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## Child custody evaluations

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Approximately half of the marriages in the United States end in divorce, which affects more than 1 million children a year. Because approximately 10% of divorces involve litigation over custody or visitation, approximately 100,000 children a year are the subjects of legal battles.

Custody and visitation disputes may involve mental health professionals in at least six different ways, which may be complementary or mutually exclusive. (1) The most frequent possibility is that a child is already in psychotherapy when his or her parents decide to separate or divorce. In that instance the role for the therapist is not to make recommendations regarding the child's custody but rather to help the child cope with the changes in the family [1]. (2) Another possibility is that the court might order that a child receive therapy as part of its custody decree. Likewise in that instance, the therapist's job is not to influence the outcome of the legal dispute but to help the child adapt to the court's decision and, hopefully, have a good relationship with both parents. (3) The mental health professional might serve as a mediator for divorcing parents, offering an alternative to the adversarial process that frequently characterizes custody disputes [2–4]. (4) The therapist may serve as a counselor for the mother and father, helping them learn to parent their child in a cooperative rather than hostile manner [5]. (5) The person might be the therapist for the mother or the father if that individual has an emotional disorder that requires treatment. (6) Finally, the mental health professional (usually a psychologist or psychiatrist with child training) may perform a custody and visitation evaluation.

These evaluations usually consist of psychiatric or psychological assessments or both of the child and both parents, with conclusions and recommendations that are intended to be in the best interests of the child. In performing custody evaluations, the psychiatrist or psychologist may be an employee or consultant to the court or may be an independent professional who has been invited to conduct the evaluation by one or both of the parents. The methodology for a custody evaluation is the topic of this article. Because the practice of forensic child psy-

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chiatry and psychology is in an early stage of development, there is no single standard procedure for conducting custody and visitation evaluations. Many psychiatrists [6–15], psychologists [16–20], and other mental health and legal professionals [21–24] have published papers, chapters, and books on this topic.

Several recently published books are particularly comprehensive. For example, a book by Galatzer-Levy and Kraus [25] presents “the scientific basic of child custody decisions.” The editors and a cadre of authors apply a vast amount of research that ranges from child development to custody and visitation decisions. The National Interdisciplinary Colloquium on Child Custody Law [26] produced a “deskbook for judges.” The Colloquium is an independent group of practicing and academic lawyers, mental health professionals, and judges. Atkinson [27] authored a comprehensive legal text that addresses child custody issues. Guidelines for performing child custody evaluations also have been adopted by the American Academy of Child and Adolescent Psychiatry (AACAP) [28], the American Psychiatric Association [29], the American Psychological Association [30], and the Association of Family and Conciliation Courts [31].

### **Brief history of divorce and child custody**

Derdeyn [32], Kelly [33], and Mason [34] reviewed the history of child custody policy and custody disputes. Public policy and legal practice in the United States have passed through several stages, which may be summarized as follows.

Father preference. Through most of recorded history it was understood that the children of a marriage were the property of the father and he routinely took custody of the children when divorce occurred.

Mother preference. During the latter part of the nineteenth century, the English and American legal systems started to act on behalf of the child and consider the relative moral fitness of the competing parents. The “tender years” doctrine, which was introduced in the late nineteenth century, presumed that young children should be raised by the mother because she had a stronger attachment and would provide better care.

Best interests doctrine. Since the 1920s, lawmakers and courts have placed emphasis on “what is best for the interest of the child,” as expressed by Justice Benjamin Cardozo (*Finlay versus Finlay*, 1925) [35]. The concept of best interests of the child is broad and somewhat elusive but significant because it implies that the needs of the child are more powerful than the rights of either parent. During most of the twentieth century, however, courts almost always gave custody to the mother when applying the best interests test.

Women’s and men’s liberation. Starting in the 1970s, our society emphasized equality between the sexes—for example, many women objected to what they perceived as having lower status in the work place and many men objected to what they perceived as having lower status in child rearing. As part of this broad social phenomenon, fathers challenged the assumption that the mother routinely should be the custodial parent and the father the noncustodial parent. In 1981, a

landmark case (*ex-parte Devine*) established that the tender years presumption violated the Fourteenth Amendment to the United States Constitution [36]. It is estimated that fathers currently receive custody in approximately 10% of all divorces that involve children but in a higher percentage of contested cases.

### *Joint legal custody*

Many authors have advocated joint legal custody, especially when the parents are able to communicate and collaborate with each other in a healthy manner and take their children's needs and wishes into consideration [37–40]. When joint legal custody works, the parents engage in “co-parenting” [41]. It is estimated that joint legal custody occurs in approximately 15% of divorces that involve children, although this rate varies tremendously because of diverse and even contradictory laws and practices among the states. That is, the laws of some states (eg, Florida, Kansas, and Texas) strongly favor joint legal custody; the laws of a few states (eg, Oregon and Vermont) limit it by requiring consent of both parents before joint custody can be ordered.

### *Parenting plans*

In 1996, the United States Commission on Child and Family Welfare made recommendations that would change significantly the way divorced parents raise their children [42]. The Commission shifted the focus from “joint custody” to “parenting plans.” Both concepts emphasize that children of divorce should be nurtured and raised by both parents. Although the operational outcomes may be similar, there are differences in what these terms imply. The concept of joint legal custody emphasizes the legal end result (ie, that the judge has ordered that the parents share certain rights and responsibilities). The concept of parenting plans emphasizes the process by which divorcing parents work out an agreement regarding almost every aspect of their child's future care.

