

Child Custody: Scientific (and Unscientific) Answers to an Impossible Question

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Overview of Presentation

- Touch on (lack of) research on three topics
 - Custody evaluations
 - Parental alienation
 - Joint custody
- First, review some of my assumptions

The Best Interests Standard Poses an Impossible Question

Mnookin (1975):

Deciding what is best for a child poses a question no less ultimate than the purposes and values of life itself. Should the judge be primarily concerned with the child's happiness? Or with the child's spiritual and religious training? Should the judge be concerned with the economic "productivity" of the child when he grows up? Are the primary values of life in warm interpersonal relationships, or in discipline and self-sacrifice? Is stability and security for a child more desirable than intellectual stimulation? These questions could be elaborated endlessly. And yet, where is the judge to look for the set of values that should inform the choice of what is best for the child? (pp. 260–261)

Want to Help Children? Change the System

- Parent conflict harms children; unpredictable rules encourage conflict
- Uniform Marriage and Divorce Act (1979)
 - the wishes of the children's parent or parents as to their custody
 - the wishes of the children regarding their custodian
 - the interaction and interrelationship of the children and their parent or parents, their siblings, and any other person who may significantly affect the children's best interests
 - the children's adjustment to their home, school, and community, and
 - the mental and physical health of all individuals involved
- Huh?
 - Some psychologists work with system, try to measure such factors
 - And we *can* measure some of them (for example, mental health)
 - My goals
 - Change the family system (renegotiate relationships)
 - Change the legal system (less adversarial)

Present focus:

Promoting children's mental health

- Of course, there are other reasons and principles for determining custody
 - Children's economic well-being
 - Fairness to one or both parents
 - Just, fair, predictable laws

Present focus: The negative

- What social scientists don't know/can't resolve
- Friday talk: Focus on the positive for research and policy
- Bottom line
 - Process (procedure) is more important to children's mental health than content (substantive law)

Custody Evaluations: Some Data

- Absence of research is shocking
 - Especially given high expenses and high stakes
 - Evaluations are all but determinative
 - A form of arbitration?
 - Perhaps this is a good thing
 - If so, we acknowledge evaluations for what they are
- Practice of custody evaluations highly criticized
 - Emery, Otto, & O'Donohue (2005), *Psychological Science in the Public Interest*
 - Tippins & Whittmann (2005), *Family Court Review*

Custody Evaluations: Some Data

- Custody conflict and custody evaluations are common
 - 15% intense custody conflict (Maccoby & Mnookin, 1992)
 - 5+% have evaluations (Maccoby & Mnookin, 1992)
- Evaluators use some good, some dubious tools
- Ackerman & Ackerman, 1997
 - Studied 201 of 800 psychologists who do evaluations
 - Parents: MMPI 1st (good), Rorschach 2nd (bad)
 - Children: IQ 1st (good), projective “tests” 2nd (bad)
- New: Tests designed to assess “best interests”
 - 1/3 used Bricklin Perceptual Scales
 - 11% used Ackerman-Schoendorf Scales
 - “Alienation” rated #3 on importance of custody factors

Some questions...

- Should children reside with parent with more normal MMPI?
 - How much of a difference matters?
 - Should a parent lose custody for taking prozac? DUI?
 - What about personality disorders? (Assessment unreliable)
 - Is some “psychopathology” due to divorce?
- What relevance is IQ test to a custody determination?
 - Law of the hammer...
- What do adult or child projectives reveal? (Hint: Nothing)
 - Determine validity of projectives scientifically, not in court
 - Mystery makes projectives rhetorically convincing
 - Two methods of discerning truth: rhetoric versus empiricism
- What evidence supports custody specific measures?

Bricklin Perceptual Scales

<http://www.custody-vp.com/bps.html>

- ***“A Research-Based Custody Test Which Measures A Child's Perceptions Of Each Parent in Four Critical Areas: Competency, Supportiveness, Consistency, And Admirable Traits. Age 6 and up.”***
 - **(“However, we have used the test effectively with children as young as 4.”)**
- **64 cards rating Mom then Dad**
 - **Sample: "If you had to memorize a long, boring poem for school, how well would Mom do at being patient enough to help you learn this?"**
- **“In highly adversarial cases, the test can be used to establish a data-chosen, research-supported primary caretaking parent (PCP).”**

Bricklin Perceptual Scales

- “The validation process has been going on for more than 25 years; several hundred cases have been studied in various ways. Many are described in the manual.”
 - “The agreement rate between the questionnaire which elicited unconscious material and BPS designations was 87 percent.”
 - 2 evaluators reviewed case records for ? N and agreed with BPS (and each other) 100% of the time!
 - Nearly 90% agreement with judges in “hundreds of cases”
 - Evaluators who use it say it works almost 100% of the time!
- PsychInfo 6/18/07: 11 hits
 - 2 papers by Bricklin (2004) published together in *American Journal of Family Therapy*; one summarizing some data...
 - 6 dissertations (reporting mixed results)
 - 3 review/evaluative papers (negative if independent)
 - Not a single, peer reviewed publication of research... in 25 years...

Ackerman-Schoendorf Scales

“a clinical tool designed to aid mental health professionals in making child custody recommendations...” (Ackermann & Schoendorf, 1992)

- Not a test, but a method for combining:
 - Parent
 - MMPI
 - Rorschach
 - IQ
 - Open ended parenting questionnaire
 - Child
 - