

CHAPTER 11

Child Custody Evaluation

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Child custody evaluations may be the most complex, difficult, and challenging of all forensic evaluations (Otto, 2000; Otto, Edens, & Barcus, 2000a). In contrast to the majority of forensic evaluations, in which the mental health professional assesses one person with respect to a specific psycholegal ability or capacity (e.g., a criminal defendant's capacity to stand trial; a personal injury litigant's emotional adjustment and functioning pre- and postaccident; a potential witness's capacity to testify), child custody assessments involve evaluation of numerous parties with respect to multiple issues or capacities. The child custody evaluator must assess, at a minimum, the two parents contesting custody and their child or children. (Although some custody evaluations may involve one child and others may involve multiple children, we use the term children throughout the chapter for the sake of consistency.) Often, there are significant others involved and evaluation of them is required (e.g., potential stepparents, potential stepsiblings). Opinions offered by these expert evaluators then go to inform the legal decision-maker's judgments about the physical custody or placement of the children (i.e., physical or residential custody) as well as who will be involved in making important life decisions for the children (i.e., legal or decision-making custody).

What makes evaluation of these multiple parties particularly difficult is the expansive and far-ranging nature of the

task. Child custody evaluators must assess the examinees with respect to a variety of behaviors, capacities, interests, and needs. This stands in stark contrast to the more narrow questions that need to be answered in many other forensic evaluations. To further complicate the evaluation task, all of the parties involved may offer their own perspectives on events and issues of relevance, and many may have an investment in a particular outcome. Finally, given the stakes involved (i.e., residential placement of the children and decision-making authority for them), emotions in cases of contested custody run high.

After discussing the family bar's perception of mental health professionals' involvement in cases of contested custody, we provide a brief overview of contemporary child custody law in the United States. Adopting Grisso's (1986) model of forensic evaluation, we believe it necessary to identify first the law that controls child custody decision making so that the psycholegal contours and factors that must be evaluated can be identified. We follow this with a discussion of child custody evaluation guidelines that have been promulgated by various authorities, as they provide some direction with respect to establishing a standard of care. After reviewing the custody evaluation process, we discuss the research most relevant to child custody evaluation and decision making.

LANDSCAPE OF CHILD CUSTODY EVALUATION TODAY

An important starting point is a consideration of the frequency with which the courts must make decisions about custody and placement of children. Although seemingly straightforward, this is more difficult to determine than it appears. First, there is no uniform formula used to derive a “divorce rate,” making interpretation and comparison of data difficult. The percentage of marriages that end in divorce for some cohorts in the United States, however, may be as high as 40%, and the rate of divorce has increased dramatically over the past 40 years, the divorce rate in the United States approximately doubled between 1960 and the end of the twentieth century (Hughes, 1996). Although the above statistics may be debated, what remains clear is that a substantial number of marriages end in divorce, a fair number of which have produced children (e.g., anywhere between 36% and 48% of married couples who divorce report having children in the family below the age of 18; Clark, 1995). Thus, family courts may be faced with issues of child custody in a large number of cases.

But even with a high divorce rate among couples with children, the courts do not need to make decisions about child custody if the parties agree about what would be in the best interests of the children. Contrary to common perceptions about divorcing parents fighting over their children, in the majority of cases, they do not litigate issues of custody. Maccoby and Mnookin (1988), in a study of California divorces, reported that 70% of divorcing parents had reached an agreement about the custody of their children. Similarly, McIntosh and Prinz (1993) reported that in only 14% of the 603 family divorce files they reviewed in a metropolitan South Carolina county was custody of the children disputed; agreements presumably were reached in over 85% of the cases. Although this indicates that child custody evaluations are not common, the current divorce rate in this country suggests that significant numbers of child custody evaluations are being conducted for the courts.

Of course, the above findings do not necessarily mean that the majority of parents agree about what is in their children’s best interests regarding matters of custody, only that they choose not to litigate such issues. Weitzman (1985) reported that 57% of the fathers she interviewed reported retrospectively that they had wanted physical custody of their children. Only 33% of this group reported that they mentioned this to their wife, and only 13% reported that they sought custody in the divorce petition. Similarly, about one-third of the fathers in Maccoby and Mnookin’s (1988) study reported that they

would have liked to have been the primary residential parent, yet more than 50% of them reported not seeking custody.

Consistent with the above, contemporary research suggests that, despite changing conceptions about parenting and sex roles, mothers almost always become the primary parent subsequent to divorce. Although there is some variation as a function of children’s age and sex, according to U.S. Census data, 84% or more of children live primarily with their mother postdivorce (U.S. Bureau of the Census, 1989). Whether this reflects that mothers remain the primary parents and caretakers of children despite changes in societal attitudes and thinking, that fathers perceive the legal system as biased toward women with respect to issues of custody and thus do not seek custody, or that the courts are truly biased with respect to issues of custody remains to be determined.

The Family Bar’s Perception of Mental Health Professionals in Cases of Contested Custody

Once the report comes out in your client’s favor all you have to do is convince the court that this evaluator is truly an expert whose recommendations must be followed or the well-being of the client will be imperiled. Then again, if the evaluation is against your client, it is all psychobabble, erroneous data, and dangerous conclusions and clearly the court should not abdicate its responsibility to do what is right for the children because of the temptation to follow the specific recommendations of this charlatan. (Oddenino, 1994, in an article written for attorneys about how to use custody evaluations to their clients’ advantage)

Although mental health professionals are involved in contested custody cases with some frequency, a separate question is how valuable attorneys and judges find their input. There is a small body of research that indicates that judges and attorneys consider the input and opinions of mental health professionals cautiously in cases of contested custody and they look to other sources of information to inform their decisions (Otto, Edens, & Barcus, 2000a).

In a survey of 57 judges and 23 trial commissioners involved in family law cases, although custody evaluations were frequently cited as an efficient means of collecting information about the family, “professional advice” ranked twelfth on a list of 20 potential custody decision-making criteria (Settle & Lowery, 1982). Similarly, in interviews with 13 family law judges presiding on the west coast of Florida, Kuehnle and Weiner (2000) reported that one of the most valued aspects of child custody evaluations was the independent information-gathering function that the experts served.

In a study of Virginia judges conducted by Melton, Weithorn, and Slobogin (1985), mental health testimony was endorsed as no more than occasionally useful in cases of contested custody. Felner, Rowlison, Farber, Primavera, and Bishop (1987) reported that only 20% of the attorneys and 2% of the judges they surveyed identified the recommendations of a mental health professional as one of the five most critical pieces of information in terms of custody decision making. In a survey examining the value that family law judges placed on different sources of information when making decisions about custody and placement of children, the expert opinions of mental health professionals were rated as less significant than the testimony of the parties and of the children themselves (Reidy, Silver, & Carlson, 1989). Thus, mental health professionals should enter the arena cautiously and with the understanding that although attorneys and judges may value their input, they are not beholden to it.

LAW OF CHILD CUSTODY

Legal Standards

The starting point for child custody evaluations, as is the case with any forensic evaluation (Grisso, 1986), is the law. Because decisions about children, their best interests, and their custody and placement are ultimately legal issues that are to be decided by legal decision makers (judges in most jurisdictions, but juries in others, e.g., Texas), psychologists and other mental health professionals who conduct custody evaluations must know the law on which legal decision makers base their opinions. Only by knowing the law can mental health professionals assess those factors with which the court is most concerned.

According to Common Law, children were considered chattel. In cases of divorce, like all chattel, their ownership and custody reverted to the father (Wyer, Gaylord, & Grove, 1987). The late nineteenth century, however, saw the development of the “tender years” doctrine, which held that mothers were considered uniquely qualified or better able to contribute to a child’s development. Thus, the law presumed that children’s best interests would be served by placement with their mother after divorce (Wyer et al., 1987). This presumption, of course, could be overcome in particular cases (e.g., by showing that the mother was unfit in some way).

The tender years doctrine controlled custody decision making until the 1960s, when significant changes in family law occurred. With shifting conceptualizations of sex roles and movement to a “no fault” divorce law, sexist presump-

tions of parental capacity were challenged. Because mothers were no longer considered better able than fathers to provide for their children’s development solely as a function of their sex, the tender years doctrine was abandoned for the “best interests of the child” standard, which has been adopted by all U.S. jurisdictions (Rohman, Sales, & Lou, 1987).

Put most simply, the best interests standard dictates that decisions about custody and placement of children should be made in their best interests, as opposed to independent interests that the parents or others may have. Anything more than a superficial analysis, of course, makes clear that the best interests standard provides the legal decision maker and custody evaluator with little direction regarding how a child’s interests are to be determined or what factors are to be considered (Gould, 1998). As a result, the majority of states have attempted to operationalize and define the best interests standard legislatively. Michigan’s 1970 Child Custody Act (see Table 11.1) has served as a model for many state legislatures in their attempts to identify factors that the legal decision maker and custody evaluator are to consider with respect to determining the child’s best interests.

Child custody evaluators are provided with considerable guidance and direction by Michigan’s custody law and corresponding laws in other jurisdictions. A review of the Michigan law reveals that both psychological (e.g., “the mental . . . health of the competing parties; capacity and

TABLE 11.1 Michigan Child Custody Statute

Michigan’s child custody statute directs that custody evaluations are to be made “in the best interests of the children” and are to be based on:

- The love, affection, and other emotional ties existing between the parties involved and the child.
- The capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of educating and raising the child in his or her religion or creed, if any.
- The capacity and disposition of the parties involved to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The permanence, as a family unit, of the existing or proposed custodial home.
- The moral fitness of the parties involved.
- The mental and physical health of the parties involved.
- The home, school, and community record of the child.
- The reasonable preferences of the child, if the court deems the child to be of sufficient age to express preference.
- The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- Any other factor considered by the court to be relevant to a particular child custody dispute.

Source: Michigan Child Custody Act of 1970, 1993 amended.

TABLE 11.2 Consensus Child Custody Decision-Making Criteria

Included below are criteria appearing consistently in states' custody statutes.

Children:

- Age and sex.
- Adjustment to current and prior environments, including the length of time in each.
- History of child abuse/victimization.
- Educational needs.
- Special mental health or medical care.
- Wishes or desires regarding placement, if of sufficient age.
- Separation of siblings.

Parents:

- History of spouse abuse.
- Economic status and stability.
- Wishes and desires regarding placement and custody.
- Mental and physical health.
- Substance abuse.
- Level of hostility.
- Flexibility.
- Parenting skills.
- Caretaking involvement before and after separation.
- Likelihood that parent would remove children from the jurisdiction.
- Likelihood that parent would alienate the affections of the children.

Other Factors:

- Religion.
- Prior custody determinations.
- Agreements between the parents.

Source: Adapted from Schutz et al. (1989).

disposition of the competing parties to provide love, affection, guidance, continuance of education, and continued religious education" and nonpsychological factors (e.g., "moral fitness of the competing parties") are to be considered by the court, as well as case-specific factors not anticipated by the legislature (i.e., "any other issues considered by the court to be relevant to a particular child custody suit"). Although how the child's best interests are operationalized varies from state to state, Schutz, Dixon, Lindenberger, and Ruther (1989) found significant consistencies in their review of state custody statutes (see Table 11.2). Of course, the child custody examiner must be familiar with the specific law in the jurisdiction in which he or she practices.

Although the legislatures' attempts to operationalize the best interests standards provide custody evaluators and legal decision makers with some direction, *how* decisions are to be made remains unclear. Perhaps most significant is that the relative importance of the statutorily identified factors, or the weight they are to be given when considering custody and placement of children, go unstated. This probably reflects an acknowledgment by legal and mental health professionals alike that questions of custody and what is in the best interests of children may vary dramatically from case to case.

Another important legal issue central to the custody decision-making process is the definition of and distinction

between different types of custody (Schutz et al., 1989). More specifically, state law typically makes reference to and distinguishes between decision-making authority for the children (referred to as legal custody or parental responsibility in some jurisdictions) and the issue of physical placement or residence of the children (referred to as residential or physical custody in some jurisdictions). The courts, therefore, must make rulings not only about the living arrangements and visitation schedule for the children postdivorce, but also about who will be involved in making decisions about them. The court also can mix these decisions. For example, it is not uncommon for courts to grant one parent physical custody of the children (with regular visitation) and both parents legal decision-making authority for the children (i.e., joint legal custody).

