Ethical Issues in Child Custody and Dependency Cases: Enduring Principles and Emerging Challenges

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ABSTRACT. The emotional and psychological risks to children of high conflict divorce have led to the increased involvement of mental health

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professionals in child custody cases. Numerous service models (Greenberg & Gould, 2001; Johnston, 2000; Johnston & Roseby, 1997) have been developed to assist divorcing families in minimizing family conflict and supporting children's needs. This underscores the need for judges and attorneys to understand the ethical and professional standards that underlie competent mental health practice in forensic cases. The practices of mental health professionals providing court-related services may have a substantial impact on the validity of their professional opinions, the effectiveness of services provided to children and families, and children's development and adjustment. The authors suggest core ethical and clinical issues to be considered by all psychologists who work in the context of custody disputes. It is hoped that these professional practice suggestions will also be useful to attorneys and judicial officers in assessing the quality of mental health professionals' opinions.

KEYWORDS. Child custody, ethics, divorce, dependency, child abuse, child custody evaluation, forensic

Research regarding children of divorce has identified numerous factors that influence their development and adjustment. Overall, children adjust better to parental separation and/or divorce if they (a) are able to develop and maintain quality relationships with both parents, including regular contact; (b) are not exposed to severe psychopathology in one or both parents; (c) are not placed in the middle of the parental conflict; and (d) learn to use direct, active coping skills to resolve relationship problems. Children who rely on avoidance or suppression of emotions tend to display less satisfactory adjustment (Chaffin, Wherry, & Dykman, 1997; Cooper, Shaver, & Collins, 1998; Fields & Prinz, 1997; Johnston, 2000; Kelly, 2000).

The factors described above, as well as the substantial increase in family court filings (Nordwind, 2000), have led to a proliferation of service models designed to assist families in reducing conflict and supporting children's developmental needs. Such models include collaborative law (Tesler, 1999a, 1999b), impasse-focused mediation (Johnston & Roseby, 1997), special master and parent coordination services, and a variety of therapeutic intervention models (Greenberg & Gould, 2001; Johnston & Roseby, 1997; Johnston, Walters, & Friedlander, 2001).

In recent literature, several authors have advanced the position that the work of child custody evaluators should be consistent with current clinical the-

ory and scientific research, as well as with the legal standards governing the relevant jurisdiction (Galatzer-Levy & Kraus, 1999; Gould, 1998; Gould & Stahl, 2000). Guidelines and/or standards for child custody and child protection evaluations have been established by several professional organizations, by statute, and by court rule (e.g., American Professional Society on the Abuse of Children, 1996; American Psychological Association [APA], 1994; APA Division of Psychology and Law, 1991; Association of Family and Conciliation Courts [AFCC], 1994; Board of Professional Affairs Committee on Professional Practice & Standards, 1999; California Rule of Court, Rule 1257.3.) Gould and Bell (2000) have suggested criteria that courts may wish to use in assessing the quality of a forensic evaluation. Greenberg and Gould (2001) and Greenberg, Gould, Schnider, Gould-Saltman, and Martindale (in press) have argued that the guidelines and standards applied to custody evaluators are also relevant to the work of other psychologists working in a forensic context, such as therapists and consultants providing services to court-involved families (Greenberg, Gould, Gould-Saltman and Stahl, 2003).

Psychologists are by nature individualistic, and qualified professionals may differ regarding the relative utility of professional practice guidelines and standards. For example, some authors (e.g., Saunders, Gindes, Bray, Shellenberger, & Nurse, 1996) have contended that the APA child custody guidelines (APA, 1994) are inadequate, represent an intrusion into the professional discretion of psychologists, and are used to unfairly attack professionals. Others (Bow & Quinnell, 2001) suggest that child custody evaluations have become more sophisticated and comprehensive following the adoption of the APA guidelines and the AFCC's *Model Standards of Practice for Child Custody Evaluations* (AFCC, 1994).

An increasing number of family law and child protection cases involve mental health professionals serving in some capacity, and judicial officers often rely on mental health professionals' opinions in making determinations about the best interests of children and families. Therefore, decisions and interventions made by psychologists may have a profound effect on the progress of a case and the welfare of children and families.

Child custody cases are the fastest growing source of ethics complaints against psychologists (Greenberg & Gould, 2001; L. Kenney-Markan, personal communication, 2000; Montgomery, Cupit, & Wimberley, 1999). While some of these complaints likely represent actions by disgruntled litigating parents attempting to discredit the mental health professional and reverse unfavorable custody decisions, other complaints result from professionals using inappropriate procedures, violating role boundaries, or exceeding the limits of their competence (or information base) in expressing opinions. Mental health professionals who use biased or inappropriate procedures often generate unreliable or distorted information about the functioning of children and families. If judicial officers rely on the opinions of mental health professionals who are biased or use inappropriate procedures, serious harm may be caused to children and families.

While professional standards exist for child custody and child protection evaluations, few standards exist for many of the other professional roles that may be fulfilled by psychologists. Professional standards have been developed for mediators (e.g., AFCC, 2000), but standards among states vary widely. There is an emerging literature with professional practice suggestions for therapists in forensic cases (Greenberg & Gould, 2001; Kenney & Vigil, 1996; Markan & Perrin, 1998), but formal standards/guidelines have not yet been established in this area. Moreover, many of the emerging service models for divorcing families involve integration of roles that have heretofore been viewed as distinct. One example is the therapeutic or impasse-focused mediation model developed by Johnston and Roseby (1997), which is described as containing elements of both treatment/intervention and mediation. Other practitioners have developed variations on traditional models of child custody evaluation, such as evaluations that are done in a shorter time frame and/or do not include all of the data collection or reporting typical in traditional child custody evaluations. The Los Angeles County Superior Court Child Custody Evaluation Office's "Fast Track Evaluation" is an example of one such model (Bobb, Lund, Louie, & Markman, 1999).

