



Pennsylvania Psychological Association

Samuel J. Knapp

416 Forster Street • Harrisburg, Pennsylvania 17102-1714 • Telephone 717-232-3817 • FAX 717-232-7294

He says

May 11, 1990

OFFICERS

President
Mary Anne Murphy, Ph.D.

President-Elect
Robert M. Gordon, Ph.D.

Past President
Jack Porter, Ed.D.

Secretary
Ruth I. Beach, Ph.D.

Treasurer
Colleen L. Carney, Ph.D.

Mr. Ken Suter, Counsel
Pennsylvania House of Representatives
Judiciary Committee
Room 313A
Main Capitol
Harrisburg, Pa. 17120-0028

Dear Mr. Suter:

I am enclosing an article dealing with psychological evaluations in child custody cases. Unfortunately, I have not been able to locate articles dealing with the more specific issue of "psychological parent" which is relevant to H.B. 1290.

APA REPRESENTATIVES

1989-92
Constance T. Fischer, Ph.D.
Jerome H. Resnick, Ph.D.

Although our association has taken no position on H.B. 1290, I have located two psychologists who are willing to write letters to your committee on this issue. Both these psychologists are very involved in the issues of child custody and I value their judgement and perspective. If I locate other qualified psychologists, I will ask them to comment to you also.

BOARD CHAIRS

Communications
Michael S. Broder, Ph.D.

Internal Affairs
Paul E. Delfin, Ph.D.

Professional Affairs
Dianne S. Salter, Ph.D., J.D.

Program and Education
David V. Orbison, Ph.D.

Sincerely yours,

Samuel Knapp, Ed.D.
Professional Affairs Officer

DIVISION PRESIDENTS

Academic Psychology
Thomas E. Klee, Ph.D.

Clinical Psychology
Richard F. Small, Ph.D.

Public Sector Psychology
Martin C. McGurmin, Ph.D.

School Psychology
Gerald M. McMullen, Ph.D.

EXECUTIVE OFFICER

Thomas H. DeWall, M.A.

PROFESSIONAL AFFAIRS OFFICER

Samuel J. Knapp, Ed.D.

COMMUNICATIONS MANAGER

Krista L. Jones, M.A.

EVALUATING AND MEDIATING CHILD CUSTODY CASES

Andrew P. Musetto

Decision making in child custody reflects the values and myths of the day. It changes as society changes. In Roman times and until the 18th century, for example, children were the property of their parents (fathers, for the most part), who had an almost unlimited prerogative regarding their children. Roman fathers could sell their children into slavery or condemn them to death with impunity (Derdeyn, 1976).

Over the last two centuries, however, children have acquired rights of their own. By the end of the 19th century, the values that sprung up around the Industrial Revolution and the changing moral climate in Victorian England and the United States conferred increasing importance on the protection of children's interests (Committee on the Family of the Group for the Advancement of Psychiatry, 1980). Child labor laws and compulsory school attendance statutes, for example, came into being. As childhood gained recognition as a distinct phase in the life cycle, children were no longer considered small adults to be put to work as soon as they were able. Rather, they needed to be educated and nurtured, to be encouraged through their developmental tasks, to be trained in a skill or profession, and to be prepared for adult living.

As the rights of children increased, bringing more attention to parental fitness and capacity, parental prerogative became parental obligation. Thus, as children gained rights, parents gained obligations.

Through much of this century and until recently, two guidelines swayed decision makers. One was the Maternal Presumption, that a mother is presumed better fit for custody on the basis of gender, and the other, the Tender Years Doctrine, especially in cases of younger children. These two guidelines, as well as a tendency to use marital fault as a contraindication for custody, reflected the beliefs and values of the times and facilitated custody decision making. Today their influence is waning.

The increased concern for children's rights and parental fitness has now been written into judicial practice. The hallmark of this change is the Best Interests of the Child Doctrine, which is still, at least in theory, the lodestar of custody decision making. The best interests guideline encompasses a child's physical and emotional needs. The UNIFORM MARRIAGE AND DIVORCE ACT (National Conference of Commissioners on Uniform State Laws, 1970), a model piece of legislation recommended for enactment by states, cites the "best interest of the child" as the deciding factor in determining custody. Section 402 advises courts to consider all relevant factors including the wishes of the child and parents, the relationship of child to parents, siblings, and

other significant adults, the overall adjustment of the child, and the physical and mental health of all parties involved. Though the best interests standard is the final test in almost every custody case, interpretation as to what it means can vary in different states and different courts.

Along with a changing social consensus, custody practices continue to evolve. In most states, both parents have an equal claim to custody. Joint custody and coparenting are commanding the attention of parents, legislators, the judiciary, and mental health professionals. No longer coterminous with parental rights nor confined to the question of controlling children's lives, custody now entails parental accountability (Cotroneo, Krasner, & Boszormenyi-Nagy, 1981), or the responsibility that parents have to raise their children to maturity; a responsibility that does not dissolve because a marriage fails.