Legal Presumptions

Not only does the law in a specific jurisdiction identify on which factors decisions about placement and custody of a child should be based, but the law also reflects many presumptions about custody and placement of children. These legal presumptions identify what the law assumes to be in the best interests of children in cases of contested custody. These presumptions, however, can be overcome or abandoned in a particular case with a showing of cause.

Sex and Parenting Capacity

The legal presumption that women are better able to meet the needs of children (i.e., the tender years doctrine) has been abandoned essentially by all jurisdictions and replaced by the best interests of the child standard (Schutz et al., 1989; see above for further discussion). Thus, judges are to make no presumptions about parenting ability and sex. However, many in the field offer anecdotal accounts of mental health professionals and members of the bar who, although they acknowledge that the best interests standard controls, act as if the tender years doctrine remains in place, at least insofar as they appear to hold personal beliefs that women, as a function of being women, are better parents than men. Moreover, data indicating that the large majority of children reside primarily with their mother postdivorce (U.S. Bureau of the Census, 1989; see above for further discussion) also raise questions about whether societal attitudes, behavior, and roles are congruent with legal presumptions.

Custody Arrangements

In some jurisdictions, legal presumptions are in place regarding what kinds of custody arrangements are in the best

interests of children. This is important for the child custody examiner to realize because the legal presumptions for the varying types of custody may differ. For example, some state laws presume that it is in the best interests of children to have one primary residence rather than live equal or essentially equal periods of time with each parent. In contrast, with respect to the issue of parental responsibility or legal custody, some state laws direct that it is in children's best interests to have both parents involved in making decisions about them (e.g., regarding their education, religious training, health care needs; Florida Statutes 61.13(2)(b)2, 2000). Although any legal presumptions can be overcome, it is important that child custody examiners be aware of the legal presumptions in their jurisdiction because they serve as starting points from which the legal decision maker will consider a particular case.

Placement of Siblings

The law in many jurisdictions makes reference to how decisions regarding placement of siblings should be made. For example, in some states, it is presumed that it is in the best interests of siblings to live in the same household, as opposed to splitting siblings between parents in a Solomon-like solution. Thus, in cases of disputed custody, the legal decision maker is likely to start from this perspective, but a decision that "splits" siblings may follow if the decision maker is convinced in a particular case that placement of the siblings in different households would be in their best interests.

Sexual Orientation

There is less consistency regarding how states treat parents' sexual orientation as it relates to the children's best interests and decision making regarding custody. Perhaps just as important as the formal law is the attitude of judges and attorneys who are involved in child custody cases. It will be important, of course, for the examiner to be familiar with the legal presumption regarding parents' sexual orientation and describe for the court how the child might be affected by each parent's sexual orientation, as well as the literature regarding sexual orientation and parenting (see, e.g., American Psychological Association, 1995; Falk, 1989; Patterson, 1995).

CHILD CUSTODY EVALUATION PRACTICE GUIDELINES AND STANDARDS

As described above, the mental health professional's child custody evaluation will, in part, be informed by the law

controlling child custody decision making in the jurisdiction in which he or she practices. The child custody evaluation process, however, is also shaped by relevant practice guidelines and standards. To date, three national organizations have promulgated custody evaluation guidelines, all of which attempt to identify a standard for child custody evaluation and provide the examiner with some direction regarding evaluation process. Although some state psychological associations have developed child custody evaluation guidelines, we do not discuss them here.

Guidelines for Child Custody Evaluations in Divorce Proceedings (American Psychological Association [APA], 1994)

In 1994, APA published guidelines for psychologists conducting child custody evaluations that focus less on the substantive nature of such evaluations and more on the format and process of the evaluation (e.g., the goal of the evaluation; the role and orientation of the examiner; the competence and ability of the examiner; and procedural matters related to confidentiality, informed consent, record keeping, financial arrangements, and use and interpretation of data). It is difficult to disagree with any of the guidelines adopted by the APA. As such, the guidelines are not objectionable, but they do not provide much direction in terms of the substantive areas of inquiry. Because of their basic nature, failure to perform one's duties in a manner consistent with the guidelines is quite likely to constitute substandard practice.

Model Standards of Practice for Child Custody Evaluations (Association of Family and Conciliation Courts [AFCC], undated)

The AFCC is an interdisciplinary group of attorneys, judges, and mental health professionals interested in matters of family law and child custody. Although psychologists who are not AFCC members cannot necessarily be held to the organization's standards, psychologists conducting child custody evaluations should, nonetheless, be familiar with them.

Like the APA evaluation guidelines, the AFCC guidelines offer direction to the evaluator regarding role definition, structuring the evaluation process, and competence. They are, however, more substantive than the APA guidelines in that they identify areas of inquiry in the evaluation process (e.g., quality of the relationships between parents and child; quality of the relationships between parents; domestic violence history; psychological adjustment of parents). As such,

the AFCC guidelines provide more direction to the custody evaluator, as they focus not only on the process of the evaluation but also on its substance.

Practice Parameters of Child Custody Evaluation (American Academy of Child and Adolescent Psychiatry [AACAP], 1997)

The most recently developed custody evaluation guidelines were developed by the AACAP. These AACAP guidelines include sections devoted to both the process and substance of the evaluation and are the most detailed of any that currently exist. Not only do the guidelines identify areas of inquiry for the examiner to address, they also identify evaluation techniques and discuss some special topics (e.g., parents' sexual orientation; grandparents' rights; child sexual abuse allegations; reproductive technology issues).

Although the guidelines are informative and provide the examiner with considerable direction, they suffer from numerous shortcomings. They are overly broad in some sections (e.g., offering generic recommendations about report writing) and overly detailed in others (e.g., offering suggestions about how examiners should dress and present themselves when appearing in court). The AACAP guidelines also offer poor practice recommendations in relation to some issues. For example, it is recommended that examiners refuse to listen to tape recordings, whereas no such prohibition is offered for similar kinds of materials (e.g., videos, journals, other documents that may be produced by the parties). Although examiners should be sensitive to evidentiary issues when considering what types of third-party information they review (see below for further discussion), a wholesale recommendation against reviewing one type of information that may be of value in some cases while failing to identify limitations of or problems with similar types of information reveals a weakness of the AACAP guidelines. Finally, some sections appear to be shaped more by guild concerns than matters related to professional practice. For example, the AACAP guidelines describe psychological testing as of little help in custody evaluations, in part, because parental psychopathology is not the primary issue before the decision maker and introduction of psychological test data results in a "battle of the experts." Although there is some basis for the discussion of the limitations of psychological testing, singling out such data as the only type of information that may be interpreted differently by opposing experts is, at the very least, unusual and demonstrates that such publications are, to some extent, political documents. Moreover, the naïveté of the apparent assumption that all psychological tests are pathology-focused also reveals a limitation of the guidelines.

THE CHILD CUSTODY EVALUATION PROCESS

As described above, child custody evaluations are involved and time-intensive procedures. Ackerman and Ackerman (1997) surveyed 200 psychologists who conducted custody evaluations on a regular basis. The mean length of time per evaluation was reported to be 26.4 hours, including such activities as administering psychological tests (a mean of 5.2 hours per evaluation), interviewing parents (4.7 hours per evaluation), interviewing children (2.7 hours per evaluation), interviewing significant others (1.6 hours per evaluation), reviewing records (2.6 hours per evaluation), report writing (5.3 hours per evaluation), and testifying (2.2 hours per evaluation). Similarly, Bow and Francella (2001) performed a national survey of 198 psychologists and found highly consistent results. In general, the time spent per evaluation was quite similar, but the distribution of time spent per *method of assessment* varied somewhat (e.g., time spent interviewing parents increased to more than 7.0 hours and report writing increased to 7.3 hours per evaluation).

That custody evaluations are intensive should not be surprising when the task is considered in some detail. Jameson, Ehrenberg, and Hunter (1997) surveyed 78 psychologists in western Canada who conducted child custody evaluations and had them rate the significance of 60 custody decision-making criteria culled from legal and psychological authorities. A factor analysis of the psychologists' responses revealed three major factors around which decisions regarding custody hinge in the opinions of psychologists: interpersonal relationships (including both parent-child relationships and parent-parent relationships); the parents' understanding of and sensitivity to the children and their needs; and the parents' ability to meet their children's needs as determined by their emotional stability, history of parenting, and parenting skills and knowledge. Thus, in a custody evaluation, it is the examiner's responsibility to describe for the court the children, their adjustment and needs; the parents (and potentially others, such as stepparents), their adjustment, their parenting abilities, and their understanding of and relationships with their children; and the likely outcomes of proposed custody arrangements (for a discussion of whether psychologists should offer an "ultimate opinion" on custody, see Martindale & Otto, 2000; for a discussion of this issue more generally, see Melton, Petril, Poythress, & Slobogin, 1997). Moreover, the custody examiner must access any and all information relevant to understanding these issues.

Appointment, Notification, and Consent

Although it is not a violation of any ethics code or custody guidelines to conduct a custody evaluation while retained by

one party (i.e., either the mother or father), it is agreed generally that child custody evaluations ideally are performed when all parties agree on the examiner and have him or her appointed by the court to conduct the evaluation (Ackerman & Ackerman, 1997; Gould, 1998; Martindale & Otto, 2000; Otto, 2000; Stahl, 1994). In contrast to each party retaining an expert to conduct an independent evaluation, court appointment of one expert reduces overall costs and time of the evaluation process and minimizes opportunity for bias and forensic identification (see Otto, 1989, or Zusman & Simon, 1983, for further discussion of this issue). Court appointment also increases the parties' comfort with the evaluation process and reinforces the perception that the examiner is an impartial expert. Moreover, in some jurisdictions, court appointment may afford the custody examiner some protection from malpractice claims.

Except in the case of *pro se* litigants, examiners should have preliminary discussions regarding the case with the attorney representing each party (see Table 11.3). The examiner should make clear to the attorneys his or her qualifications, evaluation process, fees and payment procedures, and requirements for court appointment. Ideally, the examiner will have a model appointment order from which the attorneys can draft an order for the judge to review and sign.

Once appointed by the court, the examiner should seek from the attorneys any third-party information that they believe is relevant to the issues in the case. This may include legal documents (e.g., court orders and injunctions related to the case; arrest reports; depositions of knowledgeable persons, including the parties); financial documents; and mental health, medical, school, and employment records. Although opinion varies regarding whether it is best to review such records prior to or after interviewing the parties, all agree that access to third-party information is crucial in such cases (also see following).

TABLE 11.3 Appointment, Notification, and Consent

Preliminary Issues	
Except in <i>pro se</i> cases, have preliminary discussions with attorneys representing the parties.	
Make qualifications and evaluation approach known to all parties.	
Seek appointment via court order.	
Provide a model or draft order to the attorneys for review.	
Postcourt Appointment	
Request relevant third-party documents from the parties.	
Notify parents of:	
Role.	
Nontherapeutic nature of contact.	
Absence of confidentiality and privilege.	
Fees and costs.	
What the evaluation will entail.	
Length of time the evaluation will take.	
Notify children of nature and purpose of the evaluation using age-appropriate language and concepts.	

The final preliminary task is to inform the parents about the evaluation process—a particularly important aspect of the evaluation that unfortunately is neglected by many evaluators. The parents should be informed about the examiner's role, the nontherapeutic nature of their contact with the examiner, the absence of confidentiality and privilege, fees and likely costs of the evaluation, the nature of the evaluation process (i.e., the extent of interviewing and testing that may be required), how long it will take to complete the evaluation, and how feedback will be provided (e.g., in the form of a report and/or testimony). Of course, any questions the parents have should be answered. Taking the time to fully inform parents about the evaluation process may increase their participation and cooperation because they will know what is expected of them. Parents who express concern about or refuse to comply with some aspects of the evaluation after discussion with the examiner should be directed to their attorneys because it is the examiner, not the parties or their representatives, who ultimately decides the shape and direction the evaluation takes.

Examiners also should consider obtaining assent from the children who are to be evaluated. In language they can understand, children should be informed about the examiner's role, the purpose of the evaluation, and how the information will be used.

