

his antisocial behavior. She calls the district attorney to learn why the request for a transfer hearing was made. The district attorney points out the history of arrests, the appearance of threatening and potentially violent behavior and that Jim will soon be 17 and beyond the scope of juvenile probation. Dr. Smith asks if the court has the option of deferred or concurrent sentencing, where Jim would be sent for drug treatment by court order and his progress reviewed at age 17, when he would either be released or sentenced as an adult. The district attorney said that was possible but did not know of treatment facilities that would take Jim. Dr. Smith then prepares a report for the court outlining her findings and opinion that Jim should not be transferred because there was no prior rehabilitation for his drug use and the lack of previous violent offenses. She recommends a facility that would accept Jim for drug treatment on court order. The court and district attorney accept Dr. Smith's report and recommendation at the hearing and she does not have to testify.

CONCLUSION

There have been numerous changes in the judicial and legal system in recent years that affect the role of the child and adolescent psychiatrist in court (11). It is critical for any professional to keep abreast of these changes, even if forensic child psychiatry is not a part of their clinical practice. Practitioners may not choose to perform custody evaluations, but new laws and judicial decisions regarding custody will

affect the children and families they care for. Understanding the judicial process improves the chances of being a more effective advocate for mental health, either as a fact or expert witness.

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CHAPTER 7.3.2 ■ DIVORCE AND CHILD CUSTODY

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INTRODUCTION

The evolution of current American attitudes and concepts of family, marriage, divorce, and childrearing responsibilities has been highly influenced by technological innovations, and by changing legal concepts, economic conditions, and governmental policies (1). These factors include the development and availability of birth control and family planning options in the 1960s and the women's and children's rights movements in the 1960s and '70s (2–4).

During these decades, the U.S. Supreme Court affirmed constitutional rights to privacy regarding the sexual behaviors of adults (5, 6). The past 3 decades have also seen large changes in the labor market and increase in educational and employment options for women. There have also been various governmental tax policies (marriage penalties) and transfer payments (social welfare and dependency support) that impact individual decisions about marriage, cohabitation, and childrearing arrangements (7–9).

These same sociocultural changes impelled the divorce reform pressures in the 1960s, resulting in the divorce reform state statutes in the 1970s, enabling no fault divorce, community property rights, and variable child custody arrangements.

Recent demographic trends indicate that approximately one-half of marriages in the United States end in divorce, with increasing numbers of children living with an unmarried or single parent. Approximately one-third of American children will experience significant family instability and grow up living with only one parent, especially if they are poor and minority children (7).

These sociocultural changes and legal reforms in turn have generated a demand for competent psychiatric evaluators who are knowledgeable about the complex clinical, legal, and ethical considerations involved with child custody work, and who are capable of integrating and translating the multidimensional aspects of this evaluation into a comprehensive and useful format for the courts.

THE IMPACT OF DIVORCE ON CHILDREN

While some parents may think or hope that their conflicting or untoward behavior may have little impact on the child, our clinical experience with these children reveals the heartfelt sensitivity and anguish that the child may feel. For example,

one 5-year-old boy when discussing with the child custody evaluator his experience in his family, apprehensively stated, "My parents are having a tug of war and I am the rope." An 8-year-old girl, after overhearing part of her mother's angry telephone exchange with her father, anxiously asked her mother, "Do you hate the part of me that is Daddy?"

The psychological sequelae on children of divorce are dependent on many risk and protective factors, but a large body of research over the past 30 years confirms that divorce increases the overall risk for adjustment problems in children and adolescents (10–14). Overall, the data indicate the psychological risk to be at approximately two times greater for children of divorce families as compared to children from intact families (12, 15). More specifically, about 10% of children in married families had serious psychological and social problems compared to 20–25% of children from divorced families (12, 13, 16).

Several important longitudinal studies have investigated the short- and long-term effects of divorce on children (13, 17). According to these studies, the initial period of separation is immensely stressful for the majority of children and adolescents, partially due to the fact that most children are uninformed by their parents about the separation or divorce (13). Thus, a large number of children are unprepared for their parents' separation and react with an acute, intense sense of shock, disbelief, distress, sorrow, anxiety, and anger (13, 15). Developmental factors dictate how children and adolescents manifest their distress at the time of marital rupture (12, 15, 18, 19). Preschool children can experience regression, intensified anxiety, fears and neediness, sleep disturbances, and increased aggression. Middle school-aged children may experience anxiety, loneliness, and a sense of powerlessness. They may also struggle with feelings of responsibility for the divorce, conflicts of loyalty between the parents, and have fantasies of reconciliation. Their school performance and peer relationships may also be negatively affected. Adolescents may experience acute depression, intense anger, and anxiety about their own future relationships. They may also withdraw socially and accelerate their separation and individuation process from the family. In general, this acute response diminishes or disappears over a period of 1 to 2 years (13). Interestingly, the initial responses of children do not necessarily predict the longer term consequences for psychosocial adjustment (15).