Increased concern over parental accountability is reflected in changing ideas about parental fitness. In the last century, to be fit meant to be morally fit, according to the standard definitions of morality. Today, to be fit is to be capable of rearing children to adulthood, to be available emotionally as well as physically, and to be able to provide long-term continuity in caretaking. Fitness is not guaranteed by gender or biology, by material well-being, or by conventional life style, nor is it necessarily abrogated by a history of emotional problems (Committee on the Family of the Group for the Advancement of Psychiatry, 1980). It is a complex issue, and because divorce is so prevalent, it is also an urgent one.

The consciousness of today is, however, muddled. There is no clear consensus on the issues. Divergent opinions about unconventional life styles (e.g., homosexuality), the value of joint custody, the importance of having one psychological parent as the principle caretaker, and the claims of grandparents regarding visitation, are all factors. Competing interests further complicate matters. Just as the courts have discovered children's rights (some children come to court with a *Guardian-ad-litem*, someone appointed by the court for the protection of a child during and after a divorce), so parents assert their own claims and needs. Faced with vague guidelines and changing laws with different interpretations, judicial decisions may reflect personal preference and cultural prejudice more than sound judicial and psychological principles.

Matching the changing social consciousness and the uncertainty of custody practices is the developing awareness of social scientists and mental health professionals who have discovered the interactional and systems level of inquiry. Today the horizon of clinicians is expanding from individual, intrapsychic variables to broader and more complex systems approaches (Beavers, 1977; Bowen, 1978), beyond individual diagnosis to include family intervention, beyond the therapist as an observer to a participant observer, and even towards a careful use of self as a therapeutic tool (Beavers, 1977). Also, as we shall see in this contribution, child custody mediation and evaluation is taking on the colors of family therapy and systems theory.

CHILD AND FAMILY ISSUES

Like so many other important decisions, divorce is not simply an event which takes place when a judge signs the final divorce decree, but a process which

occurs gradually over months and years. Divorce and separation, which are highly stressful life events, are linked to a host of physical and emotional disorders (Bloom, Asher, & White, 1978). Many changes confront the parents and children of divorce. These include financial pressures, new living arrangements, changes in family structure including new lines of authority, alterations in parent-child relationships, intense emotional reactions, the weakening of customary support systems, and decisions regarding working and socializing. Custody is one of the changes that must be decided, and contested custody signifies that the transition of divorce is incomplete.

Custody conflicts arise, I believe, from several sources. They may reflect a continuation of unresolved marital or family problems (e.g., a struggle for control), exacerbated by the adversary legal process and the massive stress of divorce which drains parents emotionally and discourages them from their responsibilities. Custody disputes may also grow out of a precipitous or unilateral decision to divorce, pushing one parent to use custody as a way of gaining revenge or saving face. They may represent one or both parents putting personal gain ahead of parental responsibilities. They may also indicate one person's belief in his or her greater capacity for custody in relation to the other parent. Several of these reasons may exist together.

Whatever the causes of the disputes, a proposed resolution must respect several important factors about children and their families. All children are born into a matrix of relationships and are attached and loyal to not only one or two parents, but to a larger emotional universe. This includes a network of relationships encompassing both parents, siblings, grandparents, aunts, uncles, cousins, and possibly others, all of whom are potential sources for support and trust-building. The identity of any child is linked to the identity of his or her entire relational network. To isolate children from their emotional universe is to isolate them from their emotional roots, and to denigrate either parent or any part of the network is to denigrate part of the child's identity.

The dramas played out by parents and families, in the form of custody contests and divorce wars, determine the fate of children. The best interests of children are not different from the best interests of their families.

Invisible but intense loyalty ties bind parents and children together. Parenthood is not simply a biological event, but a long series of encounters characterized by commitment, devotion, and love. From this intimate connection between parents and children, and prompting it, comes a sense of loyalty, an allegiance that lasts beyond distance and separation, beyond conflict and, sometimes, even beyond abuse and neglect. Neither a court decree nor the end of a marriage can dissolve this allegiance, for the loyalty of parents and children usually endures a lifetime. To think, then, of a child as having one parent with the other parent (and siblings) as peripheral, as courts and families often do, is to perpetuate a harmful myth.

Children are equally concerned with how their relationships are conducted and how they are treated. Exploited children who are battle-scarred from custody wars, angered, neglected, or used up by their parents' disputes, develop a sense of injured justice, the feeling of being exploited and expendable (Boszormenyi-Nagy & Spark, 1973). Such actions discourage their emotional investment in society, damage their trust in human relationships, and prompt

them to withdraw from people or, later, to exploit others just as they felt exploited.

GUIDELINES FOR DECIDING CONTESTED CUSTODY

In my view, the best interests of the child should remain the cornerstone for deciding custody (Musetto, 1981, in press). This guideline is not, however, without difficulties.

Goldstein, Freud, and Solnit (1973) offer incisive criticism. Separation and divorce, the breakup of a family and possible disruption of a child's relationship with one or both parents, protracted custody contests, and adversary court proceedings already jeopardize children emotionally. Why, then, should we talk about a child's best interests? In the midst of such upheaval, decision makers should not assume their interventions will automatically benefit a child. The authors suggest, therefore, that decision makers focus more on minimizing further harm rather than on doing good, a point the best interests guideline obscures. In practice, furthermore, this standard often reflects the competing interests of adults, as children fall victim to parental and court battles. Finally, only a limited number of choices exist anyway, and courts and mental health professionals are fallible in their ability to predict which of the available alternatives would be better. Goldstein et al. suggest the Least Detrimental Alternative Available as a more realistic standard.