The Clinical Evaluation

As described above, the custody examiner will assess various issues with a particular family, and this requires a far-ranging inquiry and assessment of each parent, the children, informed third parties and, in some cases, significant others (e.g., potential stepparents, potential stepsiblings, grandparents). Information is gained via clinical interviews with the parties, interviewing of informed third parties (e.g., teachers, babysitters, neighbors), and administration of psychological tests (see Tables 11.4 and 11.5).

Evaluation of the Parents

With each parent, examiners may consider starting with an abbreviated social history. In addition to providing some information that may be of relevance to the court, starting the discussion by obtaining information that is likely to be less threatening may help in establishing rapport and alleviating the parties' anxiety. Factors addressed in the social history that may be of relevance include educational history (e.g., history of poor academic achievement, which may indicate that the parent will have difficulty assisting the child in meeting academic goals); employment history (e.g., involvement in a career that has limited or may interfere with the

TABLE 11.4 Clinical Inquiry in Child Custody Evaluation: Parents

Social history:
Family history.
Educational and occupational history.
Medical history.
Mental health and substance use history.
Legal history.
Parent's description of marital relationship and family structure.
Parent's attitude and concerns regarding the other parent, his or her access to the children, nature of visitation, etc.:
Discussion with children about the separation and divorce.
Parent's communications with the children about the other parent.
Evidenced hostility.
Ability and willingness to foster the other parent's contact with the children.
Parent's goals for visitation and decision making should he or she be awarded primary residence.
Parent's prior and current relationship with the children and responsibility for care taking:
Reaction to pregnancy and childbirth, and impact of these on relationship and functioning outside the family.
Early caretaking.
Current caretaking.
Punishment/discipline.
Leisure and social activities.
Interactional style.
Allegations of abuse/neglect.
Parent's prior, current, and anticipated living and working arrangements:
Who is living in the home.
Significant others.
Daycare, baby-sitting.
Schools and school districts.
Parent's emotional functioning and mental health:
Prior or current substance abuse/dependence and treatment.
Prior or current mental health problems and treatment.
Emotional response to the divorce.

parent's ability to parent the children); medical history (e.g., health conditions that limit parenting ability); and mental health history (e.g., psychiatric conditions that may impact a parent's ability to parent).

The development and progression of the marital relationship should receive considerable attention. For purposes of organizing this inquiry, it may be most helpful to conceptual-

TABLE 11.5 Clinical Inquiry in Child Custody Evaluation: Children

Child's attitude and preference regarding parents, current living arrangement, visitation, and future placement.
Child's depictions and conceptualization of relationship with each parent:
Punishment/discipline.
Leisure and social activities.
Interactional style.
Allegations of abuse/neglect.
Child's emotional functioning and mental health:
Prior or current substance abuse/dependence and treatment.
Prior or current mental health problems and treatment.
Emotional or behavioral responses (i.e., problem behaviors) to the separation/divorce.
Child's prior and current social, academic, and vocational functioning.

ize three phases of the marital relationship: (a) the period the couple was together but without children; (b) the phase during which the couple was together and caring for the children; and (c) the period postseparation. By focusing on the time when the marriage presumably was more harmonious and the couple was focused on caring for the children, the examiner can begin to understand the parenting abilities, parenting histories, behavioral patterns, and emotional functioning of each party. The separation period may be seen as an interim "pilot" phase during which each parent begins to anticipate and adjust to a new life (e.g., as a stay-at-home mother returns to the conventional workforce and attempts to meet the responsibilities of parenting, or as a parent who historically worked 80 hours per week attempts to restructure a work schedule that allows assumption of more parental responsibility). How the parents interact with each other regarding issues of parenting, visitation, and blameworthiness for the divorce during the separation period will provide some insight into how they might be expected to act around these issues in the future. Custody examiners should keep in mind, however, that they are assessing the parties at one of the most emotionally taxing phases of their lives, and their adjustment at the time of the evaluation may not reflect what their adjustment will be over time (Schutz et al., 1989).

Crucial to interviewing the parents is assessing their relationships with their children. It is important that the parents describe for the examiner their perceptions of their children, both in terms of their response to the separation and impending divorce, as well as over time and in more general terms. How each parent perceives the children and their needs, and how they have attempted to meet those needs, both in the past and during the separation process, is germane to understanding how the parents may interact with their children postdivorce. Observation of parent-child interactions often provides insight into the nature of their relationships, the parent's feelings about the child, the parent's knowledge of and ability to interact with the child, and the child's feelings about the parent (see below).

The examiner should obtain from each party a rich description of the custody arrangement he or she proposes. First, the examiner should gain a comprehensive understanding of the school or day care arrangements, the place of residence, baby-sitting arrangements, and work schedules that are included in each parent's proposal. The examiner must then assess how similar this is to what has occurred in the past (either during the course of the marriage or following separation), whether the parent has had to make any changes to accommodate such arrangements during the separation period, and whether he or she will be able to make changes subsequent to the divorce. For example, although a neurosurgeon may propose that he

will cut back his 80-hour work week to 30 hours to be awarded primary residential placement, a failure on his part to make necessary changes related to his work schedule and residence (or a failure to consider factors such as the fact that placement with him will require a change in the children's school or day care) is problematic.

In addition to requesting relevant third-party information from each attorney, the examiner also should make this offer/request to each parent. In addition to potentially providing the examiner with valuable sources of third-party information of which the attorney may be unaware (e.g., records, informants), this practice allows each parent to be fully heard. Of course, examiners must employ their professional judgment and discretion in some circumstances (Gould, 1998) and ultimately decide what sources of information they will consider (e.g., when presented with potentially inadmissible evidence; when provided a list of third-party contacts whose reported opinions are irrelevant to the issues in the case).

Finally, the examiner should ensure that the parties have an opportunity to identify issues that they believe to be of importance, including concerns they may have about the other parent. In response, each parent should be confronted with and provided an opportunity to respond to concerns or allegations that were made about him or her by the spouse or others.

Evaluation of the Children

The nature and extent of interactions with children vary considerably depending on their age. With younger children (infants through 3 years), the examiner may simply choose to observe parent-child interactions (see below). With older children (ages 4 to 11), the interview primarily will be aimed at understanding their adjustment and "world" both prior and subsequent to their parents' separation. Children 11 and older should be able to provide an accurate depiction of their life and preferences, and also provide information helpful to understanding the family and their parents.

Regardless of their age, the examiner should focus on learning more about the children (pre- and postseparation) in three separate but related areas: (a) their relationships and interactions with parents, (b) their emotional and behavioral adjustment and functioning, and (c) their involvement and adjustment to outside activities, including school and after-school activities. As the examiner understands the child, he or she can then draw some conclusions regarding the parents' understanding of their children's needs, and their abilities to meet those needs. Moreover, in addition to providing important information regarding their own adjustment and their relationships with their parents, even young children can

sometimes provide information that helps the examiner better understand the parents and their interactions with their children (Gould, 1998).

Opinions vary regarding the appropriateness of asking children their preferences regarding custody (Rohman et al., 1987; Stahl, 1994), but there is near unanimous agreement that younger children should not be asked such questions. A recommended alternative is to query the children regarding the good things and bad things about time with each parent, although this too may have implications for younger children, particularly when queried postinterview by an over-interested parent.

An overriding concern among custody evaluators is that of rehearsed children who have been prepared by a parent to offer a particular storyline. Any time a child volunteers a preference regarding a living arrangement, more important than knowing the child's stated preference is knowing and understanding the underlying reasoning. Careful questioning of younger children may reveal preparation or rehearsed answers (e.g., "Is there anything that your mom or dad told you it was really important to let me know?"). Perhaps most important for the examiner to know and communicate to the child is that, absent unusual conditions (i.e., local legal custom or a judicial decision in a particular case), any information conveyed by the child to the examiner may be revealed to the court (and to parents).

Direct Observation

It generally is agreed that interviewing the children with each parent and observing the parent and children engaging in some type of structured or unstructured activity serves to decrease initial anxiety the children may have about the evaluation process and provides helpful information regarding parent-child interactions and the relationship more generally. Examiners should be careful, however, to ensure that each parent is provided similar opportunities with the children, and they must remain aware that such interactions can be affected by a number of extrarelationship factors. Thus, observation of the parent and children on more than one occasion may prove helpful.

Authorities differ with respect to their recommendations regarding observations of and visits with the parent and children in the home setting. Possible benefits of a home visit include that it allows for more naturalistic observation of the family and provides an opportunity to consider the parent's ability to establish a positive and safe home environment. Additionally, younger children may be more comfortable talking about themselves and their family, and may be more likely to do so, in an environment more familiar than the

examiner's office and with stimuli readily available to foster discussion and description (Gould, 1998; Stahl, 1994). Downsides to home visits include their potential costs, as such visits will require a considerable number of hours on the examiner's part when travel and observation are considered. Schutz et al. (1989) provide direction to examiners considering home visits in the context of child custody evaluations.

Use of Psychological Testing in Child Custody Evaluation

Although surveys indicate that use of psychological testing in child custody evaluations is common (at least among psychologists; see below for a summary of this research, as well as Otto et al., 2000b), the utility of testing in this context has been questioned by a number of commentators. Many of the psychological tests used by child custody evaluators have been criticized on the grounds that they do not assess constructs or issues most relevant to the child custody question, such as parenting ability, the nature and quality of the parent-child relationship, and the willingness of each parent to facilitate a close relationship with the other parent (Bricklin, 1994, 1995, 1999; Brodzinsky, 1993). Indeed, use of psychological measures that assess general constructs such as intelligence, psychopathology, or academic achievement requires the evaluator, at a minimum, to make an inference from the global construct assessed to a more specific behavior or capacity that is relevant to child custody questions (e.g., ability to meet the child's emotional and behavioral needs). Grisso (1984, cited in Melton et al., 1997) offered a cogent summary of the problem:

Too often we rely on assessment instruments and methods that were designed to address *clinical* questions, questions of psychiatric diagnosis, when clinical questions bear only secondarily upon real issues in many child custody cases. Psychiatric interviews, Rorschachs, and MMPIs might have a role to play in child custody assessment. But these tools were not designed to assess parents' relationships to children, nor to assess parents' child-rearing attitudes and capacities, and *these* are often the central questions in child custody cases. (p. 484; emphasis in original)

Other evaluation tools and methods purported to assess constructs more specific to custody questions have been criticized on the grounds that they do not comport with basic ethical, scientific, and practice requirements under which psychologists and other mental health professionals must operate (see Heinze & Grisso, 1996; Otto et al., 2000b; and below). In a recent handbook on family law, judges were warned,

“We . . . believe that judges should be wary of a recent trend to make use of supposedly scientific tests claimed to distinguish between potential custodians” (National Interdisciplinary Colloquium on Child Custody [NICCC], 1998, pp. 321–322). Moreover, all three sets of professional custody evaluation guidelines (see above) offer cautions regarding the use of psychological testing in the evaluation process.

A number of assessment techniques are used in the context of a child custody evaluation, all of which can be placed into one of three broad categories: (a) clinical assessment instruments, (b) forensically relevant instruments, and (c) forensic assessment instruments (see Heilbrun, Rogers, & Otto, in press). The appropriateness of using and relying on results of a psychological test in a child custody evaluation will depend on a number of test- and case-specific factors. Based on their review of the APA Ethical Principles and Code of Conduct (1992), the Standards for Educational and Psychological Testing (American Educational Research Association, American Psychological Association, National Council on Measurement in Education, 1999), and Heilbrun's (1992) guidelines for considering use of psychological tests in forensic evaluations, Otto et al. (2000b) offered a template consisting of a number of questions forensic examiners should ask themselves when considering using a psychological test or assessment measure in the context of a custody evaluation (see Table 11.6).

Clinical assessment instruments measure general psychological constructs (e.g., psychopathology, intelligence, academic achievement, personality), were developed for therapeutic applications, and most typically are used in nonforensic settings. If the examiner believes that these tests validly assess general constructs that are relevant to decisions revolving around child custody, then their use in these evaluations is appropriate. For example, in those jurisdictions where emotional stability of the parties is one factor to be considered in making decisions about the custody and placement of children, use of the Minnesota Multiphasic Personality Inventory 2 (MMPI-2;

TABLE 11.6 Considering Use of Tests in Child Custody Evaluations

Is the test commercially published?
Is a comprehensive test manual available?
Are adequate levels of reliability demonstrated?
Have adequate levels of validity been demonstrated?
Is the test valid for the purpose for which it will be used?
Has the instrument been peer-reviewed?
Do I possess the qualifications necessary to use this instrument?
Does the test require an unacceptable level of inference from the construct it assesses to the psycholegal question(s) of relevance?

