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**12TH ANNUAL
BERNARD I. ROSEN
DOMESTIC RELATIONS
INSTITUTE**

**What is Involved in Custody
Evaluations & How DR
Practitioners Can Assist in the
Process**

Presented By:

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Custody Evaluations

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Types of Custody Evaluations

- Parenting Evaluations
- Divorce Custody Evaluations
- Post-Divorce Decree Custody Evaluations
- Custody Evaluation
- Psychological Evaluations

History

- Children were viewed as property from Roman times until the 19th century. Thus, they were placed in the custody of their fathers.
- American courts initially based custody decisions on English Common Law. Children were placed in the father's custody because of financial resources to raise children.
- 1800's courts adopted *parens patriae*- a moral or legal duty to protect those who cannot protect themselves.
- Emphasis on mother-infant relationship resulted in the *Tender Years Doctrine*. Young children were placed with their mother except in extreme situations. Presumption that it was in best interest of the child to be placed with mother.
- The Feminist Movement
- Current prevailing tests- Best interest of children

Best Interest of the Child

- The custody arrangement that best meets the needs of the child/children.
- Children needs versus parents needs have become focus of the decision making process.
- "Best Interest" implies that there is a "best" or even a good solution.
- Alternatively the "least detrimental" parent.

Uniform Marriage and Divorce Act (American Bar Association, 1974)

In determining custody on the basis of best interest, the court shall consider the following:

- Wishes of the parent
- Wishes of the child
- Interaction and interrelationship of the child with parents
- Child's adjustment to his home, school, and community
- Mental and physical health of everyone involved

Custody/Visitation Disputes

- In the United States and Canada, most (90 to 95%) separated parents settle custody and visitation issues without contesting them in court.

Factors to consider for Joint Custody/Shared Parenting Arrangements

- Successful joint custody arrangements hinge on communication. (Family Wizard, third parties, battle wounds)
- If parents cannot communicate effectively with support of intervention or for the sake of the child- sole custody arrangement.
- Can the child/children tolerate joint custody?
- Can the parents separate their own needs from the needs of the children?

Physical Custody and Visitation

- Shared placement- equal time with each parent.
- Primary and secondary placements (11/3 split)
- Schedule A visitation- every other weekend, Wednesdays, summer vacation
- Holiday schedule- shared or alternating
- Right of first refusal

Areas of Assessment in Custody Evaluations

- Continuity and Quality of Attachments
- Child Preference
- Parental Alienation
- Child/children's special needs
- Education
- Gender

Areas of Assessment continued...

- Sibling relationships
- The physical and psychological/psychiatric health of parents
- Parent's work schedule
- Finances
- Parenting Styles and Discipline

Continued....

- Conflict resolution
- Support systems
- Cultural and ethnic issues
- Ethics and values
- Religion

Special Issues in Child Custody Disputes

- Infancy
- Homosexuality
- Grandparents
- Child Sexual Abuse
- Reproductive technology

Ethics and the Role of the Evaluator in Custody Evaluations

- Court ordered/forensic evaluation
- Objective evaluator-not advocate for the parents
- Goal “not to relieve suffering or to treat the child but to provide objective information and informed opinions to help render a custody opinion” (AACAP Practice Parameters for Child Custody Evaluations)
- Clarify role with all parties at the beginning of the process.

Ethical Issues and the Role of Evaluator

- Strive to maintain an objective/impartial stance.
- Gain specialized competence-education, training, supervision in the areas of child and family development/psychopathology, legal standards and procedures
- Be aware of personal biases regarding age, gender, race, religion, sexual orientation, disability, culture, SES, ect.
- Avoid multiple relationships-do not conduct custody evaluation in a case where professional has served in a therapeutic role for child or his immediate family.
- Do not accept any party for treatment after the evaluation.

Ethical Issues continued...

- Child custody recommendations must be derived from sound psychological/psychiatric data and address the psychological best interest of a child.
- Recommendations are based on clearly articulated assumptions, interpretations, and inferences that are consistent with established professional and scientific standards.
- Not every evaluation will result in a recommendations.
- Sufficient time and flexibility to complete the evaluation.
- Reasonable fees.