Despite these criticisms, the best interests guideline remains the acid test for deciding custody in most cases. Its chief advantage is to remind decision makers that a child's interests, not adult preferences, cultural prejudice, or judicial presumption is the ultimate test for deciding custody. In retaining this standard, however, we should keep in mind its limitations.

Deciding what are a child's best interests, in fact, is quite difficult. Courts have a wide latitude in determining what a given child's best interests are, and specific states interpret the standard differently. To help reach such a decision, the following observations and guidelines are offered. Wallerstein and Kelly (1980), in a 5-year longitudinal study, concluded that both parents continue in psychological importance to a child 5 years after divorce and that the greatest hazards of divorce for children are the disruption or loss of a child's relationship with either parent or the implication of a child in the ongoing hostility of his or her parents. While the former deprives a child of adequate parenting, the latter subjects a child to a divided loyalty conflict. Either can damage a child emotionally or injure his or her sense of justice. We should remember, furthermore, that a child is part of an emotional and relational network which extends beyond attachment to either parent alone.

With this in mind, coparenting or joint custody (i.e., equal responsibilities and rights, not necessarily joint living arrangements) offers an excellent solution. Since it encourages a child's contact with both parents and extended families, it minimizes both the child's and parents' sense of loss. It supports the accountability of both parents, thereby preserving a child's trust in human relationships. And since responsibilities are shared, it relieves either parent from carrying the entire weight of child rearing. Since coparenting is based upon cooperation, however, it is destroyed by

unresolved parental conflict. When coparenting is ruled out, a child's best interest is served by having a loving and continuous relationship with at least one parent or parent surrogate.

If a choice must be made between parents, the one that has demonstrated the greater parental capacity should be favored. A continuity of caretaking maintained over time, a relationship characterized by commitment, affection, stimulation, and limits, evidences parental capacity. A parent's willingness to negotiate with the other parent and to promote a child's involvement with that parent and the child's entire relational network, also demonstrates parental capacity.

The preferred custody arrangement, therefore, provides a child with the most amount of available parental caretaking. It fosters a child's positive contact with his or her entire emotional universe and minimizes the conflict that surrounds a child. The wishes of a child, especially from adolescence on, are also important; however, Wallerstein and Kelly (1980) found the preferences of preadolescent children could be unreliable or unwise.

ISSUES FACING CLINICIANS

Working with child custody problems raises a number of complex issues. We face an adversary legal system which is founded upon competition, fosters dishonesty, and discourages face-to-face negotiation. Disregarding a child's emotional universe, the courts will frequently seek out one custodial parent and treat the other as peripheral. Parents themselves come to court filled with self-righteous indignation. Each is out to prove the other wrong and himself or herself blameless. In fact, the conflict is almost always mutually caused and can best be resolved by cooperation instead of condemnation.

The task facing the clinician who is asked to evaluate or mediate custody is weighty. While a judge always makes the final decision, some courts place considerable value on a clinician's recommendation. Not only is the responsibility weighty, however, it is also taxing. Warring parents and distressed children, stacks of affidavits, and heated arguments drain a clinician emotionally. Parents fighting against each other, using their children as weapons, strains one's faith in human nature and ranks among the most unpleasant work I know.

The work is also confusing. As one side produces documents and allegations matched by documents and allegations by the other, point by point the testimonies conflict. Solid evidence, like cooperation, is scarce. Emotionality can reduce one's ability to reason. Meaning not only varies with one's perspective, but individuals also lie. As the barrage of charges continues, the evaluator has difficulty knowing anything for certain. Even if the facts can be ascertained, there may be no worthwhile or preferred alternative. More often than not, clinicians face finding the least detrimental alternative available. To decide between parents is often to split hairs.

Finally, evaluating or mediating custody raises the issue of who employs you. The clinician, at least in private practice, has services for hire but must never be considered a "hired gun." Neither our judgment nor our credibility

should ever be bought, and it is essential for clinicians to make their position on this question clear.

CLINICIAN'S ROLES

MEDIATION

As an alternative to costly and highly stressful adversary legal contests, divorce and custody mediation is gaining popularity and acceptance (Coogler, 1978; Haynes, 1981; Irving, 1980). In custody work specifically, a clinician can either be a mediator or an impartial evaluator, including expert witness (Musetto, 1982b, in press). Mediation, which is similar to brief, problem-focused family therapy, means intervention. In the interest of not arousing more resistance, however, I do not use the word "therapy" to describe the process to the court or family. Mediation requires bringing all one's therapeutic skill to bear on the family system so that the parents can resolve custody themselves. When parents are at loggerheads, blaming and distrusting each other in a contest each wants to win, the mediator's job is to instill a spirit of cooperation.