Source: Adapted from Otto et al. (2000b).

Butcher, Dahlstrom, Graham, Tellegen, & Kaemmer, 1994) to assess psychopathology and emotional stability *as it may be related to parenting* is appropriate. Similarly, if an examiner uses the Parenting Stress Index (PSI; Abidin, 1995) to assess how interactions with the child affect the parent, this too would appear to be appropriate use of a validated clinical assessment instrument for purposes of a custody evaluation.

Forensically relevant instruments are assessment techniques that evaluate constructs or issues that most typically arise in the course of forensic evaluations, but are not limited to forensic assessments. Tests of defensiveness, malingering, and psychopathy [e.g., Paulhus Deception Scales (Paulhus, 1999), Crown-Marlowe Scales (Crown & Marlowe, 1960), Structured Interview of Reported Symptoms (Rogers, Bagby, & Dickens, 1992), Test of Memory Malingering (Tombaugh, 1996), Psychopathy Checklist–Revised (Hare, 1991)] are examples of such instruments. Perhaps with the exception of measures of general defensiveness (for an example, see Paulhus, 1999, for a description of the Paulhus Deception Scales), forensically relevant instruments are unlikely to prove helpful in the large majority of child custody evaluations.

Forensic assessment instruments (FAIs) are developed specifically for application in forensic settings. Their purpose is to assess constructs relevant to particular legal issues. Rogers and Webster (1989) observed that in many forensic evaluation contexts, the best validated tests and assessment instruments are general clinical tests, which are least relevant to the psycholegal questions the courts look to mental health professionals for assistance in answering (i.e., the constructs assessed by the best-validated, traditional clinical measures are not directly related to the legal issue at hand). This observation applies in the child custody evaluation context, in which the general clinical assessment instruments that are used typically have better validity data than existing child custody evaluation measures. The constructs they assess (e.g., psychopathology, intelligence, academic achievement, normal personality) are not directly legally relevant, although they may provide useful information nonetheless.

At the current time, there are a number of child custody evaluation instruments that are proffered by their authors as assessing constructs directly relevant to child custody decision making: the Bricklin Perceptual Scales (BPS; Bricklin, 1990a; Bricklin & Elliott, 1997), the Perception of Relationships Test (PORT; Bricklin, 1989), the Parent Perception of Child Profile (Bricklin & Elliott, 1991), the Parent Awareness Skills Survey (PASS; Bricklin, 1990b), the Custody Quotient (Gordon & Peek, 1989), and the Ackerman-Schoendorf Parent Evaluation of Custody Test (ASPECT; Ackerman & Schoendorf, 1992). Other instruments, such as

the Uniform Child Custody Evaluation System (UCCES; Munsinger & Karlson, 1994), which is intended for use in data collection in custody evaluations, are better described as structured clinical approaches to child custody assessment and, thus, are not discussed here. Integrating these tests into the assessment process may be appealing to mental health professionals and the judiciary because, unlike general clinical assessment instruments, they ostensibly address the specific questions involved in forming an opinion in a custody case, such as “Does the parent have adequate parenting skills?” or “With which parent is the child most bonded?” Such questions are not easily answered by making inferences from results of standard measures of psychopathology, intelligence, and personality. However, essentially all of the FAIs developed for use in child custody evaluation have been subjected to significant criticism. In their review of the above instruments, Otto et al. (2000b) recommended that none of these assessment techniques be employed by child custody evaluators, given their significant psychometric and conceptual limitations. (The interested reader is directed to reviews of these FAIs by Arditti, 1995; Bischoff, 1992, 1995; Carlson, 1995; Cole, 1995; Conger, 1995; Fabry & Bischoff, 1992; Hagin, 1992; Heinze & Grisso, 1996; Hiltonsmith, 1995; Kelley, 1995; Melton, 1995; Melton et al., 1997; Shaffer, 1992; Wellman, 1994.)

Although a number of researchers (see below) have investigated child custody evaluators’ general assessment practices and their use of tests more specifically, it is unclear how accurately these results depict current practice. All of the surveys to date have been based on the self-report of practitioners, have been conducted using small samples, and have oversampled psychologists. Thus, the studies described below may overestimate the use and significance of psychological tests in custody evaluations.

In the first published study of custody evaluation practices, Keilin and Bloom (1986) surveyed a national sample of psychologists, psychiatrists, and master’s-level practitioners. Of the 82 surveys that provided usable data, 78% were completed by doctoral-level psychologists, 18% were completed by psychiatrists, and 4% were completed by master’s-level practitioners. No single measure was used by a majority of the respondents when assessing children. Intelligence tests were the instruments most frequently employed by the examiners, with 45% of respondents using some measure of intelligence in the majority (85%) of their cases. The next most frequently used measure was the Thematic Apperception Test (TAT; Murray & Bellak, 1973) or the Children’s Apperception Test (CAT; Bellak & Bellak, 1992); 39% of the respondents reported using these measures in most (75%) of their evaluations. The

next three most commonly used assessment techniques with children were miscellaneous projective drawings, the Rorschach Inkblot Technique (Rorschach, 1942), and the Bender Visual Motor Gestalt Test (Bender, 1946).

Respondents identified the MMPI (Hathaway & McKinley, 1989) as the most commonly used assessment technique with adults; 70% of the evaluators reported using this instrument in child custody evaluations, and those who used it employed it in almost all (88%) of their cases. The next most commonly used instruments were the Rorschach Inkblot Technique (42%) and the TAT (38%), and evaluators who employed these instruments reported using them in a majority of their cases. Measures of adult intelligence also occasionally were employed, with the Wechsler Adult Intelligence Scale (WAIS; Wechsler & Stone, 1955) being used by 29% of the respondents. Those who used the WAIS reported employing it in a majority (67%) of the cases.

Ackerman and Ackerman (1997) replicated the Keilin and Bloom (1986) survey to obtain a more current picture of the child custody evaluation process. In the 10-year interim between these two surveys, a number of new or revised standard psychological measures were developed (e.g., MMPI-2, WAIS-III; Wechsler, 1997), as were several of the instruments specifically designed for application in cases of child custody noted earlier. Of the 800 questionnaires mailed to psychologists identified by various psychological and legal associations as conducting child custody evaluations, 201 usable protocols were returned by doctoral-level psychologists.

Intelligence tests and projective measures were the instruments most frequently used with children, consistent with the findings of Keilin and Bloom (1986). Fifty-eight percent of the respondents reported using intelligence tests in their evaluations, and those using them reported employing them in about half (45%) of their evaluations. Thirty-seven percent reported using either the CAT or the TAT (in 53% of their evaluations). Also consistent with the earlier findings of Keilin and Bloom were the respondents' reports of how they assessed adults. The MMPI/MMPI-2 remained the most frequently used assessment instrument: 92% of the psychologists reported using a version of this test in the large majority (91%) of their evaluations. The Rorschach Inkblot Technique remained the second most frequently used test with adults; 48% of the respondents indicated they used the test in the context of custody evaluations, and those who used it did so in over half (64%) of their cases. The next most frequently used tests were the revised WAIS (Wechsler, 1981) and the Millon Clinical Multiaxial Inventory (MCMI-II/MCMI-III; Millon, 1987, 1994), with 43% and 34% of the examiners reporting using these tests in their custody evaluations, respectively.

Over one-third of the respondents (35%) reported using the BPS (Bricklin, 1990a), one of the better-known forensic

assessment instruments designed for use in child custody evaluations. On average, those examiners using the BPS relied on it in a majority (66%) of their evaluations. Respondents (16%) also reported use of the PORT (Bricklin, 1989), with those using it reporting that it was employed in a majority (64%) of cases.

Fewer of the respondents reported using specific custody measures designed for use with families or adults. Only 11% of the psychologists reported using the ASPECT (Ackerman & Schoendorf, 1992), but those who used it did so in essentially all (89%) cases. The only other custody-specific measures endorsed were the PASS (Bricklin, 1990b), used by 8% of the respondents (who employed it in 94% of their cases) and the Custody Quotient (Gordon & Peek, 1989), used by 4% of the respondents (in 57% of their cases).

Recently, however, Hagen and Castagna (2001) performed a reanalysis of the survey results presented by Ackerman and Ackerman (1997) and came up with quite different results. Instead of focusing on the percent of respondents who "had ever used in custody evaluations for children and adults and the percentage of time that each of these tests had been used" (Ackerman & Ackerman, 1997, p. 138), Hagen and Castagna computed the *percentage of evaluations* in which a particular test was actually used. Other than the MMPI, which was used in 84% of the 43,195 evaluations examined, no test was used in even one-third of the evaluations. Only the Rorschach, the MCMI-II/III, and the WAIS-R were used in more than 20% of them. In light of this alternative view of the Ackerman data, they concluded,

It would be highly misleading to represent to the public . . . 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 & Castagna, 2001, p. 271)

LaFortune and Carpenter (1998) surveyed mental health professionals about the tests and strategies they employed in their custody evaluations. They received completed surveys from a geographically diverse sample of 165 mental health professionals, the majority of whom were psychologists (89%). Respondents reported the frequency of use of various assessment methods on a 1 (never) to 5 (always) scale. Regarding psychological tests used to assess adults, "parenting scales," such as the ASPECT and the Bricklin measures (the specific Bricklin measures were not identified by the investigators), were second in frequency of use (mean response level of 3.28) only to the MMPI (mean response level of 4.19). Unfortunately, the authors did not report frequency of use for individual custody tests. Nevertheless, it appears that

these newer, more specific instruments enjoyed a fairly significant rate of use among these respondents. Data regarding instruments used to assess children apparently were not collected, so it is unclear whether a similarly high rate of use would have been found.

Finally, Bow, and Quinnell (2001; see also, Quinnell & Bow, 2001) replicated the Ackerman and Ackerman (1997) survey regarding the current practice of child custody evaluations. Of the 563 surveys mailed, 198 usable questionnaires were returned. These encompassed mental health professionals from throughout the United States, 96% of whom were doctoral-level psychologists. Reporting of this study is bifurcated, with one article reporting the general procedures used by child custody evaluators (see Bow & Quinnell, 2001) and a second article discussing the current use of psychological testing specifically in this context (Quinnell & Bow, 2001). The use of psychological testing of parents ranked fourth out of 10 custody procedures in importance—behind clinical interviews with parents and children and parent-child observations. Psychological testing of the child ranked sixth. Nevertheless, findings showed that approximately 90% of adults and 60% of children continue to be tested.

By far, the MMPI/MMPI-2 was the most frequently used test (i.e., 94% of respondents reported using it), which reaffirms prior findings (Ackerman & Ackerman, 1997; Hagen & Castagna, 2001; Keilin & Bloom, 1986; LaFortune & Carpenter, 1998). Respondents in this study also reported wide use of the MCMI. Indeed, it emerged as the second most commonly used test (i.e., 52% indicated incorporating its use) out of all categories for both adults and children. Use of projective tests and intelligence tests with adults was essentially similar to earlier surveys. For assessment of children, intelligence tests (48%) and projective measures (ranging from 23% to 45%) were the most frequently used instruments, and the adolescent version of the MMPI followed closely behind (43%). No measure, however, was used in more than half of the child assessments, and generally, children appear to be tested somewhat less frequently by these respondents than by those participating in earlier surveys.

Of the specialized measures examined, parenting inventories were used by more examiners in this survey than by those in prior studies. In fact, the Parent-Child Relationship Inventory (Gerard, 1994) and the Parenting Stress Index (Abidin, 1995) were the fourth (44%) and fifth (41%) most commonly used tests of adults, respectively, out of all categories. This is especially noteworthy considering that in the Ackerman and Ackerman (1997) study, each of these tests were used by only 10% of evaluators overall. In contrast, the use of custody batteries and forensic assessment instruments designed specifically for use in custody evaluations was similar to earlier survey results (e.g., BPS: 28% versus 35%;

PORT: 23% versus 16%; PASS: 21% versus 8%; and ASPECT: 16% versus 11%). Overall however, study participants reported relatively low usage of these instruments.

