

THE PROCEDURAL ANALYSIS OF CHILD CUSTODY  
ASSESSMENT MODELS IN CASES OF  
MARITAL DISSOLUTION

CENTRE FOR NEWFOUNDLAND STUDIES

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DORIS M. HANCOCK, B.S.W.









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ASSESSMENT MODELS IN CASES OF  
MARITAL DISSOLUTION

by

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A thesis submitted to The School of Social Work  
in partial fulfillment for the Degree of  
Master of Social Work

Memorial University of Newfoundland, 1990

St. John's

Newfoundland



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ISBN 0-315-68258-2

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## **Abstract**

Twenty-three child custody assessment models are identified in professional literature written by social workers, psychiatrists, psychologists and lawyers between 1966 and 1989. These models were identified by a key word search (child + custody + evaluation + assessment + study + data) of four indexes: Medline (MESH), Social Science Citation Index, Legal Resources and Social Work Abstracts.

Part 1 conceptually defines and describes the field of child custody assessment and the clinical context in cases of marital dissolution. In Part 2, child custody assessment models are identified, categorized by country of origin (Canada or the United States) and procedurally reviewed by professional orientation (i.e. social work, law, psychiatry and psychology). A formulation for child custody assessment practice as a redefined area of child welfare and an emerging clinical social work specialization is developed.

### Acknowledgements

This roller coaster called a "thesis" will long be remembered as a family milestone. Special thanks go to the following: my family for their financial support and encouragement; the School of Graduate Studies for financial support in the preliminary stages; my thesis advisor, Dr. Kimberley, faculty and students at the School of Social Work for the opportunity to become involved in field instruction and teaching; staff at Unified Family Court and colleagues in The Newfoundland Association of Social Workers for their fellowship and inspiration. Special thanks go to Linda, Mary and Judy for editing and typing the many drafts and the final product.

## Table of Contents

	Page
Abstract	ii
Acknowledgements	iii
List of Tables and Figures	viii
<b>CHAPTER</b>	
<b>I</b>	
<b>THE INCIDENCE OF MARITAL DISSOLUTION</b>	1
Divorce and Dependent Children	6
<b>II</b>	
<b>THE CLINICAL SIGNIFICANCE OF MARITAL DISSOLUTION</b>	17
Marital Conflict	20
Indicators and Issues in Custody Assessment	23
Child Custody Classifications	27
<b>III</b>	
<b>CHILD CUSTODY ASSESSMENT PRACTICE MODELS</b>	31
The Semantic Field of Custody Assessment	31
Canadian Models of Custody Assessment	37
Psychiatry (Awad, 1978)	37
Social Work: The Custody Project	
(Parry et al., 1986)	39
Psychology (Kaplan, Landau & McWhinney, 1988)	44

## CHAPTER

III	American Models of Custody Assessment	
	The Integrated Law/Social Work	
	Approach (Krishner, 1978 and	
	Kargman, 1979)	46
	Psychiatry: The Group for the	
	Advancement of Psychiatry (1980)	48
	Professional Role and Function	49
	Referrals or Entry Into Custody	
	Assessment	51
	Fees	52
	Consent	53
	Disclosure	55
	Interview Schedule	56
	Preparation of Adults for the	
	Assessment	57
	Parental Interviews	58
	Interviews With Children	60
	Preparation of Children	60
	Joint Interviews	62
	Criteria for Custody Recommendations	63
	The Interpretive Interview	65
	Report	66
	Court Appearance	67
	Family Systems Approaches	68
	Musetto (1978)	68

## CHAPTER

III	Everett and Volgy (1983)	69
	Bresee, Sterns, Hess and	
	Packer (1986)	72
	Psychology	74
	Nichols and Troester (1979)	75
	Barnard and Jensen (1984)	77
	Hodges (1986)	79
	Schultz, Dixon, Lindenberger and	
	Ruther (1989)	82
	Social Work (Skafte, 1987)	87
IV	ANALYSIS AND CONCLUSIONS	92
	Assessment Dilemmas and Procedures	95
	Professional Role	96
	Professional Function	100
	Contracting	102
	Investigation	105
	Inclusion of Children	107
	Family Approaches	111
	Office/Home Visits	112
	Inclusion of Significant Others	113
	Custody Recommendations	118
	Reporting: Oral and Written	122
	Written Reports	125

## CHAPTER

V	SIGNIFICANCE FOR SOCIAL WORK	130
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References	139
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## Appendices

Appendix 1 - Definitions	162
Appendix 2 - The Best Interest Doctrine	167
Appendix 3 - Permissions	169



## List of Tables and Figures

	Page
<b>Table 1</b> Rate of Divorce for Canada and Other Countries	2
<b>Table 2</b> Number of Divorces and Number of Divorces Involving Dependent Children Per Province - 1979 - 1985	4
<b>Table 3</b> Divorces in Newfoundland by Number of Dependent Children in Family - 1979-1986	8
<b>Table 4</b> Newfoundland: Actual Number of Dependent Children by Party to Whom Custody Was Granted - 1979-1985	9
<b>Table 5</b> Parent's and Children's Issues Related to Marital Dissolution	19
<b>Table 6</b> Child Custody Classifications	29
<b>Table 7</b> Flow Chart of Custody Assessment	35
<b>Table 8</b> Report Content Summary	127

## CHAPTER I

### The Incidence of Marital Dissolution

Marital dissolution ranges on a continuum from voluntary estrangement, withdrawal, annulment, legal separation and uncontested divorce to involuntary separation by desertion, committal, imprisonment, contested divorce or death. The phenomenon of coupling and uncoupling is a complex, social, psychological and legal process. There are few rituals to acknowledge marital dissolution; however, the legal procedures of divorce and/or name change may be the most frequent social symbols that a marriage has ended.

The actual rate of marital dissolution in any society is difficult to determine. Developed countries record demographic data to indicate significant social developments, such as the number of marriages and divorces in a given year. Divorce rather than separation data are accepted as representing a factual indication of marital instability (Norton & Glick, 1976). Divorce statistics in Table 1 indicate that comparable, consistent and increasing divorce trends are occurring throughout the world (United Nations, 1985). "Each year North America, has in excess of 1.5 million marriages end. Three quarters of them involve children, ... and will conservatively affect some 5 million people" (Irving & Benjamin, 1985, p. 305).

Table 1

Rate of Divorce for Canada and Other Countries<sup>1, 2</sup>

Year	Canada	United States	Wales & England	Australia	New Zealand	Sweden
1960	39	218	51	65	69	120
1965	46	247	78	75	69	124
1968	55	292	93	89	69	142
1970	140	316	120*	97	79	152 (1969)
1975	200 (1974)	462 (1974)	214 (1973)	123 (1973)	144 (1969)	333 (1974)
1980	251 (1979)	519	301*	262 (1979)	186 (1978)	241*
1985	244.4 <sup>3</sup>	496*	289 (1984)	276 (1984)	283 (1984)	233*

\*Provisional figures.

<sup>1</sup>Permission to include granted by The Canadian Review of Sociology and Anthropology for L.R. Pike, 1975; Legal Access and the Incidence of Divorce in Canada. The Canadian Review of Sociology and Anthropology, 12(2), p. 115-133.

<sup>2</sup>Crude divorce rates are the annual number of divorces per 1,000 population but have been converted to 100,000 population. The above countries have at least 100 final divorce decrees issued in a given year.

<sup>3</sup>The 1975 Demographic Yearbook indicates 275 as the divorce rate for Canada. Marriage and Divorce (Statistics Canada, #85-205, 1985) Table 1: Vital Statistics Summary 1984 divorce decrees issued in a given year.

Increased divorce rates are associated with socio-economic variables, such as boom and bust economies and industrialization. Legislative reform improved legal and financial access (Pike, 1975; Adams, 1989). Since the 1930's, the United States has been a leader in court-related social services, progressive legislative reform (i.e. California's 1970 no-fault divorce legislation) and consistently has had the highest divorce rate in the world.

Canada's first national divorce legislation, The Divorce Act 1969, was revised with The Divorce Act 1985. Legal access improved and the average length of marriages decreased from 15 years (1969) to 11.2 years (1985) and 9.1 years (1986). The success rate in petitioning the court for a divorce is virtually 100% and probability of divorce is 40% (Statistics Canada, 1988). In 1983 and 1985, Canada had the seventh highest divorce rate in the world.

In 1986 and 1987 Canada experienced record high increases in the number of divorces (Statistics Canada, 1986, 1988). Preliminary figures indicate that 78,160 divorces were granted in 1986, representing a 26.1% increase over 1985 figures. In 1987, 86,985 divorces were granted representing an 11.3% increase over 1986 figures. Dramatic provincial differences were maintained and with the exception of the 1983 to 1985 decline every province experienced increases (Table 2). British Columbia and Alberta had the highest divorce rates. In 1986 Prince Edward Island experienced a

Table 2

**Number of Divorces and Number of Divorces Involving Dependent Children per Province - 1979 - 1985<sup>4</sup>**

Province	1979	1981	1982	1983	1984	1985	1986
<b>Newfoundland</b>							
Divorces	483	569	625	711	590	561	610
Children	306	400	424	481	368	377	
<b>Prince Edward Island</b>							
Divorces	144	187	206	215	195	213	191
Children	84	101	95	98	85	74	
<b>Nova Scotia</b>							
Divorces	2,275	2,285	2,281	2,340	2,264	2,337	2,550
Children	1,489	1,400	1,500	1,467	1,481	1,467	
<b>New Brunswick</b>							
Divorces	1,223	1,334	1,663	1,942	1,427	1,360	1,700
Children	761	871	1,041	1,178	953	746	
<b>Quebec</b>							
Divorces	14,379	19,193	18,579	17,365	16,845	15,814	18,399
Children	8,419	10,822	10,976	10,311	9,824	9,365	
<b>Ontario</b>							
Divorces	21,793	21,680	23,644	23,073	21,636	20,854	28,653
Children	11,481	10,606	11,467	12,055	10,408	9,739	
<b>Manitoba<sup>5</sup></b>							
Divorces	2,152	2,399	2,392	2,642	2,611	2,314	2,917
Children	N/A	1,249	1,334	1,424	1,440	1,223	
<b>Saskatchewan</b>							
Divorces	1,528	1,932	1,815	2,000	1,988	1,927	2,395
Children	881	1,092	1,018	1,135	1,150	1,014	

(table continued)

<sup>4</sup>Permission to include granted by O. Adams, Statistics Canada.

<sup>5</sup>Incomplete reporting, divorces involving dependant children not included.

**Number of Divorces and Number of Divorces Involving Dependent Children per Province - 1979 - 1985**

Province	1979	1981	1982	1983	1984	1985	1986
<b>Alberta</b>							
Divorces		6,531		8,418		8,882	
8,758	8,454		8,102		9,386		
Children		3,566		3,932		4,362	
4,410	4,388		4,387				
<b>British Columbia</b>							
Divorces		8,862		9,533		10,165	
9,348	8,988		8,330		11,176		
Children		3,908		4,536		4,739	
4,310	3,930		3,435				
<b>Yukon</b>							
Divorces	62	75	117	88	100	96	89
Children	39	40	55	38	53	49	
<b>Northwest Territories</b>							
Divorces	78	66	67	85	74	72	94
Children	46	37	37	47	40	38	

\*Statistics are from Statistics Canada, Marriage and Divorce: 1979, 1980, 1981, 1983, Table 17 (p. 26-27), 1984, 1985, (Table 19) (p. 28-29) and the Daily, June 3, 1988.

decline; however in 1987, the divorce rate increased by 28% and Alberta as the only province to experience a decline of 4%.

In the 1980s, Newfoundland experienced modest population growth (0.1%) (Mitchell, 1989), but in 1986 the divorce rate increased by 9% (430.9 to 468.9). In 1987 Newfoundland had the largest divorce rate increase of all the provinces (62% or 1,002 divorces) (Adams, 1988).

#### Divorce and Dependent Children

In the United States, divorce-related, child custody issues are recognized as a major child welfare concern (Lytle-Vieira, 1987), In the 1990s, only 40% of children born will spend their entire childhood living with both biological parents. Most of these dependent children are expected to experience a period of growing up in a one parent family, predominantly female headed, with economic losses and the possibility of alternate parenting or parental remarriage within five years of marital dissolution (Weitzman, 1985).

In Canada, the number of divorces and the number of dependant children increased between 1979 and 1983 and peaked in 1983. Between 1983 and 1985, the divorce rate and the number of dependant children involved in divorce cases declined (Table 2). Provincial averages indicate that Newfoundland had the largest percentage of dependent children

involved in divorce proceedings. As of 1985 and in descending order, the provinces are as follows: Newfoundland (66%); Nova Scotia (64%); New Brunswick (62%); Quebec (58%); Saskatchewan (56%); Northwest Territories (55%); Manitoba (54%); Yukon (53%); Alberta (52%); Ontario (50%); Prince Edward Island (48%) and British Columbia (44%).

The mean number of dependant children involved in divorce proceedings has consistently decreased from 1.00 to 0.90. In Newfoundland, the mean number decreased from 1.32 to 1.28 but remained above the national average (Table 3). Preliminary 1986 figures indicate the number of dependant children involved in divorce, declined from 54 to 32% and under the new legislation 3,550 divorces with custody orders involved 6,105 children (Adams, 1988).

At the time of marital dissolution, court authority may be required to settle distributive issues, such as matrimonial property and financial support, or integrative issues, such as child custody and access (McIssac, 1988). Child custody disputes may be resolved through mutual parental agreement, mediation or legal negotiation; however, 10 to 20% of the divorcing population have difficulty reaching agreements and litigate (McKie, 1983; Richardson, 1988). Adjudicated custody disputes in cases of marital dissolution have been referred to as "functioning in the face of indeterminacy" (Mnookin, 1975, p. 226), "the ugliest litigation" (Goldzband, 1982) and "gorilla warfare" (Chisholm, 1986, p. 107).



Table ?

Divorces in Newfoundland by Number of Dependent Children in Family - 1979-1986

Number of Children	1979	1980	1981	1982	1983	1984	1985
0	177	196	169	201	230	222	184
1	120	152	160	178	210	148	142
2	94	126	162	159	187	148	154
3	59	44	53	59	59	52	61
4	20	25	19	23	20	12	15
5+	13	12	6	5	5	8	5
Total Div. & D.C.	306	359	400	424	481	368	377
Divorces	483	555	569	625	711	590	561
Mean # D.C.							
Canada	1.00	1.28	0.92	0.93	0.94	0.92	0.90
Nfld.	1.32	1.28	1.32	1.27	1.22	1.17	1.28

Table 4

**Newfoundland: Actual Number of Dependent Children by Party to Whom Custody Was Granted 1979 - 1985**

Year	1979	1980	1981	1982	1983	1984	1985
<b>Divorces</b>							
Canada	59,474	62,019	67,671	70,436	68,567	65,172	61,980
Nfld.	483	555	569	525	711	590	561
<b>Award Recipient (Paternal Custody - Petitioner Husband)</b>							
Petitioner	80	114	149	109	124	63	100
Respondent	53	73	93	90	113	86	114
Joint Custody <sup>6</sup>	N/A						
Third Party	1	-	6	1	-	-	-
No Award	31	21	17	17	8	10	10
Total							
Canada	16,512	17,522	17,824	18,824	19,186	18,419	17,780
Nfld.	165	208	265	217	245	159	248
<b>Award Recipient (Maternal Custody - Petitioner Wife)</b>							
Petitioner	432	454	452	529	591	506	430
Respondent	13	26	24	34	21	23	21
Joint Custody	N/A						
Third Party	-	-	4	-	1	-	-
No Award	29	21	6	11	12	2	20
Total							
Canada	41,344	42,078	44,610	46,517	45,035	41,644	38,556
Nfld.	474	501	486	574	625	513	471

<sup>6</sup>Joint custody was a newly established award not yet incorporated into statistical reporting. Marriage and Divorce, Statistics Canada (1985), Table 17.

Canadian courts cannot grant a divorce until a reasonable custody arrangement exists for dependant children (The Divorce Act, 1985). Judges may choose not to award custody or exercise discretionary power and independently make custody decisions. Rules of thumb and case or statutory law may be applied (Awad, 1978; Derdeyn, 1976; Kronby, 1986). Joint custody and changes in awarding custody are relatively new occurrences (Table 4). Maternal custody awards remain most frequent (75%) but have decreased approximately 10%. Paternal custody awards have increased proportionately. Joint custody awards account for another 11% of awards and third party awards remain approximately the same at 3% (McKie, 1983; Statistics Canada, 1988).

Judicial interpretation of legislation reflected changing societal values, perceptions and roles of children, families and parents (Lee, 1982). Children were increasingly recognized as persons with developing capacity for decision-making. In court, lawyers as guardian ad litem represented children's rights and interests. Parental suitability, relative parental abilities, parental capacities and equality are also emphasized in relation to The Best Interest of the Child Doctrine (Appendix 2). The Least Detrimental Alternative (Goldstein, Solnit & Freud, 1973) recognized that imposed solutions did not always solve interpersonal battles and the courts cannot totally supervise interpersonal relationships. Child placement guidelines safeguarded the child's best

interest by recognizing the child's sense of time, psychological parent and relationship continuity. Custody and access assessments, which were commensurate with the level of knowledge and skill obtained in the social sciences, were increasingly requested to improve the quality of judicial decision-making (Ash & Guyer, 1982, 1986; Barnard & Jensen, 1984; Benedek & Benedek, 1972; Berkman, 1984; Goldzband, 1986; Richardson, 1988; Schultz, Dixon, Lindenburger & Ruther, 1989; Trombetta, 1982; Westman, 1979; Woody, 1977). Research indicated that in comparison to human service professionals, judges had lower rates of satisfaction with custody determinations (Charnas, 1985).

In the United States (Ash & Guyer, 1984, p. 140), judges ordered custody assessments in especially difficult cases, which exhibited one of the following features:

1. Intense, often violent, conflict between the parties,
2. Allegations of child abuse,
3. Allegations of one party having severe (suicidal or psychotic) mental impairment (Brum, Rump & Tulman, 1981; Pearson, Thonnes & Munson, 1982),
4. One party was a very important person (VIP),
5. The parents looked very good and the case appeared "too close to call" (Ash & Guyer, 1984; Pearson, Thonnes & Munson, 1982; Brum, Rump & Tulman, 1981).

Eighty-nine percent of custody assessment referrals were initiated by judicial court order with attorney agreement or circuit court judge recommendation; 11% were requested by the contesting parties. Most referrals arose during the pendency of a divorce action (55%) and the others (41%) were post-divorce referrals; 72% were for custody and access assessments and 23% were access disputes (Ash & Guyer, 1984).

In Canada, custody assessment referrals originate from more than one source. Approximately 60% were initiated by the presiding judge, 28% by the father's lawyer, and 17% by the mother's lawyer. More than 70% of the referrals were initiated during litigation, with 30% at the pre-trial stage. As interdisciplinary co-operation improved between lawyers and clinicians, referrals from the presiding judge decreased to 11% and lawyer initiated referrals increased proportionately (Parry et al., 1986).

The areas of inquiry in custody assessment are defined in the court order by the circumstances and nature of the child or family. Depending on the issue and the availability and willingness to undertake such work, a professional from social work, psychiatry, psychology, education or economics may conduct a custody assessment. Professionals function as private practitioners, government employees or members of agency/hospital teams. Custody assessments conducted by agency personnel are more likely to be influenced by agency mandate or classification schemes, include police or employ-

ment checks and be less extensive than assessments conducted by private practitioners (Hodges, 1986).

