

Child Custody and Divorce: An Overview

Family Law Section

San Francisco Bar Association

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Introduction

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Disclosures

- Majority of my professional time in private practice
- No relevant financial or contractual conflicts of interest to disclose

References for this discussion

- Lewis' Child & Adolescent Psychiatry: A Comprehensive Textbook, 4th Ed., A. Martin & F. Volkmar, ed's; Lippincott Publishers, 2007: Section 7.3.2

Divorce & Child Custody

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The Evolution of American Concepts of Divorce and Child Custody

- **A reflection of societal views** of the family and the mother's and father's role
- A shift away from a **patriarchal model to a more egalitarian one**
- A shift away from **parent centered to a child centered** focus
- **Reforms in the divorce statutes** in the 1970's
 - Community property
 - No fault divorce
 - Variable custody arrangements

Demographic trends

- Approximately **1/2** of current marriages in US end in divorce.
- Approximately **1/3** of American children will grow up living with only one parent, especially if they are poor and minority children.
- Note: Divorce rate is decreasing but marriage rate is also similarly decreasing

The Stress of Divorce

- **Moves and adjustment** to two homes
- **Diminished parental support**
- **Reduced economic resources**
- **Loss of relationships**
- **Conflict and misunderstandings**
- **Two times the risk** for serious psychological problems: externalizing > internalizing
- **Good news:** most kids do okay

Initial Psychological Impact Dependent on Developmental Stage

- **One to Two Years**
- **Preschool:** regression, fears, sleep disturbance, increased aggression/acting out
- **School age:** same as above + behavioral and academic problems in school, depression, loyalty conflicts
- **Adolescents:** depression/suicide, academic failure, delinquency, promiscuity, substance abuse, intense anger and anxiety, acceleration of separation and individuation

Risk and Protective Factors

- **Interparental Conflict**
- **Psychological Health of the Parents**
- **Quality of Parent Child Relationships**
- **Other Factors Related to Stability in Environment:** relocations, loss of important networks and relationships, reduction in economic stability

Appropriate and Effective Parenting

- Keep the child **out of the middle**
- **Stable** and **routine** environment
- Minimize **transitions**
- Low **conflict**
- **Warmth**
- Active **involvement** in activities and academics
- **Authoritative** Parenting

Evolving Legal Concepts

- Roman and Common Law: father and his “**chattels**”
- 19th century: **tender years’ doctrine**
- Early 1970’s: “**psychological parent**” and maternal preference
- Increasing recognition of **father** role
- Current guiding legal doctrine: the “**best interests of the child**”

1974 ABA Uniform Marriage and Divorce Act

- Established language and definition regarding the “bests interests” criteria
- Most states have adapted their statutes from the language of this Act
- “the Court shall consider the **wishes** of the parents and the child, the **interactions** of the child with those who may significantly affect his or her best interests; the child’s **adjustment** to his or her home, school and community; and **the mental and physical health** of all individuals involved.”

California Family Code 3011

- In making a determination of the best interest of the child...the Court shall, among any other **factors** it finds relevant, consider all of the following:
 - The **health, safety, and welfare of the child.**
 - The **nature and amount of contact** with both parents, (with specified exceptions).
 - The habitual or continued use of **controlled substances**...or habitual or continual **abuse of alcohol**...
 - Considerations of **abuse**, as in Penal Code 11165.6
 - Considerations of **Domestic Violence**

California Family Code 3040: Parent More Likely to Allow Ongoing Contact

- “The Court shall consider, among other factor, which parent is **more likely to allow the child frequent and continued contact** with the non-custodial parent...and shall not prefer a parent as custodian because of the parent’s sex.”

California Family Code 3042: Child's Wishes

- **“If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the Court shall consider and give due weight to the wishes of the child in making an order granting or modifying custody....”**

Custody Defined:F.C.3002-07

- **Joint Legal Custody vs. Sole Legal Custody**
- **Joint Physical Custody vs. Sole Legal Custody**
- Joint Custody means joint physical and joint legal custody

California Family Code 3080: Presumption of Joint Custody

- “there is a **presumption**, affecting the burden of proof, that **joint custody** is in the best interest of a minor child” *if both parents agree to joint custody*. If they do not agree to joint custody, there is no recognized presumption.

Ethical considerations

- **Competence**
- **Consent**
- **Critical**
- **Conflicts of Interest**
- **Clear Boundaries and Role**

Custody Evaluation Process

- **Purpose** of the evaluation
- **Interviews** with each parent and child
- **Home** visit
- **Collateral** information
- Use of **psychological test** and other records
- The written **report**

Special Issues

- Special needs of infants and young children
- Medical, physical health, and special education needs
- Stepparents
- Allegations of sexual abuse
- Domestic violence
- Gay and lesbian parenting
- Parental kidnapping
- Parental alienation
- Move aways

Alternative Dispute Resolution

- Mediation
- Co-parent counseling
- Special master appointment
- Collaborative law process
- Preventive interventions:
 - Curriculum based education programs
 - <www.kidsturn.org>

Psychological Testing in Child Custody Evaluations

Presentation to the
Bar Association of San Francisco

November 18, 2010

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Who Does Testing in Custody Evaluations?

- Psychologists: 78% (Keilen & Bloom '86)
- Psychiatrists: 18% (Keilen & Bloom '86)
- Master's Level Practitioners: 4% (Keilen & Bloom '86)

How Does Testing Fit Into the Evaluation?