Professionals may disagree regarding the best methods and procedures to use when working with divorcing families. As Gould and Stahl (2000) note, child custody evaluation includes elements of both art and science. Evaluation and/or intervention approaches may be influenced by state statute and local court rules and customs, as well as by the relevant research and professional orientation of the psychologist. These differences make a variety of service models available to divorcing families. We would argue, however, that established standards and the emerging professional literature are sufficient to identify core ethical and clinical issues that should be considered by all mental health professionals working in child custody or dependency cases.

All psychologists providing court-related services must be aware of the potential impact of the court context on treatment, consultation, evaluation, and all other professional services. It may seem obvious that all professional relationships will be impacted by an ongoing court battle over custody of a child; however, failure to appreciate these issues may lead psychologists to make serious methodological errors and, potentially, into ethical or legal trouble.

THE NEED TO ESTABLISH COMPETENCE

The APA's Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the APA Ethics Code) (APA, 2002) requires that psychologists establish competence in areas in which they wish to practice. This is a particularly salient issue in court-related practice, as the courts may rely on mental health professionals' opinions in making determinations about major is-

sues in the custody dispute. Examples include the validity of abuse allegations, parental capacity, and the best custodial arrangement for the child.

Since many community psychologists provide services to divorcing families, it may sometimes be difficult to recognize when specialized education and training is needed in order to provide quality services. Few clinicians would knowingly enter an area with a full awareness that they lack sufficient competence; however, it is often tempting for clinicians to approach contested custody cases with the same clinical mind-set that they have used in cases that are not involved with the court.

Many aspects of forensic cases differ markedly from traditional community treatment (those which do not involve the court). Clinicians who fail to appreciate these differences may do serious damage to children and families. This often occurs when psychologists fail to consider both sides of an issue; advocate positions that are contrary to a court order, applicable law, or relevant research; or fail to address issues that are relevant to the psycholegal issues being considered by the court. Because of the increased potential for causing harm, some authors (Gould, 1998; Gould & Stahl, 2000; Greenberg & Gould, 2001) have argued that all psychologists practicing in forensic cases should be expected to demonstrate the *highest level* of professional competence and ethical practice. This requires that, at a minimum, psychologists practicing in child custody and dependency cases be familiar with (1) state law and applicable court rules for the type of proceeding in which they are providing services; (2) research relevant to the population at issue; and (3) ethical and professional practice standards relevant to forensic psychology. Psychologists providing therapeutic services, or communicating with health plans, should also be familiar with federal regulations such as the Health Insurance Portability and Accountability Act (1996), which may require different or additional disclosures than are otherwise required under state law.

Court rules and legal standards for custody decisions vary markedly across the country, and may impact the practices of mental health professionals. For example, the law in some jurisdictions establishes a rebuttable presumption that it is not in the best interest of a child to be in the custody of a parent who has been found to have engaged in domestic violence, except under limited circumstances. Similarly, many states have presumptions that it is in the best interest of a child to relocate with a parent who has had primary physical custody, and have very specific standards for rebutting that presumption. Other states have presumptions that it is contrary to the best interest of a child to relocate when he or she currently has contact with both parents and the relocation would negatively impact this relationship. Standards regarding third party custody, such as visitation with grandparents, also vary among jurisdictions. While mental health professionals are not expected to have legal knowledge commensurate with that of attorneys, it is important that they be familiar with the legal standards and issues relevant to the jurisdictions in which they practice.

It is also essential that psychologists recognize differences among populations served by the various courts, and differences between court-related services and traditional clinical services. Some of the most important issues to be considered are described below. While the following list is not exhaustive, we suggest that all psychologists providing services in court cases appreciate the impact of the court context on the issues that follow.

CONFIDENTIALITY

An ongoing legal proceeding may have a profound effect on how information emerging in the professional relationship must be handled. Some services (e.g., the court-appointed child custody evaluation) are explicitly non-confidential and the information is expected to come to the attention of the court. Other services may be protected from disclosure by the attorney-client work product privilege and never be revealed outside of that relationship. Examples of this type of service include consultation and the confidential parenting skills assessment. Though services such as treatment ordinarily begin with an expectation of confidentiality, the involvement of a family in litigation may result in a loss of some or all privilege. In high-conflict or complex cases, treatment may be ordered by the court and a mechanism for information sharing and accountability may be essential if the intervention is to have any chance of success.

Differences between traditional and court-related treatment have been extensively covered elsewhere (e.g., Greenberg & Gould, 2001; Greenberg, Gould, Gould-Saltman and Stahl, 2003) so we will only briefly discuss them here. One important difference concerns the impact of the court case on the client expectations of confidentiality. Any time the emotional health of a parent or child is at issue in a legal proceeding, some or all of a client treatment confidentiality may be waived. While parents may be entitled to privilege in some professional relationships (e.g., treatment), they are often subject to demands or incentives to waive that privilege. For example, child custody evaluators often request to speak with treating therapists, who may have important information regarding the child or family functioning and progress over time. Such information may also be requested by a child protective services worker, guardian ad litem, or minor's counsel. Many of these professionals ultimately report to the court, and a treating therapist may be ordered to provide information either to these professionals or directly to the court. The content of these reports may be weighed by the Court in making decisions about the outcome of the case.