Some legal authors [43,44] have advocated parenting plans, and some states (eg, Colorado, Missouri, Oregon, Tennessee, Washington, and West Virginia) have passed laws consistent with the Commission's recommendations regarding this issue. To get away from the notion that the custodial parent was totally in charge and the noncustodial parent was a second-class citizen, these laws have emphasized shared parenting or co-parenting. In some states, the terms “custodial parent” and “noncustodial parent” are no longer used; rather, the laws use terms such as “primary residential parent” and “non-primary residential parent.” Rather than referring to “visitation,” these laws use the term “parenting time.” Divorcing parents are encouraged to work out a detailed agreement between themselves, which is called the parenting plan. If the parents are not able to develop a parenting plan together, they are expected to make use of mediation. If the parents and the mediator cannot agree on a parenting plan, the dispute is addressed in a traditional legal setting. Instead of having a trial to resolve the custody and visitation dispute, however, perhaps in the future we will have

“parenting trials” to address “parenting disputes.” In the future, this article may be entitled “Parenting plan evaluations.”

### **The psychiatric or psychological custody evaluation**

Most parents who separate and divorce do not need an elaborate and expensive custody evaluation conducted by mental health professionals. In most instances of divorce, parents work these issues out between themselves. In other instances, a mediator helps the parents agree on plans for the child or a judge simply takes the available information and makes the decision for the parents. A formal psychiatric or psychological custody evaluation may be helpful to the parents and the court in circumstances such as the following:

- One or both of the parents have a mental disorder that may affect the person’s parenting skills;
- The child may have specific mental health needs that should be considered in developing the custody arrangements or parenting plan;
- The divorce has been unusually hostile and the custody evaluation is seen as a less adversarial approach to making decisions involving the children;
- The child’s relative attachment to the parents seems like an important issue;
- It is suspected that one of the parents has tried to indoctrinate the child and alienate him or her from the other parent; or
- One parent has accused the other of physical or sexual abuse.

In conducting a custody evaluation, it is usually best to have access to all members of the family. That is, the evaluator should interview parents, stepparents, and all the children. The evaluator may want to interview other significant individuals either in person or by phone, such as the current love interest of either parent (especially if marriage is contemplated), grandparents, the baby-sitters, school personnel, and the psychotherapists who treated the child or one of the parents. There are several circumstances in which the evaluator is able to interview both parents:

- Sometimes the mother and the father—through their attorneys—agree on having a particular psychiatrist or psychologist conduct the evaluation;
- The judge who is hearing the case may order both parents to participate in the custody evaluation; or
- Sometimes the mother already has consulted a mental health professional and the father already has consulted a different mental health professional. The parents agree to exchange interviews so that the father’s expert has a chance to meet with the mother and vice versa.

If the evaluator has met with the mother and the father, it usually is possible to comment on the strengths and weaknesses of both parents, describe the child’s

attachment to both parents, and make specific recommendations regarding custody and visitation. In other circumstances the evaluator may not be able to accomplish a comprehensive assessment. That is, he or she might perform a one-sided evaluation by interviewing only one parent and the child. For instance, the father might consult a psychiatrist or psychologist and bring the child for evaluation, but the mother may refuse to come to any appointment. In such a case the evaluator could make limited observations and recommendations, such as commenting on the psychological condition of the father and the child, describing the parenting skills of the father, and evaluating the attachment between the father and the child. If the evaluator has seen only the father and child, he or she would not be able to say anything about the psychological status of the mother. Also, he or she usually would not be able to make any recommendations regarding custody because there is no way to compare the mother with the father. If the psychiatrist or psychologist has been asked to conduct a one-sided evaluation, it is important to determine whether the parent who is bringing the child actually has the authority to authorize the evaluation. Unless it is an emergency, it usually is considered unethical to see a child for psychiatric or psychological evaluation without the permission of the custodial parent.

### **Format for the evaluation**

Although practitioners may vary in their methods, the following components are common in custody and visitation evaluations.

#### *Initial conference*

It is usually helpful at the outset to have a meeting with the mother and father together to clarify the purpose and the format of the custody and visitation evaluation that will occur. This initial conference is used to review and resolve all of the administrative aspects of the evaluation, such as the following:

- The chronology of the marriage, including the births of the children, the separations, and the divorce;
- The legal status of the case, such as pending court dates;
- The court order that authorizes the evaluation;
- The names and addresses of the attorneys; and
- The current situation, including the current visitation schedule.

The initial conference is used to schedule all of the testing and interviews that constitute the evaluation. It is also an opportunity to obtain the written authorizations from both parents to obtain additional information from the pediatrician, teachers, therapists, and other pertinent individuals. The evaluator should obtain written permission from both parents to release clinical information at the end of the evaluation to both of the parents' attorneys, the guardian *ad litem* or attorney for the child (if there is one), and the court. The arrangements for payment also

should be established at the initial meeting. In many cases, the parents agree to split the cost of the evaluation and arrange for payment before starting the evaluation or at the time of each appointment. Finally, the practitioner can use the initial conference to see whether the mother and father want to proceed with a lengthy evaluation or if they are willing to negotiate with each other to arrive at some solution to the dispute, which makes the evaluation unnecessary.

