The Scientific Basis of Child Custody Decisions

Second Edition

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The Scientific Basis of Child Custody Decisions
Contents

Preface vii
Preface to the Second Edition xi
Introduction xiii
Robert M. Galatzer-Levy
References xxiv
Contributors xxvii

1 From Empirical Findings to Custody Evaluations 1
Robert M. Galatzer-Levy, Jonathan Gould, and David Martindale

2 Legal and Ethical Issues in Child Custody Evaluations 49
David A. Martindale and Norman M. Sheresky

3 Observations of Parents, Caretakers, and Children for Child Custody Assessment 71
Anita Lampl

4 Use of Psychological Tests in Child Custody Evaluations 85
Jonathan Gould, David A. Martindale, and James R. Flens

5 An Updated Review of the Effects of System and Estimator Variables on Child Witness Accuracy in Custody Cases 125
Bradley D. McAuliff, Margaret Bull Kovera, and Livia L. Gilstrap

6 The Importance of Attachment in Custody Evaluations: Toward the Best Interest of the Child 165
Louis Kraus and Kayla Pope

7 Improving the Quality of Parent-Child Contact in Separating Families with Infants and Young Children: Empirical Research Foundations 187
Michael E. Lamb and Joan B. Kelly
8 Divorce, Custody, and Visitation in Middle Childhood
   Louis Kraus, Robin Shapiro, and Robert M. Galatzer-Levy 215

9 Custody Evaluations of Adolescents
   Sarghi Sharma and Christopher Thomas 241

10 Adopted Children and Custody Arrangements
    Susan M. Fisher 253

11 Medically Ill Children and Adolescents
    Brenda Bursch 263

12 Parental Sexual Orientation, Social Science Research,
    and Child Custody Decisions
    Charlotte J. Patterson 285

13 Child Custody Evaluations of Parents with
    Major Psychiatric Disorders
    Michael J. Jenuwine and Bertram J. Cohler 307

14 Child Adjustment and High-Conflict Divorce
    Robin M. Deutsch and Marsha Kline Pruett 353

15 Evaluating Child Sexual Abuse
    Allegations
    Kathryn Kuehnle and Mary Connell 375

16 Rejection in Cases of Abuse or Alienation in
    Divorcing Families
    Leslie M. Drozd 403

17 Joint Custody: A Judicious Choice for Families—But How,
    When, and Why?
    Marsha Kline Pruett and Carrie Barker 417

18 Conclusions and Prospects
    Robert M. Galatzer-Levy 463

Author Index 469
Subject Index 487
Preface

This book was born in a courtroom, but it is meant for a larger world. While listening to a particularly dreadful piece of expert testimony—that the "primary intrauterine bond of mother and infant" entailed that a 4-year-old should be returned to the care of her intermittently psychotic, substance addicted, and abusive biological mother with whom she had almost no relationship—it occurred to one of us that although he wished otherwise, none of the players in this drama, expert, lawyers, or judge, had a solid base from which to consider the testimony. As clinicians and expert witnesses over the years, we have seen how difficult it is for both legal and mental health professionals to address the "best interests of the child." Lawyers and judges are often ignorant of basic psychological concepts, or worse, have latched onto a few ideas with which they were personally sympathetic. This creates situations in which the trial process functions poorly. Lawyers' lack of clarity about the testimony makes for muddled direct and cross-examinations. Judges have difficulty understanding and evaluating the testimony. Divorcing families usually have limited resources, putting expert witnesses' and lawyers' time at a premium so that custody decisions are made without full benefit of the information available about children's best interests.

Some judges and jurisdictions try to solve this problem by relying heavily on experts and agencies trusted by the court, including court-sponsored social service agencies. Difficulties arise in these situations because the opinions of these mental health professionals may be subject to little effective review and yet determinative of cases' outcome. Unfortunate situations can result when inadequately trained mental health professionals or individuals with idiosyncratic viewpoints essentially assume the judge's role in all but the most vigorously litigated cases.

