
collection procedures, 78–79
contingency fees forbidden, 77
contract and fee agreement, 70, 78, CD section V
court orders regarding payment, 78
escrow account, 78, 83 (n. 33, 34)
fee agreement, 70, 78
forms for, CD section IIb
medical insurance and CCE, 77
parenting coordinator, 26 (n. 14)
psychotherapy, 15, 26 (n. 26)
rates, 83 (n. 33)
retainer, 78, 83 (n. 35)

- state payment in CCE, 26 (n. 20), 78
- timing of payment for CCE, 16
- Permissive parents, 133
- Personality characteristics
 - adults, protective function of, 153 (n. 24)
 - children of divorce, 139
- Pragmatic psychology, in forensic work, 7 (n. 1)
- Preschool child (3–5 yrs), response to divorce, 147–148
- Presumption standard, *see* Standards for resolution of custody disputes
- Primary caretaker, *see* Standards for resolution of custody disputes
- Privacy in custody evaluations, *see* Confidentiality
- Privilege, *see* Confidentiality
- Pro se litigants
 - frequency of, 81 (n. 16, 17)
 - domestic violence and, 81 (n. 15)
- Problem-focused evaluation, 32
- Professional associations, 622
- Professional guidelines for CCE, 623
- Professionals – relationships with CCE
 - attorneys, 62–64
 - court staff, 65
 - judges, 65
 - pro se litigants, 65–66
- Professionals – risks for
 - child custody evaluator, 66–68, 251–252
 - malpractice insurance and, 67, 81 (n. 17)
 - parenting coordinator, 15
- Professionals – roles for
 - arbitrator, 10–11
 - attorney, *see* Attorney
 - child expert, 21
 - consultant to attorneys, 19–20
 - custody evaluator or investigator, 12, 24 (n. 1), 105 (n. 11)
 - compared with psychotherapist, 12, 15–19
 - divorce coach, 20
 - expert witness, 21–22
 - judge, 11
 - mediator, 11–12
 - mental health evaluator, 19
 - multiple roles, avoiding, 24(n. 1)
 - parenting coordinator, 12–15
 - psychotherapist, 15–19
 - special master, 15
- Pseudoscience
 - definition of, 5–7
 - excluding in expert testimony, 96
- Psychiatric diagnosis
 - avoiding in report of CCE, 289
 - parental alienation and, 434 (n. 13)
- Psychiatric disorders, *see* Disabilities, child; Mental illness in parents
- Psychological and behavioral disorders, child, 466–467
- Psychological parent
 - original formulation by Goldstein et al., 54 (n. 3)
 - See also* De facto parent; Standards for resolution of custody disputes
- Psychological tests
 - current use in custody evaluations, 213–214
 - critiques and rationales for using in CCE, 214–218
 - custody-specific assessment devices, 229–237
 - Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT), 231–233
 - Bricklin Perceptual Scales (BPS), 229–230
 - Child Abuse Potential Inventory (CAP), 235–236
 - Custody Quotient (CQ), 236–237
 - Perception of Relationships Test (PORT), 230
 - Parent Awareness Skills Survey (PASS), 230–231
 - Parent-Child Relationship Inventory (PCRI), 234
 - Parent Perception of Child Profile (PPCP), 231
 - Parent Authority Questionnaire – Revised (PAQ-R), 237
 - Parenting Scale, 237
 - Parenting Stress Index (PSI), 234–235
 - guidelines, process, and criteria for using in CCE, 218–220, 237–239
 - presenting test results to the court, 239–243
 - sexual orientation and, 242–243 (n. 8)
 - standard psychological tests used in CCE, 221–229
 - Anatomically-Detailed Dolls (ADD), 228–229, 602–603
 - Drawings, 228
 - Millon Clinical Multiaxial Inventory (MCMI-III), 222
 - Minnesota Multiphasic Personality Inventory (MMPI), 221–222
 - Rorschach Inkblot Method (RIM), 223–227

- Thematic Apperception Test (TAT), 228
- Wechsler Adult Intelligence Scale (WAIS-III), 223
- substance abuse, not useful for, 523–524
- Psychotherapy
- role defined, 15–19
 - child patients, 26 (n. 19)
 - compared with CCE, 12
 - confidentiality and, 16, 26 (n. 19)
 - decision-making, type of, 17–18
 - goal of, 18