Third-Party Information

As is the case with any forensic evaluation, contact with knowledgeable third parties and review of various documents can provide valuable information (Committee on Specialty Guidelines for Forensic Psychologists, 1991; Gould, 1998; Melton et al., 1997; Schutz et al., 1989; Weithorn, 1987). For example, baby-sitters may offer insights into the parents' abilities and interactions with the children, teachers may provide information about the children's adjustment and how involved the parents are in their children's education, and physicians may inform the examiner about the parents' ability to protect their children and meet their needs. Custody examiners must use and rely on such information cautiously, however.

Some information that the examiner seeks will be confidential and/or privileged (e.g., medical, mental health, or school records), and access to such information will require formal release by the parties. Other information, although not confidential or privileged, may be sensitive, and the holder of it may not provide such information without the agreement of the party (e.g., employment or day care records). Some information may be inadmissible (e.g., illegally obtained information, such as stolen documents or audio- or videotapes obtained without the party's consent). Whenever possible, before considering or reviewing information that the examiner believes may be inadmissible, he or she should contact the attorneys involved and request direction from them or the court.

In all cases, because the rules of evidence and practice standards indicate that the bases for an examiner's opinion must be revealed, potential third-party informants must first be instructed about how and for what purposes the information will be used, and that nothing they reveal will remain confidential or privileged. Of course, third parties cannot be forced to reveal information to the examiner (e.g., day care personnel cannot be forced to speak with the examiner), although the attorneys representing the parties may seek revelation of information that the parties seek via subpoena.

Report Writing and Testifying

Although custom varies across jurisdictions, it is good practice to write a report that describes the evaluation procedure, information gained, and opinions formed. In addition to forcing the examiner to integrate his or her ideas, the report provides for the efficient communication of information to

the parties, their attorneys, and the court (Martindale & Otto, 2000). The report should summarize, using language and concepts understood by laypersons, the evaluator's conceptualization of the parents, their children, and their adjustment, needs, abilities, and limitations. The report and any associated testimony should highlight the most important issues relevant to the custody decision in the case at hand, and the reasoning underlying the examiner's conclusions and recommendations should be made clear. The examiner has failed if, after reviewing the report, the reader cannot describe (a) the examiner's conceptualization of the children, their parents, and the unique family situation, and (b) how the examiner reached these opinions (regardless of whether the reader agrees with the opinions, conclusions, or recommendations). The foundation of these opinions can be considered during the deposition or hearing process (Martindale & Otto, 2000).

Summary

Central to conducting an evaluation that assists the legal decision maker in cases of contested custody is knowledge of (a) the law on which custody decisions are based, (b) practice guidelines, (c) sources of information that may provide important information about the children and their parents, and (d) techniques designed to provide some insight into the parties and their adjustment. Also critically important, however, is knowledge of research related to developmental psychology, parent-child interactions, and custody outcome. Some of the most relevant research is discussed below.

RESEARCH RELEVANT TO CHILD CUSTODY EVALUATION AND DECISION MAKING

Parenting and Child Development

Ideally, parents provide an environment that allows their children to develop and reach their maximum potential intellectually, emotionally, and in other important ways. As a result, psychologists and other mental health professionals who conduct custody evaluations should be knowledgeable about parenting behaviors and their impact on children's development.

The Impact of Parents on Their Children's Development

A central premise of the involvement of mental health professionals in custody disputes is that parents may have psychological characteristics or engage in behaviors or activities

that lead to less than optimal outcomes in terms of the development and socialization of their children. This is based on the almost self-evident belief that parental behavior exerts a strong influence on the psychosocial development of children and therefore should be weighted heavily regarding the determination of the best interests of the child. Recently, however, this basic assumption of parental influence has been challenged in the developmental psychology literature by an alternative position claiming that children's socialization is *not* influenced significantly by the behavior of their parents (Harris, 1995, 1998; Rowe, 1994). In reviewing the literature, Harris (1998) argued, "Do parents have any important long-term effects on the development of their child's personality? This article examines the evidence and concludes that the answer is no" (p. 458). Rather than parental behavior, genetic influences and children's peer groups are construed to play more determinative roles in the psychosocial development of children. If supported, such an argument obviously would have far-reaching impact in terms of the weight that should be given to any "psychological" characteristics of the parents when making custody determinations.

Leading developmental psychologists have criticized severely the basic premise that parents are inconsequential in the development of their children and have provided various counterarguments and research findings to contradict this claim. Although an exhaustive review of this issue would go well beyond the scope of this chapter (for an overview, see Collins, Maccoby, Steinberg, Hetherington, & Bornstein, 2000), the key point from this debate as it relates to child custody issues appears to be that the relationship between parenting and children's development and socialization is complex and multifaceted. Simple linear relationships and main effects models, although characteristic of early theorizing about parent-child influence, do not account for the multiplicity of interacting factors that influence children's development and socialization. The implication of this conclusion for those involved in child custody decision making is that overarching statements regarding the effects of parental behavior on child development should be made with considerable reservation and with acknowledgment of the potential mediating and moderating role of a host of other factors unrelated to the parents' behavior.

As noted previously, the legal system provides relatively limited direction to mental health professionals regarding what *specific* factors are to be considered relevant in determining the best interests of the child. Consequently, evaluators may have considerable latitude in terms of what parental characteristics are incorporated into their evaluation and the weight that is given to each factor in terms of their relevance to children's psychosocial development. The following

section reviews the extant empirical research regarding the relationship between parental characteristics and children's psychosocial development, focusing on those variables that have been shown (or have been presumed) to serve as significant risk factors for maladjustment. Clinical and developmental researchers have examined a wide range of parental factors, including (a) general features of psychopathology and personality (e.g., depression, substance abuse, antisocial personality disorder); (b) broad parenting styles (e.g., authoritarian, permissive, authoritative); and (c) more circumscribed parenting behavior (e.g., degree of monitoring, disciplinary practices). Empirical research examining the effects of these variables on children's development is summarized below, along with citations for more thorough reviews of this literature.

Mental Disorder

It seems almost a truism that various forms of parental mental disorder are important factors for examiners to consider in custody evaluations. It has been noted that "many mental health experts would place concerns about parental mental and emotional health or status at the top of any list of essential criteria in determining the appropriate custodian for a postdivorce child" (NICCC, 1998, p. 31), and this contention generally has been supported in surveys of custody evaluators. Nevertheless, *the existence of mental disorder should not be dispositive in terms of custody unless it can be shown "to be relevant to that parent's care of the child and to have a negative influence on the child's condition or development"* (p. 32; emphasis added; see also Jenuwine & Cohler, 1999). This is of particular importance as mental health professionals have been criticized in the past as focusing on psychopathology and diagnosis in the context of custody evaluations to the exclusion of more central issues related to parenting and parent-child interactions (APA, 1994; Brodzinsky, 1993; Grisso, 1984, cited in Melton et al., 1997). As such, the research detailed below should be considered from the context of how mental disorder may (or may not) impact parenting practices that, in turn, are associated with negative developmental outcomes for children. Furthermore, it is important to note that the relationship between parental mental disorder and children's functioning may not be a causal one (Jenuwine & Cohler, 1999).

The vast majority of research in this area is correlational or quasi-experimental, and inferences that parental mental disorder *causes* impaired parenting, which in turn *causes* child maladjustment, are largely unsubstantiated. All of the disorders described below have some hereditary component, and children's impairment might be attributable more to

direct genetic effects (or, more likely, interactions between hereditary factors and various environmental variables) rather than specifically to inadequate parenting caused by mental disorder (e.g., Collins et al., 2000; Rowe, 1994). Moreover, most of this research has failed to consider the effects of socioeconomic factors, which may account for significant variance in the relationship between parental mental disorder and child adjustment (Oyserman, Mowbray, Meares, & Firminger, 2000). Also, there is evidence to suggest that the behavior of children (particularly externalizing behavior problems) may exert a strong influence on parenting practices (e.g., Dishion & Patterson, 1997). All of these caveats should be considered when attempting to draw conclusions about the relationship between any given mentally disordered parent and the behavior of his or her child. Given these limitations, we review below empirical research related specifically to what is known about parental depression, schizophrenia, substance abuse, and antisocial conduct as they relate to children's psychosocial development and adjustment.

The impact of parental depression on child development is one of the most widely researched areas in developmental psychopathology, although it is noteworthy that most of this research has focused on depressed mothers rather than fathers. Maternal depression has been associated with various negative outcomes for children, including internalizing and externalizing behavior problems and social and achievement difficulties (see, generally, Cummings & Davies, 1999; Downey & Coyne, 1990; Field, 1995; Hammen, 1997; Lovejoy, Graczyk, O'Hare, & Neuman, 2000; Oyserman et al., 2000). For example, findings from one comprehensive review indicated that children of parents with major affective disorders are two to five times more likely to develop some type of psychopathology than children of nondisordered parents (Beardslee, Bemporad, Keller, & Klerman, 1983).

The empirical research examining the association between parental depression and child behavior and emotional problems has used diverse methodologies over various time frames and age ranges. Although depression appears to be associated with dysfunction during all stages of childhood, the effects of maternal depression may be pronounced particularly during infancy and may have a negative impact well beyond the first year (Field, 1995; Lovejoy et al., 2000; Oyserman et al., 2000). For example, maternal depression is associated with the development of insecure parent-child attachment (see below), which predicts various adjustment difficulties during later childhood (Cummings & Davies, 1999).

The specific mechanisms by which parental depression leads to child dysfunction are not completely clear, although several mediating factors have been investigated. Depressed

parents tend to provide fewer supportive statements, be more critical and intrusive, and display more depressive affect (e.g., sadness) when interacting with their children. They also report communication difficulties, disaffection, and increased levels of hostility and resentment, which generally have been corroborated by observational studies (see Lovejoy et al., 2000, for a comprehensive review of observational studies). Depression also has been associated with various deficits in child management practices (see below) and subsequent deviance in adolescence (see, generally, Cummings & Davies, 1999; Lovejoy et al., 2000; Oyserman et al., 2000).

Although not as widely researched as parental depression, early reports of the effects of having a parent with schizophrenia suggested that these children were particularly at risk for developing various adjustment problems and forms of psychopathology (see, generally, Jenuwine & Cohler, 1999; Mednick, Parnas, & Schulsinger, 1987; Nuechterlein, 1986; Weintraub, 1987). For example, parents with schizophrenia tend to have children who are disproportionately likely to evince later schizophrenia, personality disorders, and antisocial behavior, as well as social functioning deficits, various information-processing anomalies and cognitive deficits, neurological soft signs, and autonomic abnormalities. However, the existing studies have reported widely varying rates and types of subsequent dysfunction among children of parents with schizophrenia, which make conclusions regarding the specific effects of this disorder on children's development difficult to determine (Jenuwine & Cohler, 1999; Oyserman et al., 2000). Moreover, many children with parents who suffer from schizophrenia do not appear to experience any significant levels of maladjustment. Although the literature is less developed than the parental depression research, there is some evidence in the parental schizophrenia literature to suggest that diagnostic status per se may be less relevant in predicting adjustment problems experienced by offspring than are other factors such as the chronicity of the disorder and the specific deficits in parenting ability evidenced by the parents (see Goodman & Brumley, 1990; Oyserman et al., 2000; Rogosch, Mowbray, & Bogat, 1992).

Another truism in relation to the effects of parents' behavior on children is that exposure to parental substance abuse and dependence will be detrimental to the development and socialization of children (for reviews, see Chassin, Barrera, & Montgomery, 1997; Logue & Rivinus, 1991; Lynskey, Fergusson, & Horwood, 1994; Steinhausen, 1995; Swaim, 1991; West & Prinz, 1987). Specific childhood outcome factors that have been associated with excessive parental alcohol and drug use include various forms of externalizing symptomatology (e.g., aggression, delinquency, attention deficits), internalizing behavior problems (e.g., depression,

low self-esteem), adolescent drug use, cognitive deficits, and poor school achievement. It should be noted, however, that the majority of this research (particularly longitudinal studies) has been conducted in relation to alcoholism rather than illicit drugs of abuse.

Similar to earlier qualifications noted about the relationship between parental psychopathology and child adjustment, it should be pointed out that the strength of the relationship between parental substance use and childhood dysfunction has varied considerably across studies and that many children of substance-abusing parents do not exhibit significant subsequent psychopathology. Furthermore, there is some evidence that those parents who desist from alcohol dependence (i.e., those "in recovery") do not have children who exhibit internalizing symptomatology, although relatively little research has been conducted in this area.