The mediator assumes that families can and should settle their own problems. If parents put aside their relationship conflicts and personal agendas and attend to parental issues, a resolution should result. A mediator tries to create an atmosphere that increases the chances for this to occur. To achieve this, a mediator looks for a small point of agreement, an area of mutual confirmation, or a similar objective upon which to build a compromise. Stressing mutual responsibility as opposed to blame, talking and listening as opposed to interrupting and accusing, openness to change in contrast to defensiveness, and shared responsibility instead of winning and losing, mediator presses for a negotiated and fair settlement.

Mediation is more concerned with problem solving and intervention than with diagnosis, with the family as a whole rather than with the fitness of either parent, and with process and interaction more than with information. Fitness and information rise in importance if mediation fails. Sometimes, however, mediation is neither possible nor advisable. Certain families attempt mediation and fail. Others, caught in the emotionality of an adversary process, refuse to mediate. Not all courts endorse mediation or accept mental health professionals as mediators. When mediation is not possible, a clinician can be an impartial evaluator and an expert witness if called to testify in court.

IMPARTIAL EVALUATION

To be effective and credible, an evaluator must embody impartiality. This includes fairness to all members, independent judgment, giving each parent an opportunity to be heard, and an open-mindedness about how custody should be decided. The evaluator, in contrast to the mediator, is concerned with information more than intervention and with a recommendation more than with changing the family system. The evaluator collects information from all relevant sources (including various family members and other relevant parties, such as clinicians) to unravel the hard knots of parental allegations and to assess the level of parental capacity. Gardner (1982) clearly delineates the role of an impartial evaluator.

Both mediator and impartial evaluator have advantages and disadvantages. Because it explicitly moves toward a resolution, successful mediation is less costly than lengthy adversary sparring, less stressful to the family, and, most importantly, capable of reducing, if not ending, the family strife that ultimately jeopardizes a child's well-being. The greatest difficulty with mediation on the part of the parents is their lack of motivation to deal with each other or negotiate a compromise. Greed and animosity, self-justification, and self-interest can drive them to a low point in parental accountability. On the part of the clinician, mediation requires considerable skill, including expertise in marital and family therapy. Common sense bargaining, since it overlooks the hidden agendas that give rise to custody conflicts, rarely works. The promise of mediation is rivaled by the difficulty in actually doing it.

Impartial evaluation, though it does not hold out as much hope for a resolution, reaches a definite conclusion which ends the family's uncertainty regarding custody. It also offers the court more reliable information regarding parental capacity and children's interests than would otherwise be available. The difficulties with impartial evaluation involve acquiring reliable information and the demand for almost Solomon-like wisdom from the clinician. The "hired gun," who essentially works for or represents one party in a custody suit, has no place in custody work. There are a few cases of obvious harm to children in which a clinician may be an advocate but, in most instances, we are called upon to be mediators and evaluators.

Ideally, to do custody work, clinicians should work for a public agency which pays their salary, be hired by the court which decides how fees should be split, or have fees divided equally between parents. To avoid even the appearance of partiality, the invitation to serve as an evaluator should come ultimately from the court.

CASE STUDIES

In the following case studies of the differing roles in which clinicians find themselves, identifying information has been changed.

MEDIATION

Bob and Clare, a separated couple in their mid-20s, parents of Susan, a 4-year old, came to mediation by court order. Bob, a salesman, lived with his parents. Clare was a live-in housekeeper and companion for an elderly woman. The parents had shared custody; Susan stayed with her mother during the week, and with her father and his parents on weekends. Clare, the defendant, wished to continue the present arrangement, whereas Bob, the plaintiff, citing Clare's "immoral character," petitioned for sole custody.

I interviewed the parents together in the first session. I explained to them my guidelines and expectations: (a) the fee would be split equally, payable at each session; (b) confidentiality was limited - I could bring up relevant information in joint sessions that I learned in individual ones if I thought it was critical and the other parent refused to disclose it (for example, charges of abuse); (c) my role was as mediator of custody with no recommending responsibilities; (d) resolution was of great importance to their child; (e) sessions could be individual or conjoint, including family; (f) we would have

at least three or four sessions before assessing the value of mediation; and (g) their attorneys should forward any information they wished me to see.

When I inquired about what each parent wanted, Bob responded first. With morality on his side and righteous anger on his lips, he presented allegations of Clare's negligence as a parent: leaving Susan alone too much, her "immo. conduct," including one or more extramarital liaisons and several drinking episodes, and leaving the state with Susan for 3 weeks without discussing it or notifying him. In a pleading tone, mixed with anger, Clare either denied or refuted each allegation. She acknowledged she had had a brief extramarital affair, but only after the marriage was clearly over. She had wished to leave Bob before but alleged that he threatened her, forcing her to stay. She said she drank to excess on three or four occasions, but did not have a drinking problem. Further, she said she left the state to visit her family and gain some emotional support from them. She did not tell Bob because she knew he would try to stop her. Why should she be bound by his wishes anyway, she asked. Bob's jealousy and possessiveness, according to Clare, drove her out of the marriage in the first place. She alleged that he beat her two or three times, a charge he vehemently denied.