Regarding the longer term consequences, children of divorce are significantly more likely to have externalizing problems such as conduct disorder and antisocial behaviors, relationship problems with peers, parents and authority figures, academic problems, and internalizing symptoms such as depression, anxiety, and low self-esteem (16). Other potentially long-term negative effects of divorce include a significant decline in the economic stability of their family and the loss of important relationships with close friends and extended family members, including nonresident parents, who are typically the fathers. As young adults, these children are at risk for weaker marital relationships, earlier pregnancies and lower socioeconomic attainment (16).

The psychological impact of the divorce on any individual child is dependent on a number of risk and protective factors. High levels of interparental conflict—whether in the conflict of the marriage or in high conflict divorce situations—appear to have an especially negative influence on the psychological adjustment of children (20). Protective factors include a good relationship with at least one parent or caregiver, parental warmth, and the support of siblings and peers (13, 16). The effect of the parent and child's gender on postdivorce adjustment is another increasingly important area of study. The data on this subject is unclear, with some studies indicating boys are more vulnerable than girls in both short-term and long-term consequences (15, 21). In mother-custody families,

boys may have improved adjustment with regular paternal contact, provided the father is reasonably healthy (21). Overall, interparental conflict, the psychological health of the parents, and the quality of the parent-child relationships appear to be among the most important predictors of a child's adjustment to divorce (16, 22).

Despite the increased risk of psychopathology in children of divorce, it is important to recognize that the majority of controlled research findings demonstrate that no significant difference exists between children from divorced and married families (13, 18). More specifically, about 75 to 80% of children and adolescents who come from a divorced family do not suffer major psychological problems (13). In other words, the majority of children demonstrate resiliency rather than dysfunction as an outcome of divorce.

LEGAL CONCEPTS

Changing values and perceptions of women and children's rights in the 1970s (2) have largely driven the evolution of current concepts of divorce. Historically, the father had inherent custody of the children since they were considered to be his "chattels" or property and women had few legal rights (18, 23, 24). From the mid-nineteenth century through the later part of the twentieth century, the courts emphasized the importance of the mother-infant bond and adopted the "tender years doctrine," with custody presumptively going to the mother (23). During the 1970s, the courts also relied on the concept of the "psychological parent," with the presumption that the mother fulfilled this role (15). The current social and legal trend has moved away from assuming single parent custody and increasingly recognized the importance of the father's role in parenting (25). Currently, the legal doctrine of the "best interests of the child" is the guiding principle in deciding child placement and custody disputes (26). The model legislation of the Uniform Marriage and Divorce Act (the "Act") approved by the American Bar Association in 1974 (27) further established the language and definition regarding the "best interests" criteria. According to the relevant section (section 402), 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 (26, 27).

The majority of states have adapted their statutes from the concept of and language in this Act (26). For example, in California, the court makes a determination in the "best interests of the child," considering "among any other factors it finds relevant," "the health, safety, and welfare of the child," "allegations of abuse and neglect" and "the habitual and continued illegal use of controlled substances or the continual abuse of alcohol (28)." California Family Code Section 3040 further delineates the "best interest of the child" definition: "The court shall consider, among other factors, 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 Section 3042 also states, in part, "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 weight to the wishes of the child in making an order and granting or modifying custody (29)." Despite the general acceptance of the "best interests" principle (30, 31) the concept remains ambiguous, leaving judges wide discretion to interpret it in a variety of ways. As a result of this vagueness, the courts have increasingly relied on the expertise of mental health professionals to assist in the determination of the "best interests" concept (23).

Another important legal concept in child custody work involves the two usual outcomes of a custody dispute, namely joint or sole custody (31). In joint legal custody, both parents have legal decisionmaking powers regarding their child's welfare. In sole legal custody, one parent has the legal authorization to make major decisions for the child. In joint physical custody, the child resides for periods of time in each parent's home. The schedule regarding the time spent in each household and transitions between residences varies on a case-by-case basis. In sole physical custody, the child resides with one parent all the time. Current literature reflects a lack of consensus on the best custody arrangement for children (21).