Mental health professionals involved in custody determinations have often not thought through the difference between evaluations done in a forensic context and those appropriate for clinical work. Often mental health professionals are ill-prepared to contribute to the legal process. Accustomed to treating mentally ill or distressed people, they commonly collect and
formulate information in a way that is appropriate for that purpose, information that is often quite different from that required in forensic work. For example, although no rational person would try to mislead someone from whom he or she sought treatment, parties to a forensic evaluation can quite reasonably wish to do so. The level of confidence with which a treater makes recommendations need reach a conviction only that the recommendation is the best choice available. Even that recommendation is subject to correction and reevaluation in the light of its effects as observed during the course of treatment. In contrast, expert opinions are expected to be highly reliable and defensible against close examination and do not carry with them the expectation that they can be corrected as a result of subsequent experience with the client. The questions that treaters address are typically different from those raised in a forensic context. In most instances, the primary question when treating a patient is what form of therapeutic intervention is most likely to aid him or her. This is a different type of question from those raised in custody evaluations, which concern the impact of various living arrangements on the child within the context of the governing law. The mental health professional who does not maintain a serious interest in these issues is unlikely to have kept up with the explosion in research concerning parenting, divorce, and children’s developmental needs.

The end result of all these factors is that the vast amount of information gathered through research in child development has less impact on custody and visitation decisions than it should. In that courtroom many years ago it became clear that all those concerned, especially the child whose fate was being litigated, would benefit from a reliable reference that could clarify thinking about the psychological issues in the case. Such a book would have to be accessible, if at times with a little work, to both legal and mental health professionals. It would need to not only reflect the best current thinking on topics affecting custody and visitation, but also provide information about the credibility of those current views. It would need to focus on the issues that courts address, and although it could not possibly speak to every situation that might arise, it should at least discuss some of the common, particularly troublesome situations confronted in custody decisions. Finally, it should be a book about what mental health professionals and knowledge of behavioral science can contribute to the decisions, with legal issues examined insofar as they impact those contributions.

We intend this book to be of use not only in situations involving litigation but also in the much more common situation where families are able to decide on custody and visitation arrangements for themselves. Families and their advisors should be guided by what is known about the impact of arrangements on children. The material presented here is applicable to any child involved in divorce.
As will quickly become apparent by perusing this volume, a surprisingly wide range of information is needed to address these questions. As editors we tried to locate leading authorities to address these issues. We soon discovered that some topics were far better investigated than others and that the extent to which topics were investigated did not necessarily relate to their significance to custody decisions. At this point, for example, a great deal is known about how parents facilitate the growth of infants and young children, but little is known directly about the details of effects of visitation schedules on children’s psychological well-being in middle childhood. We have tried to ensure not only that this book includes the best available knowledge on a range of topics pertinent to custody decisions in divorce but that the reader is able to access how reliable that knowledge is. The chapters’ authors have been generous in not only writing original work but in responding to our suggestions and queries designed to address these issues. For a variety of reasons we were unable to address certain issues that commonly arise in custody disputes in the depth we would have liked. In some important areas, such as the impact of personality disorders (chronic maladaptive patterns of living) on child rearing, there was a surprising paucity of data. In some other areas we simply could not locate an authority of adequate stature to address the issue. We hope to be able to rectify the latter limitation in later editions of this work.

Completing a work such as this naturally reminds one of the many debts owed not only to those who supported the effort directly but also to those who originally stimulated our interests and supported our efforts to think about these issues. Our teachers Bennett Leventhal, Alan Ravitz, and the late Ner Litner showed us that mental health professionals could benefit children outside the consulting room through informed participation in the legal process. Members of the Core Group of the Behavioral Science and Law Forum, including Leslie Star, Sandra Nye, Forest Bayard, Randy Franklin, Frank Lani, Joy Feinberg, Richard Cozzola, Edward Wolpert, Jonathan Nye, Alan Ravitz, and Eric Ostrov, have provided an exceptional forum to stimulate our thinking. Through their sometimes challenging questions, lawyers too numerous to mention have brought many of the issues addressed in this book into sharp, even occasionally uncomfortably sharp, focus. Jeanne Galatzer-Levy has provided editorial support and more throughout this book’s creation.

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September 15, 1998
Preface to the Second Edition

The decade since the publication of the first edition of this book has witnessed a sea change in custody evaluations and decisions. Several factors—legal, professional, and social—have converged, resulting in a move toward more rational and empirically based arrangements for children of divorce.