Parenting practices have been noted as potential mediators of the relationship between parental substance use and childhood dysfunction. Specifically, Chassin et al. (1997) review data supporting the deleterious effect of alcohol on parents' monitoring of children's behavior, which resulted in increases in association with drug-using peers. Indeed, higher rates of child abuse and neglect are consistently reported among substance-abusing parents (e.g., Black & Mayer, 1980; Mayes, 1995). Other relevant parenting factors that have received empirical support include increased exposure to stressful life events and breakdown of family routines due to parental substance use, and impairments in parent-child attachment status among younger children.

A final area relevant to custody evaluations is research examining the relationship between parental antisocial conduct and childhood dysfunction. One of the most consistent findings in the developmental literature is that parents who engage in significant antisocial behavior tend to have children who evidence various adjustment problems, particularly related to externalizing behaviors such as aggression and delinquency (see, generally, Dishion & Patterson, 1997; Farrington, 1995, 2000; Frick, 1993; Frick & Jackson, 1993; Loeber, 1990; Loeber & Stouthamer-Loeber, 1986; Robins, West, & Herjanic, 1975). Although most of this research has addressed paternal antisocial personality and behavior, maternal criminality and antisocial personality disorder (as well as sibling delinquency) also have been shown to be associated with subsequent impairment among offspring.

Specifically in terms of custody evaluations, it should be noted that parental antisocial conduct not only exerts a significant impact on children's functioning in childhood and adolescence, it also has been associated with long-term consequences reaching well into adulthood. For example, when predicting antisocial behavior at age 32, Farrington (2000)

reported that having a criminally convicted parent when the individual was between ages 8 and 10 was the single strongest predictor among a host of risk factors (odds ratio = 3.7) examined in the Cambridge study of delinquent development.

The specific mechanisms that account for the relationship between parental antisocial personality disorder/criminality and subsequent dysfunction have not been clearly explicated, although research has supported the role of both genetic and family socialization factors and has, to some extent, paralleled the research examining the effects of parental depression on parenting and childhood psychopathology. Those specific parenting practices that have received empirical support as predictors of later impairment are reviewed below.

Parenting Practices and Child Development

Aside from parental mental disorder, various other “psychological” characteristics related to parenting more broadly have been investigated in relation to children’s psychosocial development. In fact, the bulk of developmental research over the past half-century has focused less on diagnosable psychopathology and more on specific parenting practices. Various practices have been examined in terms of their effects on the development and socialization of children and adolescents, ranging from very concrete microanalyses of observable parental behaviors to more global assessments of latent parenting constructs. Although a wide range of variables has been investigated, much of the research and theorizing about parental influence in the past several years has come to focus on a core set of “family management” factors that appear to be associated strongly with adverse outcomes over the course of development from infancy to adolescence. Much of this research has been conducted in reference to the development of attachment theory (described below), although behavioral models also have been prominent. Regardless of the specific theoretical orientation of researchers, the data derived from these studies have provided empirical support for several parenting factors that appear influential in children’s development. Key factors that have emerged from this literature are highlighted below. For more comprehensive reviews of these variables, see Campbell (1997), Dishion and Patterson (1997), Edens (1999), Greenberg, Speltz, and DeKlyen (1993), Kelly and Lamb (2000), Loeber and Stouthamer-Loeber (1986), Reitman and Gross (1995), and Shaw and Winslow (1997).

The quality of parent-child attachment during the first few years of life has received considerable attention in terms of its relationship to children’s later adjustment. Attachment theory was initially proposed by Bowlby (1969) as a general

theory of personality development that was based heavily in ethnology and evolutionary theory. Attachment is seen as an organized behavioral system designed to maintain “felt security” for the infant by preserving proximity to the caregiver and by providing a “secure base” from which to explore the environment. Much of the attachment research has focused on how early relationship experiences influence infants’ development of emotional regulation (a key sociodevelopmental milestone), as well as how these early experiences form the basic “working models” of subsequent relationships in later childhood and adolescence.

Typically, investigators have assessed specific patterns of attachment that are observed in infant-caregiver relationships. The majority of this research has been an outgrowth of the Strange Situation procedure (Ainsworth, Blehar, Waters, & Wall, 1978), in which the parent briefly leaves a 12- to 18-month-old infant in the company of a stranger. Building on Bowlby’s initial observations of typical reactions to separation and reunion, the response of the infant to the caregiver upon reunion has been the basis for identifying four basic attachment styles: securely attached, insecure-resistant or ambivalent, insecure-avoidant, and insecure-disorganized. Most children are identified as secure, in that they welcome caregivers upon reunion and seek their proximity if distressed by the separation. Insecurely attached children, however, display various forms of dysfunctional reactions in response to the reunion (see Ainsworth et al., 1978, or Greenberg et al., 1993, for a more thorough description).

Although main effect models have been inconsistent, a wealth of data exists showing that insecure attachment before the age of 2 years, in combination with other risk factors, significantly predicts increased problems with aggression, depression, and peer relationships in the preschool, elementary school, and preadolescent age ranges (see Greenberg & Speltz, 1988; Greenberg et al., 1993). In fact, many of the behaviors and outcomes distinguishing secure and insecure preschoolers are specific symptoms of childhood behavior disorders such as oppositional defiant disorder (Greenberg et al., 1993). Regarding specific patterns of behavior associated with each attachment status, Renkin, Egeland, Marvinney, Mangelsdorf, and Sroufe (1989) found that teachers rated boys who were identified as avoidant in infancy as more aggressive, whereas ambivalent-resistant attachment was associated with passive-withdrawal. More recent research, summarized by Lyons-Ruth (1996), suggests that disorganized attachment status in infancy may be the most predictive of subsequent externalizing behavior problems in the preschool and grade school years. For example, Lyons-Ruth, Alpern, and Repacholi (1993) found that a large percentage of children exhibiting serious hostile behavior problems had

disorganized attachment histories. Similarly, Solomon, George, and DeJong (1995) reported that children with disorganized attachment histories were more aggressive (mother- and teacher-report) than nondisorganized children.

Specific parental factors (as well as child variables) have been shown to predict insecure attachment. Aside from obvious risk factors such as abuse and neglect, parents' emotional expressiveness and their sensitivity and responsiveness to infants' emotional cues are associated with attachment status (see Campbell, 1997; Crockenberg & Leerkes, 2000; Cummings & Davies, 1999). Although much of this research has been conducted with mothers, similar relationships appear to exist regarding father-child attachment.

Collectively, the attachment data clearly indicate that the quality of the parent-child relationship plays a central role in children's socioemotional development, and the theory itself provides an explanatory mechanism for understanding how parental relationships affect children. Moreover, the importance of this variable is not limited to the infancy and toddler years, in that relationship quality continues to be an important predictor of maladjustment in later childhood and adolescence. It is worth noting, however, that other paradigms (e.g., learning theory) can be used to explain the results of the attachment data and that much of the research with children beyond the toddler years is not driven from an attachment perspective. In fact, some have argued for a "macroparadigm" in developmental psychology that accommodates results from multiple theories (Reitman & Gross, 1995).

Consistent with this macroparadigm conceptualization, developmental researchers have identified two basic dimensions of parenting that seem to play a prominent role in the socioemotional development of children. The first of these dimensions has been labeled *nurturance*, reflecting the degree of affective warmth or coldness in the relationship. The second broad dimension, sometimes referred to as *control* or restrictiveness, relates to the type and degree of supervision, monitoring, and limit setting used by the parent. These two factors often have been used to classify basic parenting styles (Baumrind, 1967; Campbell, 1997; Reitman & Gross, 1995), such as *authoritative* (high nurturance, high control), *authoritarian* (low nurturance, high control), and *permissive* (high or low nurturance, low control).

Both authoritarian and permissive parenting styles have been linked with undesirable outcomes among children and adolescents, through the use of various research methodologies (e.g., laboratory tasks, home observation, self-report questionnaires). For example, toddlers who have parents whose behavior is consistent with an authoritarian approach tend to show more negative affect and to be more defiant and noncompliant in parent-child interactions. Deficits in

self-regulation also have been noted. Children and adolescents with authoritarian parents are at greater risk for aggression and other forms of externalizing behavior problems and for academic difficulties and tend to perform more poorly on measures of moral development, self-esteem, and self-competence. Parenting practices associated with permissiveness also have been shown to be linked with aggression and poor behavioral controls. More specifically, a meta-analysis conducted by Loeber and Stouthamer-Loeber (1986) found that boys' conduct problems were significantly related to a lack of parental involvement in 22 of the 29 studies reviewed. Level of parental supervision also was strongly correlated with subsequent delinquency and antisocial behavior.

Not surprisingly, parents who engage in what generally can be construed as authoritative approaches to parenting tend to have psychologically healthy children who are more prone to be self-reliant, socially competent, and capable of self-regulation. Moreover, these parenting strategies may serve as a buffer against other risk factors in a child's environment. As Dishion and Patterson (1997) have noted in their summary of the research:

In every instance, the finding has been that the impact of context on adjustment is mediated through parenting practices. The parents can be subjected to severe stress, but if they manage to keep their parenting practices relatively intact, the negative context will not have a significant impact on child adjustment. Effective discipline, monitoring, and family problem-solving practices are the strongest protective factors that we have seen in the literature. (p. 211)

Divorce

The research literature of the 1970s and 1980s took a narrow view of divorce, focusing on family structure and on adverse outcomes (Hetherington & Stanley-Hagan, 1999) and conceptualizing divorce in a simple cause-effect model (Kaplan & Pruett, 2000). Divorce was not yet recognized for its longitudinal impact. Using anecdotal, cross-sectional, uncontrolled studies, early researchers reported that children from divorced families suffered from a wide range of emotional, behavioral, and academic problems when compared to children from nondivorced families (Kaplan & Pruett, 2000). Mean differences, often using clinical samples, were interpreted inappropriately and sweeping generalizations were made about the effects of divorce. The accumulation of such negative findings led to the inaccurate conclusion that being divorced per se caused ill effects in children (Kelly, 1998). Essentially, divorce was viewed as a single traumatic experience. In retrospect, much of this research has been criticized

for various methodological flaws: Most investigators used cross-sectional methodologies and nonrepresentative, poorly defined samples; data often were derived from single sources or measures of questionable validity; researchers failed to distinguish negative effects resulting from marital discord from negative effects resulting from divorce per se; and significant mediating or moderating factors were not considered (Hetherington & Stanley-Hagan, 1999).

The current model of divorce research does not assume that divorce inevitably leads to poor outcome. Instead, developmental, family systems, and ecological models have been adopted that regard divorce as a family transition or disruption that, depending on a variety of individual, family, and extrafamilial factors, places each individual child at risk for variable amounts of time (Hetherington & Stanley-Hagan, 1999). Emphasis is placed on the diversity of children's adjustment to divorce and on the interactions among the influences that undermine or support the child's adjustment (Wolchik, Wilcox, Tein, & Sandler, 2000). Also, replacing the cross-sectional tradition of early research on divorce, leading researchers have adopted a life course, risk, and resiliency perspective (Hetherington, 1999a). From this perspective, it is assumed that "although divorce may be associated with stressful changes and challenges in family members' lives, it also may present a chance for escape from conflict, for more harmonious, fulfilling relationships, and the opportunity for greater personal growth, individuation, and well-being" (Hetherington & Stanley-Hagan, 1999, p. 130). Such a complex approach is made possible by the use of more sophisticated statistical methods (e.g., cluster analysis, structural equation modeling) and research methodologies (e.g., quasi-experimental designs, longitudinal studies, multiple outcome measures, nationally representative samples, studying the adjustment of multiple children in a family).

Unlike earlier reports, more recent research examining the impact of divorce on children indicates that many of the problems suffered by children of divorce cannot be accounted for by the divorce itself. Instead, events and experiences in the years preceding the divorce (e.g., general family conflict and marital discord) are of central importance (Cherlin et al., 1991; Kelly, 2000). For example, families on the verge of breakup have been found to be characterized by less intimate interparental and parent-child relationships, less parental commitment to children's education, and fewer economic and human resources, resulting in more academic, psychological, and behavioral problems for children even before the marital disruption (Sun, 2001). Moreover, children's maladjustment subsequent to divorce can be predicted largely by these pre-disruption factors and by the corresponding changes in family circumstances during the period

surrounding the divorce (Sun, 2001). In general, Cherlin et al. concluded that the differences in outcome between children from divorced and intact families derives from three sources: (a) growing up in a poorly functioning family, (b) severe and extended marital conflict, and (c) parents' emotional upset, diminished parenting capacities, and ongoing conflict that continues after separation. Thus, the presence of prolonged marital conflict appears to play a greater role than divorce itself on children's adjustment.