Traditionally-trained therapists often lament the greater permeability of psychotherapist-patient privilege when treatment occurs in a forensic context. Proponents of safe-haven treatment (Silbergeld, 1997) suggest that treatment can only be effective when confidentiality is maintained and treatment information is excluded from consideration by other professionals, such as the child

custody evaluator and the court. While there may be circumstances when this is true, court-involved populations often differ markedly from traditional treatment populations. As a result, the assumptions underlying clinical treatment cannot be extended to treatment in the context of the court.

The court-involved mental health professional must remain aware of differences between traditional treatment populations and families involved with the courts. There may also be important distinctions within and among different court-involved populations. For example, Stahl (1999) notes that the vast majority of child custody cases result in settlement. Those families that become involved in protracted litigation are often characterized by higher levels of conflict, greater exposure of the children to that conflict, visitation disruption, and greater emotional harm to the children (Johnston & Roseby, 1997; Kelly, 1993, 1998; Kelly & Emery, in press). It is in these cases that the impact of disclosing treatment information must be weighed against the potential effects of withholding that information, with the result that the child custody evaluator and/or the court may not have access to important information about the child or family's functioning. In some cases, the court may determine that the value of treatment confidentiality is subordinate to that of other goals, such as ensuring that the court has access to all of the important information that may be needed to make decisions about the best interests of the children. Access to treatment information may also be essential to promote (and monitor) parents' compliance with court orders and cooperation with the treatment process. While many parents are compliant in order to support their children's needs, others are responsive only when some mechanism is in place that will ensure accountability. Psychologists appointed for intervention roles may be able to provide useful consultation to counsel and/or the Court regarding how the intervention should be structured and the possible consequences of various decisions for the effectiveness of the treatment process. Mental health professionals, however, must ultimately respect the authority of the court (and the autonomy of the parties, where they hold the privilege) to weigh competing interests and determine the court's need for access to treatment information. In some situations, a therapist may be permitted to safeguard some treatment information and limit his or her reports to information relevant to the matter before the court (In *re Mark L*., 94 Cal.App.4th 573, 114 Cal.Rptr.2d 499, 2001; In *re Kristine W*., 94 Cal.App.4th 521, 114 Cal.Rptr.2d 369, 2001). In some circumstances, a child or adolescent may be able to assert privilege with respect to his or her treatment communications (In *re: Daniel C.H.*, 220 Cal.App. 3d 814, 269 Cal. Rptr., 1990).

Responsible professionals may differ regarding whether it is possible to provide effective treatment if privilege is permeable by the court. Many professionals (L. Kenney-Markan, personal communication, 2000) believe that there are circumstances in which it is appropriate to resist or guide a parent's efforts to obtain information about his/her child's treatment. Such provisions are included in some state statutes (e.g., CA Health and Safety Code, Section

123100-123149.5). Other statutes (e.g., CA Family Code Section 3025), however, establish the right of parents, including non-custodial parents in some cases, to obtain information regarding children's treatment.

Though an extensive discussion of these issues is beyond the scope of this paper, psychologists providing court-related services should always anticipate that they may ultimately be asked by the client or ordered by the court to disclose information. All customary procedures must be reexamined with this in mind and several, including informed consent and record keeping, should be adjusted accordingly (American Academy of Child and Adolescent Psychiatry, 1997; APA, 1994, 2002; Greenberg & Gould, 2001). Both parents and children should be informed of the limits of confidentiality, and it is often helpful to have an order or stipulation (and/or an acknowledgment of understanding) that specifies (1) the nature of services to be provided; (2) the scope of the mental health professional's potential participation in the legal process; and (3) in the case of children's treatment, any limits on parents' access to treatment information or the therapist's participation in the legal process, including speaking with the child custody evaluator. In the event that treatment information is to be disclosed to an evaluator or the court, both parents and children (as appropriate to their age) should be prepared for the release of treatment information and what the therapist is likely to say if required to testify or provide information. Often, children are more concerned about the reactions of the adults around them than about the sharing of information per se. Whatever the child's feelings, it is essential that the therapist talk with the child about the pending release of information and assist the child with coping skills for dealing with the adults in his/her environment. Otherwise, the disclosure of treatment information may seriously damage the child's trust in the therapist and attitudes concerning the therapy process.

INFORMED CONSENT

It is generally accepted (e.g., APA, 2002) that psychologists have an obligation to obtain informed consent from consumers of psychological services. Such consent procedures are at least as important in forensic cases, particularly since consumers may assume that circumstances (e.g., confidentiality) apply that are not always applicable in a court-related case. Parents should be provided with written information concerning the mental health professional's role, services to be provided, the limits of confidentiality, and payment arrangements. Mental health professionals must also respect the rights of the parties to review this information, and to confer with counsel prior to signing informed consent documents or stipulation forms.

It is well established (cf. APA, 1992, 1994, 2002; AFCC, 1994, etc.) that participants in forensic evaluations, including children as appropriate to their ages, should be advised that information obtained in the course of the evalua-

tion is not confidential and that some or all of the information will be provided to the Court and the opposing party or parties. While such standards have not been specifically established for many of the other roles fulfilled by forensic psychologists, we would argue that informed consent procedures are equally important whether a psychologist is serving as an evaluator, consultant/expert witness, therapist, mediator, special master, parent coordinator, or reviewer of another psychologist's work. Parents and counsel who employ a psychological consultant may assume that the psychologist is obligated to testify in a manner that will be supportive of the parent or attorney's position before the court. To avoid misunderstandings, potential consumers of psychological consultation services should be specifically informed that payments to consulting psychologists represent compensation for time expended and are not a guarantee of supportive findings.