One assumes a child custody assessment is only undertaken by a qualified professional; however, there are no nationally accepted standards or procedures in the United States or Canada (Hodges, 1986; Kaplan et al., 1987; Trombetta, 1982). There is a lack of research into the tools and techniques of custody assessment (Marafiote, 1985; Ollendick & Otto, 1984) nor do studies demonstrate effectiveness or validity (Hodges, 1986; Trombetta, 1982). In court, assessments are criticized because the professional knowledge and value base is inadequate, subjective (i.e. assessor bias) and unreliable. Unsubstantiated assertions and judgments are not supported by empirical evidence (Eeekelaar & Katz, 1984; Okapu, 1976) or the assessor was unable to provide relevant information (Barth & Sullivan, 1987; Family Law Reports, 1986; McDermott, 1978). In practice, ethical and procedural rules are at the discretion of the professional conducting the assessment. The most basic clinical issue may be professional expertise (Beaber, 1982) and monitoring the limits of competence (Melton et al., 1987).

In court, any combination of knowledge, skill, experience, training or education may qualify a witness as "expert" and able to give opinions that may influence the judiciary (Schultz et al., 1989, p. 98). Psychiatrists have been traditionally established as expert witnesses in court.

Expert status for social workers is a relatively new but increasing occurrence (Gothard, 1989).

Westman (1971) indicated that child custody assessment was done best by "clinicians and trained court personnel, combining psychiatry, paediatrics and skilled social work" (p. 124). Child psychiatrists claimed expertise and viewed other measures and interactional assessments as well intentioned but less useful to the courts (Solow & Adams, 1977, p. 85). More recent research indicates experienced and inexperienced social workers and psychologists also conduct assessments and demonstrate considerable agreement in the criteria applied and the ability to make custody determinations (Charnas, 1985; Lowery, 1985), however, expertise is not well established in professional literature or in court.

Social workers conduct custody assessments in England (Levin, 1982), Israel (Schindler, 1985), and the United States (Lytle-Vieira, 1987). In Israel, public agency social workers constitute the largest professional group conducting custody assessment (Schindler, 1985). In the United States, social workers are the earliest and largest professional group offering psychological and social treatment services (Lieberman, 1982, p. xii). In Canada, "the preponderance of services provided in most communities is by individual social workers, psychiatrists, and psychologists as private practitioners. Court clinics are being developed but are limited by fiscal restraint and government priorities" (Parry et al.,

1986, p. 32). Social work with persons experiencing marital dissolution represents a new area of clinical specialization within which mediation and custody assessment may be regarded as a separate specialization or sub-specialization (Irving & Benjamin, 1986; Yelaja, 1986).

Chisholm (1986) identified the respective professional expertise and competence as follows: social work - family and interpersonal relationships, psychiatry - mental health and emotional and psychiatric disturbance, and psychology - intellectual functioning. In the attempt to become experts, social workers may refer to agency guidelines or research and professional literature for direction. However, inconsistency exists among courts, legal jurisdictions, professions and practitioners. In professional literature, legal criteria and practice guidelines exist but lack consistency and clarity (Charnas, 1981). Even though social workers have published on a variety of related issues, such as divorce mediation and joint custody (Haynes, 1978; Irving, 1980), "social work literature contains few references to the profession's specific role in custody assessment" (Lytle-Vieira, 1987). Research-based, professional literature written specifically to guide social workers conducting custody assessment is difficult to find and has surfaced only recently. After reviewing 20 years of professional literature, Parry et al. (1986, p. 33) concluded "data are not available with regard



to the kinds or numbers of models through which mental health professionals provide such service."

In social work, practice models facilitate the translation of practice procedures into a conceptual analysis and description of the helping process (e.g. the dynamics and skills required in the beginning, middle and ending phase sessions) as well as the entities with which we work (ie. individuals, families, groups, communities, organizations) (Shulman, 1985, p. 4). Each part is replaced with a perceptual symbol or representation that matches, in part or totality, that which is actually occurring (Hearn, 1952). Given the complexity of child custody assessment, the search for models of practice and the need for frameworks that enable social workers to understand and respond more efficiently is a valid pursuit (Yelaja, 1985).

## CHAPTER II

### The Clinical Significance of Marital Dissolution

While each marital relationship is different, marriages have similar characteristics and may be broadly categorized as parallel or passionate (Kressel & Deustch, 1977). Parallel marriages end with relative ease and minimum overt conflict but passionate marriages have difficult and painful endings. The marital dissolution process can begin slowly and unconsciously 2 to 3 years before the actual breakdown and extend over 2 to 5 years before the final breakdown (Ahrons, 1980; McKie, 1983). Multiple separations and reconciliations may occur and intensify beliefs and fantasies of reconciliation and permanency (Hodges, 1986).

Marital dissolution is a time of crisis, family transition and change (Ahrons, 1980). The traditional nuclear family changes to accommodate single parent and increasingly androgynous, bi-nuclear families. As a stressful life event, marital dissolution by divorce is second only to the death of a spouse (Holmes & Rahe, 1967) or parent (Bonowskie et al., 1984). Many stressors exert a cumulative effect, which differ in quality, intensity, duration and consequences depending on the children's and family's perception of the event and regenerative ability (McCubbin, 1979; McCubbin et al., 1980). Separation distress differs for the leaving and the left

spouse (Weiss, 1975) and some degree of distress is experienced by each family member (Heatherington, Cox & Cox, 1976).

The first year of marital dissolution is most stressful. Parenting capacity is diminished and the most distressed and conflicted custodial parents are in receipt of little emotional support from family and friends (Wallerstein & Kelly, 1980). As the family re-organizes, legal, emotional and practical issues require resolution (Cantor & Drake, 1983; Department of Justice, 1988; Morrison, Thompson-Guppy & Bell, 1986) (Table 5).

The process of divorce has identifiable stages, which are experienced by the individuals involved at different times, in varying degrees and sequences. Each stage requires resolution of additional and specific developmental tasks before advancing to the next stage or successfully accomplishing change. Progression through the stages of divorce varies for adults (Bohannon, 1971), children (Wallerstein & Kelly, 1980) and families (Ahrons, 1980; Irving & Benjamin, 1986).

Legal termination may be prompt but emotional resolution is most difficult (Bohannon, 1971). The emotional stages of divorce are similar to those experienced at the death of a loved one (Kubler-Ross, 1973). Feelings of attachment and loss continue and extend to the loss of the viability and organization of the family unit (Everett & Volgy, 1983). Parents have difficulty achieving a sense of finality as

Table 5

Parent's and Children's Issues Related to Marital Disillusion<sup>7</sup>

Parent's Issues	Children's Issues
1. Transition to single parent status	1. Transition to "child of divorce" status
2. Child care and discipline	2. Adjustment to schedule
3. Dating; remarriage; step-children	3. Loss of family life and parent
4. Loneliness	4. Step-parent, step-siblings and half siblings
5. Establishing different relationship with former spouse, relatives and children	5. Moving
6. Financial problems	6. Change of school and friends
7. Housing	7. Involvement in loyalty issues between parents
8. Anger and unresolved feelings	8. Involvement in custody issues
9. Child-napping	
10. Grieving loss of family, spouse and children	
11. Employment	
12. Custody decisions and litigation	
13. Communication problems	
14. Loss of generational boundaries	

<sup>7</sup>Used by permission. Cantor, D.W., and Drake, E.A. (1983). Divorced Parents and Their Children. New York: Springer Publishing Co. Inc., p. 59.

responsibilities for dependant children continue. Marital and parental issues often become emotionally fused and divorce becomes a child-centered crisis, which "is not an event, but a way of life" (Westman & Lord, 1980, p. 268).

### Marital Conflict

Conflict which precipitated the marital dissolution often carries over into post-divorce relationships (Kressel, 1985). Feelings of loss and anger may be turned inward to produce depression or psychosomatic symptoms or outward as aggressiveness or hostility. Inability to successfully mourn the loss of the idealized marital partner and/or significant attachment figures contributes to the unresolved behavioral and emotional conflict (Weiss, 1975). Unresolved issues and emotional losses intensify angry emotions (Hodges, 1986) and continue to destructively bond parents together (Hodges, 1986; Minuchin, 1974;).

There is a progressive nature to the resultant conflict and means of conflict resolution (Chisholm, 1985). Guerin et al. (1987) have conceptualized marital behaviour as a product of the degree and quality of spousal bonding, which can serve a wide functional range for couples. The more rapid the change, the more likely conflict will be produced. Marital conflict differs in the source of the conflict content (i.e.

issues), frequency duration, intensity, and has its own frustration and stress (Emery, 1982; Slavin, 1969).

Expressions of marital conflict may be effective when the normal means of discussing issues and making decisions are non-responsive or no longer apply. Issues and problems may be brought to the fore for discussion or increased understanding. Different perspectives or positions can be distinguished and resolution may be attained (Slavin, 1969). In contentious cases, the interests of the child become displaced and parental interests prevail (Derdeyn, 1976; Goldzband, 1985). Children become pawns and are like valued parental possessions rather than persons in their own right (Noble & Noble, 1975).

Unresolved marital conflicts resurface as parenting disputes, focus on child custody and access (Musetto, 1978; McKie, 1983), and lead to the worst examples of post-divorce legal battles (Kressel & Deutsche, 1977; Kressel, 1985). Parents argue over the power and responsibility to influence the child's upbringing and psychosocial development and to decide on the place of residence and geographic mobility (Awad, 1983). If attempts at resolution are unsuccessful, conflict may amplify and produce extreme parental reactions, such as abandonment (Weitzman, 1985) or parental kidnapping, which is probably the most extreme form of parental redress (Kressel, 1985).

Destructive conflict and distrustful perception between spouses may be evident. Each spouse has the self perception

of being more helpful, co-operative and supportive than they were perceived to be by their spouse (Kressel, 1985). "Ill will is commonly expressed by one parent denigrating the other in front of the child with an invitation for the child to participate" (Wallerstein & Kelly, 1980, p. 28). Emery (1982) concluded a relationship between marital turmoil and behaviour problems in children existed, however, the type of marital conflict, form of the child's behavioural response, sex differences, age effects, parental buffering and the effects of parental psychopathology require consideration.

Custodial parents have primary control over the child and are in a powerful position to facilitate or impede the child's relationship with the non-custodial parent. Continuation of any type of relationship between divorcing spouses is no longer indicative of spousal inability to accept the end of the marriage (Roman & Haddad, 1979). Preference has been given to the custodial parent having total control over the non-custodial parent's involvement with the child (Goldstein, Freud & Solnit, 1973). However, as the non-custodial parent's relationship to the former spouse and the child was found to be a direct determinant of healthy child adjustment (Wallerstein & Kelly, 1980, 1985), relationship continuity was increasingly recognized.

Parenting was no longer gender specific or linked to marital status. Both parents may be employed and the child's welfare was no longer automatically or best served by

continuously being with one parent (Hodges, 1986; Rosenberg et al., 1984). Divorced fathers were more prepared to fight for parental rights and long term commitment to the child was increasingly considered in awarding custody (Cox & Cox, 1976; Heatherington & Jacobs, 1982; Weitzman, 1985).

### Indicators and Issues in Custody Assessment

When couples experiencing marital dissolution are referred for child custody assessment, clinical decisions are made on the level of conflict, parental ability to tolerate stress and the most appropriate means of intervention (Chisholm, 1986). Candidates for custody assessment are spouses in passionate marriages (Kressel & Deutsche, 1977), enmeshed parents, three-generation families (McIssac, 1986), and couples with active or severe and protracted conflict (Chisholm, 1986; Guerin, Fay, Burden & Gilbert, 1987).

The following indicators for conducting custody assessments have been identified in professional literature: parental hesitancy to exercise control and responsibility over children (Nichols & Troester, 1979), psychiatrically ill spouses (Haller, 1981), high rates of petitioning and counter petitioning (Illfield, Illfield & Alexander, 1982), ambivalence about the divorce or interest in reconciliation (Pearson et al., 1982), power imbalances (i.e. spousal abuse) (Leeman, 1984), irretrievable marriage breakdown, stalemated



negotiation or mediation (Barnard & Jensen, 1984), unresolved emotional attachment (Kressel & Deusche, 1985), and intense anger or polarization (Chisholm, 1986). Increasingly, custody disputes are between two equally fit but highly conflicted or polarized parents, who if not divorcing, would not be in court (Girdner, 1987).

Financial and religious issues may be inter-related and contribute to restricted access or prolonged custody disputes (Grief, 1987; Hodges, 1986; Noble & Noble, 1975). Generally, young children, especially before adolescence, have frequent but shorter access visits than older children and sibling units remain intact (Chasin & Grunebaum, 1981). When contested, the frequency and quality of parental contact emerge as issues and may lead to the re-opening of custody orders granted at the time of divorce. Conflict may focus on the quality of the parent/child relationship, separation difficulties at transfer time, parental interference or parental functioning. Most serious are pathological alliances between parent and child (Levy, 1982). Access disputes, especially those involving grandparents, are often more protracted and painful than custody disputes (Awad, 1980; Everett & Volgy, 1985).

Divorced fathers with access are perceived as more motivated and concerned about children than divorced fathers without access but are dissatisfied with the lack of meaningful parent/child contact. For some fathers, the non-custodial

relationship has been so painful and traumatic that the relationship with the child may be avoided or abandonment may occur (Weitzman, 1985). Symptoms of anxiety, depression and panic reactions may develop (Jacobs, 1982). The importance of children as a facilitating and stabilizing factor in post-divorce adjustment for men is just being recognized (Stewart et al., 1986).

Fathers who seek custody immediately after divorce are characterized as having had a close father/child relationship. During the marriage, fathers had been pleased with the pregnancy and involved in the birth, infant care and planning activities for the child. In contrast, fathers who later sought custody were more inclined to do so because of anger at the former spouse, being restricted or denied access, or feeling the custodial parent was a poor example because of alcoholism, neglect or abusive behaviour (Turner, 1984).

Remarried parents present an alternate family form with unique parenting issues (Morrison, Thompson-Guppy & Bell, 1986). Parenting is a prime source of conflict in second marriages and custodial parents may wish to eliminate continued contact with a former spouse (Hodges, 1986). Conflict may focus on the child's name, parental behaviour or family or step-parent adoption. Adoption symbolizes and solidifies the new family relationship and also presents an opportunity to terminate parental rights without parental consent. The establishment of grounds that negatively impact

on the child's growth and development may not be necessary (Weiss, 1980).

Hodges (1986) referred to grandparent and foster parent awards as non-traditional; however, the writer's experience indicates that informal third-party arrangements within families are not uncommon in Newfoundland. Grandparents are increasingly considered as custodial parents in their own right or indirectly as facilitators of parental involvement. Intergenerational issues are present in some of the most protracted and bitter disputes: "To what extent did the grandparents' parenting style influence parental dysfunction? How will control issues between parents and grandparents be managed? If the child is very young, can grandparents sustain the quality of parenting over a long period?" (Volgy & Everett, 1985).

Parents may attempt to prove each other unfit by focusing on gross parental inadequacy and drug or alcohol abuse (Litwack et al., 1979), homosexuality or imprisonment. Allegations or misallegations of child abuse and neglect have become a weapon of choice in domestic disputes (Awad, 1987; Mnookin, 1975; Schultz, 1989). Misallegations may arise from domestic conflict, distortions, hysteria, misinterpretation, overreaction or outright lying on the part of the reporting parent, or from professional error (Halliday, 1988; Mangel, 1989). There is a high incidence of unverifiable court reports (Bresee et al., 1986) and depending upon the para-

meters of the population studied, there may be up to an 80% chance of misallegations in custody disputes (Lopiccalo, 1985). Determination of the child's safety and security are paramount. The existence of homosexuality or psychiatric illness is not sufficient to deter custody. Parental behaviour has to directly impact on the well being of the child and be substantiated.

When the court is satisfied that a child is in need of protection as a result of parental behaviour or mistreatment, termination of parental rights is possible. If there has been a temporary or permanent termination of parental rights or a child care plan is not presented, foster parents may be logical applicants for third-party custody awards or adoption procedures. The legal and emotional dynamics between biological and foster parents, children, child welfare and legal agencies are complicated. The assessment is emotionally charged with sensitive issues and can be even more complex if the biological parents have marginal parenting ability, low incomes or if the child has special needs because of developmental delays or physical limitations (Gross, 1984).

### Child Custody Classifications

In the attempt to identify and manage marital conflict and custody and access disputes, a typology of divorcing couples (Kressel, Jaffee, Tuchman, Watson & Deutsch, 1980) and

classifications with intervention or treatment plans have been developed by Awad (1983), Guerin, Fay, Burden and Gilbert (1987), and McIssac (1989). (See Table 6).

In cases of marital dissolution, a child's perception of time is different than an adult's but their emotional reactions are equally intense and dramatic (Goldstein, Solnit & Freud, 1973). Children are most affected when parents "pump" for information, coach responses and try to "poison" or negatively portray the other parent (Girdner, 1985). If exposed to parental conflict, the child may model observed parental fighting and/or act out of anxieties and resentments (Levy, 1982). Divided loyalties, separation anxieties, relationship deterioration and parental conflict may serve as a source of parent/child conflict. If the child cannot separate from marital conflict, he/she may become symptomatic (Minuchin, 1974), overburdened (Wallerstein & Kelly, 1980) or instigate further marital conflict (Hodges, 1986). Consensus does exist that divorce is a time of crisis for children and a major life trauma for children under seven years of age with boys generally being at greater risk than girls (Emery, 1982; Hodges, 1986; Jaffe, 1985; Levitin, 1979; Parry et al., 1986).

In child-related divorce research, a complex set of factors impact upon child development and the child's divorce-related response has to be separated out from the other factors in his or her life (Wallerstein & Kelly, 1985). Parental divorce may be constructive (Kanoy & Cunningham,

Table 6

**Child Custody Classifications<sup>8</sup>**


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<b>Type I</b>	<b>Absolute sole custody:</b> Custody, in all three aspects belongs to one parent. The other parent has no access. Usually the parents have no contacts or the contacts are litigious and extremely hostile.
<b>Type II</b>	<b>Sole custody:</b> Custody in all three criteria belongs to the custodial parent. The non-custodial parent has access that is negotiated with and decided by the custodial parent. This is the type of arrangement that Goldstein et al. (1973) have recommended for all cases. The relationship between the parents varies from friendly to distant or hostile.
<b>Type III</b>	<b>Non-alternating joint custody:</b> <b>III A. Undisputed:</b> The residence of the child is with one parent. The care and control, as well as decisions to move are genuinely shared by both parents. Access is negotiable, flexible and unhindered. Parents can relate to each other and tend to use court and clinical services in a therapeutic way. <b>III B. Disputed:</b> Such arrangements are court ordered because the parents cannot agree. The parents have to agree on major issues such as schooling, religion or major geographic moves. Their relationship is usually unfriendly and clinical services or the Court are frequently involved in dispute resolution.
<b>Type IV</b>	<b>Alternating joint custody:</b> The custody is shared. There is no access because the child lives in both places. <b>IV A. Undisputed:</b> The parents have a genuine ability to relate to each other. They make plans and resolve disputes either alone or with clinical help. Clinical services help decide the details and not the desirability of such an arrangement. <b>IV B. Disputed:</b> The arrangement is a compromise between parents. There is usually a dispute regarding the desirability of such an arrangement. Clinical services are used to decide the desirability, as well as the details of such an agreement.

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<sup>8</sup>Permission to include granted by Awad (1983).

1984); however, the most distressed children become the focus of parental conflicts (Wallerstein & Kelly, 1980). Interparental conflict and disrupted or diminished parenting become the central hazards to healthy child development (Barnard & Jensen, 1984; Bohannon, 1971; Emery, 1982; Heatherington, Cox & Cox, 1976; Hodges, 1986; Ruter, 1971; Wallerstein & Kelly, 1985; Westman et al., 1970). The more protracted the marital dispute, the greater the chances of parents and children developing psychopathological reactions. The greatest damage may occur when the conflict is focused on child custody and destructively waged with active child involvement (Gardner, 1983; Girdner, 1985; Wallerstein & Kelly, 1980, 1985).