Teasing apart the differential impact of marital conflict and/or divorce proves difficult. Accordingly, there has been a large increase in the number of studies examining complex variables within the marriage that profoundly impact child adjustment, including marital conflict, violence, and related parenting behaviors. The results essentially have confirmed that the deleterious effects of the divorce process and/or the postdivorce family structure on children's adjustment have been overstated and overgeneralized (Hetherington & Stanley-Hagan, 1999; Kaplan & Pruett, 2000; Kelly, 2000).

Finally, studies examining the possible association between genetics to divorce-proneness and to children's adjustment to divorce have begun to accumulate (Jockin, McGue, & Lykken, 1996; O'Connor, Plomin, Caspi, & DeFries, 2000). In a prospective longitudinal comparison of children from adoptive and biological families who divorced, findings for psychopathology (e.g., behavioral problems, substance abuse) appear to be consistent with an environmentally mediated explanation for the association between parent divorce and children's adjustment. Findings for academic achievement and social adjustment, however, were consistent with a genetically mediated explanation (O'Connor et al., 2000). Although the results are intriguing, conclusions derived from a single study should be viewed cautiously.

Effects of Divorce on Children's Adjustment

It is a generally accepted fact that children of divorce, compared with children in never-divorced families, have significantly more adjustment and achievement problems (Kelly, 2000). This is not surprising considering that

most children of divorce experience dramatic declines in their economic circumstances, abandonment (or fear of abandonment) by one or both of their parents, the diminished capacity of both parents to attend meaningfully to their children's needs (because they are preoccupied with their own psychological, social, and economic distress as well as stresses related to the legal divorce), and diminished contact with many familiar or potential sources of psychosocial support (friends, neighbors, teachers, school-mates, etc.), as well as familiar living settings. (Lamb, Sternberg, & Thompson, 1997, p. 395)

In the short term, the experience of parental separation and divorce represents a significant crisis for the majority of children and adolescents, who are likely to respond with a multitude of conflicting emotions. For example, anger, sadness, and deep feelings of loss may be apparent, but in situations of extreme parental conflict, considerable relief also may be experienced. Depression, low self-esteem, and anxiety are common under these circumstances, and acting-out may occur.

Certain differences between children of divorce and children of never-divorced families consistently are reported (Amato & Keith, 1991); and a recent, updated meta-analysis suggests that this gap is widening, after a decrease during the 1980s (Amato, 2001). However, recent studies with more sophisticated methodologies report smaller differences between children of divorce and children of never-divorced families than previously believed (Kelly, 2000). Contrary to early research, most children from divorced homes actually fall within the normal range of adjustment on standardized measures (Amato, 1994). There is, of course, considerable disagreement about the size and significance—both statistically and practically—of differences in problems experienced (Hetherington & Stanley-Hagan, 1999). Furthermore, although a variety of problems (e.g., teenage pregnancy, substance abuse, delinquency) in some areas of adjustment are nearly twice as common among children of divorce than among children of nondivorced families, it is important to note that these problems tend to cluster together in the same individuals, potentially exaggerating the true range of impairment and pathology. The vast majority of children whose parents divorce do not exhibit severe or enduring problems and develop into relatively competent and well-adjusted adults (Amato, 1999).

Despite the preceding caveat, disturbances in the social, academic, and physical domains frequently are cited in the literature, in addition to the psychological effects of divorce noted earlier. Poor academic performance and achievement test scores are commonly reported, but differences are modest and are reduced further when researchers take into account the effects of changes in socioeconomic status and parental supervision (McLanahan & Sandefur, 1994). The school dropout rate of divorced children is two to three times that of nondivorced children, and they are less likely to earn a college degree (McLanahan, 1999). In addition, divorced children are twice as likely to give birth to a child as a teenager (McLanahan & Sandefur, 1994), to use alcohol, cigarettes, and marijuana (Kelly, 2000), and to engage in other antisocial or delinquent behavior. Furthermore, children of divorced parents tend to have more illnesses, medical problems, and physician visits, and are three times more likely to

receive psychological treatment than never-divorced children (Zill, Morrison, & Coiro, 1993). Finally, children of divorce commonly experience difficulty with peer relationships.

In keeping with the risk and resiliency perspective of divorce research cited above, many researchers have investigated the characteristics of children that cause some to be more vulnerable or resilient than others. The most commonly investigated characteristics are age, sex, and personality. First, it has long been proposed that young children may be more affected by divorce because they are less prepared cognitively, emotionally, and socially to deal with the challenges and changes of divorce. However, most researchers have reported equally negative effects for older children and adolescents (Amato & Keith, 1991). Contrary to popular belief, the majority of children—and especially older ones who have the ability to form cognitively appropriate conclusions—do *not* assume responsibility or blame for causing their parents' marital separation (Kaplan & Pruett, 2000). Furthermore, as Emery (1998) has noted, the results of many studies examining the relationship between children's age and adjustment are inconclusive, as age is often confounded by other factors (e.g., time since parental separation and divorce, age at the time of assessment).

The association between sex and adjustment to divorce is more complex than originally believed. Although earlier researchers often reported more problems pertaining to divorce for boys and to parental remarriage for girls, findings of more recent research do not indicate such sex differences (Hetherington & Stanley-Hagan, 1999). When sex differences are found, they tend to be more likely to occur with younger children than with adolescents (Amato & Keith, 1991). In addition, boys from predivorcing families demonstrate difficulties in the domains of aggression and impulsivity, whereas girls are more likely to demonstrate difficulties with interpersonal relationships (Block, Block, & Gjerde, 1989). Behavior problems appear to increase in children from divorced families during adolescence, with the increased adjustment difficulties being more significant for girls than for boys (Hetherington, 1993; Hetherington et al., 1992). Furthermore, fathers tend to be more involved with their sons subsequent to divorce, which is encouraging considering that such involvement has been found to be more important for the development of boys than of girls (Amato & Keith, 1991). Overall, divorce appears to be more detrimental to females than males, but the differences seem modest. Instead, Hetherington (1999b) notes the complexity of the gender-age-adjustment issue, in that adjustment and achievement in boys and girls after divorce have been found to vary by age, time since divorce, type of parenting, and type and extent of conflict (Kelly, 2000). Finally, intelligent, effective, and

pleasant children are more likely to evoke positive responses and support from others and to be able to adapt to new challenges and stressful life experiences (Hetherington, 1989), whereas the psychosocial stress of divorce merely serves to exacerbate the difficulties of already troubled and poorly adjusted children (Block et al., 1989; Hetherington, 1989).

Adjustment problems tend to diminish in intensity over time, but, on average, children of divorced parents remain less socially, emotionally, and academically well-adjusted than children from nondivorced families (Amato & Keith, 1991). Specifically, meta-analyses have revealed that young adults whose parents divorced (when compared to those whose parents did not divorce) reported lower psychological well-being and socioeconomic attainment, more pregnancies outside of marriage and earlier marriages, poorer-quality marital relationships, and increased propensity to divorce (Amato & Keith, 1991). Even when issues apparently have been resolved earlier, problems can emerge or reemerge later in life in the face of new challenges and developmental tasks. Again, however, such effects are modest, and the general view of this research is still that of resiliency rather than dysfunction (Kelly, 2000). For example, in the National Child Development Study, a long-term follow-up of divorced children into adulthood, 94% of men and 82% of women fell below clinical cutoffs for adult emotional disorders (Chase-Lansdale, Cherlin, & Kiernan, 1995). Unfortunately, however, the most enduring effects of divorce during childhood lie in the realm of educational attainment, which in turn affects the occupational achievement and socioeconomic security of those who dropped out of school and entered early marriages and parenthood (Kelly, 2000).

In the most extensive study to date, both in terms of duration (25 years) and method (e.g., based on hundreds of hours of face-to-face interviews), Wallerstein and Lewis (1998) reported anecdotal data on the psychological, economic, and social consequences of marital breakdown on children. Over two decades postdivorce, the young adults in the sample continued to relate sad stories of their "lost childhoods." The developmental tasks of young adulthood—choosing a profession or career, searching for and selecting a life partner, establishing intimacy, and beginning a family—posed special challenges for these adult children of divorce. Specifically, burdened with financing their own education beyond high school, these children of middle- to upper-class parents were forced to select career lines that, in many cases, fell far below those of their parents. As a consequence, 40% fell below their parents' socioeconomic level. Furthermore, they commonly expressed deep concerns about marriage and having children, worrying about committing the same mistakes as their parents. Consistent with other researchers on the

topic, Wallerstein and Lewis recognized the resiliency of children, but emphasized that divorce "does superimpose a series of special and difficult tasks on top of the normative tasks of growing up" (p. 375).

Parental/Marital Conflict and Children's Adjustment

As mentioned, marital conflict is a more powerful predictor of children's adjustment than is divorce itself. Marital conflict takes its toll via a number of mechanisms, both direct (e.g., simple extended activation of the body's physiological stress response, modeling effects; Kelly, 1998) and indirect (e.g., less effective parenting). Furthermore, among the most important predictors of the adjustment of the child are a number of central variables: (a) frequency and intensity of parent conflict; (b) style of conflict (e.g., presence and type of interspousal violence and other acts of marital aggression); (c) manner in which conflict is resolved; and (d) presence of buffers to ameliorate the effects of high conflict (e.g., good relationship with at least one parent or caregiver, parental warmth, support of siblings, good self-esteem and peer support; Kelly, 2000). More extreme expressions of parental anger result in a broader range of adjustment problems and significantly higher levels of psychopathology. The most harmful conflicts are those directly concerning the child, those to which the child is directly exposed, those that lead to physical violence, and those in which the child feels caught in the middle (Davies & Cummings, 1994). Furthermore, high marital conflict is associated with less warm parent-child relationships (Kelly, 1998). Parents in high-conflict marriages engage in more erratic disciplinary practices and are more likely to use anxiety- or guilt-inducing techniques to discipline (Kelly, 1998).

Although immediately after divorce children exhibit more problems in adjustment than those in high-conflict nondivorced families, as the children adapt to their new familial structure, the pattern of differences reverses (Hetherington & Stanley-Hagan, 1999). In fact, when divorce is associated with a move to a less stressful situation, children in divorced families show adjustment similar to those in intact families with nondistressed marital relations (Amato, Loomis, & Booth, 1995; Hetherington, 1999b). However, when divorce is associated with continued high levels of conflict, adjustment of divorced children is worse than that of nondivorced children, perhaps because of the lack of a second residential parent, fewer resources, and higher rates of stressful life events (Hetherington & Stanley-Hagan, 1999). The implications of these findings is made clear by Hetherington and Stanley-Hagan (1999): "Essentially, if conflict is going to continue, it is better for children to remain in an acrimonious

two-parent household than to suffer divorce; but if there will be a shift to a more harmonious household a divorce is advantageous" (p. 134). This relationship is not fully clear-cut, however. As expected, when marital conflict prior to divorce was high, divorce resulted in positive outcomes as young adults. Conversely, when marital conflict was low and parents divorced (divorce was unexpected), young adults suffered *more* adjustment problems (Amato et al., 1995).

To summarize, children of divorce in general do appear to suffer from a number of problems in behavioral, emotional, and social domains, particularly in the short term after the divorce, in comparison to children of families never impacted by such a major family transition. However, the differences are smaller than originally believed, and most children of divorce fall in the normal range of adjustment, developing into competent, stable adults. Furthermore, review of the recent literature yields less than consistent findings, as researchers have employed very different methodologies, including groups sampled, instruments used, definition of terms, length of follow-up, and the age of children at the time of divorce (Kaplan & Pruett, 2000).