At the outset of the custody evaluation, it is wise to clarify ethical issues such as confidentiality and role definition. Children and parents must be aware that this forensic evaluation does not provide total confidentiality. For instance, one of the parents might bring in a lengthy written diary and ask the evaluator to read it. Before accepting this document, the practitioner should explain clearly that any material that he or she reads in conducting the evaluation might have to be produced for the other side because of a court order pursuant to a request by the opposing parent and attorney.

The evaluator collects much personal information about the parents and other family members. Ultimately, much of this information is presented in the written report (to be read by a judge, attorneys, and other persons) and perhaps in the testimony of the evaluator. The mental health professional should reveal sensitive information only when it is necessary to support conclusions or recommendations, however. Otherwise, information about the parties and family members should be kept out of the report when it is not pertinent to the issues addressed in the evaluation.

Regarding role definition, it is important for the parties to understand the difference between a forensic evaluation and psychotherapy. That is, the forensic evaluation is not therapy, although it may be therapeutic in the general sense. Also, practitioners who are already involved with some member of the family as a therapist should not perform a custody evaluation [45]. Those are mutually exclusive roles that should be performed by different professionals.

### *Parent meetings*

The evaluator meets with each parent individually to complete a clinical evaluation and assess that person's parenting attitudes and skills. This evaluation may require one long meeting of 2 or 3 hours or several shorter meetings. Although evaluators have different priorities as far as what information to collect from each parent, a sample agenda could include the following items:

- A brief history of the marriage;
- A brief history of the period of separation and divorce;
- Information about each child, such as the parent's opinion of the child's strengths, weaknesses, and reactions to the divorce;
- The past history of the parent, including education, work history, and legal problems, such as arrests;
- The psychiatric history of the parent, including symptoms, episodes of treatment, and how it might have affected that parent's relationship with the child;

- The medical history of the parent, including use of drugs and alcohol;
- The parent's proposal for the child's custody and visitation;
- The parent's feelings toward the other parent.

To assess parenting attitudes, the evaluator may decide to present several hypothetical situations for the parent to assess and resolve. For example, "If you are granted custody of the child, how would you help the child maintain a good relationship with the other parent?" and "If you lose custody, how would you maintain a good relationship with the child?" As with any psychiatric or psychological interview, the evaluator is interested not only in the content of the answers but also in the way the parent approaches the task of the interview and the parent's style of relating to the interviewer.

### *Child meetings*

The meetings with the child should be used to accomplish these tasks: complete a clinical evaluation of the child, assess the child's attachment to each parent, determine how the parents' separation or divorce has affected the child, and assess whether the child has been indoctrinated in some way. In most circumstances the evaluator should determine the child's preferences regarding custody and visitation and his or her reasons for that preference. In some instances it may not be appropriate or useful to elicit the child's conscious preferences. For example, a young child or a child who is severely mentally disturbed might be confused or befuddled by an adult asking where he or she wants to live.

There should be at least two interviews with the child so that each parent brings the child for one appointment. The content and format of the interviews depend on the age of the child.

With preschool-aged children, the evaluator may want to start the interview with the parent and the child together. The evaluator could invite the parent and child to engage in some play activity together, such as drawing pictures or building with blocks, and ask them to plan a weekend outing together. It should be possible to make observations about how the child and the parent deal with such an assignment. Approximately halfway through the meeting the evaluator should ask the parent to leave and explain to the child that the parent is waiting outside the interview room. (The evaluator should explain this procedure to the parent before the interview.) When the parent leaves the room, the evaluator should observe how the child and parent deal with separation. During the remainder of the meeting, the evaluator can use play, drawing, or other techniques that are customarily used in assessing young children. At the end of the meeting, the evaluator should observe how the child and parent deal with reunification.

With latency children, the evaluator can use a semi-structured interview commonly used in clinical evaluations of children. He or she can introduce topics or tasks that pertain to school, peers, recreational activities, and family relationships. Simple projective questions can be helpful, such as the baby bird

story, the deserted island story, going on a picnic, and the magician who can grant three wishes [9].

In using the baby bird story, the evaluator says that he or she wants the child to help make up a story. The evaluator may say, “One time there was a baby bird that lived in a . . . [The child says, “nest”]. The bird lived in the nest with its . . . [“mother bird”] and [“father bird”]. One day there was a big storm and there was a lot of rain and . . . [“lightning”] and [“thunder”] and [“wind”]. There was so much wind that the mother bird was blown over in that direction and the father bird was blown over in the other direction. The baby bird was blown out of the nest. The baby bird, by the way, could fly, but only a little bit. Tell me what happens next in the story.” At that point the evaluator prompts the child to finish the story with as much detail as possible.

In using the deserted island story, the evaluator asks the child to help with a new story. The evaluator asks the child if he or she knows what an island is and then what a deserted island might be. If necessary, the evaluator “sets the scene” by providing a brief description of a deserted island. Then the evaluator proposes that the child might go on a trip to a deserted island and asks questions such as: “How would you get there? What provisions would you need to take? Who would you take with you?” The child might list several people. The evaluator can say: “Suppose you only have room to take one person with you to the deserted island. Who would you take? Why would you take that person?” The picnic story is similar, but a picnic might be more familiar to some children than a deserted island.