GENERAL CONSIDERATIONS IN THE EVALUATION PROCESS

Competence as a forensic specialist in child custody work involves a well trained clinician with sufficient skills in evaluation, diagnosis, and treatment of mental health problems (18, 23, 32). Other important skills include knowledge of child development, an understanding of family dynamics, and familiarity with family law and the legal process of divorce and custody in the relevant jurisdiction. In many states, clinicians must remain current in their knowledge of child custody issues by participating in relevant court approved continuing education requirements. For example, court appointed child custody evaluators must document that they have obtained appropriate training as specified by the Judicial Council of California (33).

To further promote and maintain standards of care in this exceedingly complicated area of forensic work, guidelines for evaluating child custody disputes have been published by practitioners and other mental health and legal associations. Professional organizations have taken the lead in developing guidelines and practice parameters. The AACAP has published Practice Parameters for Child Custody Evaluations (23); other guidelines have been published by the American Psychological Association (34), the American Association of Family and Conciliation Courts (35), the American Psychiatric Association (36), the Judicial Council of California (37) and other mental health professionals (19, 32, 38).

Prior to beginning the evaluation, the expert should familiarize himself with the common ethical issues and pitfalls frequently encountered in child custody work (19). Wearing "two hats," therapist and forensic evaluator, is a common mistake and inappropriate in the setting of a custody evaluation (31, 39). As a therapist, the clinician acts as an advocate for the child and attempts to establish a therapeutic alliance with him/her for the purpose of treatment. As a forensic evaluator, the clinician is acting as a neutral expert who assesses the child and then provides objective information and informed opinions to the attorney or court. Before starting the evaluation, the clinician should be clear about his role and convey this information to all parties involved. The evaluator should also avoid situations that might bias the evaluation or suggest a conflict of interest such as prior involvement with either of the parties in the case (23, 39). Finally, the expert should be careful about conducting unilateral evaluations with only one parent-child interaction assessed. This type of one-sided participation inherently leads to biased assessments (40).

The psychiatric evaluation process itself has several phases. The initial phase essentially involves acceptance of the referral, clarification of the questions to be answered and determination of the fee schedule (40). In order to avoid a biased assessment, the referrals should come from both attorneys and the judge. Experts should talk to the attorneys in a conference regarding clarification of the questions to be answered. Evaluation and court time fees should be determined up front and full or partial retainers requested prior to starting the evaluation process (23).

The next phase of the evaluation consists of the clinical interview and collection of data from a variety of sources. Prior to beginning the interview process, the expert may explain to the parents that information provided in the evaluation is not a confidential or privileged communication; the information can be disclosed in the written evaluation and to the attorneys and judges during the court process (18). The expert should obtain written waivers regarding this issue. Interviews typically include an interview with each parent individually, the child alone, and the child with each parent (18, 23, 32). Some evaluators prefer to make home visits to put the information they are gathering in a larger context. In the interview with parents, the expert may obtain the history of the marriage and separation and each parent's psychosocial history, work schedule, financial stability, social support network, parent capacities and understanding of the child's needs, plan for meeting these needs, disciplinary style, daily routine with the child, and relevant cultural and religious beliefs (23, 32).

Psychological testing may be used when the mental health of a parent is an issue (19, 32). However, the testing results should only be used adjunctively and not relied on as the sole support of an opinion (18, 32).

In the interview with the child, the expert should use a nonthreatening, comforting, friendly style of interaction and developmentally appropriate language while assessing for level of attachment and evidence of indoctrination by the parents (23). The interview with child and parent is used to assess the child's way of relating to each parent and vice versa (32, 40). More specifically, the expert may assess attachment to and degree of comfort with each parent and look for signs of anxiety in the child. The expert may also look at the home environment to get a sense of the child's daily life and the parent's attunement to the developmental needs of the child. Other important sources of collateral information include therapists, teachers, healthcare providers, alternate caregivers, extended family members and friends, as well as records from or interviews with schools, therapists, mental health experts and pediatricians.