### CHAPTER III

#### Child Custody Assessment Practice Models

An uneasy alliance has traditionally existed between legal and human service professionals. Adversarial legal methods conflicted with professional ethics and therapeutic methods and prolonged dispute resolution. Many human service professionals preferred therapy or counselling and retreated from difficult cases and the possibility of court testimony (Benedek & Benedek, 1972; Goldzband, 1986; Hodges, 1986; Westman, 1971). In custody cases, professionals feared judges were rubber stamping custody recommendations (Trombetta, 1982). Judges did not always find custody assessments useful (Kargman, 1979) and feared replacement by human service professionals. "Agreement did not exist about what process(es) should be used or who should bear the primary responsibility for resolving parenting disputes" (Trombetta, 1982, p. 65).

#### The Semantic Field of Custody Assessment

In clinical practice, terminology reflects subtle attitudes and shapes interventions (Hodges, 1986). Professional literature on custody assessment is a mix of legal and social science terminology and reflects practice developments. The diversity and confusion in legal and professional termin-



ology found in child custody assessment literature necessitates definition of the following terms found in this thesis (Appendix ).

The term custody is not limited to children or divorce and a variety of custody options exists: maternal, paternal, joint, third party and split. In law and in clinical practice, custody implies restrictions and a need to protect the person in custody or society. In criminal law, "custody" has punitive implications related to control and sentencing of offenders. In family law and as related to children, custody has protective implications and requires a therapeutic use of authority. Therapeutic treatment and social control mandates may operate simultaneously as in child welfare; separately as in custody assessment; or concurrently as in assessments involving both child welfare and custody. The semantic field includes the separate but co-existing issues of access or visitation and guardianship (Yogis, 1983; Sanagen, 1979).

Custody assessment has been referred to as home study (Day, 1986), child custody study (Schoonmaker, 1982), family evaluation (Gardner, 1982), family assessment (Everett & Volgy, 1983), psychological investigation (Howell & Topeke, 1984), social evaluation (Catton, 1981), child custody consultation (Goldzband, 1982), child custody evaluation (Barnard & Jensen, 1984; Haller, 1981; Schindler, 1985; Parry, 1985; Skafte, 1985; Hodges, 1986), child environmental impact

statement (Krishner, 1978), custody assessment (Awad, 1973; Chisholm, 1986) and custody quagmire (Beaber, 1982).

In this context professionals combine therapeutic skills and knowledge of the legal system to produce an assessment which is impartial, fair and meets both court and family needs. In such a complex time-limited process, professionals relate to a diverse clientele (Bresee et al., 1986; Chisholm, 1986; Goldzband, 1982) and are expected to produce reliable and valid assessments. Very little is known about procedural matters or how such assessments are actually conducted.

The literature review for this thesis indicates that professionals in psychiatry, social work and psychology are drawing on theoretical knowledge, clinical experience and practice wisdom to propose practice models of child custody assessment (Hurley, 1986, p. 8).<sup>9</sup>

A model, as distinct from a theory, does not say which variables in a given situation are the strongest determinants of behaviour. Its purpose is to describe the various parts or factors that are relevant to a phenomena and how these parts appear to be related to one another. (Vickery, 1974, p. 279)

In assessment, practice and theoretical knowledge are simultaneously integrated; however, conceptual differentiation

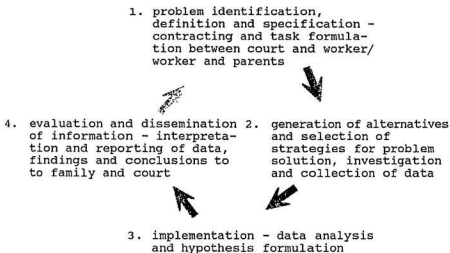
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<sup>9</sup>Permission to include granted by Hurley (1987).

for analytic purposes is possible. Such an intentional analysis of custody assessment practice models builds upon social work practice principles, which include client partnership, conscious use of time and professional function and the development of a professional relationship within the purpose of the service offered (Smalley, 1967). Whereas Awad (1978) conceptualized custody assessment, as having technical (i.e. process) and clinical (i.e. decision making) components, this analysis conceptualizes custody assessment as a clinical process which has a technical (i.e. procedural) aspect that is the assessor's responsibility and a therapeutic aspect, which depends on the client and the relationship established between the assessor and the parent (Sarri, 1986, p. xii).

In identifying custody assessment models, the concepts of time and phases of work can apply to the analysis of an individual session, the process of assessment or the entire course of a therapeutic relationship (Shulman, 1981). Each phase has identifiable tasks and depending on the inclusion of beginning, middle and ending components, a practice model can be distinguished from a clinical perspective and the identification and analysis of a custody assessment model becomes possible (Table 7).

Table 7

Flow Chart of Custody Assessment

The inter-related parts of a child custody assessment model include:

1. **Contracting:** pre-assessment activity (professional and/or theoretical orientation and review of court documents or research findings), intake, informed consent (McConnel, 1986) establishing the scope of the investigation and who is to be included.

2. **Investigation:** data collection, parent, child and family interviews, home visits, collateral contacts, parent

references, psychological testing or other consultative services.

3. **Analysis:** observations, findings, oral and written reports, test results are synthesized and reviewed in relation to theories of human development and functioning and research to describe, infer, analyze, predict and recommend; and

4. **Reporting:** findings, conclusions, rationale and possibly recommendations are summarized and presented in the interpretive interview (Warner & Elliott, 1979), written reports are forwarded to parents, lawyers and courts.

Application of the above criteria lead to the identification of 23 practice models of child custody assessment in professional literature: Solow and Adams (1977); Awad (1978); Krishner (1978); Levy (1978); Musetto (1978); Kargman (1979); Nichols and Troester (1979); Jackson et al. (1980); Westman and Lord (1980); Haller (1981); Chasin and Grunebaum (1981); Group for the Advancement of Psychiatry (1980); Goldzband (1982); Gardner (1982); Everett and Volgy (1983); Barnard and Jensen (1984); Skafte (1985); Parry et al. (1986); Bresee et al. (1986); Hodges (1986); Marafiote (Hawkins, 1987); Kaplan et al. (1988); and Schultz et al. (1989).

The following procedural review categorizes the 23 custody assessment models by country of origin, Canada and The United States, and profession: law, psychiatry, psychology and social work, according to the primary author's profession.

### Canadian Models of Custody Assessment

#### Psychiatry (Awad, 1978)<sup>10</sup>

Custody assessment is "a preventive measure ... (to provide) an optimum custody arrangement that will ameliorate current or prevent future psychological problems of the child and family" (p. 442). The source and early management of a custody assessment referral were relevant to the outcome. Neutral experts, the consent and involvement of all parties, written financial agreement undertaken with the parents' lawyers, full information disclosure and collection of as much information as possible were recommended. The parents were informed that the recommendations were not binding and the judge made the final decision.

Assessment and psychotherapy were differentiated in context and in relation to confidentiality, understanding and interpretation of parental behaviour. There was no established interviewing schedule. The custody assessment included interviewing all parties, obtaining relevant reports of previous or current psychiatric, social or educational involvement from other agencies and, in selected cases, home visits.

Comparative parental fitness was assessed and only rarely were mental and moral fitness relevant. Mental fitness

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<sup>10</sup>Permission to include Awad (1978) granted by G. Awad, M.D.

may be relevant if one or both parents had a past or current history of psychiatric illness. The type or severity of the illness was not necessarily related to parenting ability nor the determining factor in recommending custody. "A detailed investigation of the symptoms and psychosocial adjustment of a parent and how these affect a child were seen as more useful than other criteria, such as a diagnosis" (p. 444).

Children were interviewed to evaluate their perception of the situation, attachment and choices. Young children were seen individually and in play room interviews with parents. The style, quality and strength of parent/child relationships were evaluated. Home visits were included upon request.

Awad (1978) refers to the difficulty in synthesizing contradictory data. Report content includes information on the people involved and current issues; sources of information, an interview schedule and a list of reports from other sources; each party's version of the history of the marriage, separation, and how the current arrangements are working; a personal evaluation of each party, a clinical formulation; rationale and recommendations (p. 843).

If a recommendation is not made, the situation is reported as precisely as possible with the advantages and disadvantages of different custody alternatives. Awad's (1978) recommendations combine criteria from the best interest of the child and the least detrimental alternative. Similar to Gardner (1982), Awad recommends the report not contain

professional jargon but be lengthy enough to give background material or the reasoning behind the recommendations.

Upon completion of a custody assessment, the official custody assessment report is sent to the judge and lawyers. Whenever possible, a "marathon" joint session is held with parents and lawyers. Awad (1978) recommends children not attend because of the potential for hostility or violence but that children be informed separately, preferably by therapists.

**Social Work: The Custody Project (Parry et al., 1986)**<sup>11</sup>

Between 1976 and 1984, the Department of Psychiatry at the University of Toronto and the Clarke Institute of Psychiatry conducted "The Custody Project". Clinicians worked independently on a peer consultation basis and applied a family systems/conflict resolution approach to custody assessment. The position of an impartial expert was preferred to that of an advocate.

The crisis surrounding marital dissolution and custody was described as a turning point for primary intervention. The capacity to resolve conflicts rested with the clients and the assessment emphasized parent education in communication, problem solving and negotiation (p. 74). Emphasis was placed on how change occurs, knowledge of normal individual develop-

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<sup>11</sup>Permission to include granted by S. Todd, Permissions Editor, Lexington Books.



ment, family life cycles and tasks and a range of reactions to marital dissolution.

In "The Custody Project", the separation of administrative and clinical procedures "prevented premature clinical activity in situations where there is no real consensus between the parties to seek clinical assistance as an alternative to litigation" (p. 43). Assessment referrals were forwarded to the Family Court Clinic Project Co-ordinator who forwarded a letter describing the research project and assessment procedures to each lawyer and client.

A nominal administrative fee was paid and written parental consent to interview or obtain information from significant others was obtained. Both lawyer and parents completed a questionnaire providing basic demographic information, history of previous litigation, the current legal status and position with regard to custody, access or both. The collection of retainer fees was seen as "incongruent and ethically questionable in clinical practice" (p. 41). Spouses shared the cost of the assessment; however, the fee was negotiated, acknowledged in writing and paid by the lawyers. Accounts, which listed all professional activities related to the assessment, were submitted at an hourly rate for a one month period. Payment was indicative of commitment to constructively use the assessment process and non-payment resulted in discontinuation of all assessment activity (Goldzband, 1982; Hodges, 1986).

The development of "a therapeutic alliance" between professionals and family members was encouraged. Clinicians contacted lawyers by telephone or requested a joint interview to reinforce the professional alliance or clarify particular issues. Information was not available until the final report was released. Treatment needs or concerns specific to one parent were identified and were discussed with that parents' lawyer as separate from the assessment. Professional collaboration was dependent upon equal treatment of each party's lawyer and the depth of mutual understanding and trust in one another's roles.

Unless advised otherwise by lawyers, the parents were interviewed together and if possible, with the total family present. Further individual and joint interviews were arranged. Two individual parent interviews provided personal, family and marital history, a developmental history of the child and parenting plans vis-a-vis the child and the other parent. Interviews were conducted with each child and with all the children and significant others. If lawyers and parents met, at the end of the meeting, parents might be asked to leave and in assessor/parent meeting, children might be asked to leave.

Children were seen early in the assessment as individuals, as part of a sibling group and with each parent. Interviews included a psychiatric examination and structured and unstructured age-appropriate tasks. Open-ended questions were

asked and framed in relation to concrete items or routines, such as activities and time spent with both parents, outings, treats, friends and differences in parenting. Seventy percent of the children stated a custody preference. Parents were encouraged to function as parents and take charge of the children in unstructured or play sessions. Pictures and dolls might be used in interviews with young children and home visits might occur.

Interviews were held with extended family members, including new partners, step-siblings, and grandparents or others who were closely involved with the children's lives. Psychological testing was not routinely requested. If diagnostic uncertainty existed about psychopathology, intellectual functioning, paranoid thinking or personality characteristics, confirmation or clarification was obtained with psychological testing. Test results also served as a second opinion to reduce possibility of bias or personality conflict. Legal documents were reviewed and information was obtained from written reports or telephone calls from schools, agencies, day care staff, physicians, and previously involved mental health personnel.

Two thirds of these cases took more than two months to complete and some took much longer; 32% required 5 to 9 clinical hours, 30% required 10 to 12 and 23% required 13 to 18 clinical hours. In "The Custody Project" decision-making, clinicians viewed both parents as equally likely to be seen

as the preferred custodial parent for children of both sexes and for all ages. Reasons for making custody recommendations were as follows: psychological bonding, continuity of care, children's wishes, attempts to unite siblings, parental ability, step-parent issues and others, such as special needs or willingness to permit contact with non-custodial parent.

Parry et al. (1985) applied the best interest guideline and factors identified by GAP (1980) such as, stability of home life, continuity of care, parental capacity and advantages of children being together or apart. Information was integrated in a clinical formulation which included mental health functioning and personality style, capacity to provide continuity and stability in physical and emotional care, capacity to understand the child's individual developmental needs and attachment to the other parent and capacity to negotiate with the other parent.

A case might be presented to Custody Project members for consultation before presenting the findings and conclusions to the parents. If the parents agreed, a mediated settlement may result. A written report was presented to the lawyers in a concluding meeting. Report content included a statement of qualifications, referral information, a summary of assessment activity, individual history of parents, marital history according to each parent, developmental history of each child, clinical impressions, findings and recommendations. Custody options stated preferences, advantages and disadvantages for

children and parents. Information was presented in language that could be understood by the parents and in an unoffensive manner. Clinicians did not have to testify in over half of the cases that returned to court because the report was sufficient for the court's needs.

Psychology (Kaplan, Landau & McWhinney, 1988)<sup>12</sup>

Most recently in Canada, the Interdisciplinary Committee for Custody/Access Assessment recognized uneven custody assessment practices and produced procedural guidelines which are intended to give direction to future professional standards. The guidelines assume professional qualification and competence, and involvement of independent legal counsel for both parents and the family as a whole. The process is intended to have a therapeutic and educational effect and encourage mediated parenting agreements, which are "in the best interest of the child within the capabilities of the family" (p. 1).

Contracting and data collection procedures are similar to Parry et al. (1986). Unlike Parry et al., a retainer may be requested, a confirming letter is forwarded to the parents and lawyers after the initial meetings and the lawyer is included in the formulation of custody recommendations. All

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<sup>12</sup>Permission to include granted by R.G. Burry, Executive Director of The Ontario Psychological Foundation.

data collected and impressions are reviewed in relation to the initial request for a custody assessment.

When parents have reached agreement, parenting plans may be clarified or elaborated, the soundness may be evaluated and appropriate aspects approved and recommended. A report describing, commenting on and recommending the parenting plan is completed and submitted. When parents did not agree the entire process was reviewed.

The findings and recommendations are presented to counsel for explanation, questioning, facilitating a settlement and developing a plan for parental acceptance and implementation or willingness to appear in court for trial. The assessment and recommendations are then presented to the parents to discuss implementation.

The report contains the following: referral sources, reason for referral, assessment objectives, professional qualifications, assessment process and sources of information, family history, an assessment of the children, a summary, discussion of alternative parenting arrangements, rationale for recommendations and recommendations for a specific parenting plan and its implementation. "Potentially damaging material is presented in such a manner as to take into account its impact on family members and their relationships (bearing in mind who might read the report both now and in future)" (p. 11). The report and recommendations are submitted to parents and counsel and filed with the court.

American Models of Custody Assessment

The Integrated Law/Social Work Approach (Kirshner, 1978<sup>13</sup> and Kargman, 1979)

Krishner (1978) and Kargman (1979) recommend different integrated legal/social services approaches to child custody. Krishner proposed a Model Child Custody Act, a Federal Child Environmental Kidnapping Act, the appointment of a guardian ad litem and a Mandatory Child Environmental Impact Statement (CEIS). The CEIS required a qualified "social service worker or agency to screen parents, conduct interviews with relevant parties and visit homes and schools."

A state licensed psychologist would administer the following psychological tests: Personal Opinion Inventory (Zaks), Thematic Apperception Test, Rorschach Ink Blot Test, Weschler Adult Intelligence Scale, Weschler Intelligence Scale for Children, Bender Visual Gestalt Test, Standard Illusion test, Draw a Person Test Battery, ZIP Cube Test. The psychologist would conduct the interpretive interview, the guardian ad litem would assess economic matters and present findings to the court. Re-evaluation may be recommended at six month periods to discuss recommendations and related adjustments and social functioning.

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<sup>13</sup>Permission to include granted by Diane Campbell for The University of Louisville; Journal of Family Law for S.G. Kirshner.

If a mandatory CEIS was not possible, Krishner proposed a screening option as a preventive measure. For disputant parents, the CEIS would indicate the probable impact of change on the child and serve as a standing court record whenever child custody or access matters were brought to court. For non-disputant parents, the CEIS would present an opportunity to raise reasonable questions about the proposed custody and visitation arrangements and suggest ways of reducing the detrimental impact of the marital dissolution on the children.

In contrast, Kargman (1979) indicated professionals failed as advocates, report writers and expert witnesses and recommended that lawyers trained in marriage counselling and family sociology function as assessors and guardian ad litem. In this assessment, parents and lawyers were interviewed to establish the terms of reference for the assessment and obtain consents for the release of information. Strategic inclusion of the parents' lawyers established a team rapport, reduced the likelihood of litigation and surprise cross-examinations and appears to be the first procedural safeguard recommended in custody assessment (Suarez, Weston & Hartstein, 1978).



Psychiatry: The Group for the Advancement of Psychiatry  
(1980)<sup>14</sup>

In the United States, 11 models of custody assessment have been proposed by the following psychiatrists: Solow and Adams (1977), Musetto (1978), Jackson et al. (1980), Westman and Lord (1980), The Group for the Advancement of Psychiatry (1980), Haller (1981), Chasin and Grunebaum (1981),<sup>15</sup> Gardner (1982),<sup>16</sup> Goldzband (1982),<sup>17</sup> Everett and Volgy (1985) and Bresee et al. (1986).<sup>18</sup> Most models are designed for private practice as opposed to agency/team practice and have an individual, psychoanalytic approach. Three have a family, psychoanalytic approach (Bresee et al., 1986; Everett & Volgy, 1983; Musetto, 1978), however, Musetto provides a private practice perspective and the others are agency/team approaches. The 11 models in psychiatry are reviewed in a

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<sup>14</sup>Permission to include granted by Alex Soreyan, President, Mental Health Materials Center, Branxville, New York.

<sup>15</sup>Permission to include granted by V. Satkovski from The American Journal of Family Therapy, 2(3), 43-49.

<sup>16</sup>Permission to include granted by R. Gardner, M.D.

<sup>17</sup>Permission to include granted by S. Todd, Permissions Editor, Lexington Books.

<sup>18</sup>Permission to include granted by Joan Adler, Assistant Editor, American Journal of Orthopsychiatry for Bresee et al. from The American Journal of Orthopsychiatry, 56(4), 569-569.

composite according to guidelines proposed by the Group for the Advancement of Psychiatry (1980).

### Professional Role and Function

The Group for the Advancement of Psychiatry (GAP) indicate custody disputes represent "a failure in the process of completing a psychological divorce" (p. 917). Over several months, psychiatric expertise could aid the successful psychological resolution of divorce by identifying the irrational, unconscious conflicts and motives and assisting with co-operative parenting and the child's mastery of the divorce crisis. Psychiatric contributions were considered to be a therapeutic and diagnostic intervention, an integrated and extensive custody study and expert court testimony (Westman & Lord, 1980).

In both new and re-opened assessments, "the mental health professional has two tasks ... to explore the possibility of negotiation and compromise between the parents ... and to examine the family adequately and give the court enough information so that it can make an appropriate decision ... in a way consistent with seeking peace between the warring factions" (The GAP, 1980, p. 917). The objective was to individually assess the mental health and developmental needs of a particular child and match them with parental capacity to meet those needs and reduce parental conflict.