Generally higher standards for expert testimony followed in the wake of the Daubert decision. Although various forms of “junk science” are still far too common in the legal system, especially in areas involving psychology, legal professionals are ever more demanding that the credibility of technical and scientific expertise stand up to careful scrutiny. The time when experts could safely opine on all sorts of matters based on clinical experience or undemonstrated theories is, thankfully, rapidly fading. Matrimonial law is increasingly recognized as a significant branch of law, and professional organizations for matrimonial lawyers have become increasingly sophisticated. Courts and judges have become increasingly specialized and appreciative that different sorts of divorce cases may require distinct legal and administrative processes. Ever since the founding of the juvenile court in Chicago at the beginning of the twentieth century legal and mental health professionals have recognized that a system designed to deal primarily with property and crime was a blunt instrument with which to deal with the complex subtleties of human relationships. However, attempts to model courts on social service agencies risked depriving people of the protections of due process in matters of the greatest importance to them, such as custody of their children. Legal professionals have become increasingly skillful at differentiating cases that are best approached through various forms of alternative dispute resolution from those that require the rigor of fledged legal proceedings. Together these changes have resulted in higher expectations from the courts regarding the credibility and relevance of expert opinions.

This same period has witnessed the increased professionalization of the forensic mental health professions. Until recently almost all mental health experts had primarily clinical training and learned about forensic issues either through independent study or periods of work in forensic settings.
Now there are a variety of systematic training programs preparing mental health professionals for forensic roles. Texts on forensic psychology and psychiatry have rather rapidly shifted from compendiums of personal opinions and observations to critical reviews of empirical knowledge and relevant law. Especially in the area of child custody journals in the field such as *Family Court Review* and the recently founded *Journal of Child Custody* have resulted in the emergence of high-quality research literature about custody issues.

The changing nature of marriage and parenting in our society has also contributed to increased sophistication in custody decisions. The twentieth century opened with the sure knowledge that children were their father’s possessions. For decades after the Second World War the assumption that women are caretakers dominated custody decisions. The vastly increasing divorced population and shifting gender roles meant not only that these roles changed but that the roles consistent with gender were much more diverse than they had been. Large segments of society demanded that courts operate without stereotyping assumptions. Joint custody and extensive visitation arrangements became the norm as both fathers and mothers expected to remain involved with their children after the divorce. Courts continue to struggle with the recognition that families may have very different configurations than the so-called nuclear family and that these arrangements may be of great value to children. Society’s increasingly sophisticated vision of the possibilities for relationships has forced the courts and mental health professionals to form more sophisticated and diverse views of custody arrangements that benefit children.

We think that the combination of these forces is moving the field in the direction we very much wanted to see it go when we first conceptualized this book. We are now in the happy position of being able to present a stronger foundation for child custody decisions than we could have a decade ago, as we think the Introduction will show. We hope that our book made some contribution to the trend we are describing and that this new edition will continue that contribution.

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Introduction

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Divorce impacts vast numbers of children. In the United States more than a million children’s parents divorce each year. An estimated 40% to 50% of American children before age 18 experience their parents’ divorce (Glick, 1988, 1990). Although experts disagree about the effects of divorce on children, research supports common sense that for many children their parents’ divorce presents a serious challenge. Today nearly everyone agrees that, within the limits imposed by the decision to divorce and the resources available to the family, arrangements should be made that are in the child’s best interest.

The problem is to determine what those best interests are both generally and for particular children. Some of these decisions involve values, convictions about what constitutes a good life and the aims of child rearing. These questions can be addressed only through ethical analysis and public opinion as reflected in legislation and judicial decisions. In many areas consensus on these matters is easily reached. For example, few would argue that irrational anxiety or development in the direction of criminality are good for children. In other areas consensus is less clear because of the diversity of views in our society; for example, some people believe that it is of great importance that children be raised with a strong religious sensibility, whereas others count this of little importance or even regard it as undesirable. Although many values about children’s development are so widely shared that they do not need to be spelled out, it is still important to recognize that discussions of children’s interests are implicitly embedded in a context of values and that some questions about children’s best interests can be addressed only from within that context.

However, another group of questions are matters of fact. They concern how particular arrangements are likely to affect children: whether, for example, a child of a given age and background will be able to maintain a close relationship to a parent under a particular visitation schedule. These instrumental questions are subject to empirical investigation. Rarely, though increasingly frequently, researchers have explored the question directly, but
very often a body of empirical information is available about children’s development that allows strong inferences about the likely impact of an arrangement on a child. For example, it might be proposed that a 1-year-old child spend alternating weeks in the care of each parent. It is unlikely that an experiment with precisely these parameters would be performed, but extensive research on children’s capacities to maintain relationships with caregivers and the effects on development of failing to do so strongly suggests that this would be a very undesirable arrangement in terms of the child’s psychological health. Our hope is that reliable information about children’s needs and development can increasingly be brought to bear on decisions about living arrangements for children of divorce.