Participants in mediation should be informed as to whether the mediation is confidential or non-confidential, and whether the mediator will be asked to make a custody recommendation to the court in the event that the parents cannot reach agreement. (This practice varies by jurisdiction, and has been the subject of some controversy.) As described above, parents and children receiving intervention services (treatment, special master, or parent coordination services, etc.) should be advised of the limits of confidentiality. Even if the psychotherapist-patient privilege is intact at the beginning of treatment, parents and children should be advised of the likelihood that disclosure of therapeutic information may ultimately be requested by another professional or ordered by the court. In some cases, parents will have the option to decline to sign a release allowing disclosure of information, particularly with respect to their own treatment. Mental health professionals should refer parents to counsel to discuss the potential implications of these decisions. In some cases, the court will order the disclosure of treatment information, particularly with respect to children's treatment or court-ordered interventions.

Mental health professionals involved in any of these roles should advise parents of the limits of any opinion that they will be able to offer (i.e., that they will not be able to provide opinions regarding individuals who have not been evaluated, and will not provide opinions regarding psycholegal issues; for example, parental capacity, custody arrangements or conclusive opinions regarding abuse allegations) unless the psychologist is serving in the role of forensic evaluator. Issues concerning the structure and limitations of reports and opinions will be discussed in greater detail below.

CRITICAL EVALUATION OF INFORMATION

Psychologists have historically been trained in service models derived from clinical treatment. Traditionally, psychotherapy has been conceived as a process initiated by the client on the basis of the client's own perception of a need

to make changes in his or her life. The psychotherapist-patient privilege and confidentiality are presumed to facilitate open communication by decreasing the risk that a client's thoughts, feelings, or behavior can be revealed to others without the client's permission. Implicit in this process is the assumption that the client will be motivated to provide as much *accurate* information to the therapist as possible, to enhance the therapist's ability to assist the client.

As a result of all of these issues, many psychotherapists adopt a mind set leading to the uncritical acceptance of information provided by their clients. Therapists are often trained to accept, support, and advocate for their clients' needs. This orientation can promote a supportive atmosphere but may also lead to a reluctance to challenge the client's assumptions, interpretations, or dysfunctional behavior. Therapists who adopt this perspective may also underestimate the level of bias in information they receive from their clients.

As noted above, the assumptions underlying clinical treatment cannot be extended to services provided in the context of a court case. Particularly in high conflict cases, parents may become consumed with their desire to prevail in the custody conflict to the degree that it impairs their ability to perceive situations accurately and support their children's independent needs. Other usually anticipated values, such as candor in reporting information, may become subordinate to the parent's desire to prevail in the litigation. This issue is complicated by the fact that many high-conflict parents perceive their children's best interests to be synonymous with the parent's preferred outcome in the child custody case (Stahl, 1999). In such cases, parents may seek evaluation, treatment, or consultation (on their own behalf or that of their children) as part of a strategy to prevail in the custody matter. Thus, their involvement with the mental health professional is based on their desire to achieve an external outcome (prevailing in the legal matter) rather than on the parent's independent desire to alter his/her behavior or coping patterns. Even when a parent makes a sincere effort to improve parenting skills or address emotional issues identified by the evaluator or the Court, there is often an unarticulated assumption that the parent will be perceived more positively by the evaluator and by the court because of his or her efforts. The parent may assume that the therapist or consultant will support the parent's position in the legal matter by providing information to the child custody evaluator or the court. This is not to suggest that parents should not receive recognition for improvements in their behavior and parenting skills; however, a parent's expectations regarding the mental health professional's role in the legal process may have both direct and indirect effects on the information available to the psychologist.

Adults who are intent on achieving a particular outcome may (consciously or otherwise) alter their interaction with mental health professionals in order to achieve their overall goals. The more permeable privilege of court-related services may result in parents editing information more often (Nowell & Spruill, 1993) and delivering more distorted and biased presentations of events. This may be compounded by events occurring outside of the treatment or consulta-

tion session. For example, a parent's anxiety about what may be occurring at the other parent's home can result in repeated, often suggestive questioning about the child's time with the other parent. A parent may convey decreased trust and higher suspicion if the child makes an ambiguous statement about the other parent, exhibit greater emotional dependence on the child, require the child to carry messages or spy on the other parent, or convey an implicit demand that the child choose between those he or she loves (Kelly, 2000; Kelly & Lamb, 2000). While even young children are capable of reporting events accurately if they are not exposed to suggestive questioning, children at the center of a custody conflict are often exposed to important adults (including parents) who have a significant bias in their perceptions and interpretations of events. Children often respond to biased questioning or to an interviewer with a strong opinion or emotional agenda by producing exactly the information for which the adult appears to be looking (Bruck, Ceci, & Hembrooke, 1998; Ceci & Bruck, 1995; Ceci, Bruck, & Battin, 2000; Ceci & Friedman, 2001; Stahl, Greenberg, Paul, & Gould-Saltman, 2001; Thompson, Clarke-Stewart, & Lepore, 1997). All of these factors may affect the child's perceptions, behavior, and statements to the evaluator or therapist.