The written report is a comprehensive description of all the information gathered that supports the final conclusion and recommendation (23, 32). The first part of the report essentially states the referral source, the basic question to be addressed and all the sources of information for the report. The second part describes the information obtained from the clinical interviews and collateral sources. The third part includes the results of any relevant psychological testing such as the MMPI or medical data. The final section of the writeup consists of a conclusion and recommendations. The AACAP lists factors that should be considered when the expert determines the final recommendations: the arrangement that offers the most continuity for the child; the child's preference; the quality of attachment between the child and each parent; the parent's attunement to the child's developmental needs and ability to meet these needs; the impact of gender in the parent-child relationship; and the level of conflict between the parents (23). No studies have adequately supported the idea that one gender fares better with the mother or father, but parents should be sensitive to the gender role model needs of the child (23). After the report is completed and delivered to the court or the parties specified by the court, the expert may need to participate in a chamber's conference or a deposition or be required to testify directly in a court hearing. In general, 4-5% of cases end up with a need for expert testimony (18). However, the expert should be aware that the actual trial may not take place for another year after the evaluation and she may need to update the evaluation at that time (23).

The role and use of child custody evaluations in family law proceedings has generated considerable controversy based on empirical, due process, and ethical considerations.

The Association of Family and Conciliation Courts recently devoted a symposium issue on child custody evaluations (41).

Clinicians and court personnel engaged in the complicated process of custody evaluations, struggling to ascertain the "best interests of the child," may be guided by the commentary of the California Supreme Court's perception (42) that:

The essence of parenting ... lies in the ethical, emotional and intellectual guidance the parent gives to the child throughout his formative years, and often beyond. The source of this guidance is the adult's own experience of life; its motive power is parental love and concern for the child's wellbeing; and its teachings deal with such fundamental matters as the child's feelings about himself, his relationships with others, his system of values, his standards of conduct and his goals and priorities in life.

SPECIAL CONSIDERATIONS

Current societal forces have generated special issues in child custody evaluations and created a new set of challenges for the forensic expert. The special issues involve topics such as rights of stepparents and grandparents, infant placement and custody, homosexual parenting, parental kidnapping, parental alienation, allegations of sexual abuse, parental relocation, and the impact of reproductive technologies. As these complex issues become more prevalent in custody cases, courts have grown to rely more heavily on the expertise of the child and adolescent psychiatrist for guidance (41).

One of the special issues encountered with increasing frequency involves society's changing perception and definition of the concept of "family" which has evolved into a more complicated structure than the traditional form of previous generations. The current family structure can include biological parents, stepparents, adoptive parents, biological and step-grandparents, stepsiblings, biological siblings, adoptive siblings and, with the new reproductive technologies, surrogate mothers, donor fathers, or birth others (43). These extended family members are increasingly seeking visitation rights or custody of children. Custody law surrounding this issue is evolving and varies from state to state. However, some general trends exist.

With respect to stepparents, the courts generally favor a presumption of the natural parents obtaining custody. However, this presumption can be overcome by "clear and convincing evidence" that the best interests of the child require placement with a nonbiological parent (44). All states have enacted some form of grandparent visitation legislation, but they vary in degree of permissiveness. In the case of *Troxel v. Granville*, the U.S. Supreme Court placed limitations on the grandparent's visiting rights and concluded that the broad language of a Washington State visitation statute allowing "any person" to petition for visitation rights "at any time" unconstitutionally infringed on the parents' "fundamental right" under the 14th Amendment to raise their family free from governmental interference (45). Through future case law, the courts will continue to ascertain the meaning of the "best interest of the child" through a determination of the boundary between parental autonomy and custody rights of extended family members (46).

Infant custody and visitation litigation is on the rise due to fathers more frequently seeking custody of their children and weakening of the presumption for sole maternal custody (the "tender years" presumption) over the past 2 decades (8, 47). Historically, the court's focus was to preserve the mother-infant attachment. However, current research indicates that most infants form meaningful attachments to both parents at about 6 or 7 months of age (9, 19). Thus, the trend now in evaluations is on identification of the child's attachment figures prior to the divorce and the preservation of these

relationships postdivorce. For example, most states have laws that emphasize "frequent and continuing contact" between children and their primary caretakers to minimize separation anxiety and maintain continuity in attachments (48). For children under 2 or 3 years of age, "frequent and continuing contact" involves multiple contacts each week (2 to 3 days) with both parents (49). In further support of this trend, current research indicates that infants and toddlers readily adapt to consistent transitions between various environments such as alternative care facilities (19, 49). These studies indicate that the prior emphasis on one-household stability has apparently been overrated. Consistency of schedule appears to be a more important factor in a child's adapting to multiple transitions rather than maintenance of one household (19).