This book is intended to serve the needs of legal and mental health professionals involved in custody decisions about children of divorce. We believe that these decisions should be informed by the best available knowledge regarding their likely impact on children. Although several recent volumes have addressed the performance of custody evaluations and providing expert testimony about them (Ackerman, 2006; Ackerman & Kane, 2005; Bricklin, Elliot, & Halbert, 1995; Gardner, 1989; Gould, 2006; Mart, 2007; Rohrbaugh, 2007; Schutz, Dixon, & Lindenberger, 1989; Stahl, 1994, 1999; Woody, 2000) and there are many scholarly works about child development generally, we could not find a single volume in which readers could locate authoritative statements about the basis on which custody decisions can be made that included discussions of the reliability of those statements.

When a couple separates or divorces, decisions must be made about the children’s custody and visitation. Because society recognizes its interest in these arrangements, the family immediately becomes involved with the legal system, yet most of these decisions are made by the divorcing couple with no input from professionals of any kind. Other couples seek the counsel of mental health professionals, pediatricians, attorneys, and clergy to come to an agreeable arrangement. In approximately 10% of divorces involving children, parents are unable to agree about custody and visitation arrangements and litigation is initiated. The resulting process of discovery, mandated mediation, and evaluation has been estimated to result in agreed resolution of approximately 90% of these disputes. Overall, it has thus been estimated that only 1% of custody decisions are the result of trials. However, this figure is misleading with regard to the impact of the courts on custody arrangements. The pattern of actual decisions reached by the courts and legislatures on custody matters has a profound effect on the agreements that parents reach between themselves. For many years the “tender years doctrine” was widely applied by courts. It involved the presumption that young children were best cared for by their mother. As this doctrine lost sway, largely through legislation, fathers who previously believed it highly unlikely that they could
gain custody of their children increasingly sought custody or a major role in their young children’s lives. Thus, in addition to affecting custody arrangements that actually go to trial, judicial decisions have a far-reaching impact on the lives of many children of divorce. The ever present potential for litigation inevitably affects all actors in custody decisions so that the shadow of these cases is much longer than the numbers suggest.

The process by which custody decisions are reached is unusual in that the individual most affected by the decision, the child, is rarely a party to the litigation. Additionally custody and visitation arrangements are most often made as part of an overall divorce settlement so that, especially when the parties settle between themselves, considerations other than the child’s best interests are likely to play an important role in the actual decision. For example, additional time with the child may be traded for increased financial support.

Mental health professionals who hope to contribute to custody arrangements must keep in mind both the intrinsic complexity of the issues involved and the context in which the contribution is made. Because these decisions often require specific information about issues peculiar to divorce and because they require the integration of multiple viewpoints more is needed than the application of general child developmental and parenting principles. The divorcing family has distinct qualities and its members are subject to forces that may not have been considered in investigations of broader developmental issues.

In addition to the particular problems associated with divorce, mental health professionals need to formulate and defend their views in a different fashion from that ordinarily used in other aspects of their professional lives. The expert’s job is to provide accurate information, and the function of the legal process is to assess the accuracy of that information. Recognizing this affects every aspect of the mental health professional’s work. Whereas in a therapeutic context it is in the best interest of interviewees to provide information that is as accurate as possible, in a forensic context interviewees often have good reason to give inaccurate information. In a clinical setting treaters properly provide information in such a way as to encourage the best clinical outcome; in a legal setting it is wrong to shape information to achieve a desirable goal. In a clinical setting the credibility of a treater’s knowledge is rarely vigorously questioned; mental health professionals engaged in forensic work should anticipate that their credibility will be carefully examined. Generally, mental health professionals need to be aware of the different world they enter when they become involved in forensic matters and to develop professional expertise in dealing with that world (Brodsky, 1991; Gutheil, 1998; Melton, Petrila, Poythress, & Slobogin, 2007).