Areas of Assessment

The focal point of the assessment will vary case by case. The “one size fits all” approach does not apply to custody evaluations.

Continuity and Attachment

- The parent child relationship is the “center piece” of the evaluation.
- Consider Bowlby’s Attachment Theory- Ainsworth’s Strange Situation- secure, ambivalent, avoidant, and disorganized attachment.
- How can the child-parent maintain continuity- visitation schedules.
- Consider developmental level of the child/children.

Child Preference

- Judges give more weight to preference offered by a child 12 years or older.
- Young children rarely offer a preference, if they do consider the influence of a parent. Was the statement rehearsed.
- Consequences when children are given too much control.

Parent Alienation

- Parent Alienation is “a disturbance in children are preoccupied with the depreciation and criticism of a parent- denigration is unjustified and/or exaggerated” (Gardner, 1991)
- Parent Alienation is NOT a valid mental health diagnosis
- If a child has extremely hostile feelings about one parent, consider alienation or the developmental stage of child (black and white thinking)

Parent Alienation Continued...

- Overt alienation (brainwashing)- conscious acts of programming a child against a parent.
- Covert alienation- subtle- silence, children with too much information, “After all these years...”
- Alienation can vary-mild, moderate, severe.
- It may be inevitable to some degree- consider sensitive children.
- Has the “alienated” parent contributed to the problematic dynamics? Can intervention help.

Special Needs of the Child

- Can the parent attend to the child's physical or mental health disorder.
- Consider work schedule/flexibility, and social resources.
- Do the parents argue about the choice of physicians, treatment, ongoing care?
- Does one parent have specialized training?
- The ability of a parent to follow through with specialized treatment.

Education

- Primary focus is the child's needs.
- Consider continuity.
- What are the parents interventions or educational plans for the child?
- Is one parent more sensitive, patient or realistic about a child's special educational needs?
- Parochial schools, home schooling, public schools....

Gender

- Research does not support the conclusion that all children should be raised by the same sex parent. Case by case basis.
- Consider impact of separating siblings.
- High conflict relationships and transference onto children. (ie. A teenage boy looks like his abusive father-impact on mother-son relationship.)
- Consider developmental issues.
- Alternative same sex role models-ie. grandparent.

Sibling Relationships

- Siblings can offer each other support during divorce.
- Do not assume that siblings should stay together. Siblings can also influence each other's relationship with a parent.

Styles of Parenting and Discipline

- Consider the “fit” between the child and parent- may be difficult to assess during evaluation – is the parent too harsh or too permissive- gather collateral data.
- Parenting Stress Index
- Baumrind's Parenting Styles:
 - Authoritative- high responsiveness/ high demanding (child centered)
 - Authoritarian- low responsiveness/high demanding (punitive, demanding)
 - Permissive- high responsiveness/low demanding (lenient-spoiled)
 - Unresponsive- low responsiveness/low demanding

Parents Physical and Mental Health

- Does the physical ailment impair a parents ability to meet their child's basic needs?
- Consider substance abuse, psychiatric/psychological illness and the impact on children.
- The American Psychiatric Association (1991) espoused the position that only when issues of parents “fitness” are raised that the parents psychiatric records should be released.

The Impact of Depression on Parenting

- Children as young as 3 months react to mother's facial expressions.... including blunted affect. (ie. Increased heart rate, irritable)
- Maternal depression increases child's risk for emotional and behavioral problems- such as increased aggression.
- Depressed mothers tend to be less positive, less sensitive to children's needs and less engaged.
- Parents lack the physical and emotional energy needed to consistently parent their children.
- What about the children of parent who have attempted suicide?

Substance Abuse and Parenting

- Children raised by parents struggling with addiction learn not to trust, feels, or talk.
- They are not carefully supervised
- Such children may be exposed to dangerous criminal element.
- They are higher risk to also abuse drugs and alcohol.