 - payment arrangements, 16
 - privilege for child patients, 26 (n. 19), 73–74
- Race and response to divorce, 130
- Recommendations for custody, *see* Ultimate issue, general
- Record keeping in CCE
- discussion of, 1, 263–266, 272 (n. 9)
 - forms for, CD section II
- Referrals
- CCE, screening, 249–251
- Relocation
- assessment of cases involving, 387–392
 - domestic violence and, 395
 - effects on children, 384–386
 - legal issues in, 386–387
 - parenting plans for, 392–395
 - rates of, 383
 - risk assessment for, 387–392
- Removal, *see* Relocation
- Report of child custody evaluation
- access to written reports, 75–76, 315
 - access to evaluator's notes, 76–77
 - confidentiality, consent, and privilege in, 69–75, 315
 - data-gathering techniques for, 337–338, 344
 - filing, 346
 - format and outline, 329–331
 - functions and guidelines, 323
 - language and focus, 323, 326
 - length, 329
 - levels of inference and sections of report, general, 327–328
 - background to evaluation, 337
 - children, 342–343
 - data-gathering procedures, 333
 - family dynamics, 343
 - informed consent, 270–271
 - introductory information, 330–331
 - methodology, explanation for, 333–337
 - parents/caretakers, 337–342
 - referral, reasons for, 331–332
 - recommendations, 346
 - special issues, 344
 - summary and general conclusions, 344–346
 - preliminary v. final, 347
 - psychiatric diagnoses, avoiding in, 341
 - psychological testing, discussion of, 239–243, 326–329
 - recommendations in, 107–115, 328–329
 - sample report form, CD section X
 - See also* Reviewing child custody evaluations
- Resistant-ambivalent attachment, 147
- Resolution coordinator, *see* Parenting coordinator
- Reviewing child custody evaluations
- evidentiary requirements, 353–357
 - general issues in, 350–351
 - roles for legal and mental health professionals, 350–360
 - scientifically-based methodology, 276, 350–357
- Risk Assessment
- high-conflict families and, 156–158
 - parental mental illness and, 473–475
 - relocation and, 387–392
- Same-sex parents
- family-building strategies, 367–368
 - legal issues in custody, 369–371
 - parenting styles and effects on children, 368
 - See also* Family Structure; Psychological tests
- School, experience following divorce, 138
- Scientific testimony, legal standards for, 95–98
- Daubert* standard, 7 (n. 2), 96–98
 - Federal Rules of Evidence, 95–96
 - Frye standard, 95
 - Use of legal standards by judges, 96–98
- Secure attachment, 146
- Separation, *see* Divorce
- Sexual abuse of adult, *see* Domestic violence, definition and types of
- Sexual abuse of child
- child memory and testimony, 599
 - child sexual abuse accommodation syndrome (CSAAS), 599–600
 - definition, types, and rates, 589–593
 - effect on child victim, 594–595
 - common effects, 594–596

- common indicators of sexual abuse, 598–599
 - risk and resilience in child victims, 596–598
- evaluation, court orders for, 608–612
- evaluation, guidelines for, 612–613
- evaluation, techniques for children anatomically detailed dolls (ADD), 602–603
- child interviews, 283–302, 600–601
- evaluation, techniques for alleged perpetrators, 603–604
- parenting plans, 604–607
 - reunification plan for child/alleged abuser, 605–608
 - risk factors for reunification, 607–608
 - risk factors for occurrence, 593–594
- Sexual orientation
 - psychological tests and, 242–243 (n. 8)
 - See also* Same-sex parents
- Siblings
 - effects of divorce on, 137
 - step-siblings, 374
- Single parents, *see* Never-married parents
- Sole custody, 174–177
- Sources of information, corroboration of
 - custody evaluations, 16
 - See also* Collateral sources for CCE psychotherapy, 17
- Special master, *see* Parenting coordinator
- Special needs, *see* Disabilities, child
- Stalking, *see* Domestic violence