The role of judicial aid, data collector and evaluator was implicit in custody assessment, however, professional responsibility was perceived differently by different psychiatrists. Solow and Adams (1977) rejected "neutrality and proposed child advocacy and child psychiatry values replace legal values. Gardner (1982) preferred the role of an impartial expert and Goldzband's (1982) preferred the *amicus curie* (i.e. friend of the court) or consultant role.

Most psychiatrists differentiated between the objectives of assessment and therapy. Assessment was not recommended if a previous therapeutic relationship existed as the therapeutic alliance, emotional transference and counter-transference biased the assessment (Haller, 1981). Assessment and therapy were not interchangeable processes (Gardner, 1982; Goldzband, 1982) however, the terms "evaluator and therapists" were interchanged in the literature and therapy after the assessment was not precluded (Bresee et al., 1986; Everett & Volgy, 1985; Haller, 1981).

Mediation was not emphasized in psychoanalytic models; however, systemic family models endorsed self-determined settlements but did not refer to them as mediation. If a negotiated or self-determined parental agreement was possible, Chasin and Grunebaum (1981) held a series of meetings with parents and their attorneys before preparing a final report.

Haller (1981) identified the role of therapeutic adjunct to help parents comply with new legislation and

facilitate optimal custody decision-making. The therapeutic aspects of custody assessment included reassurance of continuous parenting and parental understanding, minimization of blame, an opportunity to mourn related losses (Goldzband, 1982) and the separation of marital and parental issues.

#### Referrals or Entry Into Custody Assessment

The court order officially began the assessment process; however, timing and the parent's clinical condition influenced the actual beginning of the assessment (Jackson et al., 1980; Haller, 1981). As in forensic matters, psychiatrists initially entered custody disputes as "hired guns" (GAP, 1980, p. 919) at the request of one parent or lawyer and later testified in support of that parent's custody claim. One party referrals were acceptable if an allegation of mental illness or mental retardation was made, a parent was geographically unavailable or a parent opposed a psychiatric evaluation of his/her parenting abilities (Haller, 1981).

One party referrals were also seen as restrictive and compromising professional impartiality and objectivity and allegations had to be very specific and carefully managed with regard to unseen litigants (Bresee et al., 1986; Goldzband, 1982). The GAP (1980) recommendation to conduct assessments with the consent of both parents and their respective lawyers was an important procedural safeguard, which influenced the entire assessment. Custody assessments were started only if

court ordered and if both parties and their attorney agreed to an impartial evaluation of the entire situation. Impartiality was encouraged by returning one party referrals to court or the referring lawyer (Haller, 1981; Westman & Lord, 1980) and by the establishment and maintenance of a neutral position equidistant from each parent (Chasin & Grunebaum, 1981). Parents were advised that custody recommendations might not favour either parent and would be guided by the child's needs and best interests (Goldzband, 1982).

#### Fees.

Agency and team models gave few references to fees, however, private practitioners included fees in the initial contracting for the assessment. Solow and Adams (1977) expected the father as primary wage earner to pay for the assessment and related expenses. The GAP indicated both sides were to make a commitment to pay for the assessment and receive the custody report prepared by the individual psychiatrists or clinical team. Fees included: clinical interview, telephone consultation, report preparation and court time (Haller, 1981). Advance payment or payment at the time of each visit was preferred as non-co-operation or disagreement could lead to non-payment of fees.

Chasin and Grunebaum (1981) requested a retainer and discontinued the assessment unless payment was made. Separate payment schedules may be worked out for court time (Haller,

1981); however, court involvement did not occur unless all fees for services were paid in full (Goldzband, 1982). When an agreement was reached (Haller, 1981) or a contract was negotiated and signed, the assessment interviews started (Chasin & Grunebaum, 1981; Solow & Adams, 1977). Goldzband (1982) indicated that professionals had an obligation to contain and avoid unnecessary aspects of investigation and the establishment of assessment parameters was a matter of professional judgement.

#### Consent.

"Completeness, thoroughness and objectivity are the hallmarks of a custody assessment" (Goldzband, 1982, p. 57) however, unless parents are aware of the relevance of specific information and give consent to access such information, thoroughness may jeopardize parental co-operation. Professional activity may be construed as inappropriate and intrusive and relevant information may not be obtained (Westman & Lord, 1981).

In psychiatric assessment models, direct interviews and observations and self-administered witness questionnaires, which were completed by parents, lawyers and references, served as a data base and an initial screening mechanism. Questionnaires directed inquiry and supported observations made during the assessment (Solow & Adams, 1977; Everett & Volgy, 1983; Gardner, 1982).

Verbal and written consent to access and/or disclose information was obtained in the initial interview or early in the assessment process (Solow & Adams, 1977; Haller, 1981; GAP, 1981; Goldzband, 1982; Gardner, 1982). Parents and children were primary sources of information (Gardner, 1981). Comprehensive data collection was encouraged with an expanded family approach which assessed both parents and children, their interaction with relationships and other family members was recommended (GAP, 1981); however, an individual parental approach prevailed.

Inclusion of significant others was infrequent and psychiatrists differed in the manner in which significant others were included. "Objective data about the child's entire life situation is obtained from parents, teachers, physicians, sitters, neighbours and relatives ... (sic lawyers and guardian ad litem) ... who have some on-going contact with the child before and during the marital crisis" (Westman & Lord, 1980, p. 260). Gardner (1982) regarded information from other sources as exaggerated but useful if corroborative or new. Parents were asked to invite significant others to participate and Gardner did not actively communicate with other professionals for fear of compromising the assessment through undue influence. A specific written request for information was made but if not forthcoming, became a limitation of the custody assessment and was to be pursued by the court.

Goldzband (1982) consulted with other professionals only when necessary. Haller (1981) interviewed close friends if the friend's presence or influence was considered an issue by either parent. Verbal or written information relating to custody was obtained in the office, over the telephone or in home visits (Chasin & Grunebaum, 1981).

Psychological tests were not routinely included in psychiatric assessments but were requested as a consultation. Gardner (1982) did not encourage the use of projective tests for interpretative and testimonial reasons. If necessary, interactional tasks such as the Talking, Feeling, Doing Game (Gardner, 1973), the animal transformation game (Kritzberger, 1966), pictures from The Boys and Girls Book About Divorce (Gardner, 1971), The Holsopple Mials Sentence Completion Test (1954) and IQ tests were used.

#### Disclosure.

One of the objectives of a custody assessment is to inform the court, therefore the court may ultimately access all information. Professionals have considerable discretion in managing the information obtained in the course of an assessment. Solow and Adams (1977) regarded the parent's right to information as superior to the child's right to confidentiality. Both parents were given findings regarding the child. Findings which might be detrimental or misused by



either parents, spouses or other persons, were withheld as confidential and only discussed with the implicated party.

Westman and Lord (1980) designated specific communications as confidential. When therapeutically possible, children and parents were assisted to share information previously regarded as secret. Recognition was given to the critical nature of parent-child communication and the undesirability of forcing a child to disclose preferences that could jeopardize a relationship if made known to a parent. Children were told in camera sessions with the judge could be requested and the judge would decide where the child's disclosure would be made.

#### Interview schedule.

Exact formulas for the composition and sequencing of interviews were not given; however, professionals' actions needed to be valid, justifiable and defensible (Goldzband, 1982). Each family member was seen individually, in sub-sets and if emotionally ready, with the entire family, including all new spouses and prospective spouses of the divorced parents (Solow & Adams, 1977). The following interview sequence may be followed: each parent and child separately, the children together, each parent with all the children, then each parent separately. More complicated situations may require more interviews (Chasin & Grunebaum, 1981; Goldzband, 1982; Haller, 1981; Westman & Lord, 1980).

Individual interviews were preferred and recommended if anxiety or emotion was intense (Everett & Volgy, 1983; Musetto, 1979). Haller (1981) accommodated parental requests to be seen first. As a procedural safeguard, Haller (1981) consulted with the other parent and the relevancy of the information was evaluated before proceeding. Haller (1981) discouraged back to back interviews and treated each interview as separate. Interview length varied from 30 to 90 minutes (Solow & Adams, 1977).

#### Preparation of Adults for the Assessment

Custody assessment models differ in the manner in which lawyers and parents are included and prepared for the assessment process. Similar to Kragman (1979), Haller (1981) and Goldzband (1982) initially prepare and share information with lawyers, who then prepare parents. In the meeting with lawyers, Haller (1981) discusses statutory criteria for custody, access, inclusion of recommendations regarding the nature and extent of psychological disturbance, stress and/or long standing psychopathology in the child or parent, the need for periodic psychiatric follow-up, previous rulings on controversial issues and report requirements. Goldzband (1982) focuses on the respective legal and assessment roles and the questions to be addressed in the custody assessment. In contrast, Solow and Adams (1977), Westman and Lord (1980)

and Gardner (1982) give priority and clarify assessment parameters with the parents.

### Parental Interviews

For most psychiatric models the evaluation of parents as individuals and their relative parenting capacities was more relevant than the evaluation of the child (Gardner, 1982; Goldzband, 1982; Haller, 1981;). Solow and Adams (1977, p. 91) indicate the central question in the evaluation was "Which parent can provide the more likely environment for nurturance and growth of the child?." Haller (1981) considered the following variables relevant: the psychological status of each parent and presence or absence of psychopathology, parental functioning vis-a-vis discipline, time spent with children, ability to share activities, and overall sense of the child as an individual, custody motives and parental self-expression. Chasin and Grunebaum (1981) asked about parental knowledge of the child's life, developmental needs, guidance, discipline and problem-solving approaches.

The GAP (1980) emphasized the quality of parent/child interaction over time and the parental capacity to interact in the short and long term. Parental examination focused on mental health, personality functioning, pathology or deficits, childhood parenting in his/her family of origin, ability to accept feedback and/or co-operate and focus on the child's needs. Parenting capacity was based on the parent's person-

ality structure and suitability to raise a child or children. Parents defined problems in relation to themselves rather than the child. Interviews elicited information on prior ways of functioning, patterns of handling conflict, areas in which guidance and support were needed, attitude toward the other parent and visitation issues (i.e. time/availability/activities).

In parental interviews, Gardner (1982) provided questions and relied on direct quotes and observations to reduce inference. In the first part of the custody assessment, a psychoanalytic approach was recommended to explore the parent's early childhood and parenting and provide a thorough history. If meaningful childhood information was not available, a visit to the family home might be recommended or a parent might be invited to participate directly in the assessment. Parental competence was indicated by parental involvement with the child, relationship ties, psychological bonding, parental sacrifice, educational commitment and continuity. Parental conflict and controversial issues were anticipated. Parental behaviour, which interfered with a child's healthy growth, development and functioning, was seen as the most appropriate focus in a custody assessment. Towards the completion of the assessment, Gardner emphasized current and future concerns.

Goldzband (1982) viewed the main task in custody assessment as evaluating relative parenting capacity and placed

greater weight on individual parents rather than child interviews. The assessor's responsibility was to calm the child, and instruct parents in ways that would reduce the child's sense of loss and feelings of responsibility for the marital dissolution. Child preferences were discussed in a family context.

### Interviews With Children

#### Preparation of children.

Haller (1981) and Chasin and Grunebaum (1981) prefer the custodial parent to prepare the child for the assessment. Chasin and Grunebaum (1981) provide the exact wording and explanation to minimize indelicate or dishonest handling of a child by professionals. Parents are helped to understand the need for direct observation and the risks and benefits of involving children, and are instructed on introducing the assessment process and the assessor to the child. Parents are aware the assessor will ascertain the child's understanding of the process before interviewing the child.

Children are initially interviewed individually in a non-threatening and unstructured manner to clarify the non-confidential nature and purpose of the assessment. Information is obtained about the child's personality, developmental phase and reaction to the divorce. Custody and/or access preferences are approached indirectly (Haller, 1981). Goldzband (1982, 1986) cautions that the use of diagnosis may negatively

rebound on children and that play therapy is not necessary in custody assessment.

The GAP (1980) examination of the child included a mental status examination, open-ended questions on developmental history, information on attachment and loss and coping mechanisms, parenting and degree of psychological impairment or treatment. Westman and Lord (1980) aimed to increase understanding of the child's intrapsychic life, divorce and custody preferences and family dynamics. Past and current relationships are explored to determine the child's psychological parent and the extent to which a child has incorporated the psychological parent into his/her personality. The significance of the child to the parent, parental commitment and priorities were further indicators of the parent/child bond. In adolescent assessment, parental ability to tolerate independence, role reversal, over-identification, sexuality, sibling ties and peer relationships were relevant (Haller, 1981).

Westman and Lord (1980, p. 262) focused on six social and psychological skills that contribute to an understanding of the child's developmental needs and the degree to which the child is prepared for self-reliant citizenship. These include social skills, self-control, learning ability, values system, decision-making ability and self-identity and self-esteem. Each parent is evaluated relative to his/her capacity to meet the above criteria and present a life plan that accommodates

relationship continuity, changes over time and the child's current developmental needs.

### Joint Interviews

Joint interviews may occur with both parents or with parent and child and include observational sessions or tasks. Future events, such as remarriage, might be discussed and parents might be asked specific questions about the ideal custody arrangement, not getting custody, the benefits and drawbacks of joint custody and negotiable items, the child and his/her routine, preferences and problems, and parental strengths and weakness (Chasin & Grunebaum, 1981).

Observational parent/child interviews focused on interaction, spontaneity, nurturance and the degree of complementarity between personalities. Structured age-appropriate tasks may be proposed for the child. Behavioral indicators of parental capacity are as follows: parental attentiveness, understanding, empathy, capacity to talk and play at an age-appropriate level, capacity to allow spontaneity and maintain discipline, consistency and flexibility in handling the child. These observations would inform judgement as expressed in a formal clinical assessment.

Sibling or group interviews provided a less intense context for exploring custody issues. Useful information on the quality of family life and patterns of alliance or

antagonism may be forthcoming and helpful if split custody is considered (Chasin & Grunebaum, 1981).

### Criteria for Custody Recommendations

Chasin and Grunebaum's (1981) custody recommendations were guided by maximum relationship continuity and empowering the custodial parent if conflict was intense or active. The preferred custodial parent was most likely to:

1. facilitate visitation, objectivity and respect toward the other parent;
2. maintain continuity of contact with extended family, friends, and school;
3. possess the most knowledge and skill in dealing with the child;
4. demonstrate humanity, consistency and flexibility in handling the child; and
5. be the parent to whom the child is most emotionally attached (p. 47). If a parent was deemed unfit or abusive, safe ways of maintaining contact were identified. Recommendations provided for current custody and allowed for modifications as the child matured. Research findings substantiated recommendations and added a criterion of external validity to confirm assessment findings (Chasin & Grunebaum (1981).

The Group for the Advancement of Psychiatry (1980, p. 922) provide an outline for examination or custody assessment.



The following criteria apply in determining individual parental suitability:

1. mental health status;
2. personality vis-a-vis parenting;
3. past personal history/childhood;
4. degree of flexibility in accepting feedback on parenting responsibilities;
5. probable method of restoring missing mate;
6. ability to form treatment alliances where children are concerned.

Gardner's (1982) custody recommendations focus on parental strengths and capabilities, the quality of the parent/child relationship and the psychological bonding to one parent or persons. Broad generalizations or recommendations were not made and recommendations for therapy, with a particular agency or referral source was avoided. Similarly, Goldzband (1982) applied the best interest legislative guideline and determined parental capacity vis-a-vis personality structure. Preference was given to maintaining the status quo and keeping a child where he/she was coping well. Substantial reasons accompanied a recommendation for change; detrimental aspects of the present living arrangement were articulated to minimize perceptions of assessor bias. Detailed reasoning, theoretical understanding and internal consistency based on factual and observable data supported a custody recommendation.

Solow and Adams (1977) did not prevent the parents from returning to court but, similar to arbitration, required the parents to accept binding recommendations. Prediction was avoided but recommendations may include further interviews, analysis, evaluation, treatment or a 6 to 12 month follow-up. Haller (1981) reviewed the custody options on an individual case basis. If neither parent was appropriate, alternate family members may be recommended as custodial parents. Child abuse and protective services were included if termination of parental rights was recommended.

#### The Interpretive Interview

Professional differences in starting the assessment with the lawyer or parents may carry through to the end of the assessment, and the order in which recommendations are discussed. Professional difference in managing the concluding or interpretative interview have been attributed to professional style (Goldzband, 1982) and the degree to which the clinician has resolved personal losses (Warner & Elliott, 1979). Goldzband (1982, p. 46) indicates the interpretive interview is valid only if significant parties are told beforehand that findings and recommendations may be discussed with the assessor at the end of the assessment.

Findings are presented in a logical and progressive manner to support conclusions and allow sufficient time for questions. Findings might be released initially to the parent

or the lawyers, who inform parents of the assessment outcome (Goldzband, 1982; Kaplan et al., 1988) or to lawyers and immediately after each parent (Haller, 1981). Jackson et al. (1979) recommend the interview with the non-custodial parent be held first to minimize any opportunity for destructiveness. The second interview with the recommended custodial parent emphasizes the importance of the non-custodial parent in the child's life, special needs, financial arrangements and positive aspects of the non-custodial parent's personality and visitation arrangements. Any difficulties or special needs of the child might be discussed and a recommendation for therapy, re-evaluation or follow-up might be made. The likelihood of litigation might be reduced if the assessor answered the non-custodial parent's questions.

### Report

Organizational work to write a report parallels the preparation for the interpretive interview; however, a custody report might become a formal, legal and strategic document to which the public has access (Kargman, 1979). In preparing the custody report, a preliminary step is to determine how each factor relates to each available custody alternative and the merits of a third placement.

Evidence from the history and clinical examinations were integrated to form a conclusion and custody recommendation. The report provided an extensive history and background and

explained the clinical findings and justified the . . . for the conclusions and recommendations. Statutory criteria were included and in conference with lawyers, tentative recommendations might be formulated and a custody/access alternative recommended.

Report length varied from 15 pages (Goldzband, 1982) to a two to three page, letter format (Gardner, 1982). Gardner's report consisted of four sections: statistical data and interview schedules, a brief description of each parent and child and prior circumstances, the respective assets and liabilities of each parent and conclusions and recommendations. Only the most relevant and pertinent information was included without reference to professional jargon, labelling or diagnosis (Gardner, 1982). A well written report was explanatory and educational for the parents and a helpful aid in court. Facts and opinions, which were within one's competence and knowledge, reduced claims of assessor bias.

#### Court Appearance

Chasin and Grunebaum (1981) require seven days notice for a court appearance in which expert testimony and information about, rather than for, the respective parties might be given. If a recommendation favoured one parent and the matter went to court, a pre-trial conference might be requested with the supporting lawyer (Haller, 1982). Prior preparation and

familiarity with assessment information and court procedures were recommended.

### **Family Systems**

#### **Musetto (1978).**

Adversarial approaches to conflict resolution and individual approaches to custody assessment were seen as a disservice to families by psychiatrists who preferred a family systems approach (Everett & Volgy, 1985). Musetto's (1978) theoretical base consisted of systems theory, family intervention and Bowen's (1976) theory of individuation and triangulation in emotional relationships. "Intervention surpasses pure evaluation" and the spirit in which the court's final decision is carried out is more important than the specific custody/visitation arrangement (Musetto, 1978, p. 61).

Therapeutic alliances with family members and court personnel were seen to promote family commitment, age-appropriate individuation and not endanger children's loyalties to both parents. Parents were encouraged to put aside blame for responsibility and accountability and understand the child's loyalty ties to both parents. Children were given a chance to mourn their losses and be reassured of consistent parenting. The non-custodial parent's continuing responsibility and involvement were reinforced and the family was

given a supportive environment to reach a self-determined settlement.