Mental health professionals commonly misunderstand the court’s activities, believing that the judge’s assignment is to do what is in a general sense
best for the child. They often believe that the lawyers should also be working directly toward that end. Although hopefully overlapping with doing what is best for the child, the judge’s assignment remains, as it is in all matters, to apply the law to the particular case at hand. The attorney’s responsibility is to vigorously represent the client’s interest within the limits of the law. Through this adversarial process of litigation the intention is to reach a decision based in law. Developed largely to resolve disputes about property and criminal behavior, trials, even trials conducted with special rules based on the difficulty of custody decisions, often appear to be poor tools for society to ensure children’s welfare. Indeed, actual trials occur only when other, less rigid mechanisms for solving the problem have failed. When mental health professionals understand the legal process and appreciate the enormous difficulty of the court’s work, they can participate in it more effectively.

In this context the judge gathers information pertinent to the issues before the court. It is here, as an expert witness, that the mental health professional’s input often enters into child custody decisions. The role of expert witness is well defined and limited (Lubet, 1999).

Mental health professionals commonly misunderstand their own roles and are tempted to go beyond that role. Most mental health professionals, primarily trained as treaters of psychological illness and accustomed to having their opinions taken as authoritative, need to retool to function well as experts for the courts. In particular this means understanding that what they have to contribute is information about their particular expertise. Mental health professionals need both to understand what the role requested of them is and to decide whether they can fill that role with professional integrity. Similarly, lawyers and judges need to understand and appreciate these limitations. Just as the appropriate role of legal professionals may be difficult for nonlawyers to understand, it is important for legal professionals to appreciate that mental health professionals, if they are to function well, must be careful to remain within their appropriate roles even when common sense might suggest that they could extend their activities further. For example, although much is made of legal professionals’ denigration of mental health professionals, mental health professionals are commonly pressed to give an opinion on issues that they cannot adequately address.

Judges and lawyers frequently seek predictions from mental health professionals about the consequences of a particular course of action: Will a visitation schedule provide sufficient contact to maintain a relationship with a noncustodial parent? Will the child be better adjusted as a result of being in the custody of one parent rather than the other? Does the fact that a parent assaulted a spouse mean that parent will assault a child? In almost all instances mental health professionals whose opinions are based on reliable knowledge can answer such questions only with
statements about the likelihood of some event occurring, and even then the details of that likelihood may be imprecise. Experts can provide the court with the best information available, but often this best information is limited. Recognizing that ultimately a decision must be reached, it is sometimes difficult for experts, lawyers, and judges to exercise the restraint needed to preserve the expert’s useful function to the court, which is solely the provision of accurate information.

The quality of information provided by experts in custody disputes has been particularly open to question. In their widely acclaimed text on psychological evaluations for the courts, Melton and colleagues (2007, p. 540) referred to the validity of expert opinions in these matters: “There is probably no forensic question on which overreaching by mental health professionals has been so common and so egregious.” Among other concerns, they and others observe that the scientific basis of many custody evaluations is questionable (see also Grisso, 1990; Heilbrun, 1995). Part of the difficulty arises because of the wide variation in training of custody evaluators and the variety of methods they employ to come to their recommendations (Ackerman & Ackerman, 2006; Keilin & Bloom, 1986; LaFortune & Carpenter, 1998). An even more serious concern is that the scientific database on which many recommendations are made appears weak.

In many contexts courts have increasingly demanded that expert testimony live up to some reasonable standards. Confronted with ever increasing amounts of “junk science” and studies of very dubious merit generated for the purpose of litigation (Huber, 1993), courts have tried to better address issues of how information provided by experts is to be assessed. In the Dau-bert v. Merrell Dow Pharmaceuticals, Inc. (1993) decision and a series of decisions that followed it, the U.S. Supreme Court initiated a process designed to improve expert testimony. In particular the court clearly aimed to reserve the term “scientific” for information that would widely be regarded as meeting the high standards commonly associated with that term (see Martindale & Sheresky, Chapter 2). The criteria suggested by the courts will strike many trained in scientific methodology as somewhat problematic, but their spirit will be welcomed by those who hope that science can inform judicial process. Perhaps as important as the ruling’s details is the indication that courts will increasingly try to assess the scientific merit of testimony presented. Experts of all types are clearly expected to meet improved standards for the opinions they provide.