A substantial body of research on the effects of divorce on children has accrued since the 1970s, but there are still many issues left virtually unexplored and others remain open for clarification. Hetherington & Stanley-Hagan (1999), in their extensive literature review, identified a number of suggestions for new directions of research. First, although not entirely new, the need for further longitudinal studies cannot be overstated. There has been an increasing call for research to examine the diverse developmental trajectories and patterns of children's outcomes subsequent to divorce rather than focusing solely on averages. Cross-sectional studies that have so plagued the early research on the topic cannot address adequately the dynamic interaction of risk and protective factors that influence the adjustment of children over time. Second, the use of rigorous methodologies must continue and new strategies for studying this complex topic be proposed and tested. Interdisciplinary efforts, combining the sampling skills of sociologists and the assessment and observational skills of psychologists, are necessary. Third, although research on divorce in White, middle- to upper-class families proliferates, there is an unfortunate dearth of information on other cultural, ethnic, and racial factors that affect adjustment. This must be rectified to be able to draw even remotely adequate, generalizable conclusions. Fourth, more studies should take a family systems approach, considering children's relationships with custodial fathers, noncustodial parents, grandparents, siblings, and other relatively neglected family subsystems. Furthermore, effects of *multiple* transitions and reorganizations of the family (e.g., transitioning

into stepfamilies, parental relocation) on children's adjustment must be investigated, given that this is a common reality for many families. Fifth, because the family is but one system in which a child is nested, albeit a critical one, more ecological approaches studying the effects of extrafamilial structures or factors (e.g., neighborhood, school, peers, place of worship) must be undertaken. Finally, long-term systematic examinations of interventions with divorced families must follow.

Parenting after Divorce

When parents divorce, children of all ages express anxiety about caretaking and custody arrangements (Kelly, 1998). In all families, regardless of the number of structural reorganizations or the time since each transition, children's adjustment is associated with the quality of the parenting environment (Hetherington et al., 1992): the degree to which parents are warm and supportive, communicative, responsive to their needs, exert firm, consistent control and positive discipline, and monitor their activities (Hetherington & Stanley-Hagan, 1999). Especially important in single-parent homes in which, by definition, no other residential parent is available, is the ability of the custodial parent to provide these family management practices. It is also important for both parents to be able to minimize the conflict to which their children are exposed. This includes not fostering hostility against the other parent and not allowing the child to get caught in the middle of parental conflict (Hetherington & Stanley-Hagan, 1999).

Considering the stress involved with divorce, psychological and health problems often ensue, compromising the ability of parents to be responsive and sensitive to their children's needs and to be consistently controlling of their behavior (Hetherington, 1993). Children's personal circumstances and developmental needs are often given inadequate attention, particularly among couples characterized by high rates of litigation and relitigation, high degrees of anger and distrust, intermittent verbal and/or physical aggression, difficulty focusing on their children's needs as distinct from their own, and chronic difficulty coparenting and communicating about their children after divorce (Lamb et al., 1997). Furthermore, there is wide variability in the amount of time most individuals, both parents and children, take to achieve stability. The fact remains, however, that the overall psychological and economic well-being of custodial parents is one of the most powerful predictors of children's adjustment following divorce (Lamb et al., 1997).

In accordance with findings in the broader developmental literature, a recent study found both additive and interactive

effects between parenting variables and child variables (i.e., temperament) in predicting adjustment problems in children after divorce (Lengua, Wolchik, Sandler, & West, 2000). Utilizing a sample of 231 mothers and children who had experienced divorce within the preceding 2 years, main effects were detected for both parenting (with a focus on parental rejection and inconsistent discipline) and temperament (represented by positive/negative emotionality and impulsivity), in terms of the prediction of child adjustment problems (e.g., depression, conduct problems). Moreover, significant interactions resulted: Parental rejection was more strongly related to depression and conduct problems for children low in positive emotionality. That is, positive emotionality appears to act as a protective factor for children, buffering the impact of maternal rejection. Furthermore, inconsistent discipline was more strongly related to adjustment problems (both depression and conduct problems) for children high in impulsivity, suggesting that children with impulse control difficulties may be at risk for developing problems of various kinds.

Economics and Remarriage

Particularly in mother-headed single-parent households, divorce commonly brings a significant decline in economic resources. Whereas fathers suffer a 10% decline in income following divorce, mothers, who continue to be granted primary physical custody of children despite changing conceptions of gender and parent roles, experience a 25% to 45% drop in family income, further adding to general levels of stress (Furstenberg, 1990). The establishment and maintenance of two separate residences made necessary by separation and divorce impose economic burdens on the family as a whole (Lamb et al., 1997). Given how widespread economic disadvantage is among single-parent mother-headed families, it is unfortunate that economic disadvantage is commonly found to be the most significant risk factor for children's adjustment (e.g., McLanahan, 1999; McLanahan & Sandefur, 1994).

Although one way that custodial mothers can improve their financial situation is by remarrying (Furstenberg, 1990), the benefits of increased income do not appear to counterbalance the additional stresses experienced by children in step-families (Hetherington, 1993). Aside from the stress of adjusting to new family members, remarriage often entails relocation, which means further limiting availability of friends and relatives to provide social and emotional support during stressful times (Lamb et al., 1997). This is extremely problematic because children benefit from regularity, consistency, and continuity, which pertain not only to

parental involvement, but to peers, extrafamilial caregivers, and schools.

Access to the Noncustodial Parent

Meaningful economic and psychological involvement of the noncustodial parent is important in terms of children's post-divorce adjustment. To maintain high-quality relationships with their children, parents need to have sufficiently extensive and regular interaction with them, but research indicates that the amount of time involved is usually of less import than the quality of the interaction (Lamb et al., 1997). From a developmental perspective, it is recommended that time distribution arrangements ensure the involvement of both parents in important aspects of their children's everyday lives, including bedtime/waking rituals, transitions to/from school, and extracurricular activities (Kelly & Lamb, 2000). Together with developmental needs, parents must consider the temperament and dynamic individual circumstances of the individual child, and plans must be continuously adjusted accordingly (Lamb et al., 1997).

Although contact with both parents is valuable, when conflict between the two parents is intense, frequent contact with each actually can be harmful (Lamb et al., 1997). Furthermore, when a parent's adjustment is affected by mental illness or incapacity, serious substance abuse, or domestic violence, the potential costs of continued contact with children may outweigh the benefits (Lamb et al., 1997). Conversely, families headed by parents whose relationship is characterized by cooperation and flexibility in decisions about custody tend to enjoy greater advantages overall, which is not surprising. Specifically, more cooperative families, reflected by parents mediating rather than litigating custody, tended to have nonresidential parents who maintained more contact with their children, were more involved in multiple domains of their children's lives, had a greater influence in coparenting 12 years after the custody dispute, and made more changes in their children's living arrangements over the years (Emery, Laumann-Billings, Waldron, Sbarra, & Dillon, 2001). Moreover, increased contact between parents did not lead to heightened coparenting conflict.

Research has resulted in conflicting findings regarding the importance of children's contact with their father. For example, large-scale national studies have generally found no relationship between frequency of father contact and children's postdivorce adjustment (Kelly, 2000). However, in a meta-analysis of 57 studies, Amato and Gilbreth (1999) found that more recent studies of father-child contact provide stronger evidence of father impact on child adjustment than do earlier studies. Again, the quality of the relationship (e.g., feelings of

closeness with the child and active parenting of the father) is more important than frequency of visits. The degree to which father involvement impacts child adjustment, however, ultimately is linked to such factors as degree of conflict, type of paternal and maternal acceptance, and regular payment of child support (Lamb, 1999; McLanahan & Sandefur, 1994; Pruett & Pruett, 1998). Furthermore, one group of researchers reported that even when economic factors were accounted for, children in father-custody families evidenced fewer problems than those in mother-headed families (Clark-Stewart & Hayward, 1996). Nevertheless, while “fathers are important . . . children can develop well in mother-headed families with absent fathers” (Hetherington & Stanely-Hagan, 1999, p. 136).

Type of Custody Arrangements

At a theoretical level, substantial debate remains about which custody arrangement is in the best interests of children. Besides the benefits and detriments to each parent (and how they indirectly affect a child), effects on the child with regard to single-parent versus joint-custody arrangements are mixed. On the one hand, advocates of joint-custody argue that children are expected to experience both higher quality residential parenting and relationships with nonresidential parents, more cooperative coparenting, and ultimately, better adjustment (Emery et al., 2001; Gunnoe & Braver, 2001). Conversely, critics are concerned that joint custody exacerbates family conflict by requiring sustained contact to collaborate in the child’s interests and that children will be adversely affected when they are unable to keep their relationships with both parents equal (Gunnoe & Braver, 2001). Moreover, results of research on the adjustment of children from single-parent versus joint custody families also have been mixed. For example, Johnston (1995) asserts that more recent and larger studies find few differences in adjustment between children in sole versus joint physical custody, other than higher parental income and education and regular child support payments among joint custody parents. Conversely, Kelly (2000) notes that joint legal custody has been linked to children’s well-being. Yet others have speculated a more complex relationship between type of custody arrangement and adjustment. For example, Gunnoe and Braver (2001) identified 20 variables that predisposed families to be awarded either sole or joint custody, including demographic factors (e.g., education of mother, hours per week worked by father), parental adjustment (e.g., fathers’ anger), spousal relations (e.g., mothers’ visitation opposition), aspects of both fathers’ parenting (e.g., involvement in child rearing, visitation during separation) and mothers’ parenting (e.g.,

rejection/acceptance of child), and child adjustment (e.g., male children’s antisocial behavior, impulsivity). After controlling for these factors, which were hypothesized to have confounded apparent effects obtained in previous research, results indicated that families with joint custody had more frequent father-child visitation, lower maternal satisfaction with custody arrangement, and more rapid maternal re-partnering. All in all, however, children tended to exhibit fewer adjustment problems. Moreover, Maccoby and Mnookin (1992) reported that when conflict was low after divorce, adolescents in joint physical custody were better adjusted, but not in high-conflict postdivorce families. Finally, in families with extreme and continuing high conflict after divorce, children (particularly girls) with more frequent transitions and shared access were found to have more emotional and behavioral problems than children in sole custody situations (Johnston, 1995). Thus, it appears that interparental conflict continues to be a pivotal factor in children’s adjustment well after the marriage has been dissolved. The type of custody arrangement and its likely effects cannot be considered in isolation.

SUMMARY

Child custody evaluations are one of the most difficult areas of forensic practice, given the complexity of the issues at hand (e.g., vague legal doctrines, contentious family dynamics, multiple persons and domains requiring assessment) and the intrinsically tenuous nature of any empirically supported conclusions that examiners reasonably can be expected to draw in most cases. Despite these difficulties, it seems clear from the preceding review that significant improvements in the child custody arena have been made in recent years. These improvements can be seen in the ever-expanding database of empirical research concerning the relationship between parenting behavior and child adjustment, the effects of divorce, and the impact of various custody arrangements on children. Improvements also can be seen in terms of the development of professional guidelines promulgated by various organizations that provide at least some instruction about standards of practice for examiners.

Despite these advances, considerable room for improvement remains in most areas of research and practice, and significant problem areas should be noted (see also Nicholson & Norwood, 2000). First, the existing assessment approaches employed by many examiners remain of questionable value for assessing the psycholegal constructs relevant to child custody issues. Moreover, the recent advent of “custody-specific” tests in particular could be argued to be a step

backward in the process of developing appropriate instrumentation. Second, the scientific foundation on which examiners should draw their conclusions and/or recommendations, although considerably improved, remains in its infancy. Furthermore, research in this area always will be constrained by the inability to use true experimental designs to address the most prominent questions related to custody decision making. Additionally, little is known about how child custody evaluators, attorneys, and judges consider information in cases, and on what types of information they base their decisions.

A final and more general area of concern is that many of the fundamental issues needing to be resolved in custody cases (e.g., what is in a child's best interest) ultimately are value judgments that may not be directly amenable to scientific inquiry, although value judgments made by legal decision makers certainly can be informed by scientific data (as noted previously). Some of the more damning critiques of this area of practice assert that it is little more than subjective value judgment dressed up as expert opinion or social science data. In fact, there remains a debate within the field about the fundamental appropriateness of the involvement of mental health professionals in child custody evaluations (Emery, 1999; Koocher, 1999; Melton, 1999; O'Donohue & Bradley, 1999; Weisz, 1999). Despite this debate, it is clear that mental health professionals will continue to be involved in these evaluations for the foreseeable future. As such, attention to improving the quality of practice in this area should remain a priority.

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