The topic of infant overnights is evolving and a heated ongoing topic of debate within family law (49-52). In support of overnights for infants, ample evidence indicates children significantly benefit from maintaining close relationships with both parents (48, 49). No evidence exists to support the theory that overnights are harmful to infants (48, 49, 52). On the contrary, research with daycares, preschools, communal based sleeping arrangements and other alternative care facilities indicate toddlers and infants can readily adapt their sleeping schedules to different environments. Although the current research data is useful in determining custody arrangements for infants, the forensic expert should always take into account the individual differences in temperament among infants and toddlers with respect to coping with change. Also, frequent and continuing contact between parents may not be preferable if one parent is abusive, neglectful, or has serious mental health issues (19).

The topic of gay and lesbian parenting has been particularly complex and challenging. Arising out of historical prejudices and stereotypes, the current literature on homosexual parenting indicates no significant differences in parenting abilities or in the psychological health or sexual orientation of the child (21, 40). Some state legislatures and state courts have taken varied approaches to aspects of this issue, and it behooves the evaluator to obtain the relevant and current legal authorities in their jurisdiction (53). Rather than focus on issues of sexual stereotyping, the forensic evaluator in these cases should assess the child's needs, the parent's ability to meet these needs and the quality of the parent-child relationship without being influenced by sexual stereotypes (18, 44).

Parental kidnapping, the abduction or withholding of a child by one parent, is a potentially serious and tragic outcome of some child custody disputes (18). An underground network has even developed to assist parents who are fleeing from what is perceived as an unjust legal system (44). Some risk factors have been identified with parental abduction such as narcissistic/sociopathic personality traits, child abuse allegations, and low socioeconomic and ethnic minority status (54). Schetky and Haller (55) have described the trauma experienced by children in these situations and the legal aspects of these kidnappings (55). These children often suffer emotional traumas from their parent's irrational behavior and develop mistrust of their parents and feelings of a lack of safety and protection from the law. Forensic experts confronted with this issue should familiarize themselves with relevant state laws, federal laws (the Uniform Child Custody Jurisdiction and Enforcement Act and the Parental Kidnapping Prevention Act) and international agreements (the 1988 International Child Abduction Remedies Act and the 1980 Hague Convention on the Civil Aspects of International Child Abduction) that have been established to deal with this problem and provide some procedures and sanctions to address it (56, 57).

The phenomenon of parental alienation has generated considerable discussion and debate since Dr. Richard Gardner originally coined the term "parental alienation syndrome" in the 1980s. Scholars have debated over whether such

a syndrome exists, and use of the term has engendered considerable criticism and controversy (19, 23, 58, 59). Kelly and Johnston (58) have developed a new formulation of this phenomenon focusing on the alienated child rather than on the parent's alienating behavior (58). According to their new formulation, an alienated child is "one who expresses, freely and persistently, unreasonable negative feelings and beliefs toward a parent that are significantly disproportionate to the child's actual experience with that parent." They also list factors contributing to a child's alienation of one parent such as the aligned parent's negative beliefs reinforcing the child's beliefs, the parent's enmeshment or overidentification with the child, the personality and response of the rejected parent, high conflict in the divorce leading the child to choose a side, alignment of professionals, family, friends and siblings contributing to the child's feelings and the child's age, temperament, vulnerability and cognitive capacity. The children in these situations often suffer symptoms typical of high conflict divorces such as anxiety, splitting, insecurity, distortion, difficulties in relationships, anger and low frustration tolerance, and psychosomatic symptoms (19). Assessment of these cases is complicated and potentially fraught with problems due to *oversimplification*, inaccurate assumptions and inadequate training or knowledge about the complex dynamics involved in these cases (60). Stahl (19) has indicated that the evaluator's primary task is to understand the emotional dynamics of the family, the impact of the alienation on the family, the overall functioning of the child, the history of the family relationships and the level of parental conflict in the divorce. Due to the complexity of these cases, experts should be familiar with the current literature regarding the evaluation and assessment of these children both from a legal and psychological standpoint (19, 60, 61).