Consider, for example, the common issue of parental care of young children. Most intact families are aware that co-sleeping and co-bathing are fairly common, particularly with young children, and that both mothers and fathers commonly assist children in dressing and bathing. Particularly when there is a high degree of mistrust between parents, these ordinary activities may become the object of extraordinary attention. This may be a particular issue when the caretaking activity involves a parent and child of different genders. If the parent perceives the other parent's caretaking activity as ominous, he/she may convey that to the child (e.g., by engaging in anxious questioning about what occurs at the other parent's home). The child may, as a result, become anxious about the caretaking activity and/or present that anxiety to a mental health professional. This may interact with other issues, such as a less experienced parent being less adept at bathing or dressing a child, and becoming even clumsier in response to the child's anxiety. A professional who perceives the anxiety but does not consider these factors may assume that something inappropriate happened during the bath. While this would certainly be one possibility, another would be that the child's *perception* of the caretaking was changed, before or after the event, by exposure to the other parent's anxiety.

As a result of all of these issues, it is essential that mental health professionals adopt a *forensic perspective* when dealing with contested custody cases. This may require considering a variety of issues, including the motivations of both parents, the alignment and influence of the extended family, various potential sources of external influence on the child, the pre- and post-separation alignment of family members, the expectations of the legal system, the impact of changes in the law, the ethical guidelines and standards that guide professional psychological practice (from both a clinical and forensic perspective),

the therapist's need to help, and other relevant variables. In dependency cases or family law cases involving allegations of abuse, additional relevant variables may include: alleged endangerment or maltreatment, the needs and motivations of foster and adoptive parents and families, children's continuing (and possibly unspoken) attachment to natural parents and siblings, and the policies and expectations of involved agencies such as CPS.

One of the defining characteristics of the forensic perspective is the objective mindset. Forensic psychologists are aware that they must critically evaluate all information that is provided to them, whether they are functioning in evaluative, consultative, or treatment roles. It is well established that child custody evaluators have an affirmative obligation to seek information from multiple sources, and to consider a variety of possibilities in interpreting statements made or behavior exhibited by children (APA, 1994; AFCC, 1994; Kuehnle, 1996). It is our position that similar obligations apply to children's therapists and to therapists conducting child-centered conjoint therapy, as biased treatment can cause serious damage to children and families (Greenberg & Gould, 2001; Greenberg et al., in press). In the hypothetical caretaking example described above, meeting this obligation would require that the therapist attempt to obtain information from both parents about the caretaking of the child and actively explore multiple interpretations concerning statements made or behavior exhibited by the child. Failure to do so can result in the therapist exacerbating, rather than helping the child to resolve, feelings of anxiety or issues in either-parent child relationship.

When a psychologist is engaged in a private consultation role or treatment of a parent, it may not be possible or appropriate for the psychologist to obtain information from both parents. It is our position, however, that this does not diminish the mental health professional's obligation to consider multiple hypotheses regarding the information that he or she receives from a parent or child. This should include the possibility that the information received is, in whole or in part, the product of an external influence or the parent's agenda regarding the outcome of the custody conflict.

This is not to suggest that a therapist or consultant should investigate or challenge a parent's or child's statements in that same manner that a forensic evaluator would. It is our position, however, that a psychologist who does not explore multiple hypotheses does no favor to a parent or child who is involved in an adversarial litigation process. Many divorcing parents selectively adopt only the most ominous interpretations of behavior problems that may be exhibited by their children. Of course, it is essential that any realistic concerns about child abuse and endangerment be carefully (and neutrally) assessed. Mental health professionals, however, can also provide realistic feedback to parents regarding alternative interpretations of their children's behaviors and ethical standards for professionals who must maintain a balanced perspective, such as child custody evaluators and children's therapists. Consultants, therapists, mediators, special masters, and parent coordinators all have opportuni-

ties to educate parents about children's needs for relationships with both parents and the damaging effects caused to children by prolonged exposure to parental conflict (Amato & Gilbreth, 1999; Emery, 1999; Garrity & Baris, 1994; Johnston & Roseby, 1997; Kelly, 1998, 2000; Kelly & Johnston, 2001; Roseby & Johnston, 1998; Whiteside, 1998; Whiteside & Becker, 2000). Children's therapists can also assist children in learning to critically evaluate information presented to them by biased adults, comparing such external information to their independent experiences and learning to use adaptive coping skills to resolve problems with the parent involved (Johnston et al., 2001; Sullivan & Kelly, 2001). Any of these interventions may assist families in reducing children's exposure to conflict and resolving issues in a manner that is most supportive of children's needs. All of them require that mental health professionals consider multiple hypotheses regarding any information that is presented to them. The forensic perspective is also helpful to mental health professionals in maintaining appropriate role boundaries, professional objectivity, a balanced perspective, and appropriate limits in reports and testimony.

APPROPRIATE APPLICATION OF THE RESEARCH

Psychologists practicing in forensic cases have an ethical obligation to be thoroughly familiar with research relevant to the populations they are serving. The expanding research base on children's adjustment to divorce, the impact of adult conflict on children, children's suggestibility, domestic violence, child abuse, alienation dynamics, and children's coping and development has taught us much about children's needs and responses when they are at the center of a family conflict. Moreover, professional objectivity requires balanced consideration of the research (i.e., reviewing studies that support a variety of perspectives, rather than focusing only on studies supporting a similar view).