In using the magician story, the evaluator first asks the child if he or she knows what a magician is. The evaluator sets the scene with a description of what a typical magician looks like and what the magician does. Then the evaluator says, “Suppose you are walking down the street. You see a magician who has on a black outfit and a cape. The magician comes up to you and says, ‘Freddie, I am a magician. I can give you anything that you want. I can change anything in your life that has happened to you. I can make anything happen in the future that you may want. Tell me something you want me to do.’” After the child replies, the magician offers two more wishes [9]<sup>1</sup>.

The child might express himself or herself through drawings, such as drawing a person, drawing the family doing something exciting, or drawing a picture of something happy or fun and something that is not so nice. One approach is to make a list of the parents and stepparents and ask the child what he or she likes and does not like about each person. The child’s dislikes might turn out to include information about child maltreatment or parental behavior, such as alcohol and drug abuse. The evaluator might ask the child to describe the current custody and visitation arrangements and ask whether the child would want them changed in any way. If the evaluator chooses to elicit the child’s preferences, it should be

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<sup>1</sup> The previous three paragraphs are reprinted from Bernet W. The child and adolescent psychiatrist and the law. In: Noshpitz JD, editor. Handbook of child and adolescent psychiatry. New York: John Wiley & Sons; 1998. p. 438–67; Reprinted by permission of John Wiley & Sons, Inc.



done in a way that minimizes the importance of the question. It is useful to mention that it is really the judge who is going to decide this issue, not the child or the interviewer. Because of the possibility of parental indoctrination, the interviewer should explore what each parent told the child to say to the evaluator and what the parents say about each other.

With adolescents, the evaluator may take the tack of asking them to express opinions about the current situation at home. For instance, adolescents might relate their perception of the relationship between the parents, what they know about the reasons for the divorce, and the effects of the divorce on their own life. Most adolescents can discuss the advantages and disadvantages of life with each parent, the merits of particular visitation arrangements, and how to keep their own lives from becoming entangled with their parents' issues. The adolescents may have definite opinions about where they want to live and what they want to say to the judge. The evaluator should explore in detail the reasons for their preferences and other aspects of the case, such as how the adolescents intend to maintain a good relationship with both parents.

### *Outside information*

In conducting a custody and visitation evaluation, the evaluator should collect information from certain outside sources after obtaining permission from one or both parents, as appropriate. It is usually helpful to interview the other people who live in the mother's or father's home, such as stepparents, grandparents, nannies, and other siblings who are not directly involved in the custody dispute. In some cases it is appropriate to speak on the phone with the family's pediatrician, because he or she may provide unbiased observations about both parents' skills and attitudes. Although schoolteachers and daycare workers may provide useful information, the evaluator must be mindful that they already may be allied with one of the parents. It is important to speak to previous and current psychotherapists of the child and the parents. Although it usually is advisable for therapists to avoid making formal recommendations or testifying in court, it can be helpful for therapists to discuss their observations of the parties with the individual who is conducting the independent forensic evaluation.

### *Psychological testing*

Psychological testing can be useful in many custody and visitation evaluations. Comprehensive personality inventories such as the Minnesota Multiphasic Personality Inventory-2 [46] and the Personality Assessment Inventory [47] can be used to screen for unidentified parental psychopathology and determine each parent's overall psychological adjustment. Both of these tests also contain scales that indicate the person's openness to providing sensitive information; identification of a defensive parent is often particularly useful when there are allegations of abuse or misconduct.

In some circumstances, it may be helpful to conduct formal intellectual testing (if there is a question about a parent's cognitive abilities) or a battery of projective

tests (if there is a question about the diagnosis of a parent's mental illness). Projective psychological tests constitute an opportunity to observe the parent's efforts to cope with an unstructured and stressful situation and provide information about psychological resources and characteristics. Other psychological tests, such as the Parenting Stress Index [48], can provide information about a parent's level of attachment to the child, perceived problem areas in the child, and the perceived helpfulness of the spouse. The Ackerman-Schoendorf Parent Evaluation of Custody Test [49] is designed to assess the fitness of parents for custody. This test is composed of three scales: observational, social, and cognitive-emotional. If psychological testing is used, the same tests should be administered to both parents.

Psychological testing of the child also can provide useful information. Behavior rating scales such as the Achenbach Child Behavior Checklist [50] and the Personality Inventory for Children [51] can identify problem areas and clinical syndromes. The Family Relations Test [52], although not standardized, provides a nonthreatening means of assessing a child's feelings toward each parent and the child's overall style of dealing with unpleasant feelings.

Bricklin [53] introduced several standardized psychological tests that are specifically intended for custody evaluations, including the Bricklin Perceptual Scales (BPS) [54], the Perception-of-Relationships Test (PORT) [55], and the Parent Awareness Skills Survey [56]. In administering the BPS, the evaluator asks the child 32 questions about the mother and the same 32 questions about the father. One of the questions, for example, is, "If you had to memorize a long, boring poem for school, how well would Mom do at being patient enough to help you learn this?" The questions are sequenced in such a way that the interviewer never asks the child to compare directly the merits of the mother and father. In this test, the child answers the questions verbally and nonverbally by punching a hole in a card with a stylus. The child's nonverbal responses can be measured and the 64 answers scored to give a composite score, which indicates which parent is the preferred parent for that child. According to Bricklin, the nonverbal responses are less susceptible to parental influence than are verbal responses. The theoretical basis for the BPS and PORT is that the parents may seem to others to be equally qualified to be the custodial parent, but the child may perceive one of the parents to be more nurturing or desirable.