- Standards for resolution of custody disputes
 - American Law Institute proposals, 48
 - approximation standard, 47–49
 - assessment information required (comparison), 53
 - best interests of child, 40–41 (n. 9), 43–45
 - de facto parent, 45
 - co-parenting model, 51
 - friendly-parent rule, 51
 - gender roles and, 49, 55 (n. 12)
 - joint custody presumption, 51–52
 - least detrimental alternative, 45
 - modification of custody, 52
 - parental deference standard, 50–51, 56 (n. 13)
 - parental fitness, 40–41 (n. 9)
 - presumption standard, 50
 - prohibited factors, 79–80 (n. 5)
 - primary caretaker standard, 47–49
 - psychological parent standard, 45–47
 - religious factors and judicial authority, 79–80 (n. 5)
 - substantial change of circumstances, 52, 56 (n. 16)
 - tender years presumption, 43
 - Uniform Marriage and Divorce Act (UMDA), 43–44
- Stepparents and stepsiblings, *see* Blended families under Family, structure of
- Strange Situation protocol
 - criticisms and revisions of, 154 (n. 32)
 - description of, 154 (n. 32)
 - findings based on SS research, 146
 - See also* Attachment in childhood, assessment of
- Substance abuse
 - assessment methods for, 511–524
 - collateral sources of information, 514–515, 519
 - interview, alcohol use, 514–516
 - interview, substance use, 514–518
 - physical testing (urine, hair, saliva, sweat, blood, breath), 519–523
 - psychological tests not useful, 523–524
 - definitions and rates of, 499–500
 - gender differences in, 500–505
 - parenting plans and, 525
 - parents
 - characteristics in substance-abusing, 505–506
 - effect on children, 506–508, 510–512
 - in response to divorce, 139
 - parenting behaviors and, 509
 - stages of, 500, 503–504
 - treatment and recovery programs for, 524
 - warning signs for, 500
- Substantial change of circumstances, *see* Standards for resolution of custody disputes
- Supervision of parenting time
 - effects of, 166
 - function of supervisor, 165–166
 - location/setting of, 156
 - no-contact exchange, 157
 - risk, assessing level of, 157–158
 - supervision of exchange only, 156–157
 - supervisor, sources for locating, 167
 - supervisor, type of, 156
 - visitation center, 156, 158–166
- Temperament, *see* Personality characteristics
- Tender years presumption, *see* Standards for resolution of custody disputes
- Testifying in court, 90–101
 - criminal proceedings and forensic evaluations, 83 (n. 30)

- demeanor, 98–99
- evidence, types of, 91
- examination, direct and cross, 98
- expert witness, 21–22, 92–95
- fact witness, 91
- legal standards, use of, 96–98
- materials to bring, 99
- meeting with attorneys, 99, 105
(n. 11, 12)
- preparation for testimony, 99
- qualifying an expert witness, *voir dire*, 93,
95, 99, 102
- scheduling, 99
- strategies for testifying, 98
- witnesses, types of, 91–92
- Tribal warfare in high-conflict families, 140,
153 (n. 28)
- Ultimate issue, general,
107–115
 - arguments for and against
recommendations, 107–111
 - current practices, 107
 - federal rules of evidence regarding,
95–96
 - professional guidelines, 107
 - reports - levels of data, inferences, and
conclusions, 111–114
- Unethical conduct, reporting of, 68
- Uniform Marriage and Divorce Act, 43–45,
54 (n. 1)
- United States v. Frye*, 104 (n. 6)
- Virtual visitation, *see*
Electronically-mediated parenting time
- Visitation
 - term for, 207 (n. 13)
 - See also* Parenting plans
- Visitation Center
 - children using, characteristics of,
159–161
 - effects of using, 166
 - finding for specific family, 167
 - referrals, reasons for and sources of,
158–159
 - services needed in, 161–163
 - services, length of, 163–164
 - standards and practices of, 164–166
- Voir dire, 93, 95, 99, 102
- Wiseperson, *see* Parenting coordinator