Both parents were notified in advance of a conjoint interview; however, if the anxiety level was too high, parents may initially be seen separately. A family interview began the assessment and the family was advised that the evaluation was being conducted because of the conflict and not necessarily because of any suspected individual pathology. Children were active participants and were present during some of the sessions.

During the assessment, the clinician tried to determine the child's psychological parent. Relevant factors were as follows: the child's concept of time and prompt assessment of young children, the custodial parent's willingness to accommodate visitation and the non-custodial parent's continuing financial responsibilities to the child. If conflict centered on visitation, specifics of time and place were recommended. The clinician provided a recommendation that was not unjust to either parent, was as explicit as possible and had the endorsement of both parents and the family. In severely conflicted and dysfunctional families, the best optimal solution may be the least detrimental alternative.

Everett and Volgy (1983).

Everett and Volgy proposed a team approach, which conceptualized marital dissolution as a process of structural

decoupling and structural re-coupling in tough post-dissolution families. Such families required active conflict management to "assist the family reach a self-determined ... agreement and to evolve a more experiential awareness of the family process in structural coupling and decoupling" (p. 346). This process was emotionally intense and required a therapeutic approach with "more than a cursory investigation of parenting attitudes, financial resources and matters related to the "best interest of the child" (p. 346).

A cross-sex therapy team with members responsible for a specific family sub-system conducted the assessment. Team members were assigned roles of parent/family therapist or child/sibling therapist. The parent/family therapist coordinated data collection and determined the structure and progress of the interviews. The child/sibling therapist was responsible for contact with the child or children and other professionals who could provide information about the child's social and academic functioning, intellectual level and general maturity.

Assessment may take 8 to 10 weeks before the signing of a written agreement by lawyers and parents. Initial conjoint interviews were contraindicated to avoid further exacerbation of adversarial matters and the intensity of allegations directed toward the other spouse. The parent/family therapist held an individual interview with each spouse and within a two

week period, held two more individual sessions with each parent.

A genogram (McGoldrick & Gerson, 1985) was constructed and detailed information was obtained about family of origin, courtship and engagement, marital history and development, pregnancy patterns and problem areas within the marriage and extended family. Parent and child therapists consulted to coordinate intervention. Therapy and assessment functions operated simultaneously to delineate important issues, ameliorate marital animosities and increase healthy family functioning and problem solving ability. Marital therapy might be conducted to identify and resolve latent anger and grief from the marital relationship. A mental status examination was performed and symptomology was understood in relation to its origins in intrapsychic functioning and family process.

Children under four were seen in playroom settings with parents and familiar objects from home. If parental competency was questioned, parents might be asked to change or feed the child during the observation. Children of four years or older were interviewed individually and provided with confidentiality to protect parental relationships. Children under ten were seen in observational playroom settings, which were equipped with projective and interactional toys and games. Each parent separately accompanied the child for one or, if necessary, more observations. Other sibling family sessions, parent/child sessions might be conducted in the parental home



with the child or children present to provide a guided tour of the residence.

Interviews with extended family and significant others had specific information requests. Parents submitted the names of 3 to 5 character references, who were forwarded a questionnaire which focused on that person's perceptions of the parent's stability, maturity, parenting skills and suitability for custody and/or access.

In an analysis of clinical impressions, court data and written information, the following systemic issues were relevant: enmeshment or cohesion in each parent's family of origin loyalties, parental success in structural decoupling, patterns of structural coupling in the post-dissolution stage; parental potential for healthy recoupling. When a team consensus was reached, a report was written by the supervisor and submitted to the referring judge with copies to the attorneys. The team remained available for time-limited family therapy related to the custody and access, post-dissolution adjustment or remarriage issues. Re-evaluations may occur after 6, 12 or 18 months and therapy might be recommended.

**Bresee, Sterns, Bess and Packer (1986)**

The custody assessment model proposed by Bresee et al. (1986) was specific to allegations of child sexual abuse and similar to Everett and Volgy's (1983) custody assessment model. Greater emphasis was placed on formal agreements and

standardized psychological testing. A preliminary investigation assured the safety of the child, and interim access. Whereas "an ordinary custody evaluation can take several months to complete ... and protective measures are in place ... there is no basis for rushing to complete the investigation and evaluation of the sexual abuse allegations" (p. 568). Upon completion of the custody assessment, professional continuity was ensured as the child therapists offered ongoing treatment and consultation.

Unless further harm to the child would result, the child was interviewed in the presence of each parent. Some of the issues presented involved understanding the basis of the parent/child relationship and the child's sexual perceptions. Distinction between reality-based perceptions and perceptions based on underlying psychotic processes, sexual over-stimulation, embellished or confounded reports, or coaching to describe the molestation, might be required (Girdner, 1985).

Bresee et al. (1986) describe the characteristics of mothers with legitimate allegations and those who were primarily interested in attacking the father. They distinguish between children who have been abused once or repeatedly, and fathers who were fixated or regressed offenders (Groth, 1985). Two consistent clinical findings related to intrafamilial abuse were a reversal of parental roles and failure to control sexual impulses toward children (Summitt & Kryso, 1978). Other relevant factors included

parental difficulty in monitoring or directing emotional reactions, excessive self-centeredness, strong dependency needs and poor judgment (Bresee et al., 1986).

In Bresee's et al.'s (1986) model, the report might be prepared jointly, by the supervisor or as two separate sets of recommendations. Even when there was inconsistency in evaluating risks to the child, compatible recommendations were made and consistency in recommendations as they affect each family member was critical. The expertise of two experienced therapists in consultation with each other reduced the danger of personal bias or misinterpretation of observation or information. Lawyers were consulted before results were forwarded to the parents and the court. Pursuant to the legislation, the completely developed parenting plans were presented to the court in a comprehensive written report.

### Psychology

Five models of custody assessment have been proposed by the following psychologists: Nichols and Troester (1979),<sup>19</sup> Hodges (1986),<sup>20</sup> Barnard and Jensen (1984),<sup>21</sup> Marafiote (1987)

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<sup>19</sup>Permission to include granted by K. Prince, Permissions Co-ordinator, The National Council on Family Relations, Minn. USA.

<sup>20</sup>Permission to include Hodges, W.F. (1986). Interventions for Children of Divorce, granted by John Wiley and Sons Inc., New York. All rights reserved.

and Schultz et al. (1989).<sup>22</sup> These models reflect a rational, mediation, conflict resolution approach, and cognitive-behavioral approach, in which the concepts and procedures from social science and child development research were applied to custody assessment. Early models found in psychology were not easily replicated in practice and contained minimum information on administrative or clinical procedures, contracting or relationships with lawyers. The following procedural review follows the same format as the models produced in psychiatry but describes private practice rather than interdisciplinary team custody assessment models.

Nichols and Troester (1979).

Nichols and Troester (1979) viewed evaluation as antithetical to their clinical philosophy and practice. Parents and children were the primary clients and therapeutic benefits were increased by introducing a task oriented, crisis intervention and mediation/conflict resolution approach. Many couples had not directly communicated since filing for divorce; parental communication, decision making and maintaining parental relationship continuity were emphasized.

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<sup>21</sup>Permission to include granted by V. Satkovski, Brunner/Mazel, for Bernard/Jensen from The American Journal of Family Therapy, 12(2), 61-67 (©1984 by Brunner/Mazel Inc.

<sup>22</sup>Permission to include granted by A.S. Morrow, Permissions Editor, Jossey-Bass Inc., for Schultz et al. (1989).

Initial meetings were held with both parents to inform them of the above approach and to advise parents that their decisions would be respected and the assessment would not be constrained by time. A co-therapy approach with active facilitation and problem solving occurred in three or four sessions lasting two to three hours. Parental reflection, interpretation and historical material was useful. Past data clarified family dynamics and helped break the stalemate and facilitated the disengagement process. Conflict focused on parental access and the amount of time with children. Even though children could have more than one psychological parent, the concept of the psychological parent was expanded to refer to "those persons embodied in the child's mental image of the parents rather than simply those persons who meet the child's current psychological needs for a parent" (p. 401).

The benefits of this approach were similar to those of co-therapy and immediate post-assessment results were favorable. A one year follow-up of 26 couples, in which 13 couples responded, indicated that the custodial parent, as awarded by the court, was more pleased than the non-custodial parent with the assessment procedure and its outcome. Battles and previous attitudes had returned and some fathers were disappointed that "allegations had not been checked, custody had not been recommended and feelings more than facts were emphasized. Some women reported being inhibited by the presence of their husbands and intimidated into making

premature agreements and concessions. Others reported "the flexible orientation ... may have negative rather than positive ramifications for the children involved" (p. 405).

Barnard and Jensen (1984).

After marital therapy and/or family mediation have failed, Barnard and Jensen (1984) conceptualize a concentric systemic, evaluation with the child in the centre (i.e. Level I). The child's psychological, physical and neuropsychological constitution was evaluated in relation to adjustment and behaviour. Level II consisted of matching the needs of the child to the resources of the contesting parents, extended family and the community or social resources. Level III, the legal system, contained all components and required a synthesis of the information in a custody assessment by impartial experts.

The initial assessment phase consisted of meeting with and obtaining the prior agreement and consent of both parents and their respective attorneys or a court order to begin the custody evaluation. Procedures, expectations and fee arrangements were reviewed. The interview format was as follows: (a) a conjoint session with parents; (b) individual parent/child sessions; (c) collective meetings with all the children, the children and each parent; (d) each parent and his/her extended network; and (e) the parents together. Interviews were a

minimum of one hour with 10 to 20 session hours to complete an assessment.

Psychological testing might be requested to determine special educational or developmental needs of children. Interview aids may include Kinetic Family Drawings (Burns, 1982; Burns & Kaufman, 1972) and game oriented activities such as Talking, Feeling and Doing (Gardner, 1973). The Family Bond Inventory (Fullmer, 1972) may be applied in group interviews with children. Tasks, such as puppet play, vacation planning, developing want ads and family sculpting (Papp et al., 1973) might also be included. More than in previous models, the extended family network and community support system (i.e. Alcoholics Anonymous or Al-Ateen) for the restructured family were assessed relative to resources and the child's future needs.

After synthesizing the findings, Barnard and Jensen (1984) determined which factors were most and least likely to provide an emotionally secure and mentally sound environment for the children. Before the report was forwarded to the court, a meeting was held with both parents to correct any misconceptions, alter findings or mediate custody if agreement existed. Reference was not made to any follow-up or review provisions.

Hodges (1986).

Custody evaluation has been defined as "a process of gathering information, interpreting data, forming and communicating a recommendation concerning child custody" (p. 120). The model presented was based on a review of custody assessment and child development literature and has recommended assessment guidelines. Similar to GAP (1980), one party assessments were discouraged and professional action to reduce anger and the likelihood of relitigation was encouraged. The assessment focused on the child rather than the parents.

Upon accepting a referral, a working relationship was negotiated with both lawyers. Pre-evaluation procedures include forwarding a written explanation of the evaluation procedure, the limits of confidentiality and fee provisions to both parties. An uncomplicated assessment of 2 children may require 20 to 40 staff hours, not including team meetings to pull the information together, report writing or court testimony, and costs \$1000. to \$5000. Professional fees were held in an escrow account. If non-payment occurred, professional anger was not to influence the custody recommendation; however, the report would not be completed.

All parties signed a written agreement specifying the above and information sources to be included in the assessment. Written questionnaires expedited access to factual information and interviews to explore more probing questions



with third parties. Consultation with other professionals may occur; however, therapists and psychological testing were not preferred sources of information (Gardner, 1982; Goldzband, 1982; Haller, 1982). Psychological testing included projective techniques, the Thematic Apperception Test and the Minnesota Multiphasic Personality Inventory to detect false negatives and borderline pathology. Test results, which required inference and interpretation, were relevant in the context of patterns of behaviour and other information.

Hodges indicated assessments usually started with individual interviews; however, all family members were seen together and in various combinations. Interactional tasks and genograms were used to collect information. Questions focused on the nature and degree of parent/child interaction, knowledge of the child and child development, daily routine and personal/parental strengths and weaknesses and attempted to understand preferences and why each parent wanted or opposed the other parent's involvement (Chasin & Grunebaum, 1981; D'Andrea, 1983; Gardner, 1976; Skafte, 1985; The Group for the Advancement of Psychiatry, 1981).

Misbehaviour by the child has been recognized as an additional parental stressor during the assessment. If parental limits were not set, the assessor may ask the parent to set limits and observe how this is done. A one way-mirror, and structured tasks were recommended in observation interviews. The parents perceived knowledge of the child was

measured by responses to questions on routine and daily child care, safety, child development (intellectual, physical, emotional, religious, recreational, moral), discipline, the child's sense of belonging, financial decision-making and inclusion of the non-custodial parent in the child's life. Suicide, homicide, divorce, family violence, substance abuse were also explored.

The GAP (1980) custody criteria were applied and as the child's cognitive abilities increased, greater weight was given to the child's opinions. Hodges (1986) indicated that directly asking a child's preference might have placed a child under greater stress, precipitated a reactive depression, exacerbated divided loyalties or increased distrust of legal and professional services. A child may answer for the wrong reason or the best deal, parental coaching, a desire to punish the parent, or changing developmental attachments. Indirect inquiry, which was supported by observations of parent/child bonding, or direct, in-chamber inquiry without the parent's present, was recommended to ascertain child preference. Any interpretation of the meaning of the child's preference was to be placed in context of the interview and the assessment. Careful note-taking about all observations, interviews and testing was recommended as complex and conflict ridden cases may require longer waiting periods before court.

In reviewing custody criteria, Hodges (1986) included the work of Chasin and Grunebaum (1981), Awad (1978), Musetto

(1980) and Lowery (1985). In making difficult custody decisions, the operative factor was the least detrimental alternative. Custody criteria emphasized the psychological parent, parental maturity, relationship continuity, sibling unity and ability to provide for the child (Fine, 1980).

In managing and conducting the concluding interview, professional differences were recognized. Careful parental feedback could increase acceptance of the report and if feedback was initially given to the lawyers, alternatives to litigation might be explored (Suarez, Weston & Hartstein, 1978). The custody report was written by the person who conducted the evaluation, began with the question asked by the court and summarized the data and sources of information. The report was intended to give positive support to both parents and present the facts, the opinions formed from those facts, and the conclusions. A child advocacy position was preferred when giving expert testimony.

Schultz, Dixon, Lindenberger and Ruther (1989).

This practical guide was intended for professionals in private practice or agencies conducting custody assessments. A behavioral assessment approach was described as detailed procedures that might be replicated to increase the validity of custody assessment. "The evaluation may be seen as 'an acid test' of parenting under stress" (p. 33), which provided

useful information about how well a stressed parent can shield the child from stress.

Multiple variables and multiple methods were applied and informed by recent parenting research. Standardized and equivalent assessment procedures were recommended in assessing "the degree of congruence between a parent's functional ability ... and the individual needs of a child" (p. 29) and the demands of a specific situation. Other variables included in the assessment were parental relationship, parental deficits, past history and potential for child abuse or neglect, child preferences, parental history as primary caretaker, future availability to parent and significant others in the child's life. Predictions were avoided.

Procedural safeguards focused on professional objectivity and impartiality and a counterbalanced sequence of interviews with all parties. The role of the expert was preferred to that of the quasi-judicial role of the court evaluator and was specified in a retaining letter. Contact with lawyers was limited to telephone and written correspondence to arrange interview schedules, the availability of records and limits of confidentiality. Such arrangements were made approximately six weeks before the assessment started (p. 76). "The degree and frequency of contact with the attorney should be carefully controlled and documented" (p. 52). Cases were not discussed over the telephone or without the other side represented.

Unless contraindicated by spousal violence, the first business interview was held with both parents to describe the role of the evaluator, the procedures and their sequence and the extent of confidentiality and privilege. Fees, and the obligation to report child abuse and neglect were discussed. Parents were informed about preparing the child for the evaluation. Consent was obtained for a written release of information from other professionals and for the audiotaping and transcription of interviews. After notes were completed, the tapes and transcripts were erased and served as an evaluation tool rather than actual court evidence.

Parents and children completed questionnaires which elicited primarily factual information and identified areas for further inquiry. Indicators or allegations of child abuse or neglect were referred to trained experts; however, the allegation became a central part of the total assessment (Parry et al., 1986; Awad, 1987).

The interview or observation sequence was determined by the flip of a coin and included biological parents, step-parents and persons living in the home with child care responsibilities. Each child was seen twice, individually with each adult and in a home visit. Lengthy separations and immediate re-unions were discouraged prior to observations, as the stability of behaviour across time and the opportunity of being observed were relevant. Both structured, unstructured and informal observations were included. Observations

focused on specific behaviour to indicate positive emotional attachment, differentiation of self, accurate perception of the child, reasonable expectations, and communication skills. A standardized interview format for families with children under three, and three and over existed. Such interviews took two hours with the time equally divided between five age-appropriate and specified tasks: free play, teaching, cooperative, problem-solving and clean-up. The home visit was the least controlled observation, in which the child conducted a tour for the assessor, and concluded family contact.

The report "details the variables evaluated, the sources of the data, and the reasoning for any finding." (p. 89). In integrating data and writing the report, Schultz et al. relied on behavioral science literature on parent/child interactions and post-divorce adjustment of children, direct observations and patterns which corroborated or converged with other sources of information. The recommended validity measurement was "discriminant validity: the degree to which significant differences between individuals on legally relevant psychological dimensions are correctly identified" (p. 90).

The problem of assigning weights to the different variables recognized and Schultz et al. favoured "sources that sample actual current behaviour because they reduce the number of inferences that must be made in reasoning from data to conclusions" (p. 92). Data from self reports or direct observations in combination with one other data source (Parry

et al., 1986) and a description of factors increased the level of significance in reportable findings and were recommended to support clinical opinion or inference. The suggested minimum criteria for comparing parents was to weigh significant reports on the parenting variable for each parent and favoured parent, or established clear and convincing evidence to indicate a parent represented a danger to the child.

If a custody preference was not clear the factors that contraindicated joint custody were assessed. Conclusions were presented on the quality of the relationships and optimal conditions in a manner which was "remarkably like a recommendation for a specific custody arrangement" (p. 96).

A parallel format was recommended in preparing the report and court testimony. Custody reports were completed before meeting with attorneys to avoid allegations of influence. If an assessment dealt with only one parent, a pre-trial meeting was recommended with the requesting attorney. Meetings with both attorneys were to be conducted as formal depositions. If the assessor was pressured to provide a report, Sch'ltz et al. recommended petitioning the court for a protective order. In court, familiarity with court procedures and professional literature, all relevant documents and supporting data and awareness of the limits of knowledge were recommended.

Skafta's (1987) Practical Guide

Skafta's (1987) practical guide assumed professionals have "a firm grounding in family therapy or casework as the approaches ... techniques are appropriate only in the context of a therapeutic experience, particularly with children" (p. 10). The practitioner was advised to have access to a supervisor or staff trained in child custody. Skafta acknowledged professional values and assumptions and stated assumptions in the context of current social science, cultural and clinical knowledge, experience and wisdom.

Skafta (1987) referred parents rather than interchange assessment, mediation and therapy. As with custody assessment (Schulz, et al., 1989), the evaluator, not the attorney, sets the ground rules for case management and a custody study should not be started later than six weeks before the court date (p. 18). Skafta did not begin an evaluation unless all attorneys and litigants agreed to participate and signed a written agreement or the evaluation was court-ordered. One professional conducted the evaluation and mini-evaluations were avoided.

Fees were negotiated before the evaluation started. Skafta (1987) recommended an hourly fee multiplied by the estimated number of hours of which half is to be paid by a retainer before the first interviews were held. An evaluation of two adults and two children typically took 18 hours (four hours office interviews, six hours home visits plus travel



time, 2 1/2 hours interviewing collaterals, three hours report preparation and 1 1/2 hours for each parent's feedback session) over a one month period (p. 26).