Evaluator's Rankings (Quinnell & Bow, 2001)

- Clinical Interviews of Parents
- Clinical Interviews of Children
- Parent-Child Observations
- Psychological Testing of Parents
- Psychological Testing of Children

How Does Testing Fit Into the Evaluation?

Frequency of Occurrence

- Psychological Testing of Parents: 90% of Evals
- Psychological Testing of Children: 60% of Evals

Criteria for Test Selection

- Is the test available commercially?
- Are there standardized test instructions and a manual?
- Is the test reliable (results can be replicated)?
- Is the test valid (measures what it says it measures)?
- Is the test valid for the intended purpose, circumstance, and examinee, or is an unacceptable level of inference required that negates the test's validity and/or reliability?
- Is specialized education, training, and/or experience required to administer, score, and/or interpret the test?
- Does the person administering/scoring/interpreting the test have the requisite training to do so?

Clinical Assessment Instruments

- Measure broad psychological constructs
- Were designed to be used in therapeutic or educational settings
- When used in Forensic settings, inferences must be drawn to relate the clinical constructs measured to the relevant psycholegal question(s)

Clinical Assessment Instruments

Assesses

- Intellectual Functioning
- Psychological Functioning
- Executive Functioning
- Attention and Concentration
- Academic Functioning
- Motor and Sensory Functioning
- Daily Living Skills

Adult Assessment

Intellectual Functioning (IQ)

- WAIS/WAIS-R
 - Used by 29% in 67% of cases (Keilin & Bloom, '86)
 - Used by 43% of doctoral level psychologists (Ackerman & Ackerman '97)
 - Used in > 20% of 43,195 evals in Ackerman & Ackerman, '97 (Hagen & Castagna, 2001)

Adult Assessment

Psychological Functioning

MMPI/MMPI-2

- Used by 70% in 88% of cases (Keilin & Bloom, '86)
- Used by 92% of doctoral level psychologists in 91% of exams (Ackerman & Ackerman, '97)
- Used in 84% of the 43,195 evals in Ackerman & Ackerman, '97 data (Hagen & Castagna, 2001)

Adult Assessment

Psychological Functioning

Rorschach

- Used by 42% in most evals (Keilin & Bloom, '86)
- Used by 48% of doctoral level psychologists in 64% of exams (Ackerman & Ackerman, '97)
- Used in > 20% of the 43,195 evals in Ackerman & Ackerman, '97 data (Hagen & Castagna, 2001)

Adult Assessment

Psychological Functioning

TAT (Thematic Apperception Test)

- Used by 38% of evaluators (Keilen & Bloom, '86)

Adult Assessment

Psychological Functioning

MCMII-II/MCMI-III

- Used by 34% of doctoral level psychologists (Ackerman & Ackerman, '97)
- Used in > 20% of the 43,195 evals in Ackerman & Ackerman, '97 data (Hagen & Castagna, 2001)

Child Assessment

Intellectual Functioning (IQ)

- Used by 45% of evaluators in 85% of cases (Keilin & Bloom, '86)
- Used by 58% of doctoral level psychologists in 45% of exams (Ackerman & Ackerman, '97)
- Used by 48% of evaluators (Quinnell & Bow, 2001)

Child Assessment

Psychological Functioning

MMPI-A (MMPI-Adolescent Version)

- Used by 43% of evaluators in adolescent custody evaluations (Quinnell & Bow, 2001)

Child Assessment

Psychological Functioning

TAT/CAT (Thematic Apperception Test/Children's Apperception Test)

- Used by 39% of evaluators in 75% of cases (Keilin & Bloom, '86)
- Used by 37% of doctoral level psychologists in 53% of exams (Ackerman & Ackerman, '97)

Child Assessment

Rorschach; Projective Drawings; Bender Visual Motor Gestalt

- Next three most commonly used tests with kids in custody evals (Keilin & Bloom, '86)

Forensically Relevant Instruments

- Measure constructs relevant to forensic settings
- Have limited utility in Child Custody Evals

Forensically Relevant Instruments

Defensiveness

- Paulhus Deception Scales (Paulhus, 1999)

Malingering/Feigning/Symptom Exaggeration

- Structured Interview of Reported Symptoms (SIRS & SIRS-2; Rogers, Bagby & Dickens, '92)
- Test of Memory Malingering (TOMM; Tombaugh, '96)

Psychopathy

- Hare Psychopathy Checklist-Revised (Hare, '91)

Forensic Assessment Instruments (FAIs)

- Developed to measure forensic constructs and for use in forensic settings
- Most have significant conceptual and psychometric problems
- Are not recommended for use in Child Custody Evals by a number of scholars/experts in forensic psychological assessment due to conceptual and psychometric problems

FAIs Designed for Child Custody Evals

Bricklin Perceptual Scales (BPS; Bricklin '90)

- Used by 35% of doctoral level psychologists in 66% of evals (Ackerman & Ackerman, '97)

Perception of Relationship Test (PORT; Bricklin, '89)

- Used by 16% of doctoral level psychologists in 64% of evals (Ackerman & Ackerman, '97)

Ackerman-Schoendorf Parent Evaluation of Custody Test (ASPECT; Ackerman & Schoendorf, '92)

- Used by 11% of doctoral level psychologists in 89% of evals (Ackerman & Ackerman, '97)

Standard of Practice or Usual and Customary Test Batteries

There isn't one!

- Make sure you use an expert who is well trained and articulate in discussing their psychometric test battery.

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