The custody conflict continued the unresolved marital problems. Clare functioned as a dependent child looking for approval and getting it only for following Bob's wishes, and Bob acted as a good parent now turned into an angry and critical one who tried to dominate her. It also reflected Bob's anger at Clare's unilateral decision to divorce. Revenge, as much as parental concern, motivated Bob. Self-justification and vindication goaded Clare.

The first two sessions were spent giving each a chance to express his or her views and trying to block the dysfunctional relationship patterns that fired up the conflict: blame-counterblame, revenge followed by counterattack, attention to marital fault instead of their child's needs. My intervention failed to hit the mark and the patterns continued.

Feeling a lack of progress, I decided to use direct confrontation. Without a breakthrough, I thought mediation would soon fail. I would try to show them how Susan was adversely affected by their conflict, as well as provide authoritative advice to neutralize the issue of Clare's character. While it is certainly important to substantiate or refute serious charges, in my mind those offered by Bob were designed mainly to discredit Clare and did not demonstrate serious parental incapacity. It would be almost impossible to substantiate the charges anyway. In effect, I would try reframing (Bandler & Grinder, 1982), or changing the context of the interviews from marital issues to parental ones and from fighting to cooperating as parents.

At my request, the family brought Susan in for the next session. Children are usually extremely anxious during these sessions and Susan was no exception. She sat silently and buried her head in her father's lap. When I asked her questions, she looked up, fidgeted, and hid behind one of the chairs. Both parents were surprised because they had considered Susan to be outgoing and friendly.

When Susan left the room, I commented to the parents that they could see the effect of their conflicts on Susan. Taking the stack of Bob's allegations against Clare, I indicated I viewed them as irrelevant. Moral condemnation of either parent is not constructive (Committee on the Family of the Group for

the Advancement of Psychiatry, 1980) and represented a condemnation of Susan's emotional network and, therefore, of Susan herself. The better parent, I told them, is usually the one willing to compromise. I read from various experts who supported my position. Silent and taken aback at first, Bob then admitted that Clare was adequate as a parent at times, but he still believed she demonstrated an "immoral character." Clare reiterated her willingness to compromise.

A shift occurred in the next session. Bob agreed that Clare should be a major force in Susan's life, but he was still afraid Clare would take her out of state again and this time not return. After some encouragement, Clare was able to assure Bob that she would not do this, though she might want to visit her family again some time. Bob seemed relieved. Clare mentioned, for the first time, that she was unhappy with her present living and working circumstances and was considering a change. After supporting Bob's shift and their efforts at talking, I advised them to meet for lunch during the week and continue negotiations.

During the week, Bob called to say that Clare had agreed to let Susan stay with him for an entire week, but without explanation, she then reneged. He was hurt and angry. I counseled him not to lose hope because they had already shown that they could talk together, and we would work on this in the next session. The beginning of the next session was tense. I was afraid we had just missed an opportunity for a settlement. To avoid an angry confrontation, I controlled the process of the session, requesting that Bob ask without blame what had happened. Clare explained that her employer and some family members had pressured her not to be accommodating to Bob, so she became confused. She apologized and then asked to see me alone.

She advised me that she had decided to give up custody of Susan. Unhappy with her employer, she felt she would have to move. With no prospects of a steady income, she felt she could not adequately care for Susan in the near future. After supporting her for taking such a major step, I asked her to share this with Bob. She said she worried about what people would say about her but, nevertheless, had reached a decision. When Bob returned to the session, she told him. Pleased, he told Clare he knew how hard it must be for her to decide this. They agreed to reverse the present custody arrangement so that Susan would be with Bob and his parents during the week and with Clare on weekends. Both were relieved. I notified the court of the agreement and was told the parties would not have to return to court; their lawyers would write up the agreement to be signed by the judge.

Discussion. In mediating custody disputes, it is essential to know first, what the courts are asking of you. In strict mediation, a clinician is not asked to offer a recommendation should mediation fail. If it does fail, the family is sent to a separate, impartial evaluator. Second, you must know your mandate and convey it to the family. Explicit guidelines should be spelled out, including what you expect of the family (negotiation) and what they can expect of you (intervention). Third, the clinician must be in charge of the sessions or intense anger and blame can overwhelm and further demoralize the family. Fourth, focus should be on the custody issue as opposed to financial or legal concerns. Fifth, since custody mediation is similar to therapy, the full range of therapeutic interventions appropriate for brief, symptom-focused family therapy should be used (e.g., Minuchin & Fishman, 1981; Weakland, Fisch, Watzlawick, & Bodin, 1974). The thrust of mediation is to block the

family's usual and dysfunctional approach to custody (e.g., blame-counterblame, mutual efforts at control), to identify and neutralize their hidden agendas (e.g., custody as a way of reinvolving an estranged spouse or punishing one who left), to put the parents in touch with their resources, to reframe the custody contest so that both parents are working toward a similar objective (e.g., how to minimize harm to their children), and to develop problem solving skills to reach the desired outcome. Once the parents are committed to a resolution, the clinician can help them vary their approach to each other until a resolution results.

Although the conclusion in this case seems like a dramatic turnabout, I believe that Clare probably never wanted custody due to her difficult life circumstances, but fought for it as a way of defending herself against Bob's attack. As Bob softened his position and affirmed her as a parent, she was free to express her true feelings. As she assured Bob she would not abscond with Susan, he was relieved and able to be more supportive of her. Although they did not settle their marital issues, they had begun to cooperate as parents.