Untreated Psychosis/Bipolar and Parenting

- Such parents are very unpredictable... therefore, children are unable to predict what will happen in a given day.
- Increased anxiety for the child.
- Child is in crisis mode and unable to focus on academics, normal social development, ect....
- Parents struggling with chronic mental illness often do not adequately supervise their child.

Special needs of a traumatized child

Consider the PTSD Recovery model based on Maslow's Hierarchy of Needs

1. Basic physical needs (preoccupation with survival if not met)
 2. Safety, order, structure, limits- lack of stability creates fear- stable routines/predictability allow children to heal
- If these two stages are not met... the children cannot proceed to other stages- Belonging, Self-worth, self actualization.
 - To develop a pro-social lifestyle as an adolescent or adult, a children must at a minimum have the first two stages.

Continued....

- Traumatized children need an environment that decreases their level of arousal.
- Opportunity to bond with stable and supportive caregivers.
- A child cannot progress in therapy to address traumas in a chaotic home with unpredictable care givers.

Chronic Instability-frequent moves

- Preoccupation with survival
- Poor academic performance
- Low self-esteem
- helplessness

Parental conflict and children?

- Insecurity, helpless, and powerless
- Poor academic performance
- Increased risk to abuse alcohol and drugs
- More physical illnesses
- Regressed behaviors

Personality Disorders- Borderline, Narcissistic, Antisocial, Histrionic

Consider the impact of personality disorders on parenting.

Consider the impact of personality disorders on the communication between the parents.

Impaired Cognitive Functioning

- May be a result of stroke, closed head injury, dementia, or developmental disabilities.
- What is the impact on parenting?

Physical/neuropsychological disabilities

- Consider progressive diseases- dementia, parkinsons, Huntington's disease.
- Consider physical disabilities and the age of the child.
- Consider child in the role of caregiver to parent.
- Impulse control problems

Additional areas of Assessment

- Parents finances
- Support systems- availability of family member or relatives in case of emergency.
- Cultural influences
- Religion- contentious issues- consider exposing children to more than one religion.
- Ethics and Values-consider Antisocial Personality Disorder

Additional areas to consider

- Homosexuality- educate the court- some mixed research- but research suggest no difference in parenting outcomes for gay, lesbian, bisexual parents. Consider the children's reactions.
- Transgender parents- consider developmental age of child.
- Grandparents
- Reproductive technology- custody disputes over frozen embryos

Allegations of Child Sexual Abuse

- Paucity of recent research- consider: mothers file for divorce after learning that child was abused by his/her father, a child feels safe to disclose abuse after the divorce.
- Studies of allegations of CSA in the United States showed that 2-15% of the CSA allegations are fabricated in contested custody cases. This is only slightly higher than cases where custody is not contested. (studies have major limitations)

Australia study of abuse in custody cases

- Review of 200 randomly selected families involved in Family court.
- Severe physical and/or sexual abuse reported found in 70% of case.
- Study found that the false allegations were no more frequent than child abuse allegations made in other circumstance (9%)
- Only 22.5% were previously reported to child protection services.

How do you resolve these issues?

- Recommend that the child/children participate in a sexual abuse or physical abuse evaluation.
- Refer the “offending” parent for a sex offender evaluation.

Who should be included in the evaluation?

- Parents
- “Step-parents”
- Child/children

Ensure that everyone knows that the interviews are not confidential.

Data collected:

- Personal history (development, childhood abuse/trauma, education, employment, medical, mental health, substance abuse, .
- Parenting interventions- caregiving, schedules, discipline, abuse
- The child's perception of their relationship with each parent.
- Behavioral observations of parent/child interactions.
- Collateral information from pertinent people, police reports, and GAL

Testing

- Minnesota Multiphasic Personality Inventory- 2nd Edition- MMPI-2
- Millon Clinical Multiaxial Inventory -3rd Edition- MCMI-III
- Parenting Stress Index (PSI)
- Intelligence testing as needed
- Structured Clinical Interview
- Rorschach
- Thematic Apperception Test

Outline of Practice Parameters for Child Custody Evaluations for Psychiatrists

- Referrals typically come from the court- a referral from a noncustodial parent who wants child interviewed should be refused. It is unethical to interview a child without the permission of custodial parent.
- Clarify the questions that the court, attorneys, GAL want answered and then determine if it is possible to answer the questions.
- Avoid conflict of interest- contact both lawyers as soon as a conflict is noted
- Clarify the fees – and payment schedule. (full fee upfront is preferable)

Outline Continued...