Allegations of child sexual abuse are unfortunately a common occurrence in high conflict child custody disputes. Assessing the validity of such allegations is a complicated process involving consideration of the various potential causes for such allegations, careful interviewing techniques, and an understanding of normal child development regarding sexual behavior, memory, and suggestibility (18, 19). Berner (32) has described a variety of possibilities in considering the differential diagnosis of an allegation including parental misinterpretation, parental delusions, parental indoctrination, interview suggestion, fantasy, miscommunication, lying, group contagion and perpetrator substitution (32). The controversies surrounding this issue have led to a proliferation of literature on the appropriate way to assess children and minimize bias and distortion (32, 62-64).

In general, the current literature suggests that interviewers utilize open ended questions and avoid leading questions, repetitive questioning and manipulation of the emotional tone to direct the interviewee (65, 66). The controversies have also led to a large amount of research on the topic of children's memory and suggestibility (23, 64, 65, 67-70). Regardless of the validity of the allegation, the allegation itself indicates emotional risk for the child (23, 63). Thus, the evaluator's responsibility extends beyond a mere determination of the validity of the allegation and should include a thorough understanding of the family and individual dynamics surrounding the accusation.

Accusations of psychiatric illness are another unfortunate special circumstance arising in child custody disputes with one parent attempting to demonstrate the mental unfitness of the other parent. In these cases, AACAP urges evaluators to focus on the assessment of "parenting" and the impact of the psychiatric illness on the parent-child relationship (23). The mere existence of such a mental disorder in and of itself is not the critical issue in these custody cases.

The issue of parental relocation is a growing topic of concern in the child custody field due to increasing demands

for mobility by both parents. Most jurisdictions recognize a presumptive right of the custodial parent to be able to move (71, 72). However, a determination of whether the parent may relocate with the child and the ultimate custodial arrangement in such cases is based on consideration of all the relevant facts and circumstances specific to each individual case (40, 72, 73), with a focus on an outcome that is in the "best interest of the child."

For the child custody evaluator, these cases are among the most complicated and emotionally difficult assessments to conduct due to the inherent physical limits on arriving at a middle ground or compromise with one parent attempting to move to a different location. In addition, there is a dearth of literature and research on move-away evaluations. Thus, experts and the courts have been grappling with this issue and continue to do so through the evolving case law on the subject. Based on the information rising out of these cases, the courts generally consider several factors when confronted with move-away cases: the children's relationship with both parents, the age of the children, the developmental needs of the children, the distance of the move, the children's preference (if the age is appropriate), the parents' ability to cooperate effectively, the current custodial arrangement, and the reasons for the move (72, 74, 75).

Three landmark cases regarding this issue that were decided by the California Supreme Court are *In re Marriage of Burgess* (72), *In re Marriage of LaMusga* (74) and *In re Marriage of Nicole F. Brown and Anthony Yana* (76). In the case of *In re Marriage of Burgess*, the court determined that a custodial parent seeking to relocate with the children is not required to establish the necessity of the move. However, the court can restrain such a removal if the move would prejudice the rights or welfare of the child. In the case of *In re Marriage of LaMusga*, the court determined that the non-custodial parent bears the initial burden of showing that the proposed relocation of the children would cause detriment to the children, requiring a reevaluation of the children's custody. If the parent makes such an initial showing of detriment, then the court must determine whether a change in custody is in the best interest of the children. The case of *In re Marriage of Nicole F. Brown and Anthony Yana* (76) makes clear that the noncustodial parent is not entitled to a full evidentiary hearing on the move-away until he has made a showing of detriment to the child. Since this is clearly an evolving area of child custody work, experts confronted with move-away cases should review the current case law and legislation in the relevant state to guide them in this regard.

In the past few decades, there has been an increased focus on the issue of domestic violence in the context of divorce (77-79). Its increasing importance is reflected in the fact that most state legislation currently includes domestic violence as one factor for courts to consider in determining the "best interest of the child" in custody cases. Many states such as California have a rebuttable presumption against sole or joint custody for a perpetrator of violence (80). A comprehensive assessment in these cases includes evaluation of a broad range of issues such as the veracity of the allegations, an understanding of the extent and form of violence, the impact of the violence on the children, the level of danger or risk to all the parties involved, the parenting ability of both parents, and the developmental needs of the children (19). Recommendations can include dynamic therapy, psychiatric medications, anger management or batterer's programs, parenting skills classes, substance abuse treatment, or attendance at a divorce workshop (79). Supervised or limited visitation or supervised transfers may also need to be implemented. Experts involved with this type of evaluation should stay current with the trends in the relevant state legislature. Some states also require the evaluator to

attend training in domestic violence in order to participate in court ordered assessments (81).