A parental interview was conducted to complete personal data questionnaires and obtain the informed consent of parents before proceeding or releasing information. Each party provided the evaluator with the names of references and collaterals, who have been involved with the family. Interviews with other professionals and child care personnel were primary sources of information, validation checks and reassuring for the parents. An introductory letter preceded telephone contact and a written consent was obtained to interview therapists. When therapists were contacted Skafte (1987) indicated the evaluator could implicitly give the therapist permission to say nothing if the therapeutic relationship needed protection. "Interviews with therapists should focus on primarily on the therapy process in a general way" (p. 129). Information was used sparingly to support key issues and concerns.

Parents were seen jointly or individually and slightly different interviewing approaches were recommended in each instance. Unless violence or loss of parental control were indicated, joint interviews were more difficult but yielded more information. Joint interviews initially dealt with the anxiety of meeting, the past history of the marriage, parenting, children and custody. Individual parental inter-

views were staggered so as no parent was always seen first. Questioning progressed from the parent's childhood and youth to adulthood, marriage, separation, the children and custody. Children were observed in interaction with each litigant. Each child was interviewed individually and if old enough, would be interviewed privately.

Specific questions were given to direct and manage the interview process, which lasted an hour and a half. An impartial, child centered present and future time orientation was recommended. Careful, fast note taking, which recorded verbatim statements about children and/or parents, was recommended. If a parent could not verbalize his/her concerns, the parent was asked to go home and independently or with the attorney's help, write a list of concerns.

Skafta (1987) included a home visit or arranged an alternate non-office location to meet parents in their natural environment. Parallel structures were recommended for home visits to each of the litigants. All family members were asked to be at home and for the first 30 to 45 minutes the family was together. Non-verbal families might be asked to carry out an activity. Each child was seen individually and the child may show the evaluator his/her room, toys or house. Siblings might be seen together at this time.

Observations may include games such as Mommy's House, Daddy's House, Telephone Game, Animal Game, Three Wishes, The Island Game and Draw A Family Game. Meal time invitations

might be included and family interactions are a valuable source of information. The entire family may meet with the evaluator and parents might be seen together for the last 20 minutes to conclude the home visit. Parent/child, child and sibling and collateral (i.e. accompanying, attending or auxiliary) interviews with significant others followed.

In analyzing the information and making a custody recommendation, Skafte (1987) anticipated parental motivations and the non-custodial parent's reaction. Skafte indicated "the best plan for the child was one which maximizes his or her chances for full development of the "self" in the new family structure. Self-development was examined in relation to the physical, the emotional, the intellectual, present and future needs and each litigant's ability to meet those needs. Custody recommendations focused on the age and developmental stage of the child with emphasis on physical, emotional, social and intellectual factors. Counselling for parents, who needed to increase understanding of their children or facilitate marital dissolution, might be recommended.

Questions in each of the above areas organized report information. The report described each person, a history of the case, reviewed each parent's allegations, concerns and feelings about having custody and summarized important questions. Logically described allegations gave structure to the single spaced, six or seven page report. Skafte (1987) recommended focusing on major facts, particularly allegations

and issues related to child development and living arrangements with supporting behavioral indicators.

In contrast to previous models, Skafte (1987) filed and distributed the report two weeks prior to the interpretative interview. The report was sent to each attorney on the same day, or if the evaluation was court ordered, filed in the appropriate court. No litigant or attorney was told about the results of the evaluation in advance of others. Each litigant was entitled to a feedback session with the evaluator after the reports were filed, which provided an opportunity to ask questions, make comments, and obtain potentially helpful information concerning the children. Mediation was discouraged but specific parenting arrangements might be clarified.

## CHAPTER IV

### Analysis and Conclusions

The earliest and most prolific writers on child custody assessment were American psychiatrists in private practice, who functioned as impartial consultants or expert witnesses. Social workers, psychologists and lawyers contributed to the early custody assessment literature; however, social work contributions were difficult to identify because of agency, team or other professional identification (marriage counselling, family therapy).

The need for an integrated legal/therapeutic approach was divided between expanding the role of existing human service professionals or providing lawyers with additional training and the responsibility of guardian ad litem. In this context, custody assessment literature and practice has expanded but the professional role and expertise of social workers, who are key service providers, needs further development and refinement.

In the United States, several custody assessment models originate in Boulder, Colorado (Hodges, 1986; Jackson et al., 1980; Skafte, 1986). Canadian publications are based on work by the Toronto Family Court, the Clarke Institute of Psychiatry and the University of Toronto. They are written and edited, either individually or jointly, by a social worker, Parry (1986) and by a psychiatrist (Awad, 1973).

Even though the United States has been formally dealing with marital dissolution issues longer than Canada, custody assessment models were published concurrently (i.e. Awad, 1978; Solow & Adams, 1977). These were subjective models, which originated from the writer's professional and theoretical orientation, clinical experience and practice wisdom. Except for Goldzband (1982) and Gardner (1982), most were published in journal periodicals and not sufficiently detailed to replicate in practice. The 1985 to 1989 custody assessment models were published as books and could in part or in whole guide a custody assessment. Skafte's (1986) model was based on individual clinical experience. Kaplan et al.'s (1989) procedural booklet reflects collective interdisciplinary practice wisdom and is unique in that underlying assumptions are given but research or supporting documentation is omitted. Other recent models are based on empirical research (Parry et al., 1986) or a systematic review of research or professional literature and an identified theoretical perspective (Hodges, 1986; Marafiote, 1985; Schutz et al., 1989).

Canada has fewer custody assessment publications; however, social work contributions and an interdisciplinary team approach are evident. Assessment models emphasize mediation and support Richardson's (1988) assumption that conflict is not as extreme in Canada as in the United States. In Custody Disputes: Evaluation and Intervention (Parry et al., 1986), Parry was Chief Social Worker at the Toronto

Family Court Clinic, where social workers were primarily responsible for conducting the assessment, and was Co-ordinator and primary editor for the Custody Project (1977-1984). Kaplan's (1988) practical guide included two authors trained in social work and was published by the Ontario Psychological Association. McWhittney has a private social work practice and Landau is trained in social work, psychology and law but practices as a lawyer. Social workers, psychologists and judges also served on the Interdisciplinary Committee which produced the assessment guidelines.

American models are more inclined to refer to custody assessment as evaluation, however, both evaluation and assessment refer to clinical activity. Evaluation implies a quantitative weighing of variables or probabilities (i.e. science), whereas assessment implies a formal process (i.e. tax or property assessment) of selecting relevant variables and attaching weights or value (Oxford, 1971). Evaluation has a past focus and is part of the broader semantic field of assessment, which includes investigation or study and has a present and future focus (Lauffer, 1982). In cases of marital dissolution and in therapy, the past is relevant in understanding developmental issues and affecting change. However, the past cannot be changed and the needs of separating spouses indicate a present and future oriented approach is more appropriate. Therefore assessment is the preferred term for this thesis.

### Assessment Dilemmas and Procedures

Child custody disputes are emotional and potentially volatile situations. Parents continue to function and cope with multiple and cumulative stressors and crises. The law may protect individual rights, however, parents ultimately care for children and emotional vulnerability is increased by the unfamiliar and technical legal requirements of marital dissolution.

Lawyers are retained to provide knowledge of the law, its interpretation and application, and the legal process. Depending on professional style, a lawyer may emphasize individual rights and an adversarial approach or child/family well being and negotiation or mediation (Weitzman, 1985 p.237). Lawyers are in a key position to strategically influence parent expectations, re-direct conflict and ways of attaining a desired custodial arrangement. Lawyers may also prepare clients for assessment and the legal role in custody assessment has been appropriately developed as a procedural safeguard. However, the onus is on both parent and assessor to be informed about an individual lawyer's approach to dispute resolution. The greater advance preparation and notification parents have the more empowered and able they become to constructively benefit from a clinical assessment (Gardner, 1982).



Most custody assessment models include a preliminary meeting with the lawyers to negotiate fees, confidentiality limits, the scope and comprehensiveness of the assessment, the assessor's role and possibly the development and management of recommendations. Skafte (1986) and Schultz et al. (1989) emphasize the assessor manages the assessment process and cautions against a lawyer's potential adversarial position and ability to use innocuous statements out of context or to impeach the assessor in court. Canadian models are more inclined to regard lawyers as part of the team. As mutual professional education and trust developed, clients were better prepared for assessment and the professional barriers were minimized (Chisholm, 1986; Goldzband, 1982; Kaplan et al., 1988; Musetto, 1981; Parry et al., 1986).

### Professional Role

The complexity, intensity, and different therapeutic alliances in working with families experiencing marital dissolution has been documented (Cantor et al., 1983; Parry et al., 1986; Wallerstein & Kelly, 1977). Assessments usually occur over a fixed period but time may not be sufficient to manage and resolve unexpected disclosures. Evaluative stress is added and a past focus or exploration may be regarded as overly intrusive and not legally relevant, or the emotional transfer and counter-transfer may affect objectivity.

Evaluative stress occurs and parent may find the process and issues so painful that the parent discontinues the relationship with the child (Department of Justice, 1983) or de-directs anger to the professional conducting the assessment (non-payment of fees or litigation) (Curran, 1985).

Various professional stances have been recommended so as the client has a consistent boundary within which to act and react. Each reflects the seriousness and significance of the custody dispute and discourages destructive communication. Musetto (1979) and Nicholas and Troester (1979) encourage professional activity to develop constructive parental communication and compromise, responsibilities over rights, and accountability and reciprocity. Chasin and Grunebaum (1981) adopt an empathetic, non-judgmental, facilitative stance that provided alternatives and behaviour which promote family commitment and age appropriate individuation. Goldzband (1982) takes a consultative, non-directive approach. Hodges (1986) recommends a balanced and fair evaluation, extended interpretation and professional presentation. Parry et al. (1986) indicate optimism, a sense of personal security and a process of dealing with conflict that offered structure and security.

In the assessment process, clinicians have potential for parental negotiation, mediation, therapy or direct therapeutic intervention (Berkman, 1984; Bernard & Jensen, Chasin & Grunebaum, 1981; Derdeyn, 1980b; Everett & Volgy, 1983;

Irving, 1985). Knowing when and which clinical role to pursue is difficult to determine and whether a clinician acts as a therapist or not is a matter of preference, timing and competence. Each means of interacting with clients involves a different professional stance and use of professional authority to arrive at different outcome; however, in practice the inter-relationship and legal obligations are less clear.

Turner (1978) indicates that acceptance of the term psychotherapy, therapists and therapy are not suggesting assumptions of disease or pathology but are used to imply accountability, responsibility, training and social authenticity. If the professional is not cognizant of role change and the responsibilities inherent in each role, impartiality and the entire assessment may be jeopardized or lost (Gardner, 1982; Parry et al., 1986). The respective purposes, methods and outcome of mediation, assessment and therapy need to be known and clarified at the beginning of the assessment. Otherwise, the limits of professional authority, activity and confidentiality could become contentious issues in court.

Custody assessment is intended to be therapeutic; however, custody assessment literature varies on the extent to which assessment is therapy or mediation and the degree of interchange that can be accommodated in each process. In marital therapy, assessment is often overlooked and is partner to indiscriminate treatment strategy (Herman, 1982); however,

recent clinical classifications show greater reliance on diagnostic assessment skills. Marital conflict classifications and treatment strategy indicate assessment is more evident, however, the onus is on the professional to be competent and diagnose and classify the types of disputes the desired outcome and the most suitable mode of intervention (Kressel, 1985; Irving & Benjamin, 1987).

Differences between therapy and mediation (Kelly, 1983; Brown, 1985) and mediation and assessment (Chisholm, 1986) have been identified in professional literature and are usually adhered to by psychoanalytic custody assessment models. Family system models of custody assessment proposed by psychiatrists (Musetto, 1979; Everett & Volgy, 1985; Bresee et al., 1986) are more likely to combine therapy and assessment and may continue therapy after the assessment. Social work models of custody assessment distinguish between the process of therapy, assessment and mediation. Unless first negotiated with the parents and lawyers, social work models are less likely to routinely interchange therapy or mediation. Custody assessment models proposed by psychologists are more likely to represent a third form of intervention which combines both mediation and assessment features (Trombetta, 1982).

### Professional Function

Advocacy is an accepted role for lawyers and guardian ad litem (Brieland & Lemon, 1977). Human service professionals also have ethical obligations to advocate for those who are disadvantaged, unequally treated, undermined or denied services or resources. Goldzband (1982) indicates child advocacy has been "the attitudinal hallmark of all specialists in family and matrimonial law" (p. 64). The models proposed by Barnard and Jensen, 1984, Chasin and Grunebaum, 1981, Haller, 1981, Hodges, 1986, Kaplan et al., 1988, Solow and Adams, 1977, and Westman and Lord, 1971 support a child advocacy function. However, advocacy before an assessment is complete and recommendations are formed may compromise professional impartiality. As a result, the professional role has changed from expert child advocate to that of educator and impartial consultant and amicus curie or friend of the court. Emphasis has shifted from investigation and detection (i.e. history taker or judicial aid), which outlines and evaluates parental competence, to that of mediator, educator, negotiator and facilitator of family change (Bresee et al., 1986; Musetto, 1978; Parry et al., 1986).

A clear understanding of the context and professional function contributes to effective clinical practice (Shulman, 1981, 1985). In custody assessment, Litwack, Gerber and Fenster (1980) identified the discovery, punctuation, articu-

lation, analytic and predictive functions of custody assessment and each relates to a specific phase of the assessment activity. In investigation, the discovery function refers to the identification, collection and meaningful articulation of observations and information as isolated events or consistent patterns. In the interviews and the report the professional conducting the assessment can assist the parties, especially children, by expressing (i.e. articulating) emotions and other factors that the court may not be able to access or put in context of other family events.

Specialized knowledge about individual, family and social functioning may enable the professional to appropriately direct questioning, focus attention or highlight factors which may otherwise be neglected or given too little weight by the court. In the synthesis of information and interpretative interviews, description may prevail; however, professionals are able to apply logic and analyze the various aspects of a custody case to add meaning for judges and parents. An understanding of past significant events and developmental history are relevant, however, most assessments adopt a present and future time orientation. Present behaviours and observations inform the assessment and even though the future is unknown, short-term prediction is required to increase the probability of optimal healthy child development and safety. Predictive abilities are sufficiently

accurate to be taken seriously and preventatively applied in practice (Jesness, 1987; MacKillop & Clarke, 1982).

Other professional functions included in the literature were the therapeutic and educational function (Parry et al., 1986), the bargaining chip function of custody assessment to avoid litigation (Ash & Guyer, 1986), the parental empowerment function (Musetto, 1982; Parry, 1986; Westman & Lord, 1981) and the expert testimony function (Barnard & Jensen, 1984; Westman & Lord, 1971, 1980; Haller, 1981; Chasin & Grunebaum, 1981; Goldzband, 1982).

### Contracting

The start of the custody assessment may be seen as the court order (Barnard & Jensen, 1984), or the initial meeting with the lawyers or after a series of pre-evaluation negotiations with lawyers and parents (Hodges, 1986). In each instance, the referral, contracting and intake procedures are important in establishing impartiality, authority, assessment parameters and preventing premature clinical activity. Both lawyers and clients may be provided with knowledge of the appropriate manner of contacting private practitioners. Explicitly stating when the assessment begins clarifies the point at which the assessor is able to consider observations and statements relevant.

Formal contracts, which indicate the assessor's qualifications and professional orientation, are increasingly included at the start of the assessment and in the report to ensure competence and clarify expectations (Bresee et al., 1986; Chasin & Grunebaum, 1981; Parry et al., 1986; Schultz et al., 1989; Skafte, 1986; Solow & Adams, 1977).

A more recent pre-requisite and procedural safeguard, which acknowledges professional competency, is the consent of the professional conducting the custody assessment (Chisholm, 1986). In contrast to private practitioners, agency or team approaches have the agency as the consenting party and the degree of control or choice an individual or professional has to engage in such work may vary. Professionals in agency teams or those paid directly by the court may be less concerned about fees than private practitioners. Explicit understanding about fee payments and retainers and limits of authority prevent misunderstandings and incomplete assessment reports.

In formal contracting as an amicus curie or friend of the court, a professional or agency has access to both parents and children. Even though court-mandated, the assessor does not have unlimited powers of investigation as found in child protection. Most custody assessment models contain parental consent provisions to include significant others or records and release information in the investigation report or court. The extent to which the consent requirements specify sources



of information or disclosure and empower parents or children is not specified (McConnell, 1985). Unless parents are comfortable and have a clear understanding of professional obligations, the process, the purpose and the manner in which questioning relates to the child's well being, the assessment could be regarded as interrogation, inappropriate and overly intrusive.

Custody assessment literature did not initially differentiate between child protection and child welfare assessment (Mnookin, 1975). As custody assessments are becoming increasingly complex with allegations and misallegations of child abuse or neglect, differentiation in child welfare and child protection was noted in professional literature. Beaber (1982) developed parental competency criteria and a decision-making tree to facilitate case management; however, actual documentation, researched case histories or factual data is minimal (Halliday, 1988). Expertise in child protection was acknowledged (Schultz et al., 1989) and professional obligations to report suspected or actual child abuse are increasingly acknowledged in the contracting stage of the assessment (Bresee et al., 1986; Schultz et al., 1989).

The actual determination of mistreatment rests with child welfare authorities and child safety is paramount; however, the custody assessment may still continue within the context of other investigations. The inability to legally substantiate an allegation "beyond a reasonable doubt" does

not mean that an incident did not occur. The assessment considers a lower level of certainty on the "balance of probability" that the incident has or has not occurred (Awad, 1987, p. 539). Severe and particularly vivid accounts of abuse or neglect may be difficult for the assessor to overcome or put in perspective. Thus, familiarity with current research and/or access to professional supervision are integral components of maintaining assessor impartiality.

### Investigation

The quality and value of the assessment largely depends on the quality and manner in which the information is obtained. Custody assessment is not interrogation but an attempt to accurately describe a child's life in the context of his or her family situation. Eliciting valid and sufficient information is a difficult task. The probability of information overload, contradictory, conflicting or inaccurate data and incurring assessment error is high. During interviews the manner and phrasing of questions is particularly relevant as the assessor does not wish to lead or influence. Therapy or compulsive information gathering may overtake assessment or the professional conducting the assessment may emotionally identify or destructively align with a family member (Chasin & Grunebaum, 1981; Skafte, 1986).

The focus of parental interviews has been related in the procedural review; however, particularly significant is the time factor (Beaber, 1982). The behaviours presented may not be in keeping with past or future parental coping patterns. Information may be based on the most recent encounters rather than those experienced over a long period. Parents and children may engage in coaching or misrepresent information to accomplish a desired outcome. Information may be consciously or unconsciously selected and the time and manner in which the assessor becomes aware of such information predetermined. Requests to be seen first may be an attempt to influence the evaluator and require discussion with the other parent to determine the benefits or pitfalls of what may be seen as preferential treatment. Also, professional and theoretical orientation to time and significant material may influence the content and direction of the interview questions.

Information is obtained by direct interviews and observations in structured offices or home interviews or informal settings. Relevant court or personal documents (i.e. diaries, journals) may be included or parental, lawyer and reference questionnaires may be completed. Self-administered questionnaires are useful screening devices to determine if references need to be interviewed or to identify areas which require more attention. Several interviews and observations with all parties individually, in sub-groups and with the entire family

may be necessary to fully appreciate the dynamics and progression in a custody assessment.

