

“testability” of the theoretical basis for the opinion; (b) the error rates associated with the approach, if known; (c) whether the technique or approach on which the opinion is based has been subjected to peer review; and (d) whether the technique or approach is generally accepted in the relevant scientific community.

The guidance provided by *Daubert* could be used to examine whether the expert opinions offered by mental health professionals in custody disputes are science based, but there is no evidence indicating that trial judges have actively done this. Those offering anecdotal accounts or personal impressions, however, are essentially unanimous in their impression that evidence offered by experts in custody cases is rarely objected to and even less frequently excluded (Shuman, 2002). Similarly, a review of appellate cases also suggests that the opinions of mental health experts are rarely excluded on the grounds that the basis for the expert opinions offered does not meet required scientific standards. Our view is that the low scientific standards for expert testimony again can be traced to the vague best-interests principle and the impossible dilemma it creates for judges. For this reason, and because individual trial judges rarely have the time or the expertise to evaluate the scientific status of psychological measures, we believe that it is incumbent upon the mental health professions to develop clear professional standards regarding expert testimony in child custody cases.

Professional Standards and Guidelines

The American Psychological Association (APA; 1994), Association of Family and Conciliation Courts (AFCC; 1995), and American Academy of Child and Adolescent Psychiatry (AACAP; 1997) all have developed guidelines for professionals conducting custody evaluations. All of these guidelines recommend an assessment of childrens’ needs, parents’ abilities to meet these needs, and parents’ abilities to provide for future needs. The APA and AACAP guidelines also identify a number of factors considered to be integral to child custody evaluations, including assessment of parenting abilities, assessment of capacity to provide a stable loving home, identification of inappropriate behavior that negatively influences the child (e.g., substance use/abuse), consideration of parental psychopathology as it affects parenting ability or the child directly, and consideration of the child’s wishes.

Despite broad agreement about factors that should be assessed, there is little agreement about how to assess them. For example, the AFCC guidelines (which are currently undergoing revision) do not provide assessment guidelines, while APA and AACAP both generally advocate a multimethod approach combining clinical interviews, direct observation, and psychological tests. Guidelines promulgated by AACAP question the value of psychological testing, while suggesting that collateral information be obtained from school personnel, healthcare providers, childcare providers, family, friends, and other indi-

viduals who may provide information germane to child custody placement. The lack of consensus begs the question: What accounts for the variability in recommendations? We conclude that much of the variability is the result of a lack of requisite knowledge. There is not enough scientific evidence (and legal guidance) about how evaluations should be conducted and about what type of evaluation is most helpful. Accordingly, we urge professional organizations to develop very clear guidelines concerning acceptable, scientifically based practices and what inferences can appropriately be drawn from them. We have offered our review of the literature on these measures as a starting point to these discussions and negotiations.

We also urge professional organizations to adopt clear ethical standards for mental health professionals to follow in custody evaluations. For example, professional organizations have failed to take a clear stand on principles of practice that are widely embraced by those with extensive professional experience in the custody context. We suggest three such principles are worthy of becoming standards of practice: Evaluators should

- Show preference for evaluations conducted by mutually agreed-upon or court-appointed experts
- Promote settlement and other steps that will facilitate a degree of parental cooperation in childrearing and authoritative parent–child relationships—for example, by providing concrete, private feedback to the parties about the evaluator’s opinion before submitting a final report
- Acknowledge that custody is ultimately a legal decision and thus avoid offering “expert opinion” on legal matters—such as who should enjoy primary legal or physical custody and under what conditions—despite considerable pressure to do so within the legal system

CONCLUDING COMMENT: A QUESTION OF VALUES

A clear custody rule—whether the approximation rule, the primary-caretaker-parent standard, a presumption in favor of joint physical custody, or some other law—would necessarily take a stand on values concerning family life, values that often are contested in our changing, pluralistic society. Custody laws once did take a clear and strong stand favoring fathers as property holders, and later, mothers as nurturers. Today, there is no social consensus about the appropriate family roles for men and women, and we believe this is one reason why legislatures have failed to adopt a clearer and more determinant custody standard. The “children’s best interests” standard seems to embrace a laudable value, the well-being of children; yet as we have seen, the standard actually encourages uncertainty and parental conflict that is contrary to children’s interests.

No matter what the goals or actual effects of the best-interests standard, it is impossible to sidestep the values issue. Beaber (1982) provides some illustrative examples of key value questions raised by child custody disputes:

1. Should brothers and sisters be in the custody of the same parent?
2. Should an older child, over age 12, have veto power in a custody dispute between two parents?
3. Should boys be placed with fathers and daughters with mothers?
4. Should young children, under age five, be placed with mothers?
5. Should continuity of residence and school district control placement?
6. Should children be placed with the parent who does not work outside the home or who works the fewest hours and/or the most convenient hours?
7. Should children be placed in the home that does not have/ will not have a stepparent? (p. 319)

Science cannot answer such value questions. Philosopher of science Carl Hempel (1965) has argued for the demarcation between factual issues that science in principle can settle and value issues that it cannot, and it is perhaps nowhere more important to make this distinction than in matters of child custody. Hempel makes this point using a thought experiment involving Laplace's demon—a hypothetical entity who knows all scientific laws and all initial conditions and who can perfectly and instantaneously make all relevant calculations needed to make an empirical decision:

Let us assume, then that faced with a moral decision we are able to call upon the Laplacean demon as a consultant. What help might we get from him? Suppose that we have to choose one of several alternative courses of action to use, and that we want to know which of these we *ought* to follow. The demon would then be able to tell us, for any contemplated choice, what its consequences would be for the future course of the universe, down to the most minute detail, however remote in space and time. But having done this for each of the alternative courses of action under consideration, the demon would have completed his task: he would have given us all the information that an ideal science might provide under the circumstances. And yet he would not have resolved out moral problem, for this requires a decision as to which of the several alternative sets of consequences mapped out by the demon as attainable to us is the best; which of them we ought to bring about. And the burden of this decision would still fall upon our shoulders; it is we who would have to commit ourselves to an unconditional judgment of value by singling out one of the sets of consequences as superior to its alternatives. Even Laplace's demon, or the ideal science he stands for, cannot relieve us of this responsibility. (pp. 88–89)

In short, even if all of the relevant empirical relations regarding various child custody options were known, we would still be left with the value questions of what outcomes are the best. This conclusion gives us a final perspective on our three sets of recommendations. Our recommendation favoring alternative dispute resolution and parent self-determination not only

recognizes the psychological importance of renegotiating family relationships for children but embraces the value that, except in cases of abuse or neglect, parents themselves should have the option of determining their children's best interests. Our call for the enactment of a custody standard such as the approximation rule that has the potential to produce more predictable outcomes urges a clear articulation of "family values" as embodied in the law. Finally, our recommendation that mental health professionals limit their role in providing expert testimony in custody cases places the value of science above all others in professional practice.

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