### *Conference with attorneys and parents*

At the end of a custody and visitation evaluation, some practitioners schedule a conference with the attorneys and parents together. This face-to-face conference gives the evaluator an opportunity to explain his or her conclusions and recommendations and explain why certain factors were considered more important than other issues. This wrap-up conference gives the parents and attorneys an opportunity to ask questions and allows both parties to have access to the evaluator's answers. Parents and attorneys deal with these conferences in many ways, and sometimes it leads to a constructive discussion of co-parenting. A variation of this approach is to schedule separate meetings: first with the two

attorneys, followed immediately by one parent, and followed immediately after that by the other parent. After the wrap-up meeting(s), the evaluator finalizes the written report and sends it to the attorneys and to the court. Occasionally, the parents do not want a wrap-up conference or a face-to-face meeting, so the evaluator simply prepares the written report and distributes it.

### **Critical factors**

It is understood that in contested cases decisions regarding custody and visitation are guided by seeking the best interests of the child. Parents and attorneys may disagree about exactly what constitutes the best interests of this child in their particular set of circumstances, however. There is no standard set of guidelines for what factors should be taken into consideration and what weight should be given to each factor. Each state has its own laws and precedents that spell out the issues for judges to consider in that jurisdiction. It is likely that evaluators and judges are influenced by their personal values when they make recommendations and hand down decisions in these cases. Many legislatures, courts, and mental health professionals consider the following issues important in child custody and visitation determinations.

#### *Factors associated with the parents*

##### *Parental rights doctrine*

When the dispute is between a biologic parent and some other individual, such as a grandparent or an uncle or a foster parent, it is generally held that the biologic parent has a greater right to the child as long as he or she is considered “fit.” Sometimes this principle seems to contradict the principle of pursuing the best interests of the child, because a child might be removed from a wonderful foster home and returned to biologic parents who are barely adequate. In the 1966 landmark case of *Painter versus Bannister* [57], the Iowa Supreme Court decided that a boy should remain in the custody of his grandparents rather than return to the custody of his father.

##### *Parental morals*

Courts do not look favorably on parents who have a history of felony convictions, prostitution, substance abuse, or adultery. Attitudes about moral issues change over time. Previously people believed that parents never should date until the divorce has been finalized, but such conduct is currently acceptable in most jurisdictions.

##### *Parental attitudes and parenting skills*

The evaluator should be able to assess whether the parent truly tunes in to the child’s emotional and physical needs or simply considers the child a narcissistic extension of himself or herself or is anxious, passive, and helpless in common

child care situations. Another issue is whether the parent truly appreciates that it is in the child's interests to have a good relationship with both parents, which is true in most, but not all, instances.

### *History of caretaking*

In some families one of the parents has been much more involved with day-to-day child-rearing activities. That is, the parent has fed and bathed the children, supervised their homework, organized their birthday parties, and taken them to the pediatrician, which may favor that person to be the custodial parent.

### *Continuity of placement*

It is usually preferable to continue the current custody arrangement unless there is a good reason to change it. Usually a parent cannot file for a change in custody unless there has been a change in circumstance since the last time the court decided the issue.

### *Physical health*

It is important to assess whether one of the parents has a serious or chronic illness that would compromise that person's ability to nurture the child.

### *Mental health*

The clinical evaluation should reveal any serious psychiatric condition or any significant drug or alcohol abuse. The evaluator should comment on whether the psychiatric condition impairs parenting skills. For example, a history of repeated bouts of paranoid schizophrenia would be ominous, whereas a past history of a postpartum depression might have little impact on current and future parenting abilities. The specific diagnosis may not be as important as an assessment of the person's parenting skills in the present and the future.

### *Religious beliefs*

Although this is not a psychiatric issue, many judges prefer a parent who is devout over one who is disinterested in religion. An evaluator may be asked to comment on whether a person's religious beliefs have reached the point of becoming fanatical or even delusional, which could affect one's style of parenting. Also, the issue of religion might be a consideration if the child already has formed an attachment to a particular faith and it would be confusing or disruptive to interrupt that attachment.

### *The households*

A parent who intends to remarry may be able to provide a more traditional family-oriented atmosphere. The evaluator should be aware of this and interview the potential step-parent(s). The evaluator also should have some awareness of the general neighborhood in which each parent will live after the divorce.

### *Financial considerations*

This generally is not a factor, because ideally payment of child support tends to equalize financial differences. However, an evaluator might consider finances to be meaningful if it results in a large difference between the households, for instance, if one parent lives in a neighborhood that is much safer and has much better schools.

### *Allegations of physical or sexual abuse*

In recent years, allegations of abuse have complicated the conduct of custody and visitation disputes. What typically happens is that one parent alleges that somebody in the other household—the parent or stepparent or perhaps a love interest—has sexually abused the child. The alleging parent usually wants visitation to be curtailed or discontinued. If these allegations are substantiated, it has a bearing on the child's custody and visitation. AACAP has developed a practice parameter for the evaluation of children who may have been abused [58].

### *Factors associated with the child*

#### *Child's attachment to the parents*

This issue is important and can be assessed by a mental health professional who is experienced in interviewing and evaluating children. The child psychiatrist or psychologist can find indications of the child's attachment and bonding to the parents in various components of the evaluation. For instance, information may be obtained from observations of the child and parent playing together; the details of the baby bird story, the picnic story, the family drawing, the lists of likes and dislikes, and other parts of the semi-structured interview of the child; testing, such as the BPS and PORT; and the parents' discussions regarding the child. Many children have a solid, positive attachment to both parents, which is the most desirable circumstance. Some children, however, have a much stronger and healthier attachment to one of the parents.