IMPARTIAL EVALUATION

In this case I was contacted by a Superior Court judge who asked me to serve as an impartial evaluator. She asked me to make specific recommendations regarding custody, visitation, and whether the child in question needed therapy. After completing the evaluation, she would decide how the fee would be divided. I met with the family for four 2 hour sessions over a 2 week period.

Tom, a middle-aged businessman, had been divorced from his wife of 12 years for approximately a year and a half prior to the evaluation. His ex-wife, Mary, about the same age, lived in another state with their 10 year old son, David. Mary had fled the marital home with David 2 years before, claiming mental and physical abuse. Tom filed for divorce and was able to obtain custody. Mary, allegedly out of fear, did not attend the final hearing and, therefore, did not dispute Tom's charges of her unfitness. Even though Tom was awarded custody, he made no attempt to enforce it. David stayed with his mother, and Tom did not contact him for almost 2 years. Mary petitioned for custody in her state 2 years after leaving Tom. Upon learning about this, Tom, armed with the original decision giving custody to him, went to her state and obtained David, the state court denying jurisdiction in the matter. Tom returned to his home with David, and Mary followed right behind and filed for custody.

Each parent produced a stack of affidavits and a chronicle of allegations against the other one. Mary said that Tom was violent, abusive, threatening, and drove her to her new home. She believed he knew where she and David were but did not contact or support the child, drank, and was attempting to undermine her relationship with David. Tom countered by detailing Mary's supposed faults: excessive drinking, moving out of state with David illegally and without letting him know where they were, promiscuity, provoking him to violence by her own behavior. Mary stated that David did well in their new home for the entire time he was there. She produced letters from school officials, friends, and her employer supporting her assertion. She vigorously denied ever having a problem with alcohol. While not denying that David did well in his new home, Tom believed the child belonged with him based on the

fact that, with the exception of his mother, virtually David's entire family lived nearby and, moreover, Tom could teach David the family business.

I interviewed each parent individually and conjointly, each with David, and David alone three times. I made several observations. David had adjusted well in his new home with his mother and wished to remain with her. Mary had periodic problems with alcohol, more so when she was married than at the time of the evaluation. Some parentification (Boszormenyi-Nagy & Spark, 1973), or role reversal, existed: Mary depended excessively on David emotionally, viewing him as "the only reason for my life," with David occasionally trying to persuade her to stop drinking or to go to bed when she was intoxicated. The reversal reflected, in part, the overwhelming stress of divorce and being a single parent, including the isolation from her family and a reduced support system, and I believed it would probably decrease once custody was settled. It also indicated, in part, Mary's emotional dependency and inadequacy. At the same time, she and David enjoyed a warm, affectionate relationship. Notwithstanding the drinking and role reversal, her parental skills regarding discipline and daily child rearing were more than adequate.

Tom was less invested in child rearing than he claimed. While David was staying with him just prior to the evaluation, Tom would spend several nights a week out with friends and come home nearly intoxicated at least once a week. He had been absent from David's life, regardless of the reason, for almost 2 years. A man with considerable financial resources, he could have found out where David was, if he did not already know, had he chosen to do so.

David, a friendly youngster, was clearly aligned with his mother. He had no doubts about wanting to stay with her. He felt she was more caring and had a more stable life style, and he much preferred his new school. While he loved his father, he felt more of an attachment to his mother. He exhibited no serious symptoms or problems in adjustment.

It was impossible to tell who started the violence and conflict that pervaded the marital relationship. While the physical violence ceased, the verbal assaults continued, disguised under the thin veil of the custody disagreement, but supposedly in David's best interests. For this family, custody was more of a battle between parents than an assertion of parental responsibility.

As in most contested custody cases, parental hidden agendas fueled the conflict. Angered by Mary's unilateral decision to divorce and her decision to leave the state with David, Tom was out to best her in the custody suit and to regain his lost control over her. Custody to him was a contest and David was the prize for victory. Mary, similarly, wanted to disprove Tom's allegations about her, to prove she was a capable parent, and to demonstrate to him that she was free of his dominance. Custody to her was a fight for self-respect and David was the trophy of her vindication. Their custody conflict continued the unresolved marital dysfunction (a struggle for control, dominance, and approval) exacerbated by Mary's unilateral decision to divorce.

I concluded that advantages and disadvantages rested with each parent's claim to custody. On Tom's side was the proximity of most of David's emotional network. David and his father had a caring, although not intense, relationship. Against Tom stood his absence from David's life, regardless of the reason, for 2 years, David's desire to live with his mother, and the lapses in Tom's parental capacity reflected in his frequent absences from home

and his drinking patterns. In Mary's favor was demonstrated parental capacity which I considered to be the most reliable basis for deciding this case. No one disputed that David had done well with his mother for 2 years. Supporting Mary's claim to custody was the obvious warmth that existed between them, her appropriate attitude regarding discipline, her continuous presence in David's life, and David's unambiguous desire to live with her. Against Mary was David's geographical distance from the rest of his family and Mary's lapses in parental capacity manifested in an occasional drinking problem and role reversal.