For example, most psychologists are aware of professional controversies regarding the accuracy of children's memories and their vulnerability to external influence. Some authors and researchers have focused primarily on the conditions that enhance the strength of children's recollections and ability to provide accurate information (Eisen & Goodman, 1998; Lyon, 1999), while others have focused on the circumstances that may make children vulnerable to external influence or increase the risk that they will provide inaccurate information (Bruck, 1998; Ceci & Bruck, 1995). Still other researchers have built on earlier work to attempt to identify the specific circumstances in which children may produce inaccurate reports (Lamb & Fauchier, 2001; Orbach & Lamb, 2001; Pezdek, Finger, & Hodge, 1997; Pezdek & Roe, 1997).

Most psychologists are aware of differing professional views regarding the appropriate interpretation of the suggestibility literature. In some circumstances, professional discussions regarding these issues have deteriorated to the point of polarization, with some professionals choosing to review only that

literature which is expected to support their view of the research. Just as considering only one side of a custody conflict can lead to a distorted picture of a family's needs, one-sided literature reviews can lead to inaccurate perceptions of the state of professional knowledge. Psychologists who work primarily with one population, such as people involved in juvenile dependency cases, may presume that their clinical experience and knowledge of pertinent research will effectively guide them in work with other court-involved populations (e.g., children at the center of a high conflict custody dispute or a high-profile, multiple-allegation criminal case). This is particularly unfortunate since assumptions that may be valid with one population cannot necessarily be extended to another. For example, there is general agreement that even young children can remember and report events accurately, particularly if interviewed in a nonsuggestive manner (Bruck, 1998; Eisen & Goodman, 1998). There is, however, considerable evidence that invalid reports may result from children being exposed to repeated and/or suggestive questioning or negative stereotypes of the suspected individual (Bruck et al., 1998; Ceci & Bruck, 1995; Eisen & Goodman, 1998; Poole & Lamb, 1998, etc.). Furthermore, children who are interviewed regarding familiar events may both confuse details (Eisen & Goodman, 1998) and be more vulnerable to suggestions that they change their interpretations or descriptions of the events in question (Pezdek & Roe, 1997). While these issues may emerge less frequently among children of intact families who report child abuse, children at the center of a custody conflict may be exposed to a considerable amount of external information and suggestive questioning from the adults in their lives. This underscores the importance of understanding the full scope of research relevant to children's suggestibility, and applying that research most relevant to the situation of the child in question. Similar statements can be made regarding research about children's adjustment to divorce, the effects of joint custody, children's vulnerability to the undermining of a parent-child relationship, domestic violence, and other issues relevant to child custody cases. Limiting one's attention to research with a unitary focus, or generalizing research results beyond the population and model of the study, can lead to serious errors in both interacting with families and interpreting data that emerges in the professional relationship.

ROLE BOUNDARY ISSUES

Few issues have generated the level of controversy that has accompanied discussions of role boundaries in child custody cases. There is a growing consensus among professional organizations that mental health professionals should generally avoid performing multiple and conflicting roles in forensic matters, particularly when the role conflict is likely to compromise the professional's objectivity and judgment (APA, 1992, 1994, 2002; AFCC, 1994). There may be unusual circumstances under which it is acceptable for a child

custody evaluator to provide some other type of service after the evaluation is completed (e.g., when no one else is available who has the requisite skills to provide the service). There is, however, an emerging consensus that such additional roles should be undertaken with extreme caution. The AFCC child custody evaluation guidelines suggest that "if all parties, including the evaluator, wish the evaluator to change roles following an evaluation, it is important for the evaluator to inform the parties of the impact that such a change will have in the areas of possible testimony and/or reevaluation" (AFCC, 1994, p. 6). There also appears to be general agreement that a mental health professional should avoid undertaking a child custody evaluation if he or she has served in a prior role with any of the participants (APA, 1992, 1994, 2002; AFCC, 1994), as the prior role is likely to compromise the psychologist's objectivity and ability to provide an unbiased evaluation.

While the general concepts described above have been accepted by much of the professional community, controversy persists regarding the limits of various roles served by mental health professionals. These are complex issues in that there is often some overlap among the professional roles fulfilled by mental health professionals. For example, many child custody evaluators allow some kind of feedback session with parties and/or their counsel, which may serve as an impetus for the parties to arrive at settlement. (Most established guidelines caution against the evaluator adopting the role of mediator him/herself.) Mental health professionals may urge parents to reduce conflict and change behavior to better support their children's needs, or recommend structured interventions to assist children in learning adaptive coping skills. Some of the newer service models involve some integration of previously disparate roles, such as those of therapist and mediator (Johnston, 2000; Johnston & Roseby, 1997). Others recognize a restructuring of traditional roles, such as structured treatment interventions that limit privilege or include a potential mechanism for reporting to the court (Greenberg et al., in press; Sullivan & Kelly, 2001).

We recognize that the escalating caseloads in family courts (Nordwind, 2000) and the growing number of distressed families has created an increased need for alternative services to assist families. Not all families can afford a comprehensive child custody evaluation or the services of multiple mental health professionals to assist them in resolving crises and conflicts. The numerous studies demonstrating the harmful effects of family conflict on children have also fueled demand for services that can assist families in reducing conflict (Amato & Rezac, 1994; Ayoub, Deutsch, & Maraganore, 1999; Emery, 1999; Johnston & Roseby, 1997; Kelly, 2000; Roseby & Johnston, 1998). Budgetary stresses in state and local communities and limited mental health resources may create tensions between pragmatic considerations and ethical requirements. Carefully structured integrative service models may have a role in serving these families. Certainly, as described above, there is a need for therapeutic service models that recognize the differences between traditional psy-

chotherapy and treatment in the context of a court case, and include the structural elements necessary to effectively serve the children of high conflict families (Greenberg & Gould, 2001; Greenberg, Gould, Gould-Saltman and Stahl, 2003; Greenberg et al., in press). In most high-conflict cases, these elements should include a specific order/stipulation, a mechanism of accountability for all parties, enhanced informed consent and record keeping procedures, etc.