#### *Child's preference*

Many children understand that their parents are fighting over their custody but do not have a strong opinion or preference as to their living arrangements as long as they continue to spend time with both parents. Other children are able to express a definite preference and can explain their reasons for that preference. For instance, a child might express that one parent is warm and nurturing and the other parent is cold and aloof. The evaluator should determine whether the child's stated preferences are substantive, meaningful, and consistent with the evaluator's own observations (eg, "My stepmom is really mean!"), based on trivialities ("Daddy lets me stay up late on the weekend."), or misinformed ("Mommy told me that Daddy is stingy."). Whether the judge considers the child's preference depends on the child's age and varies from state to state. In general, a court is likely to give more serious consideration to the preference

expressed by an adolescent than that of a child. In some states, the court is required by statute to consider the child's preference once the child reaches a particular age.

### *Child's gender*

Some courts and mental health professionals have believed that there is a slight preference for placing custody with the parent of the same gender as the child. This factor might be contributory, but not decisive, to the final recommendation.

## **Indoctrination and alienation**

Mental health professionals have noticed that children of divorce may favor one parent over the other and may resist greatly visiting the nonresidential parent [59–61]. This issue comes up in custody evaluations and in the psychotherapy of children of divorced parents. One parent (usually the nonresidential parent) may allege that the other parent (usually the parent with whom the child lives most of the time) is actively indoctrinating the child to reject the first parent and favor the second parent.

The forensic evaluator, the attorneys, and the judge should not jump to the conclusion that the preference, which the child experiences strongly, is the result of parental indoctrination. There are several possible explanations for the child's active rejection of visitation.

### *Maltreated child*

Perhaps the child actually was abused or neglected or disliked by one parent or current love interest of the parent, so it is natural that the child would not want to visit that household.

### *Purposeful indoctrination*

Perhaps one parent systematically and purposefully has indoctrinated the child to favor him or her (this allegation is usually made against the mother) by emphasizing his or her affection for the child and criticizing or even condemning the other parent. If that occurs, it could be driven by several possible mechanisms: by one parent's realistic appraisal of the situation, by spitefulness toward the other parent, by a strongly felt need for the child's affection, or by one parent's distorted perceptions regarding the other parent.

### *Accidental indoctrination*

Perhaps the primary residential parent (again, usually the mother) has caused the child's alienation from the other parent but has not done it on purpose. For instance, the mother may be an anxious person who worries and communicates

her anxiety to the child. She may start crying or be noticeably worried when the child leaves for visitation but insist that the child go anyway.

### *Worried child*

It is possible for the child to resist visitation and seem to favor the residential parent over the nonresidential parent despite the fact that neither of the parents did anything specific to cause the child to have these feelings. That is, perhaps the child started out with a slightly better attachment to the residential parent. The child worried after the departure and loss of the nonresidential parent, so the child becomes fearful that he or she also will lose the remaining residential parent. As a result, the child experiences an attachment to the residential parent that is greatly exaggerated and fears separation from that parent.

### *Stubborn child*

Although the child has a good attachment to both parents, the child may be upset that they have separated and divorced. That is, the child is upset (sad, angry, resentful, worried) about the situation and does not want to participate in the process. The child expresses his or her feelings by objecting vehemently and stubbornly to the visitation, although ordinarily he or she enjoys being with the nonresidential parent.

### *Child escaping conflict*

Finally, there is a common psychological mechanism—cognitive dissonance—through which the child's affections can become polarized. Specifically, the child's intense like of one parent and dislike of the other becomes his or her way of resolving the psychological tension that he or she experiences. For example, if the mother and father have been actively and visibly fighting with each other, the child experiences cognitive dissonance when trying to have affection for both of them at the same time. The child is unable to reconcile two dissonant thoughts, "My mother is right" and "My father is right." The dissonance creates a tension in the child's mind, which is resolved by believing that he or she loves one parent and hates the other.

Gardner has used the term "parental alienation syndrome" for some of these cases, specifically, cases in which one parent has consciously or unconsciously induced the child to reject the other parent. He has offered some suggestions for how parental alienation can be identified [60] and treated [62].

## **Common scenarios**

### *Two competent parents*

After conducting a custody evaluation, perhaps the most common result is to find two parents who are competent and nurturing in their own ways. That is,

either of the parents would be a more-than-adequate custodial parent. If that is the case, the evaluator can list the various factors mentioned previously—and others that might be pertinent—and indicate which ones favor the mother and which ones favor the father. The evaluator also can indicate the significance or weight attached to each factor. By presenting the data in this way, the evaluator and the judge can tally up the list and determine whether one parent is preferred over the other.

### *Two deficient parents*

In some custody disputes, the evaluator may find that neither parent has the skills, attitudes, and ego strength to be fully satisfactory. In those situations, the evaluator must be satisfied with “the least detrimental alternative” [21,22]. If the evaluator is concerned about the parents’ abilities, it also may be an opportunity to be creative and offer additional suggestions that might benefit the children. For instance, supportive therapy, parenting classes, or ongoing mediation between the parents might be helpful. The evaluator might recommend some continuing involvement by a capable relative or continuing supervision by a social service agency.