Depending on the degree of conflict or anxiety and the safety hazards, initial parent interviews may be held with parents individually, conjointly or with the entire family, including children. In the first parental interview, the professional conducting the assessment can attend to immediate parental questions, allay anxieties and determine attitudes towards unfavorable custody options (Skafte, 1986; Goldzband, 1982). The more the assessor can be receptive to information and demonstrate equal consideration of each parent and a parallel interview sequence, the greater the objectivity and trust that may be established. As the assessment continues, questioning proceeds in relation to the issues, the legislative criteria and the assessor's professional and theoretical orientation of child development and parent/family functioning.

#### Inclusion of Children

While custody determinations are made in the best interest of the child, all custody determinations and assessments do not involve children (Hodges, 1986). The manner in which children are included in custody assessment varies; however, preparation of parents and children and parental consent to include children is vital. Chasin and Grunebaum

(1981), Chisholm (1986) and Hodges (1986) have suggested procedures and the exact wording to be used in preparing adults to involve children in custody assessment.

Children have varying capacities of understanding and accepting information about assessment procedures. As a minimum requirement, the child needs to know the purpose of the interview and the assessors visit and the limits of confidentiality. Comprehension may be questioned in younger children, however, truthfulness and consent especially from children 12 years and older may be expected. The assessor can fulfill several responsibilities in relation to the child (i.e., supporter, educator, resource, advocate) but cannot offer confidentiality nor always protect the child from destructive parental conflict or overburdening with parental decision-making responsibility. Regardless of outcome, parental permission is needed for the child to have a positive relationship with both parents, even if one parent does not reciprocate with the child. Professional mishandling of children may occur and children are to be skillfully interviewed when revealing unresolved or inadvertently stressful material, which cannot be coped with in the time allotted for assessment (Hodges, 1986).

In child interviews, the presentation and wording of the question accounts for the child's vocabulary and development needs. Play techniques and drawing are most appropriate for younger children. Questions and interactional games have been

developed by Gardner (1982), Hodges (1986), Skafte (1986) and Schultz et al. (1989). Directly asking a child's custody preference is usually avoided. Questioning proceeds from the general to the specific, the concrete to the open ended and the less threatening to the more difficult and intense topics. Anxiety laden material is elicited, over a brief number of contacts, in a non-threatening, non-intrusive manner, without creating undue stress (Everett & Volgy, 1983).

Bresee et al. (1986) indicate sexually abused children are to be interviewed with both parents and that play procedures, anatomically correct dolls and skilled interviewees ensure more objective data than repeated child interviews to indicate sexual abuse has occurred. Before the assessor pursues either of these areas of inquiry or methods, consultation is necessary to determine if the abuse has been reported, if the parent is an alleged offender and if the police have begun their investigation. Premature assessment activity could contaminate police evidence, impede due process and place a child at risk. If anatomically correct dolls are used as interview aides, care and training in introducing the dolls is necessary. If dolls are introduced before the child's disclosure, the professional could be seen as leading the child or suggesting events that did not actually happen. The decision to apply a family assessment approach may have to place greater emphasis on risk factors and on the child's

protection and occur in consultation with the child welfare assessment.

Video taping and playroom observation provide first hand "laboratory" information and confirming data on family interaction. For children under three years of age, there are few formal assessment instruments, other than developmental measurements and parental reports. Children with well developed language and social skills can utilize projective techniques (Breesee et al., 1986). Toys are projective or interactional in nature and the only instruction is that the family play together for one hour.

Parental influence is minimized in family interviews with the use of genograms and interactional tasks such as infant caretaking, play and setting limits. Separation and reunion of toddlers and older children and discussion of the divorce and their opinions and wishes may occur. Barnard and Jensen (1984) include interactional tasks, which are relevant to family size and age. Hodges recommend's Skafte's (1985) play evaluation techniques including Mommy's House, Daddy's House, Calling Mom, Calling Dad, Imaginary Animal Play, Three Wishes, The Imaginary Island Game, and The Children's Apperception Test (Breesee et al., 1986) for children three to five years of age. Techniques for children five to eight years of age include: In Whom Can You Confide, Best and Worst Features of Living with Each Parent, Draw your Family and Sentence

Completion. The last three games are also used with children 10 and older.

GAP (1980, p. 923) provides guidelines for the joint parent/child interview (Hodges, 1986). Schultz et al. (1989) have designed five time-limited, structured tasks and activities for the parent/child observations. These activities focus on behaviour which is consistent with research findings on good and deficit parenting. The most significant observational data, focuses on response patterns and the quality of the interaction and non-verbal behaviour (Hodges, 1986; Schultz et al., 1989).

### Family Approaches

Few assessment models start with conjoint or family interviews; however, a theoretical systemic perspective may direct the assessment. Introduction of family systems theory meant that the problem was no longer identified as pathological or intrapsychic but as conflict resolution difficulty, which impacted upon the entire family. Families were seen in dyads and triads of sibling groups and parent/child combinations. Hierarchical family relationships were reinforced and the child's preferences were considered; however, decision-making responsibility remained with the parents. Systemic assessments focused on inter-generational issues, parental/family self-determination, conflict resolution and current



situations. Description was enhanced but explanation and prediction were not encouraged in custody recommendations.

More recent literature acknowledges the value of a systemic, family oriented approach in marital dissolution and in custody disputes. Interviews are held in "safe" office settings to facilitate "controlled encounters" and structural family therapy has been recommended to facilitate family re-organization (Everett & Volgy, 1986, 1983; Guerin et al., 1987; Irving & Benjamin, 1986; Parry et al., 1986; Issacs et al., 1987; Minuchin, 1974).

The systemic approach also increased assessment complexity and the amount of information available. Co-therapy and team approaches gave parents and children more options, and increased support for professional actions and verification of findings. Interdisciplinary assessment teams became increasingly specialized with separate parent/child therapists but may prove too expensive for rural areas or communities with limited economic or professional resources and competing priorities.

#### Office/Home Visits

Clinically, psychiatry and psychology are office or agency based practices (Hodges, 1986), in which the setting represents neutral territory and facilitates controlled encounters. However, custody assessments also require less

formal, direct interactional and observational information on parent/child functioning, in which social work expertise has been recognized (Awad, 1978; Gardner, 1976; Haller, 1981; Krishner, 1979; Lytle-Vieira, 1987; Solow & Adams, 1977).

In contrast to psychiatry and psychology, social work practice traditionally interacts with agency, client, and community, provides concrete service and examines behaviour in relation to the context in which it occurs (Richmond, 1917; Lytle-Vieira, 1987). Interview locations vary according to setting and require a flexible and broad repertoire of interviewing skills (Lytle-Vieira, 1987). Professional stances in home visiting may be the "tough, investigative researcher, who is endeavouring to uncover all the 'dirt', 'a friendly guest' or 'sanitation inspector'". However, in a custody assessment, the intent is to meet parents in their natural environment and to increase understanding of the family's functioning and the child's life situation (Skafte, 1986, p. 73). Social control is not the intent of a home visit in a custody assessment.

#### Inclusion Of Significant Others

The expanded investigation (GAP, 1981) broadened the information base and increased external, confirming sources of professional observations but was not immediately accepted into practice. Gardner (1982) regarded secondary sources of

information as exaggerated and of limited usefulness. Eventually information from references and collaterals was valued for its ability to confirm parental information or professional observations.

The need to interview all references may be assessed with initial questionnaires and the significance of the matters to be discussed. Such information may be obtained by telephone, in-person interviews, written request (letter, questionnaires, (Everett & Volgy, 1983; Hodges, 1986; Solow & Adams, 1977), or psychological testing (Chasin & Grunebaum, 1981). To reduce the possibility of misinterpretation, collateral sources are asked to communicate information in writing for inclusion with the custody report or if unavailable, are requested by the court.

Most models require parental consent to include significant others or information from secondary documents or indirect sources, such as physiological examinations, psychological tests, police or school records, diaries. Loyalty ties and the possibility of court testimony may prevent parental references from becoming involved or parents may be reluctant to involve a particular person or discuss a specific period or event. Information deficits may be unavoidable.

Gardner (1982), Hodges (1986) and Skafte (1986) offer some protection to collaterals, therapeutic relationships and therapists in reporting and court testimony. The co-operation of legal counsel may be enlisted, however, the deficit may

become a limitation of the assessment, which the court may pursue (Gardner, 1982). The assessor can request the judge not require testimony from the therapists in court, but in chambers, to protect the child's welfare (Hodges, 1986).

Psychological testing is a source of confirming data, which was initially obtained as a consulting service and not routinely included in custody assessments (Goldzband, 1982; Parry, 1986; Solow & Adams, 1977; Westman & Lord, 1971). Psychological tests may substantiate or verify clinical behaviour or self-reports, add to the understanding of the intrapsychic life of parents and children (Barnard & Jensen, 1984), establish intellectual functioning, clarify the child's developmental norms or attitudinal differences, confirm parental psychopathology, paranoid thinking or personality characteristics (Bresee et al., 1986; Parry et al., 1986).

The following tests have been applied in custody assessments to evaluate interactive, projective and personality dynamics: Kinetic Family Drawings (Bernard & Jensen, 1984; Burns, 1982; ), Thematic Apperception Test (Hodges, 1986), Minnesota Multiphasic Personality Inventory (Ollendick & Otto, 1984), MacAndrews Alcoholism Scale (Ollendick & Otto, 1984), The Family Bond Inventory (Bernard & Jensen, 1984; Fullmer, 1982). Children with special needs may be asked to participate in developmental testing or game-oriented activities, such as Talking, Feeling and Doing (Gardner, 1973; Barnard & Jensen, 1984).

In more complex cases, psychological testing procedures are routinely incorporated (Bresee et al., 1986). The Parent-Child Interaction Test (McDermott et al., 1978) has been applied and found useful but reliability is questioned (Hodges, 1986). In Bresee et al.'s (1986) model, psychological tests differentiated victims of child sexual abuse by measuring the child's self concept, depression, parental relationship, body image and anxiety level. Children 6 to 12 years of age were given The Children's Manifest Anxiety Scale and the Piers Harris Children's Self Concept Test.

Schutz et al. (1989) report "that three quarters of experienced professionals use psychological tests in custody evaluations" but "many inferential leaps are required to connect them (sic a traditional battery of clinical tests of personality traits) with parental competencies we are attempting to measure" (p. 67). In evaluating psychological tests for use in custody assessment, "no tests directly measured the domain of functional parental abilities ... there is insufficient evidence to correlate these attitudes with actual behaviour ... only one test (sic The Bricklin Perceptual Scales) has reliability and validity data for custody evaluation" (p. 69). Otherwise, recognized tests administered by a qualified tester were useful for explaining observed defects in parenting and suggesting recommendations and providing information about a child's special needs.

The Bricklin Perceptual Scale (Bricklin, 1984), has been specifically designed for custody assessment purposes with children six years and over; however, children as young as four years of age have been tested. The critical factor is the child's ability to understand test instructions and to answer the 64 questions and cards. This test measures the child's unconscious or non-verbal perception of each parent in the area of competence, supportiveness, follow-up consistency and possession of admirable traits. Parental responses are compared on pre- and post-assessment measures.

As allegations become more complex and as custody assessment becomes an established clinical practice, standardization in the use of psychological tests, observation coding and videotapes, is expected to increase (Trombetta, 1982; Breese et al., 1986). Such technological developments are apparent in the identified custody assessment models; however, custody assessment is more than a technology. Standardization does not give the opportunity for individualized participation nor the subjective reflection that enables the process to be meaningful to the parents and children. Clinical skills in interviewing a diverse clientele, conflict resolution and applying professional knowledge to arrive at clinical judgments remain essential to effective assessment that meets parent and the court needs.

### Custody Recommendations

Trends in judicial custody awards are discussed in Chapter I. In custody assessment, controversy exists over the inclusion of recommendations and the extent to which recommendations usurp the judge's function or are inappropriate (Melton, Petrilla, Pythress & Sloboggin, 1987; Schultz et al. (1989). Non-inclusion may be seen as an abrogation of professional responsibility (Gardner, 1982); however, unless specifically requested in the court order, recommendation inclusion is optional. On the basis of information and observations received during the assessment, existing theories of human behaviour and minimum empirical research, the assessor integrates a substantial amount of information, weighs multiple variables, and exercises clinical judgment to formulate, not the final custody determination, but an optimal custody arrangement for a child. Custody recommendations may be supported by clinical findings, systematic inquiry, behavioral indicators and theoretical or research knowledge.

Most assessment models include recommendations, which are based on the legislative criteria of The Best Interest Doctrine. The following appear to be the operative decision-making criteria in custody disputes: primary care giver (Goldstein, Freud & Solnit, 1973), psychological parent (Awad, 1973; Goldstein, Freud & Solnit, 1973; Parry et al., 1986; Hodges, 1986; Musetto, 1979; Chasin & Gruenbaum, 1981;

Nicholas & Troester, 1979), age and developmental stage (Awad, 1973; Westman & Lord, 1970; Chasin & Gruenbaum, 1981; Hodges, 1986), continuity of care (Awad, 1983); child's preference (Awad, 1973; Goldzband, 1982, Hodges, 1986), comparative parental fitness/competence or suitability (Awad, 1973; Beaber, 1982; Goldzband, 1982; Group for the Advancement of Psychiatry, 1980; Everett & Volgy, 1983), mental fitness (Awad, 1973; Hodges, 1986), extra-ordinary circumstances (Hoorwitz, 1982), willingness to facilitate access by the non-custodial parent (Awad, 1973; Chasin & Grunebaum, 1981; Hodges, 1986). The Least Detrimental Alternative appears to be the operative decision-making criteria in more complex custody disputes.

In child protection (Meddin, 1984) and custody assessment (Schindler, 1985) criteria similar to those found in The Best Interest of the Child influenced clinical social work decision making. In child protection, the degree of risk, support systems and the severity of abuse were given greater consideration before making a child placement recommendation.

Custody assessment recommendations often consider issues, such as homosexuality or psychiatric illness. In this context, past parental conduct may not be legally admissable and current research is not conclusive enough to contraindicate child placement on the existence of either (Awad, 1978; Hoeffler, 1981; Miller, 1979). Most assessment models rely on divorce-related parenting research but few models directly



incorporated research on parenting (Chasin & Grunebaum, 1981; Hodges, 1986; Schultz et al., 1989). Research indicates that parental styles differ according to gender (Lewis, Feiring & Weinraub, 1981), good parenting is not dependent upon marital status (Hodges, 1986) and children placed with the opposite sexed parent may be less well adjusted than children placed with the same sexed parent (Stantrock & Warshak, 1979).

Shultz et al. (1989) integrate research in "positive and deficient parenting" and "authoritative as opposed to permissive and authoritarian parenting styles" (p. 18) into their custody assessment model. Paternal contributions to child development and as relevant to marital dissolution and custody are increasingly frequent in American literature (Lambe, 1986; Cath, Gurwitt & Gunsberg, 1989), however Canadian literature and research (Morrison, Thompson-Guppy & Bell, 1986; Efron & Rowe, 1987) is less integrated into custody assessment models and recommendation criteria.

Formulating custody recommendations requires an intense trade off between values and their relative weights with the negative impact of the less desirable characteristics being weighed against the more desirable characteristics (Hodges, 1986, p. 136). Every situation is different and exercising professional judgment is even less attractive when combined with possible misallegations (LoPiccalo, 1985), fear of court testimony (Hodges, 1986) and the need for analytic and conflict management and resolution skills (Slavin, 1969;

Brieland & Lemon, 1977; Everett & Volgy, 1985). Difficulty in distinguishing fact from fiction or fantasy and synthesizing contradictory information is acknowledged (Lewis, 1972), however, even experts may not have all the answers.

When an assessor "doesn't know" (Chisholm, 1986) or may not be able to make a clear-cut custody recommendation, assessment findings and the advantages and disadvantages of each custody alternative are to be reported as precisely as possible. Assessment recommendations tend to avoid long term predictions and cannot account for or unforeseen happenings.

Assessor Involvement may end after the home visit (Schultz, 1989) or the interpretive interview; however, continued professional contact may be beneficial (Haller, 1981). Recommendations may include review provisions to prevent unwarranted re-assessments and account for changing life circumstances. Solow and Adams (1977), the only custody assessment model to include binding recommendations, contained a 6 or 12 month review option at the parents discretion. Westman and Lord (1980) include a follow-up plan for periodic counselling and re-evaluation of the custody arrangement. Everett and Volgy (1983) allow for a limited period of availability after completing an assessment to deal with questions or concerns raised as a result of the assessment process or facilitate revised family relationships and provide for follow up or re-evaluation at 6, 12 or 18 month periods.

Specific referrals for therapy may be regarded as

compromising and inappropriate for an impartial expert (Bernard and Jensen (1984). If conflict is intense, specificity in recommendations (i.e. times and places) is recommended to reduce or avoid continuation of parental conflict (Musetto, 1979). Custody recommendations that avoid loaded evaluations and are based on careful interpretation, explore custody alternatives and support parental integrity and self-esteem reduce the likelihood of litigation (Hodges, 1986).

#### Reporting: Oral and Written

Endings are difficult in meaningful relationships and in custody assessment the ending is an intense experience. Both parents need to be well informed of the information, findings and recommendations. The timing (Haller, 1982) and manner in which the findings are disclosed influence the parent's approach to litigation and capacity for change (Bernard & Jensen, 1984; Westman & Lord, 1971). Careful feedback, in which the assessor can answer the non-custodial parent's questions, may increase parental acceptance and also reduce the likelihood of litigation (Gardner, 1982; Hodges, 1986).

Except for Schultz et al. (1989), custody assessment models include an interpretive or final interview, in which parents, individually, jointly, with lawyers and/or older children are informed of findings, interpretations, conclusions and recommendations (Awad, 1978; Gardner, 1982;

Jackson et al., 1980; Warner & Elliott, 1979). Informing parents of the assessment outcome in a manner that facilitates change is possibly the most demanding clinical responsibility. Unlike other parent/child separations, informing the parent, who is not recommended for custody is a unique and potentially volatile and hostile situation (Warner & Elliott, 1979). The interview is a turning point from professional neutrality and one or both parents may experience feelings of loss. Only Skafte (1989) forwards the assessment report two weeks prior to the interpretive interview.

Solow and Adams (1977) conduct individual interpretative interviews as the content relates to each parent. Jackson et al. (1980) and Haller's (1981) practice of initially presenting assessment findings to the recommended non-custodial parent has not been maintained; however, the potentially destructive impact of a custody assessment is increasingly recognized (Kaplan et al., 1988). Haller (1981) also recommends that a placement committee, including parents, meet and formulate plans for the child. Westman and Lord (1980) preferred conjoint parental meetings. Parry et al. (1986) included a case presentation to the Custody Project Consultation Group before the final meeting with counsel and presentation of the final written report. If parents cannot agree to a joint interview, individual interviews may be necessary (Parry et al., 1986).

Suarez, Weston and Hartsteen (1978) and Kragman's (1979) recommendation that feedback initially be given to the two lawyers without parents present has not been consistently incorporated into custody assessment procedures. Awad (1978) preferred marathon meetings of lawyers, parents and children but will discuss findings with both parents and in a second, separate interview have the parents or the assessor inform children of the recommendations. In keeping with the empowerment function, assessment models which have a systemic family perspective are likely to discuss findings first with parents and secondly with lawyers or the court or include lawyers in formulating custody recommendations.

Initially informing lawyers and then both parents in another interview of conclusions appear to be developing trends; however, the implications have not been researched to determine the effects. The initial disclosure of assessment findings to lawyers is to be distinguished from giving lawyers the responsibility of informing parents of the assessment findings. The former may provide greater opportunity for legal negotiation and enhance the "bargaining chip" function of an assessment, but the opportunity to reduce parental anxiety, give parents further opportunity to correct any misinformation, or potentially reach a self-determined settlement may be reduced.

As in formulating the custody recommendation, a preliminary step in report writing is to mentally and conceptually

determine how the legislative and clinical criteria relate to feasible custody options. The process and the results are presented in a logical and systematic manner which accounts for and explains conclusions or recommendations.