The technological developments in reproductive endocrinology and in vitro fertilization (IVF) during the past 25 years have brought desired childbearing to individuals and couples who could not, in prior generations, have experienced the joys and challenges of biological parenthood.

The first IVF birth in the United States occurred in 1982. There are now over 400 fertility clinics and over 45,000 babies born in the United States in 2002 with the assistance of some reproductive technology. The processes and terminology of donor insemination, egg (ovum) donation, surrogacy, gestational care, and embryo adoption have developed in this burgeoning enterprise (43). It remains to be seen what differential developmental variations, family and social cultural adaptations, and psychosocial outcomes may develop with these children and families.

In this arena, new psychological, ethical, and legal issues are pressed to keep up with the developing technology and service demands. In 2004, the Ethics Committee of the American Society for Reproductive Medicine reported that "The Ethics Committee finds that disclosure to the child of the facts of donor conception and, if available, characteristics of the donor may serve the best interests of the offspring (82)."

A recent case involving parental rights was brought to the California Supreme Court. This matter involved a same sex couple, one of whom provided the ovum, and the other became the gestational mother, with assisted reproductive technology from an anonymous sperm donor. The couple reared the twin children as partners until they separated when the children were 5 years old. The California Supreme court ruled that the prenatal waiver of the egg-donating parent was invalid because she was a biological parent, and the couple "intended" to raise the children together. The California Supreme Court ruled that there were equal parental rights and obligations to these same sex parents, adding that "we perceive no reason why both parents of a child cannot be women (83)."

DISPUTE RESOLUTIONS

The concepts of alternative dispute resolution in divorce and child care matters has developed in the past two decades, in part because of the persistent ill effects and undesirable consequences of hostile and costly adversarial court proceedings (84).

Even after the divorce decree, property settlement, and custody and visitation, or co-parenting, orders are filed, parents continue to be parents, with relational bonds, overlapping histories, and moral responsibilities to their children. It is therefore in the best interests of the children, families, and society that the disruptive scars and dark shadows of divorce related conflict be minimized.

To meet this challenge, alternative dispute resolution techniques and divorce education programs have been developed within the court systems, as well as by community agencies and the private sector. These alternative resolution techniques seek to minimize the adversarial and polarizing tendencies inherent in civil litigation. They also seek to provide a more internal locus of control and responsibility in each parent. These programs also seek to provide a larger scope of educational information and experience to the parents, to facilitate more informed judgments and dispute resolution.

Over the past 2 decades, several states have provided legislation to encourage or mandate court-provided or private mediation services prior to court trial scheduling. California enacted mandatory mediation in 1981, and has developed specific definitions, procedures, and training requirements for court-authorized mediators (85). In general, parents utilizing

mediation services report a higher level of coparenting communication and cooperativeness than parents utilizing adversarial litigation (40, 89).

During the past decade, a new form of alternative dispute resolution has developed, known as collaborative law (86, 87). The collaborative law process binds the two parties and their respective attorneys to engage in good faith, problemsolving negotiations, defining the legitimate needs of each party and coming to a binding agreement that is then turned into a marital settlement agreement order.

This model is purported to provide incentives to cooperation and disincentives to escalating conflicts. However, either party can withdraw from the process and not forfeit their rights to take the case to court for more traditional and costly litigation (86). Child psychiatrists and other mental health experts may be consulted by the parties to inject information or opinions into this process.

Another procedure for minimizing parental conflict and facilitating decisionmaking, short of a formal court hearing, has been legislation to allow the family court to appoint a special master with limited and specific recommendations and decisionmaking authority, but always subject to the appeal and review of the court. State laws and jurisdictions vary in this partial delegation of this judicial authority, within specific parameters subject to review of the court of jurisdiction to persons with specific credentials and experience relative to the matter of the case (88).

The past 2 decades have seen the development of a variety of psychoeducational and preventive intervention programs in the public sector, court systems, and in private and community based settings. These programs have focused on the impact of family conflict and disruptions, and the negative adversarial process effects on children's postdivorce adaptation. They have also focused on parent's ability to more competently parent, communicate and reestablish domestic nurturance and stability (89).