### *One competent, one deficient parent*

Arriving at a conclusion in this kind of situation seems easier because the evaluator can recommend that the competent parent have custody of the child. The evaluator can make specific suggestions designed to help the noncustodial parent become more capable, however. The evaluator also should discuss whether it is important for the child to continue to have a good relationship with both parents or whether one of the parents is so disturbed that he or she should not have contact with the child.

## **Less common scenarios**

### *Parent versus stepparent*

Consider the situation in which a girl was raised from infancy by a mother and a stepfather. At age 10, the mother died suddenly and a custody dispute ensued between the biologic father, who had not seen the child in years, and the stepfather. In that case a compromise was achieved in which the girl made a gradual transition from living with the stepfather to living with the father, and she was allowed to have some continuing contact with the stepfather.

### *Homosexuality*

In some states (eg, California and New York) it is common for male homosexuals and lesbians to have custody of their children, but it is less usual in other



parts of the country. A custody evaluation that involves a homosexual parent should be based on objective data and not on stereotypes. The professional literature regarding this issue indicates that homosexuals can provide healthy, nurturing homes, although the children may be affected by social stigmatization in the community [63–65].

#### *Masked, reverse custody dispute*

Two parents, both successful professionals, divorced and agreed to joint custody and arranged for the two adolescent children to alternate living in the two households on a week-to-week basis. The parents stated that they worked out that arrangement so that the children would have the opportunity to spend time with both of them. Neither parent was willing to compromise his or her career to be a more consistent parent, however. The teenagers said that they would be happy living with either the mother or the father but hated going back and forth every week.

#### *Dispute over religious upbringing*

Strictly speaking, each parent has the legal right to take his or her child to whatever religious activity the parent desires when the child is in that parent's household. In some cases, both parents want to enroll the child in religious education and promote actively and assertively their respective religious beliefs. Because some religious beliefs profoundly contradict each other (one religion versus another; one sect versus another; religious belief versus atheism), the child may become mentally confused by incompatible dogmas and emotionally disturbed by intense loyalty conflicts. The evaluator should advise the parents not to subject the child to this kind of experience. If the parents cannot negotiate a compromise, probably the custodial or primary residential parent should be in charge of the child's religious upbringing.

#### *Dispute over relocation*

Americans are mobile, and frequently one or the other of divorced parents moves some distance from their original home, which may create a problem for the noncustodial parent to exercise visitation. These cases involve conflict among three competing interests: the right of the custodial parent to move, the right of the noncustodial parent to have visitation, and the right of the child to have a good relationship with both parents and stability in his or her life. Legislators, judges, and mental health evaluators have widely differing opinions on how to deal with these situations. The National Interdisciplinary Colloquium on Child Custody Law [26] made the following recommendations regarding relocation disagreements: that there be a "mild presumption" favoring the custodial parent's choice, that the custodial parent be allowed to relocate if he or she guarantees, at his or her expense, the same visitation for the other parent as was previously allowed, and that the custodial parent be allowed to relocate to accept a significantly

enhanced employment position or because of an out-of-state remarriage. Because of deep ties to friends, relatives, or school, there may be times when it is in the child's interests to transfer custody to the parent who stays in the original community. For example, an adolescent may want to continue in the same high school rather than move away with the custodial parent.

### *Dispute over frozen embryos*

In a Tennessee case (*Davis versus Davis*, 1990) [66], a married couple arranged for in vitro fertilization of several of the wife's eggs by the husband's sperm. The fertilized eggs were frozen for later use. The couple divorced and each of them wanted control over the embryos. The Court of Appeals created a simple solution to this kind of case: the embryos should be considered joint property and nothing could be done with them unless both parties agreed.

### *Grandparent visitation*

In recent years courts have considered whether grandparents have the right to visit their grandchildren, even without the agreement of the children's parents [67]. Herman [68] suggested that psychiatric experts be asked to make recommendations regarding grandparent visitation after considering the potential pros and cons (ie, the possible benefit to the child on the one hand and the possible aggravation of family conflict on the other). Typically, that issue would arise in cases that already have come to the attention of the court, such as a custody or visitation dispute between the parents. In a recent ruling (*Troxel versus Granville*) [69], the United States Supreme Court concluded that the Constitution protects the right of parents to "establish a home and bring up their children." That means that in an intact family, grandparents are not able to ask the court to override the parents' refusal to allow visitation.

### *Parental kidnapping*

One of the tragic outcomes of child custody disputes is that one of the parents may kidnap the child [68]. This may occur if one of the parents concludes that his or her own circumstances are above the law or if he or she believes the child may be in danger if allowed to visit the other parent. A parent intent on abducting a child may be assisted by an underground network. Parents who desire to bring back an abducted child have been known to hire private commando units. Federal laws (the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act) and an international agreement (the International Child Abduction Remedies Act) provide procedures and sanctions to address some aspects of this issue. These laws provide that the ensuing custody trial should take place in the location where the child habitually resided before the abduction. A more detailed discussion of this topic can be found in the article by Johnston elsewhere in this issue.

## **Possible outcomes of custody disputes**

### *Sole custody*

With sole custody, the child usually lives primarily with the custodial parent and has visitation with the noncustodial parent. This has been the most common arrangement and usually has resulted in the mother having custody. In most instances, the child has regular, predictable visitation with the noncustodial parent. In some cases, the visitation is limited or supervised if the court finds that the noncustodial parent may be irresponsible (ie, engages in drinking and driving) or dangerous to the child. The evaluator may recommend sole custody if the parents are so angry at each other that they are not able to collaborate in raising the child. Sole custody also is appropriate if one parent is clearly competent and the second parent is significantly impaired and would not be reliable in caretaking activities.