All innovation involves risk, and the adoption of new service models is no exception. Many families have difficulty understanding the differences among traditional roles fulfilled by psychologists. The proliferation of new terminology and service models is likely to create even more confusion, making it more difficult for families to understand the services to which they are consenting (J. Johnston, personal communication, October 10, 2001). These issues may also make it more difficult for attorneys and judicial officers to assess the quality of expert testimony or mental health services provided to a family. It is therefore essential that both clients and counsel be provided with detailed, specific information regarding the role of the mental health professional; the scope and nature of services being provided; limitations on confidentiality; and the scope and limitations of potential reports or expert testimony. As described above, clients should be specifically informed that the ethical psychologist bases his/her opinions on available data, regardless of who is paying for the psychologist's services.

STRUCTURE AND LIMITATIONS IN REPORTS AND TESTIMONY

Mental health professionals may be called upon to consult with counsel, provide information to other professionals, or provide reports and expert recommendations to the parties and the court. Judicial officers often rely on the opinions of mental health professionals in making decisions about children and families. This information may be provided indirectly, as when a therapist provides information to a forensic evaluator, or via direct reports and testimony to the court. These reports may be helpful to the court, and ultimately to children and families, if they are presented in clear, understandable language and focus on interventions that may assist families in reducing conflict and assisting children in acquiring adaptive coping skills. In contrast, reports that emphasize technical psychodiagnostic terms may present an overly pejorative picture of parents while offering little useful information about parent-child relationships. Such reports may increase parents' distress and feelings of humiliation, and may ultimately become tools used by the parents in their legal and emotional attacks on one another (Johnston, 2000). Moreover, reports that are laden with psychological jargon are likely to be less useful to the court in understanding a family's needs and issuing appropriate orders.

Most professional practice standards emphasize the importance of mental health professionals limiting the scope of recommendations and reports as appropriate to their role, expertise, and the data available (APA, 2002; APA Division of Psychology and Law, 1991; AFCC, 1994). This responsibility is underscored by the fact that the consumers of psychological information may not be aware of relevant research and the limitations of psychological data. Mental health professionals have an affirmative ethical obligation to articulate the limits of their procedures, expertise and information base, and the potential impact of these limitations on the validity of their conclusions and recommendations.

Limitations based on role. As described above, the information available to a mental health professional often depends on the role in which the professional is serving. Consultants and parents' therapists may only have access to information provided by one parent or his/her attorney. It is our position (Greenberg & Gould, 2001; Greenberg et al., 2003) that children's therapists have an affirmative obligation to seek information from a variety of sources (including both parents, if at all possible) to avoid presenting or supporting an unbalanced view of a child's situation. Treating psychologists may be well qualified to render expert clinical opinions on a client's diagnosis, behavior patterns observed in treatment, a child's progress toward developing healthy coping skills, changes in each parent-child relationship that would be supportive to the child, and other issues. Consultants or privately retained experts may be able to describe research relevant to the instant case, or address the quality of work performed by another professional. Neither consultants nor therapists, however, have access to the breadth of information that is available to the psychological evaluator. It is therefore inappropriate for a therapist or consultant to express opinions on psycholegal issues (e.g., parental capacity, conclusive opinions on the validity of abuse allegations, etc.). These issues are generally the province of forensic (child custody) evaluators and ultimately the court (APA, 1994, 2002; Greenberg & Gould, 2001; Greenberg & Shuman, 1997). An expert may, however, be able to offer appropriate expert opinion on relevant research, general advantages or disadvantages of certain custody schedules, the limitations for certain tests in answering specific questions, etc., which are related to the psycholegal questions of a given case.

Limitations based on available data. As described above, forensic evaluators may appropriately express opinions regarding psycho-legal issues, such as the best custodial arrangement for the child and conclusive opinions (if appropriate) about the validity of abuse allegations. Forensic experts must also articulate the limitations of their opinions based on available data, the techniques used by the psychologist, and time available to complete the evaluation.

Traditionally, forensic evaluators have been expected to rely on a variety of data-gathering methods in performing a child custody evaluation (APA, 1994, 2002; AFCC, 1994; Ellis, 2000). Several authors (Gould, 1998; Gould & Stahl, 2000; Stahl, 1999) have suggested that data collection in child custody

evaluation should include, at a minimum: clinical interviews, observation of parent-child relationships, appropriate psychological testing, and review of information from collateral sources. Professionals may differ regarding the importance of each of these methods, the interpretation of data obtained, and which, if any, of these methods may be eliminated when available time or family resources limit the scope of the evaluation. It is, however, essential that mental health professionals recognize and articulate (to both counsel and the trier of fact) the impact that limiting the scope of data collection may have on the validity of their opinions. While clinical observation and interviewing are important components of any psychological evaluation (Gould & Stahl, 2000; Stahl, 1999), opinions derived solely from clinical observation, or from any limited data source, may have less validity than clinical observations that are bolstered or augmented by other types of data (collateral interviews, review of documentation, etc.).