The core of a scientific attitude was first formulated by Francis Bacon in 1620. Science is characterized by its continuing and open assessment of the validity of its own facts and theories. Unlike arguments from authority, whose validity is claimed because of the status of the person putting forward a position, scientific arguments are assessed by the credibility of claimed
observations and the quality of the logic that connects conclusions to observations. Insofar as the theory of relativity is regard as true by physicists, for example, it is because observations and logical deductions based on them support the theory, not because it was created by the greatest physicist of the age. Thus, the unique quality of scientific statements is that they are always accompanied by an explicit or implicit assessment of their own credibility. It is in this sense that we use the term “scientific” in reference to the material presented in this volume. We include as scientific not only material that is accompanied by the apparatus of quantitative investigation but also research using other methods, provided the consequences and limitations of those methods are clear. We have tried to make it clear to readers what the best current thinking from the behavioral sciences is with regard to issues involving custody in divorce and also to invite the reader to have a picture of how credible these statements are, that is, to understand the evidence that lies behind them. We believe that such information can allow courts (and others) to weigh information from mental health experts with increased accuracy.

Unfortunately it is not rare for evidence that lacks reasonable scientific backing to be presented to the courts as though it did have scientific merit. Occasionally corrupt individuals may act as hired guns testifying in favor of those who retain them for a price; however, we believe a much more common and pernicious problem is the uncorrupt but inaccurate expert who presents pet theories and personal prejudices as scientific fact. It should come as no surprise that in the emotionally charged arena of child custody decisions some credentialed individuals, because of inadequate training or personal needs, testify in a manner that is inconsistent with reasonable standards for scientific information. We hope this book will assist both legal and mental health professionals in raising the quality of expert testimony and weeding out testimony that goes beyond the expert’s credible knowledge.

We begin the book with a discussion of general issues important in custody evaluations. The first chapter addresses conceptualizing the scientifically based custody evaluation. Robert M. Galatzer-Levy, Jonathan Gould, and David Martindale describe how information from the behavioral sciences can usefully be brought to bear on custody issues by assessing its credibility and relevance to the case at hand. They point to the strengths and weaknesses of this kind of information and the tools available for assessing scientific information provided in custody decisions. The way psychological understanding enters into testimony is dictated both by the law and by professional ethics. In the second chapter, psychologist David A. Martindale and attorney Norman M. Sheresky describe the rules governing experts’ activities, their limitations, and their impact on custody evaluations.
What information is collected in making a child custody evaluation and how the information is used are central elements of the evaluation. Three chapters directly address these issues. Because the interactions of parents and children are the means by which parenting occurs and because self-reports by either parents or children of these interactions are notoriously vague or inaccurate, many custody evaluators long ago recognized that observing parents and children together is an important part of an evaluation. But until recently the sheer complexity of such interactions and the difficulty of systematically gathering information from them has meant that these observations provided questionable information. Anita Lampl addresses these issues in Chapter 3, showing how these centrally important observations can become a more valuable part of child custody evaluations. In contrast, the methodology of psychological testing has long been well developed, but its relevance to child custody evaluations has been more doubtful. Starting at the beginning of the twentieth century psychologists developed a vast collection of tools designed to systematically, reliably, and validly assess almost every aspect of psychological function (Groth-Marnat, 1997). Although many of these tests are fine tools for their intended purposes, extending their application beyond those purposes is often problematic because the relevance of their results to questions for which they were not designed is, at best, in need of clarification. At the same time, given the complexity of the issues relevant to custody and visitation, good measures of significant qualities of the parent-child relationship would be of great value. In their chapter on psychological testing Jonathan Gould, David A. Martindale, and James R. Flens outline the fundamental ideas of psychological testing, the issues involved in using tests not originally designed for custody assessment in these evaluations, and the available tests that are specific to this purpose. A very different source of information is the child’s own statements, especially when the child is called on to testify. How reliable are the child’s statements? How much are those statements influenced by the various pressures the child is under? Are there ways to facilitate the child’s providing the most accurate information possible? In a chapter on the child as witness, Bradley D. McAuliff, Margaret Bull Kovera, and Livia L. Gilstrap explore these controversial issues with an eye to the question of helping the child provide useful information.