When I interviewed either parent, I found myself being swayed by the logic and "facts" of that person's presentation, until I interviewed the other one. Nevertheless, I came to the following recommendation: David should be returned to the custody of his mother. He had already adjusted well with her for almost 2 years, and no compelling reason existed to suggest a change. Citing the advantages and disadvantages of this recommendation and noting the unanswered questions regarding the violence, the parentification, and the allegations about each other's drinking behavior, I sent my report to the court. I suggested family counseling for David and Mary to ameliorate the areas of suspected difficulties.

Called to testify in court, I was examined and cross-examined for over 4 hours. Tom's attorney tried to discredit my testimony and have me say things I did not mean. Mary's attorney, although kinder, tried to embellish her position by exaggerating my favorable comments about her. In the end, the judge awarded custody to Mary with the proviso of family therapy.

Discussion. To insure your impartiality and the family's attendance, the evaluation should be court ordered. Interview as many people as necessary and feasible to reach a recommendation, and take as much time as needed for you to be confident of the recommendation. You should know precisely what the court is asking for and not make specific recommendations beyond that. In writing the evaluation, which may bring you into court, stick to what you have observed and can verify from several sources. I avoid diagnostic labels and jargon, and keep to behavioral observations. Any word or phrase in a report can be challenged or taken out of context by an attorney. Be certain of the facts, or your report might be discredited because of an incorrect date or inaccurate information. State the pros and cons of the recommendation and be prepared to defend what you conclude in court. If you have done a thorough investigation, kept careful notes, reviewed the notes before going to court, and are willing to admit whatever uncertainty exists regarding the recommendation, the grueling verbal onslaught by attorneys can be managed, and your testimony will be helpful in reaching a decision.

CONCLUSIONS

The following is a list of specific observations and recommendations for the clinician involved with custody disputes.

1. All parties involved in a custody conflict (i.e., judges, attorneys, and mental health professionals) should work towards helping a family resolve its own conflicts, since contested custody is primarily a family problem. No one is in a better position to solve a custody dispute than the family itself.

2. A clinician should either be an impartial evaluator (and expert witness, if necessary) or a mediator, never a "hired gun."
3. If custody cannot be mediated, a decision ought to be based on the arrangement that comes closest to providing a child with adequate parenting and healthy contact with his or her entire emotional universe. The parent who actively works toward this, who has demonstrated parental capacity, and who has maintained a continuity of caretaking, should be favored for custody. Important, too, are a child's wishes, especially from adolescence on.
4. Clinicians should be thoroughly familiar with the laws pertaining to custody. Although "the best interests of the child" is the standard for deciding almost every custody case, the meaning of this phrase is widely debated by the legal and mental health professions, varying from state to state and, sometimes, from court to court.
5. Whatever decision is reached, the clinician and court must still take into account a child's entire emotional network, the continuing importance of both parents to a child, the natural loyalties that children have to their families, and the acute sense of justice that children feel. Violating a child's loyalty, denigrating either parent or part of the network, or exploiting a child by neglect or inappropriate involvement in parental conflict undermines a child's adjustment and well-being. Even if one parent receives custody, the other should be encouraged to stay actively involved.
6. Decision making in child custody continues to evolve. It is moving from individual parental fitness to the importance of the child's entire emotional universe, from parental rights to parental accountability, from parents as adversaries to parents as collaborators, and from children as properties to be divided to children as responsibilities to be met.
7. While it is important to work towards a child's best interests, often the outcome will fall short of the mark. As a more practical way of approaching child custody, clinicians should focus on minimizing harm and finding the least harmful alternative. Often, alternatives are neither ideal nor clear cut.
8. In contested custody cases, a clinician hears many allegations. Point by point, parents contradict each other. Often it is difficult to distinguish fact from fiction or truth from allegations, making custody work demanding and confusing.
9. Contested custody signifies that the transition of divorce, which is a long-term process, is incomplete. Custody disputes reflect not only parental concern but, more often, the unfinished business of parents. This includes unresolved marital problems or one parent's anger over the other's unilateral decision to divorce, both exacerbated by adversary legal proceedings and the stress of divorce and what follows. Parents are fighting more against each other than for their children.

10. Though many families succumb to animosity, unbridled self-interest, or emotional reactivity, some, if given a chance to face each other in a neutral atmosphere, are still able to negotiate. It is the clinician's job to create such an atmosphere, to mediate custody as the foremost consideration, and to help parents lay down the weapons of battle and take up the spirit of cooperation.
11. Each case must be decided individually. Legal presumptions favoring one custody arrangement (e.g., joint custody) or one gender are unreliable indices for decision making. Questions of unconventional or conventional life style, marital fault, younger children's preferences, and a history of a parent's emotional problems, unless they directly impinge on the parent-child relationship, are also unreliable.
12. Clinicians involved in contested custody must be clear as to what the courts expect from them and what they expect from their clients. If called to testify in court, clinicians will be asked to defend what they have written.