Some curriculum-based parent or parent-child educational programs have begun to show evidence of improvements in parental satisfaction, reconstituted family communication, and reduction in post divorce adjustment symptoms (90, 91).

One such innovative community based program, *Kids Turn*, in San Francisco, utilizes curriculum-based educational workshops of 1½ hours each for 6 consecutive weeks, with concurrent parallel parent workshops and workshops for their children according to the children's developmental status (91). In addition to these court recommended but voluntary programs, *Kids Turn* has developed curriculum based educational programs for parents of infants and toddlers, workshops for stepparents, and workshops for adolescent parents and men, focusing on nonviolent family skills and nurturing parenting. Some of these workshops are translated and conducted in Spanish and Cantonese, to be more accessible to ethnically and culturally diverse communities (92).

FUTURE DIRECTIONS

In the last half of the twentieth century, we have seen how technological innovation and sociocultural changes have impacted family structure and functioning, and have driven changes in clinical practice and the law.

Child and adolescent psychiatrists and other mental health professional will continue to be called upon to develop the knowledge base, utilize evidence based practices, consult with distressed children and families, and provide relevant expertise to policymakers, community agencies, and the courts, in the evolving complexities of divorce and custody in the twenty-first century.

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CHAPTER 7.3.3 ■ ADOPTION

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Adoption refers to a formal action in which an adult assumes primary legal and other parental responsibilities for another, usually a minor. Although this formal action has the potential for enormous psychological significance for all the participants involved in the process, many of them never encounter child and adolescent psychiatrists. As our professional pathways intersect the lives of people involved in the adoption process at different places (but almost always at times when there are problems), we see only the fragmented parts of a complex and multifaceted picture. This chapter is directed at providing a cohesive overview of adoption.

HISTORICAL ASPECTS OF ADOPTION

Adoption is an ancient practice, although not a universal one, since some Islamic interpretations of the Koran ban adoption, while supporting other means of looking after orphaned or abandoned children. It was codified more than 4,000 years ago by the Babylonians, and is described in the Bible, for example, in the adoption of Moses by the daughter of Pharaoh. The ancient Romans practiced both the adoption of children and that of adults, in order to provide a suitable heir for the family. Similar practices, with similar motivation, are described in China, in ancient Egypt, Greece, and, until fairly recently, in the Polynesian societies of Tahiti, and Hawaii. Originally, adoption was designed to benefit the adopter, by providing them with a successor, someone to carry out rituals after their death, someone to work on their behalf and support them, or someone to cement a critical power alliance.

Informal adoption has been part of American society since before the institutionalization of the world's first adoption statute by the Commonwealth of Massachusetts in 1851. The formalization of adoption developed in the context of the "boarding out" in foster care of babies from almshouses, the system of apprenticing and indenturing impoverished children, and the practice of sending homeless children from the

Northeast by orphan trains to work in farming communities in the Midwest. In the first part of the twentieth century, most adoptions in the United States were still informal, without confidentiality for any of the parties, sometimes driven by financial motives on the part of the mother, and frequently accompanied by the stigma of illegitimacy and fear of the inheritance of defective genes. Throughout the twentieth century, the states, and later the federal government, have steadily formalized the practice of adoption even where it continues to be independently organized by physicians, lawyers, and the families involved. Significant social change has also affected the numbers and context in which adoption takes place. The adoption of infants was a particularly common practice in the 20 years prior to 1970. Many unmarried mothers chose (or were pressured to choose) adoption over single parenthood, and many healthy infants (mostly white) were placed, often in great secrecy because of the stigma associated with illegitimacy, with unrelated, childless, adoptive parents. The number of nonrelative adoptions increased from about 33,800 in 1951 to 89,200 in 1970.

In the 1970s, a number of social forces impacted on the numbers of children available for adoption, and their age and status. The widespread use of birth control, the availability of abortion, and the acceptance of single parenthood had a significant impact on the availability of infants, especially white infants, for adoption by unrelated couples. The number of unrelated adoptions declined from 89,200 in 1970 to 47,700 in 1977. The adoption of a healthy infant is now an often-expensive undertaking, out of the reach of many middle class couples.

In parallel with these social changes affecting the availability of babies for adoption, two other groups of children became increasingly recognized as suitable for adoptive placements. First, in the mid-1970s, there was a new recognition of the numbers of children living, often in significant instability and for many years, in temporary foster care family placements because of neglect and abuse in their families of origin. In the 1980s, there was a move toward planning for permanency,