### Written Reports

The judicial order determines report direction, however, content, quality and usefulness vary from case to case and between courts (Law Reform Commission of Canada, 1975). Haller (1981) provides written reports upon request and unless fees are outstanding, a written report is presented to the court. Custody reports may vary from a three page letter format (Gardner, 1982; Bernard & Jensen, 1984) to a 10 to 30 page report. Goldzband (1983) recommends 15 pages for report length and establishes assessor responsibility for the content, style and organization of the report. Awad (1978) does not recommend short reports but Skafte recommends the report be kept as short as possible (7 to 10 single-spaced typed pages). Fear exists that shorter reports will increase the need for court testimony and decrease professional credibility. However, professional bias and increased credibility will result if clinical reasoning and actions are grounded in rational, systematic and direct observations of all parties with at least two converging sources of informa-

tion and preferences acknowledged (Hodges, 1986; Parry et al., 1986; Schultz et al., 1989; Whitman, 1985).

Skafta (1985) notes the pull between therapy and assessment in report content and style. Therapists turned assessors frequently include short story examples and information to support clinical interpretations. Similarly, psychoanalytically trained assessors or assessors who function as judicial aids may write lengthier, descriptive, historical reports, whereas those trained in more recent family systems approaches may provide more analytic and issue specific reports (see Table 10).

Parry et al. (1986) and Hodges (1986) prefer the professional conducting the assessment have responsibility for writing the report. Private practitioners must write reports, however, the team reporting process may involve each professional writing the respective section of a report or the team supervisor writing the report in its entirety (Breese et al., 1986). The latter is intended to reduce bias and increase objectivity, however, if a working consensus is not obtained, validity and reliability could be questioned and the court may be presented with different professional opinions that are confusing (Awad, 1987; Breese et al., 1986).

Table 8

Report Content Summary**Awad (1978)**

Sources of Information  
 Interview Schedules  
 Supporting Documents or Reports  
 Current Issues and Parties  
 History of Marital Dissolution  
 Parental Evaluation  
 Recommendations and Rationale

**Hodges (1986)**

Custody Question  
 Interview Schedules  
 Other Documentation  
 Data Summary  
 Rationale  
 Recommendations

**Parry et al. (1986)**

Assessor Qualifications  
 Method of Assessment  
 Prior Circumstances  
 Parent Profiles  
 Marital History  
 Employment History  
 Child Developmental  
   History  
 Parent Child  
   Observations  
 Test Results  
 Conclusions  
 Recommendations  
 Other

**Kaplan et al. (1988)**

Referral Sources  
 Reason for Referral  
 Assessment Objectives  
 Assessor Qualifications  
 Assessment Process &  
   Sources of Information  
 Family History  
 Children  
 Summary  
 Alternative Parenting  
   Arrangements  
 Rationale for  
   Recommendations



Beaber (1982) and Schultz et al. (1989) deal with the relevancy and weight of information in a behavioral assessment. However, the process of synthesizing information and producing assessment recommendations has not recognized the shift from descriptive, psychoanalytic and systemic models to action-based, socio-behavioral models. This also involves shifting from description and inferences to analysis, and concisely presenting relevant information in keeping with legislative guidelines for the child's best interest.

In determining the information content of a custody report, professional orientations and pre-existing positions affect what and how statements are made. Research references may be useful, however, irrelevant details and technical or professional language are not recommended. The report presents the facts and the conclusions and should support parental strengths without being biased to support conclusions (Hodges, 1986; Westman & Lord, 1971; Parry et al., 1986).

The report usually ends professional involvement, however, court testimony may be requested and actualize the greatest deterrent to professional involvement in custody assessment. Fear of court testimony is based on lack of knowledge about courtroom performance, procedure and legal bargaining styles (Gardner, 1985b; Hodges, 1986). In court, only professionals designated as expert can offer opinions and make inferences, however, attention usually focuses on the report and professional credibility.

As a result of a professional assessment, there is a 90% probability judges will concur with professional recommendations and changes in custody or access will be recommended (Ash & Guyer, 1984; Parry et al., 1985). Judicial acceptance of custody assessment reports increases with the following:

1. a thorough evaluation of alternative caretakers and child,
2. a well written report with conclusions,
3. inclusion of the psychological parent concept and legislative best interest guidelines,
4. recommendations on finances and access are included (Haller, 1981), and
5. comprehensiveness and thoroughness (Haller, 1981; Frutcher, 1982).

As custody assessments become more complex with issues such as misallegations of abuse and termination of parental rights, judicial need for clear and convincing evidence and competent professional opinion increases (Goldzband 1982, 1983; Bresee et al., 1986; Benedek & Benedek, 1972).

## CHAPTER V

### Significance for Social Work

As professions other than psychiatry become involved in child custody assessment, each profession brings a unique clinical orientation and practice contribution. Professionals are responsible for providing a comprehensive assessment and do so by various means and in various settings according to available resources. Team approaches are expensive but provide an interdisciplinary perspective and share assessment responsibility. Team consensus is required for the final custody recommendations. In contrast, independent or private practitioners are solely responsible for managing the assessment process, collecting legally admissible evidence and accounting for assessment procedures and recommendations.

In each setting, practice principles exist but effective custody assessment requires competence in procedural, diagnostic and therapeutic aspects of professional intervention. Competence in one aspect of assessment does not necessarily mean competence in the other, however, professional training and practice uniquely prepare social workers to conduct competent and effective assessments. Professional values, an eclectic approach, applied knowledge of normal and abnormal individual, family and social functioning, clinical interviewing skills and intervention in complex, emotionally intense, interpersonal situations are the essence of social

work. Such expertise is increasingly recognized in court however, greater practice awareness of procedural issues and the requirements of legally admissible evidence will enhance professional credibility.

Social workers are accustomed to applying a dual focus to meet court and family needs. Child protection, child welfare and child custody assessment involve stressful child placement decisions and require court endorsement. In child protection, social controls are necessary. Treatment and control functions may operate independently or simultaneously if an open and collaborative atmosphere is established and the respective responsibilities, roles, authority, purpose and procedures are clarified with informed consent (Maidman, 1986).

In contrast, child welfare and custody assessment require a constructive and therapeutic application of professional authority. In child welfare, professional involvement is supportive of parental interest in the child, however, a paucity of clear cut, research based intervention guidelines" exists (Hurley, 1985). In cases of marital dissolution the intent is to facilitate the child's chances for optimal development in a bi-nuclear family. However, each profession is developing assessment models based on a variety of theoretical positions without the benefit of sufficient research or the development of policies, procedures and minimum practice standards.

Differences exist between the professions and within individual professional practices. Internal inconsistency may exist in an assessment by one or two workers within the same or different professions or in re-assessments. Unless practitioners are clear on the implications of each theoretical and practice perspective, different variables may be emphasized and "subjective and capricious interpretations and diverse practice decisions may occur in the same case and the child's best interest may not be assured" (Charnas, 1985, p. 66).

In child welfare and custody assessment, the problems, the population served and the means of intervention define a specialized area of social work practice. Custody assessment appears to be a re-definition of social work specializations in child welfare and marriage and family therapy to meet the emerging needs of an identified, high conflict sub-group within the total population of divorcing persons. Legal accountability and role clarification necessitate the articulation and application of the theoretical underpinnings of practice and the respective expertise of each profession.

Theories, which guide practice, are difficult to compare on the basis of one dimension but if several dimensions are available practice differences emerge. In custody assessment, each profession draws from the same body of theoretical and research knowledge. However, professional orientations emphasize different aspects of human nature (i.e. emotional, sexual, cognitive, behavioral, psycho-social), define the

problem in relation to that variable and adopt procedures which focus clinical observations, explanations and decision-making criteria on the selected variable.

Each profession "underscores the importance of early attachment however, ... each provides a different picture of early emotional bonding between infant and caretaker, a different mechanism for the process, a different function within socialization and a different understanding of the role of the caretaker. Some are inconsistent with professional social work values (Hurley, 1985, p. 8).

In clinical practice, the traditional psychoanalytic, medical model conducts an evaluation "on a person", equates the problem with pathology, and requires objective, study and diagnosis before treatment begins. Early models of custody assessment were developed by psychiatrists and reflect the influence of psychoanalytic theory. Custody assessment was individually oriented and emphasized personality, psychosexual stages of development and individuation. Assessment focused on the parent and early childhood relationships, especially the mother-infant, the satisfaction of drives and the early stages of life as significantly impacting on psychological development, sexual identification and the capacity to form significant relationships. Parental difficulties were seen as personality deficits. Conflict was viewed as intrapsychic and originating from one's past and irrational or unconscious motivation.

The professional role preferred by many psychiatrists was non-directive, impartial, objective and accommodated non-adversarial, expert legal requirements. Assessments were lengthy and full information disclosure conflicted with therapeutic responsibilities. Recommendations were likely to include re-evaluation, follow-up or therapy and were related to parents in an interpretive interview. In court, expert witness status and inference from theory were necessary to provide opinion but unless substantiated, professional credibility decreased. Spouses engaged in custody disputes did not necessarily have psychiatric disturbances but many legitimate and substantial concerns that have not been recognized by the legal system (Illfield, Illfield & Alexander, 1982; Hodges, 1986; Parry et al., 1986).

In response to client needs and clinical adaptation to the legal setting, assessment models shifted from the traditional medical model to the socio-behavioral and interactional models. Psychologists proposed rational, behavioral assessment models (Marafiotte, 1988; Schultz et al., 1989; Barnard & Jensen, 1989) or models based on integrated object relations and Piaget's cognitive theory (Hodges, 1986). Emphasis shifted from the past to present and from the mother-child relationship to parental ability to positively reinforce and model appropriate behaviour. The child's capacity to learn became relevant and assessment focused on behavioral indi-

cators of parent/child functioning, reinforcement and punishment, logical consequences, intellect and cognition.

Scientific procedures were incorporated and in court and in assessment, justice was to be perceived and actually done. Assessment required parallel data collection procedures for each parent and incorporated research findings. Data collection became more technical with psychological testing, coding, standardization and control of the clinical observation and interview setting. The professional role became more directive and emphasized teaching and role modelling. The interpretative interview or final meeting with parents became an opportunity to provide feedback and education and correct misinformation. If Schultz et al. (1989) is indicative of future trends with standardization and omission of the final parental interview, family benefits become less apparent and the court rather than the child's parents appear to be the primary benefactors of the assessment.

The social work profession is least represented in American literature but prominent in Canadian literature. Custody assessment models designed or influenced by social work are crisis oriented and based on action theory, which is most successful with highly anxious couples in crisis (Herman, 1982). Assessments are conducted with parents, who actively contribute to the consultation process, inform custody recommendations and facilitate the development of a parenting plan.



Social workers deal with the external, interpersonal conflict and if the environment supports conflict resolution and limits destructive interaction or communication, parents are seen as capable of reaching self-determined agreements. When this is not possible, assessments may explicitly define issues and recommendations to facilitate conflict management or resolution or legal negotiation. Unlike family therapy assessment models, social work assessment models are less likely to experientially resolve conflict during the assessment and more likely to make recommendations which may facilitate legal negotiation or parental education and conflict resolution. As a result, parents benefit from the therapeutic process and the courts increasingly value the bargaining chip function of custody assessment (Ash & Guyer, 1986; Richardson, 1988).

In contrast to psychoanalytic and behavioral assessment models, social work models provide a current, holistic, psycho-social assessment perspective. The individual, the marriage, the family and the social context are relevant. Child development is seen as a product of the interaction between the child and his/her caregivers and the opportunity provided by caregivers and the community. The weighing of separate variables is not as relevant as all factors are taken into account. Past history is relevant in understanding development and as related to the child, however, current functioning, developed patterns of individual and family

copmg, regenerative resources and family relationship continuity for the child are emphasized (McCubbin et al., 1980).

In social work custody assessment models, the professional role is directive and action-oriented. Parents are presented with an opportunity to discuss custody and what is conceptually and perceptually understood and realistic. Issues may be re-framed, an environment for change may be created or parents may be prepared for therapy or mediation in a manner which focuses on the child's needs and facilitates family reorganization (Rosenberg, 1985).

In the data collection process, social work models of custody assessment rely on clinical observations and do not emphasize standardized testing and structured tasks to the extent found in psychological assessment models. Social workers employed in agencies or teams may have greater opportunity than independent social work practitioners to consult with other professionals and incorporate standardized testing and technology (i.e. tape recorders, audiovisual resources) into practice. However, the introduction of such changes need to be procedurally balanced with informed consent and retain the opportunity for individualized expression and spontaneous parent-child participation. Quantifying and defining units of analysis, socio-metric testing standardization of observational interviews, behavioral indicators, and technological aides could improve the collection of believable

and court-admissible evidence. As such, child custody assessments by specialized social workers could potentially replace routine child protection and child welfare investigations. Professional credibility could be increased and both families and the court could benefit from increased social work involvement.

In conclusion, this analysis does not attempt to reinvent the wheel nor propose the adoption of a single child custody assessment model. This analysis does define the clinical field and emerging specialization of child custody assessment in cases of marital dissolution. The presenting problem, the client group, the means of intervention and the outcome are presented in a manner that has relevance for the child, the family, the court and the practitioner. The number and kinds of custody assessment practice models have been identified and the deficits recognized by Parry et al. (1986) have been addressed. In the process, the significance of practice models and the elusive links between theory and practice have been clarified. Social work contributions and expertise have been evident in the therapeutic and technical aspects of custody assessment and are presented in a manner that may increase the recognition of professional expertise, inform independent social work practice or interdisciplinary co-operation and facilitate effective use of scarce professional resources in rural communities.

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## APPENDIX 1

Definitions

**Access:** A separate but related issue in a custody dispute, which if not contraindicated by the possibility of harm to the child, is a right of the child and non-custodial parent. Access is implemented through parental visitation and receipt of information regarding the child's health, education and welfare. (Visitation in American literature).

**Assessment:** a formative, summative and consultative process of gathering information, interpreting data, formulating and communicating recommendations and arriving at expert professional judgments, which involves the application of practice skills and knowledge (Hodges, 1986).

**Bi-Nuclear family:** a family unit which consists of two households or sub-systems (ie. maternal and paternal), which become the nuclei of the child's family of orientation (Ahrons, 1980, p. 439).

**Child of the marriage:** a child who is at the material time a) is under 16 years of age, or b) is 16 years of age or over, and under their charge but unable by reason of illness, disability or other cause to withdraw from their charge or to obtain the necessities of life (The Divorce Act, 1985).

**Child custody:** the care, control and upbringing of any or all children of the marriage and any other incident of custody (The Divorce Act 1985). Included are physical and

legal decision-making rights and powers awarded to persons with the status of parents and the authority to raise children (Silverman and Abella, 1983).

**Child custody assessment:** a court ordered individualized, comprehensive, professional assessment of a child and family experiencing marital dissolution, which provides recommendations on feasible present and future parenting plans and child placement.

**Clinical social work:** the professional application of social work theory and knowledge in direct one to one, one to family or one to group basis to enhance and maintain psychosocial functioning. Included are interventions directed to interpersonal interactions, intrapsychic dynamics, life support and management issues, which may consist of assessment; diagnosis; treatment, including psychotherapy and counselling; client centered advocacy, consultation, and evaluation (Dorfmann, 1988).

**Collaterals:** professionals who are consulted in a child custody assessment to provide information related to the child, parents, family and the nature of their involvement.

**Custody order:** a judicial directive that grants permanent or interim custody to either or both spouses or any other person or party and may include access and information rights re: health, education and welfare of the child (The Divorce Act ;1985, Section 16-1, 16-5).

**Divorce proceeding:** a court proceeding in which either

or both spouses seek the legal end of a marital relationship.

**Intervention:** a planned, purposeful, time-limited activity that may begin with the client's informed consent or a court order.

**Joint custody:** a relatively new custody award in which both parents have legal rights and responsibilities to the child or children, who may have one primary residence and visit the other parent, alternate primary residences with each parent or the child stays at one residence and the parent's may alternate (ie. bird-nesting).

**Marital dissolution:** the breakdown of a voluntary, intimate and sexual relationship between two individuals, usually male and female, which was traditionally expected to last until death and exclude other marital partners.

**Maternal custody:** the mother has legal and physical custody of the child or children and the father may have access rights, which may be accompanied by decision-making privileges when the child is in his custody.

**Mediation:** an agreement oriented process with an impartial third party, whereby families were helped to identify and clarify issues between them and assisted in coming to an agreement on some or all of the issues.

**Comprehensive mediation:** includes all matters arising from marriage breakdown. Mediation may be open, in that information from the process could be used as court evidence, or closed, in which all proceedings were confidential and only

a final agreement is presented to the court.

**Model:** a pictorial, descriptive or mathematical abstraction which uses metaphor to symbolize and represent a perceptual phenomena and stipulates some correspondence and some verifiability between model and reality (Hearn, 1952).

**Parenting:** the ability of a person, regardless of gender, to nurture a child's growth and development and equip the child with the necessities of life.

**Paternal custody:** the father has legal and physical custody of the child or children and the mother has access rights, that may be accompanied by decision-making privileges when the child is in her custody.

**Professional orientation:** a view of the person and society as preferred and depicted in the values and purpose of a profession and agreed upon by the members of a profession.

**References:** extended family members, friends, employers or acquaintances of the parents or parties in a child custody assessment, who have been invited to participate in the custody assessment by the parents or the assessor.

**Social development:** the process through which people become increasingly able to interact competently, reciprocally and responsibly-that is with recognition of other's needs- in an increasing array of social contexts (Maas, cited in Yelaja, 1985, p. 220).

**Social functioning:** the ability of people to perform the

tasks of daily life and to engage in mutual relationships with other people in ways that are gratifying to themselves and to others and meet the needs of an organized community (Flack, 1989).

**Split custody:** one parent may receive decision-making privileges and the other parent may receive physical, care and control of the child or children or if there are several children in a family, the children may be separated by age or affiliation and live with in different residences.

**Theory:** a systematic explanation for the observed facts and laws that relate to particular aspects of life which consists of a conceptual scheme, a set of propositions stating relationships between properties or variables and a context for verification (Leming, 1986, p. 35-37).

**Theoretical orientation:** a conceptual guide, which orders perspective and originates in the behavioral sciences and is applicable to a wide range of human conditions (Siporin, 1972, p. 366).

**Therapeutic:** being of personal service to give hope, draw out capacities, restore, assist or help another by supplementing another's actions or resources and enabling that person to be more effective; that which is helpful (Siporin, 1972, p. 40).

**Third Party Custody:** parties other than the biological parents, who have a vested interest in the child or children, such as grandparents, extended family or child welfare agencies, may be awarded custody.

## APPENDIX 2

The Best Interest Doctrine (an Act Respecting the Law of Children, S. 31.2, Newfoundland, 1989)

In determining the best interest of a child for the purpose of an application under this Part in respect of custody or access to a child, a court shall consider all the needs and circumstances of the child including:

- a. The love and affection and emotional ties between child and
  - i) each person entitled to or claiming custody or access to the child,
  - ii) other members of the child's family who reside with the child,
  - iii) persons involved in the care and upbringing of the child.
- b. the views and preferences of the child, where such views can be ascertained;
- c. the length of time a child has lived in a stable home environment;
- d. the capacity and disposition of each person in applying for custody of the child to provide the child with guidance and education, the necessities of life and any special needs of the child;
- e. plans proposed for the care and upbringing of the child;
- f. the permanence and stability of the family unit with



- which it is proposed that the child will live; and
- g. the relationship by blood or through an adoption order between the child and each person who is party to the application.

In assessing a person's ability to act as a parent, the court shall consider whether the person has ever acted in a violent manner towards.

- a. his or her spouse or child;
- b. his or her parent; or
- c. another member of the household;

otherwise a person's past conduct shall only be considered if the court thinks it is relevant to the person's ability to act as a parent.

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