In summary, the entire area of child custody is complex, emotionally draining, and tests a clinician's integrity. It is easy to be overwhelmed by uncertain information, ambiguous standards, and weighty decisions. The clinician can be exhausted emotionally, lose his or her faith in people, want to withdraw from the pain and unpleasantness surrounding the entire dispute, or be swayed by money or blinded by power. It is an area requiring great clinical skill and judgment. When the challenge is met, however, it can be equally rewarding and worthwhile.

Andrew P. Musetto, PhD, a psychologist and marriage counselor, is currently in private practice with Psychological Service Associates in Haddonfield, NJ. His areas of interest and publication include child custody, agoraphobia, psychotherapy, and family therapy. He serves as a custody mediator and expert witness in New Jersey. Dr. Musetto may be contacted at 178 Cropwell Drive, Maple Shade, NJ 08052.

RESOURCES

- Bandler, R., & Grinder, J. (1982). *REFRAMING: NEURO-LINGUISTIC PROGRAMMING AND THE TRANSFORMATION OF MEANING*. Moab, UT: Real People Press.
- Beavers, W. R. (1977). *PSYCHOTHERAPY AND GROWTH: A FAMILY SYSTEMS PERSPECTIVE*. New York: Brunner Mazel.
- Bloom, B. L., Asher, S. J., & White, S. W. (1978). Marital disruption as a stressor: A review and analysis. *PSYCHOLOGICAL BULLETIN*, 85, 867-894.
- Boszormenyi-Nagy, I., & Spark, G. M. (1973). *INVISIBLE LOYALTIES: RECIPROCITY IN INTERGENERATIONAL FAMILY THERAPY*. New York: Harper & Row.
- Bowen, M. (1978). *FAMILY THEORY IN CLINICAL PRACTICE*. New York: Jason Aronson.
- Committee on the Family of the Group for the Advancement of Psychiatry. (1980). *NEW TRENDS IN CHILD CUSTODY DETERMINATIONS*. USA: Harcourt, Brace, & Jovanovich.

- Coogler, O. J. (1978). *STRUCTURED MEDIATION IN DIVORCE SETTLEMENT*. Lexington, MA: Lexington Books.
- Cotroneo, M., Krasner, B. R., & Boszormenyi-Nagy, I. (1981). The contextual approach to child custody decisions. In G. P. Shorevar (Ed.), *THE HANDBOOK OF MARRIAGE AND MARITAL THERAPY* (pp. 475-480). New York: Spectrum Publications.
- Derdeyn, A. P. (1976). Child custody contests in historical perspective. *THE AMERICAN JOURNAL OF PSYCHIATRY*, 133, 1369-1376.
- Gardner, R. A. (1982). *FAMILY EVALUATIONS IN CHILD CUSTODY LITIGATION*. Cresskill, NJ: Creative Therapeutics.
- Goldstein, J., Freud, A., & Solnit, A. J. (1973). *BEYOND THE BEST INTERESTS OF THE CHILD*. New York: Free Press.
- Haynes, J. M. (1981). *DIVORCE MEDIATION*. New York: Springer Publishing.
- Irving, H. H. (1980). *DIVORCE MEDIATION: A RATIONAL ALTERNATIVE TO THE ADVERSARY SYSTEM*. New York: Universe Books.
- Minuchin, S., & Fishman, H. C. (1981). *FAMILY THERAPY TECHNIQUES*. Cambridge, MA: Harvard University Press.
- Musetto, A. P. (1978a). Child custody and visitation: The role of the clinician in relation to the family. *FAMILY THERAPY*, 5, 143-150.
- Musetto, A. P. (1978b). Evaluating families with custody or visitation problems. *JOURNAL OF MARRIAGE AND FAMILY COUNSELING*, 4, 59-63.
- Musetto, A. P. (1981). Standards for deciding contested child custody. *JOURNAL OF CLINICAL CHILD PSYCHOLOGY*, 6, 51-55.
- Musetto, A. P. (1982a). *DILEMMAS IN CHILD CUSTODY: FAMILY CONFLICTS AND THEIR RESOLUTION*. Chicago: Nelson Hall.
- Musetto, A. P. (1982b). The role of the mental health professional in contested custody: Evaluator of competence or facilitator of change. *JOURNAL OF DIVORCE*, 6, 69-89.
- Musetto, A. P. (in press). Evaluation and mediation in child custody disputes. In C. P. Ewing (Ed.), *PSYCHOLOGY, PSYCHIATRY AND THE LAW: A CLINICAL AND FORENSIC HANDBOOK*. Sarasota, FL: Professional Resource Exchange, Inc.
- National Conference of Commissioners on Uniform State Laws. (1970). *UNIFORM MARRIAGE AND DIVORCE ACT*. Chicago, IL: (amended 1971, 1973).
- Scheiner, L. C., Musetto, A. P., & Cordier, D. M. (1982). Custody and visitation counseling: A report of an innovative program. *FAMILY RELATIONS*, 31, 99-107.
- Wallerstein, J. S., & Kelly, J. B. (1980). *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE*. New York: Basic Books.
- Weakland, J. H., Fisch, R., Watzlawick, P., & Bodin, A. M. (1974). Brief therapy: Focused problem resolution. *FAMILY PROCESS*, 13, 141-167.