Discussions of custody arrangements usually involve theories about the relationship of children’s well-being to their interactions with caretakers. Usually these theories either remain implicit or enter the discussions as authoritative, unquestioned statements. For these discussions to be rational we need to be explicit about these theories and their credibility. Attachment theory, which originated in a combination of observational studies and psychoanalytic conceptualization, is emerging as among the most theoretically
clear and empirically based means of thinking about the relationship of children and caretakers, as well as the impact of these relationships on development. In their chapter on attachment theory, Louis Kraus and Kayla Pope describe the major findings of attachment research and apply them to issues of custody and visitation.

We devote three chapters to an overview of child development as it relates to custody and visitation. For these chapters the authors have not attempted exhaustive reviews of the literature on development, an undertaking that would require dozens of volumes the size of this one to encompass the massive findings of recent decades. Instead, we provide an overview, an entrée into the literature, a discussion of how developmental concepts apply to custody and divorce, and an examination of particularly controversial issues during various developmental stages. At one time it was assumed that infants need to reside with their mother. Developmental theory, along with increased societal appreciation that it is the functions provided by the mother, not her person, that the child needs, directed that issues of custody and visitation be reframed in terms of the child’s psychological needs. Michael E. Lamb and Joan B. Kelly describe what contemporary developmental research tells us about these needs, how they are manifest in divorce situations, and what is understood about the impact of various arrangements on the infant and young child. Continuing in the same vein Louis Kraus, Robin Shapiro, and Robert M. Galatzer-Levy examine several lines of development during middle childhood, each of which must be traversed during this period. They describe how custody and visitation arrangements may facilitate or impede these developments and comment on the paucity of studies directly addressing these issues. Often adolescents are believed to be sufficiently mature to decide for themselves where they will live, and courts sometimes simply defer to their preferences. Yet often, despite physical appearance and a wish to be mature enough to make such decisions, adolescents lack the capacity to judge what is in their own best interest, especially in the emotionally charged context of divorce. In a chapter that describes adolescent development, emphasizing the mythical nature of some common assumptions about adolescents, Sarghi Sharma and Christopher Thomas describe the developmental needs of these young people, means for assessing their situation, and information about custody and visitation arrangements that facilitate their development.

Many custody arrangements must take into consideration special needs of particular children or potentially problematic aspects of parental function. Some empirical investigations have shown that matters regarded as problematic with regard to custody turn out to be nonissues. The third section of this book is devoted to several issues that are or have been thought to be relevant to child custody. One configuration that changes the impact of divorce on
children is adoption. Consideration of the adopted child’s special vulnerability in relation to loss and separation leads Susan M. Fisher to assert that in making custody and visitation arrangements involving adopted children, special care should be taken to maintain the child’s sense of security.

Another group of children for whom custody arrangements can be particularly challenging are youngsters with significant medical problems. Parents’ realistic and imagined worries about the other parent’s ability to care for the child, the psychological needs of ill children, and the rare but important problems of factitious illness all complicate custody decisions. In her chapter on the medically ill child Brenda Bursch explores these important problems.

In custody disputes various aspects of parental personality are commonly discussed, often without clear reference to their significance to the parent’s ability to rear a child. When the parent has qualities that may be problematic or simply socially frowned on, these qualities are often treated as though they were significant to custody decisions. Two groups who are often presumed to be less adequate parents are people suffering from severe psychiatric disturbances and gay and lesbian parents. The first step in addressing custody issues involving such parents is to clearly focus on the impact of their condition on parenting. Michael J. Jenuwine and Bertram J. Cohler show that equating severe psychiatric disorder with impaired parenting is wrong. They demonstrate that different disorders affect parenting in different ways and that the presence of a severe psychiatric diagnosis in itself should not determine a child’s custody. They also explore how parents whose illnesses do interfere with parenting may be involved with their children in a way that is most useful to the child.

Despite nearly universal recognition by mental health professionals that homosexuality is not associated with psychopathology, sexual orientation remains controversial in our country to an extent that people with one attitude toward it commonly find a different attitude incomprehensible. It is precisely in such an emotionally charged context that empirical data may be most useful in helping reach rational decisions about the best interest of children of gay and lesbian parents. In her chapter on gay and lesbian parents, Charlotte Patterson carefully reviews the available literature on the impact of parental sexual orientation on children to provide a clear picture of whether this factor should weigh in custody decisions.