### *Split custody*

Split custody means that the children are divided between the parents rather than primarily living in the same household. It is generally considered advantageous to keep siblings together, mainly because children of divorce feel threatened and insecure and they derive support and consistency from each other. If the brothers and sisters are living together, they have the sense that at least part of the family is still in one piece. In other circumstances, the evaluator may recommend split custody if it seems advantageous to separate the siblings. For instance, if divorcing parents have three children—a preadolescent boy and two baby girls—it might work out best for the father to have custody of the boy and the mother to have custody of the girls. When siblings live primarily in different households, visitation can be arranged so that they are together much of the time. Every-other-weekend visitation, for example, can be scheduled in such a way that the siblings are always together every weekend.

### *Joint legal custody*

In joint legal custody both parents have equal rights and responsibilities regarding issues such as the child's education, medical care, and religious upbringing [37,38,40]. In joint legal custody, neither parent's rights are superior. When parents have joint legal custody, the child usually lives primarily in one household and has visitation at the other one. The joint custody order may include language to the effect that if the parties cannot agree on any particular issue, one party (usually the parent with actual physical custody) has the final and exclusive decision on that issue. The evaluator may recommend joint legal custody if the parents are able to communicate with each other and are willing to take each other's opinions into consideration. Joint legal custody is not an appropriate recommendation if the parents seem incapable of cooperating with each other [70].

### *Co-parenting*

Some states (eg, Colorado, Tennessee, and Washington) have changed their laws related to divorce and child custody such that parents are encouraged or perhaps required to negotiate between themselves and develop elaborate, detailed parenting plans. These plans define the child's schedule for living with each parent, decide which parent makes decisions regarding education, medical care, and other issues, and determine which parent pays for medical care and education [71]. These plans can be highly individualized. For instance, the parenting plan might say that the mother makes all decisions regarding medical care, that the father makes all decisions regarding religion, and that both parents together make all decisions regarding education. Parenting plans do not use terms such as "custody" or "visitation" but simply refer to the mother's and father's "parenting time."

Inevitably there are times when parents disagree, including those who have joint legal custody or have a co-parenting arrangement. Hopefully the parents are able to work out most disagreements between themselves or, perhaps, with the help of a therapist whom they both trust. If that fails, the disagreeing parents may need to turn to a formal process of mediation (in which a neutral third party helps the parents settle their differences through negotiation and compromise) or arbitration (in which a neutral third party hears both sides and makes decisions for them).

### **The written report**

The evaluator should be aware that the written report is seen by several people, including readers who may attach undue significance to isolated sentences and phrases. The best approach is to make the report detailed enough so that the reader understands fully the methodology that was followed and the basis for the conclusions and recommendations but not so detailed as to include every datum that was collected. The outline for a typical report includes the following headings:

Identifying information: Names and birth dates of the children and the contesting parties, who are usually the parents.

Referral information: A brief chronology of the marriage, a statement of the current status of the children's custody and visitation, and an excerpt from the court order that authorizes the evaluation. There should be a statement about the circumstances of the referral and the specific purpose of the evaluation.

Procedure for the evaluation: A list of the various meetings that were held, the psychological tests used, and the outside information that was collected.

Observations: Information that contains a separate section for each family member. Each parent is discussed individually, with a summary of that person's strengths, weaknesses, personality traits, and significant medical and psychiatric problems and whether these factors have a bearing on the person's ability to be a good parent. Each child also is discussed individually, with a summary of strengths and weaknesses, identification of any psychiatric disorder, and a comment about how the child is coping with the parents' divorce. The report also

should address the child's attachment to each parent, whether the child has a preference regarding custody and the reasons for the preference, and whether the child seems unduly influenced by one of the parents.

**Conclusions:** A list of specific statements that the evaluator believes are supported by data (ie, the observations discussed previously). For instance, the evaluator might conclude that one parent has had a major mental illness in the past that is likely to be a problem again in the future, that a parent has personality traits or a personality disorder that affects his or her parenting abilities, or that the children are uniformly attached and bonded to one parent more than the other.

**Recommendations:** This section should follow logically from the conclusions. The evaluator may make recommendations regarding the custody of the children, the visitation schedule, whether the visitation should be supervised, whether any member of the family should be in psychotherapy, whether the parents should attend parenting classes, and other issues that are important in this particular evaluation.

## **Summary**

Because divorce is so common, it is important for our society to find ways to minimize the psychological trauma that is experienced by children of divorced parents. Ideally, divorcing parents would not fight so much over the children, in front of the children, and through the children. When disputes do arise regarding custody, visitation, and parenting plans, mental health professionals can assist the judges who make the final decisions by performing competent custody evaluations. These evaluations should be conducted in a systematic manner, should consider several critical factors in an unbiased manner, and should result in recommendations that promote the best interests of the children. In most cases, the goal is for each child to have strong, healthy relationships with both parents. After conducting an evaluation, it is usually possible to make recommendations regarding custody, parenting arrangements, and forms of counseling and therapy that should be helpful to the family members. It is important to communicate these recommendations in an articulate manner, whether verbally or in the written report.

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