This is not to suggest that there is no place for emerging models of evaluation that may be limited in scope and/or occur in a more rapid time frame than traditional evaluation (Johnston, 2000). Short-term evaluations may provide a mechanism for assessing imminent risk and/or suggesting appropriate provisions for interim orders pending the completion of a full evaluation (Bobb et al., 1999). Moreover, in some cases evaluations can be limited to a focused set of issues on which the parents cannot agree, rather than encompassing all parenting or custody-related issues. Such focused evaluations may require less time, be less costly, and reduce the stress on parents and children (Johnston, 2000). It is, however, essential that mental health professionals articulate the differences between the various models of evaluation, and limit the scope of their opinions to statements that can be supported by the data obtained.

Judicial officers confronted with escalating caseloads and families with few resources (Nordwind, 2000) may encourage mental health professionals to offer broad custody opinions based on limited data. Mental health professionals are often tempted to cooperate with such requests. Nevertheless, it is incumbent upon mental health experts to resist this temptation, describe the limits of the data underlying their opinions, and articulate the impact that limited data may have on the validity of their opinions. We would further argue that mental health professionals have a responsibility to consider whether they can perform requested services and provide valid data that will be helpful to the court, or whether circumstances exist that make it more likely that their work will be misunderstood or misused. This is a difficult issue, as mental health professionals do not control judicial decisions or the use of information generated in the professional relationship. Responsible professionals may disagree regarding the scope of responsible mental health services and under what circumstances a mental health professional should decline to provide services or request that his or her role be structured differently.

Failure to consider these issues, however, may undermine the judicial process by conveying the impression that the court should have greater confi-

dence in the expert's opinion than can be justified by the data available. Psychologists who exceed the limits of their data, violate role boundaries, or ignore relevant research can undermine the judicial process and cause serious harm to children and families.

ACCOUNTABILITY– THE HALLMARK OF FORENSIC SERVICES

Throughout this article, we have emphasized the importance of mental health professionals obtaining informed consent, disclosing the limits of their opinions and available data, and taking affirmative steps to remain professionally objective. All of these are elements of accountability, a central concept in providing quality services in court-related cases.

The essence of accountability is the expectation that one's work may be subject to review by other experts, cross-examining counsel, and/or the court. Forensic psychological services may ultimately impact on children's living arrangements, parents' custodial rights, and a host of other issues related to the outcome of a child custody case. Respect for the parties' legal rights, as well as cognizance of the implications of a mental health opinion, are essential aspects of the forensic psychologist's role.

It is our position that accountability is a value and mindset that should permeate all aspects of forensic psychological services. Legal conflicts, particularly custody conflicts, take place in an atmosphere of anger, mistrust, and advocacy. The forensic psychologist may not be able to satisfy a parent, or may indeed make a parent angry by asking difficult questions or expressing an opinion that does not support the parent's position. The psychologist's methods, however, should inspire trust and confidence. As described above, the forensic mental health professional clearly informs potential consumers of the scope, financial arrangements, and limitations of services provided. He or she maintains records sufficient to allow review of his or her work, and is prepared to clearly articulate the thought processes, rationale, and research basis for the methods used in a given case. The psychologist must remain cognizant of these issues throughout the process of providing forensic services. This may require that the psychologist periodically remind consumers of the requirements of ethical practice and the scope and limitations of their professional services and opinions. Adherence to this practice may also make it easier for mental health professionals to resist pressure to exceed their areas of expertise or the limits of valid professional opinion.

Another aspect of accountability is responsible use of interpersonal power. Particularly in court-ordered child custody evaluation or treatment, the psychologist may be in a position of considerable authority. Parents may be ordered to participate in services and cooperate with the mental health professional. Parties are aware that the mental health professional's opinion may carry sub-

stantial weight with the court. Mental health professionals must remain aware of these dynamics, and use the authority of their positions responsibly. The psychologist must remain objective, particularly in a child custody evaluation. Effective assessment or intervention may require that the psychologist challenge families, ask difficult questions, and seek information that may cause discomfort for parents or children. On the other hand, psychologists have a responsibility to minimize harm or distress resulting from their procedures. This requires that psychologists select procedures that have clear relevance to the role in which the psychologist is serving. Child custody evaluators select procedures that have clear relevance to the psycholegal issues before the court. Therapists choose interventions that are relevant to improving a child or adult's coping abilities. All forensic psychologists should avoid procedures that demean parents and families or inflict needless distress.

SUMMARY AND CONCLUSION

Mental health professionals practicing in forensic cases serve at the interface between psychology and law. The elements of due process and protection of litigants' rights may come into conflict with values held by mental health professionals. Responsible professionals may differ regarding such issues as the release of psychological test data, consideration of hearsay data, and whether an evaluator may draw an inference based on a parent's unwillingness to disclose information or assertion of the psychotherapist-patient privilege. The resolution of these issues may vary among jurisdictions and individual cases, and may be a source of controversy among professionals. At a minimum, mental health professionals should exercise discretion in considering information that the court would not be permitted to consider. In any area of forensic practice, it is essential that mental health professionals remain aware of litigants' rights and the due process procedures that promote accountability.

Mental health professionals serve a critical role in assisting families; however, they may also inadvertently escalate conflict if they abandon the central ethical principles that underline all mental health practice in forensic cases (Emery, 1999; Gould, 1998; Greenberg & Gould, 2001; Johnston et al., 2001; Roseby & Johnston, 1998; Stahl, 1999; Sullivan & Kelly, 2001). These principles include establishing competence (including knowledge of relevant research, legal issues and court rules); explaining service models and role boundaries to clients; obtaining informed consent, explaining the limits of confidentiality, respecting the parties' rights to information and due process; and limiting reports and opinions to one's role and available data. These issues transcend specific service models and can provide a useful frame of reference for assessing the quality of forensic mental health services.

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