- Request legal documents for clarification of what both parties are alleging.
- Gather collateral data from GAL, teachers, mental health professionals.
- Determine who will participate in evaluation and estimate number of sessions.
- Explain role and limits of confidentiality- sign releases.
-

Obtain the following:

- Description and history of marriage and separation.
- Parents perception of relationship with child/children
- Parents understanding of and sensitivity to child/children's special needs.
- Parents specific plan for the future if custody is awarded.
- Gather background history from parents including family of origin, social, criminal, substance abuse and mental health history.

Observe the following:

- Whether the parent is focused on discussing the child or spends time attacking the other parent.
- Note their actual level of cooperation versus their reported level of cooperation.

Outline continues...

- DSM-V diagnosis not always rendered.
- Refuse to listen to tape recordings
- Interview the children-consider mental health diagnosis, attachment, expressed preference, potential parent influence
- Siblings seen together first then separated- explain purpose of meeting
- Use caution before asking children under the age of 3 where they want to live.
- Interview children and parents jointly.
- Interview step-parents or potential step-parents- ask about relationship with child/children.

The written report

Consider the weight of specific factors when offering a recommendation:

- Continuity-which home is most stable and permanent
- Preference offered by child
- Quality of attachment to child
- Sensitivity and respect
- Parent-child gender
- Physical and mental health of the parent
- Level of conflict between parents on the child

Written report continued:

- Free of jargon
- Concise but detailed enough to provide necessary information
- List individuals seen including dates and lengths of sessions
- Avoid inflammatory statements
- Conclusions and recommendations should contain the formulation of the opinion offered- the recommendations should never be a surprise.

Maximizing Your Custody Evaluation

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Purpose of a child custody evaluation

Provide assistance in assessing the
the individual and family factors that affect the
best psychological interests of the child.

APA Guidelines for Psychologists

The evaluation focuses on:

Parenting capacity, the psychological and developmental needs of the child, and the resulting fit

- ❖ The most valuable contributions of psychologists are contributions that reflect a clinically astute and scientifically sound approach to legally relevant issues.
- ❖ Useful and influential evaluations focus on skills, deficits, values and tendencies that are relevant to parenting attributes and the child's psychological needs.

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APA Guidelines for Psychologists

Psychologists strive to maintain specialized competence

- ❖ Laws, methods, and techniques change over time. Psychologists need to demonstrate a level of expertise that reflects contextual insight as well as forensic integration, testing and interview skills.
- ❖ The acquisition of knowledge is never complete

Psychologists strive to function as impartial evaluators

- ❖ Custody evaluations are emotionally charged and involve highly personal matters. Therefore, it is important that the evaluator remain free of unwanted bias or partiality.
- ❖ Need to recognize and be aware of our own personal biases. In addition, it is important to be culturally competent.

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APA Guidelines for Psychologists

Psychologists strive to avoid conflicts of interest and multiple relationships in conducting evaluations

- ❖ Psychologists refrain from taking on a professional role that may result in impaired impartiality, competence or effectiveness, as well as exposure of the person or organization with whom the professional relationship exists

Psychologists strive to establish the scope of the evaluation in a timely fashion, consistent with the nature of the referral question

- ❖ the scope of the evaluation varies according to the needs of the particular case as well as the specific needs the psychologist is asked to address.
 - ❖ psychologists may need to clarify the referral question in order to determine if they are able to provide opinions and recommendations.
-