Although most custody decisions are reached in a civil manner a small number of cases devolve into virtual wars between parents, with allegations and counterallegations of inhumane behavior. High-conflict divorces can absorb the lives of parents and children for years, with devastating consequences for all involved. Often legal interventions designed to resolve the conflict seem only to intensify it. Effective means to end the Armageddon of these
divorces require an understanding of their underlying dynamics. High-conflict cases take up vast amounts of energy in the courts, and it is difficult for the courts not to become the instrument of, rather than the solution to, the problem of embattled parents who pull their children into the custody battle. Because they consume so many resources and because they so damage children high-conflict divorces and means of intervening in them have become the subject of substantial research in the past two decades. In their chapter Robin M. Deutsch and Marsha Kline Pruett provide a clear picture of this research and its application.

When sexual abuse is alleged during custody disputes the professionals involved are often confronted by an enormous problem. Failure to protect the child from abuse is clearly unacceptable, but taking legal steps when the allegations are false, especially when allegations are created for purposes of litigation, is likely to also be seriously damaging to the child. Matters are made even more troublesome because of the intense debate that accompanies a swinging pendulum of attitudes toward alleged sexual abuse of children. In their chapter on such allegations Kathryn Kuehnle and Mary Connell describe what empirical research has to tell us about these allegations and their assessment.

About 20 years ago it was recognized that some allegations of sexual and other abuse arose from a psychological configuration in which some children had come to hate everything associated with one of their parents. Some of these alienated children had clearly been indoctrinated against the parent and made false allegations as part of the attack on that parent. The charge of alienation was used as a defense against allegations of abuse to such an extent that Richard Gardner (1987) claimed to be able to differentiate true and fabricated allegations of abuse based on the presence of a syndrome he named “Parental Alienation Syndrome.” This not only provided a defense against abuse charges but shifted the burden to the parent with whom the child was aligned to show that the child had not been indoctrinated, which is a form of abuse. The recognition that Gardner’s approach is not valid still left the puzzling problem of why some children become alienated from parents and what significance should be given to this alienation in making custody recommendation. Leslie M. Drozd explores this important question, which comes up frequently in high-conflict divorces.

An ideal solution to the custody problem would be for children to continue to benefit fully from both parents and for parents to feel fairly treated in that time and relationship with the child are equally shared. The wide range of arrangements referred to as “joint custody” are intended to approximate this ideal. However, such arrangements are not panaceas. When parents cannot cooperate or, worse, repeatedly enter into conflicts involving the child, joint custody can introduce great difficulties into the child’s life.
When attempts to be fair to the parents take precedence over the child’s needs, like the infant in the Solomon legend the child may be sacrificed to achieve equity for the parents. For these reasons it is important to differentiate those situations in which joint custody is likely to provide well for the child from those in which the child is likely to be hurt by it. Drawing on a wide range of studies for their chapter Marsha Kline Pruett and Carrie Barker provide a clear description of what empirical research tells us about situations where joint custody works and where it fails.

Our book lacks some chapters we wish we could have included. Many observers believe that a parent’s chronic maladaptive psychological function, often referred to as a personality disorder, has particularly important effects on child development. We would have liked to address this question but found that it has been only scantily studied using empirical methods. A much more extensive literature addresses the impact of parental substance abuse on children, but we failed to find an appropriate contributor to review this literature. Another area we would have liked to explore is the impact of the community in providing support for children’s development (Bryant, 1985) because one of the common effects of divorce and some custody arrangements is to disrupt the support that children receive from the community in which they live. We hope to remedy these limitations in a later edition.

This book is intended to help legal and mental health professionals come to the best possible decisions in accessing children’s best interests. We believe that the ever growing empirical knowledge of child development and the impact of various arrangements on children can greatly improve these assessments. It is in the nature of scientific investigation that findings will change as more work is done and criticism refines existing information. We hope that this book will move that process forward.

NOTE

1. Mental health professionals are also called on by courts to serve many other roles in custody matters. They may be asked to treat or educate the children, the parents, or the family as a whole. They may serve as mediators. In some jurisdictions they may even make decisions regarding custody and visitation under judicial supervision. Sometimes the position of the court’s supportive services is so significant that a mental health professional’s opinions are almost always adopted by the courts. The wish to have mental health professionals perform in these many roles often leads to confusion on the part of both the court and the mental health professional. We agree with Strasburg and Gutheil’s (1997) view that attempts to wear more than one hat, for example to serve as both therapist and expert, result only in both roles being filled badly.
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