APA Guidelines for Psychologists

Psychologists strive to obtain appropriately informed consent

- ❖ if the examinee cannot provide informed consent, then psychologists provide an appropriate explanation, seek the examinee's assent, consider the preferences and best interests of the examinee and obtain permission from a legally authorized person

Psychologists strive to employ multiple methods of data gathering

- ❖ multiple methods of data gathering enhances reliability and validity of psychologist's conclusions, opinions, and recommendations.
 - ❖ direct methods of data gathering include psychological testing, clinical interviews, and behavioral observations
-

Mistakes Made By Therapists and Evaluators

- ▶ Becoming an advocate for the patient
- ▶ Bias
- ▶ Not informed of current theory, research and/or cultural differences



"I'm the advocate for the child, and my patient doesn't want to see her Dad..."

Examples from Case Studies

The Undermining Therapist...

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APA Guidelines for Psychologists

Psychologists strive to base their recommendations, if any, upon the psychological best interests of the child

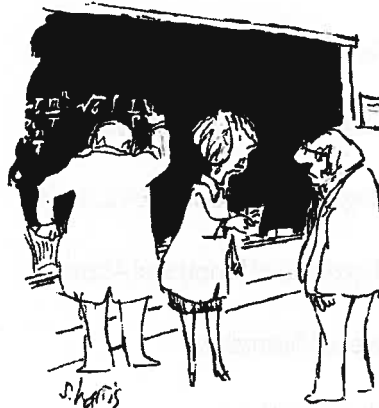
- ❖ not every evaluation will result in recommendations.
- ❖ if a recommendation is provided, the court will expect it to be supportable on the basis of the evaluations conducted.
- ❖ if a psychologist chooses to make a recommendation, it is based on sound psychological data and address the psychological best interests of the child.

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The Need for Collaboration

Challenges in Divorce Cases

- Divorcing families often need multiple interventions
- Conflicting alliances among professionals may mirror those of the family
- Therapists may be well intentioned but overwhelmed by the family's demands and the limitations of their roles and information
- Traditional structures of intervention may be ineffective



"WE COLLABORATE. I'M AN EXPERT, BUT NOT AN AUTHORITY, AND DR. GELPIS IS AN AUTHORITY, BUT NOT AN EXPERT."

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Psychological Testing

- ▶ Traditional Psychological Tests
- ▶ Custody Questionnaire
- ▶ Projective Personality Tests
- ▶ Parenting Inventories
- ▶ Benefits of Using Tests
- ▶ Risks of Using Tests
- ▶ Home Visits
- ▶ Interviewing children with parents and/or individually
- ▶ Communicating Results
- ▶ Written Report

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Assessment of Specific Issues

- Relocation Evaluations
- Allegations of sexual abuse
- Allegations of Domestic Violence
- Allegations of Emotional Abuse
- Parental Alienation
- Substance Abuse
- LGBT parents

Minnesota Judge Has 200 Blunt Words for Divorcing Parents

By Judge Michael Haas, 2001

"Your children have come into this world because of the two of you. Perhaps you two made lousy choices as to whom you decided to be the other parent. If so, that is your problem and your fault.

No matter what you think of the other party—or what your family thinks of the other party—these children are one-half of each of you. Remember that, because every time you tell your child what an "idiot" his father is, or what a "fool" his mother is, or how bad the absent parent is, or what terrible things that person has done, you are telling the child half of him is bad.

That is an unforgivable thing to do to a child. That is not love. That is possession. If you do that to your children, you will destroy them as surely as if you had cut them into pieces, because that is what you are doing to their emotions.

I sincerely hope that you do not do that to your children. Think more about your children and less about yourselves, and make your a children kind of love, not foolish or selfish, so your children will suffer."

**Personality Disorders-Borderline,
Narcissistic, Antisocial, Paranoid,
Histrionic**

- ▶ Differences between Axis I and Axis II Diagnoses
- ▶ How Mental Illness Impacts on Parenting and Decision Making
- ▶ Consider the Impact of Personality Disorders on the Communication Between the Parents

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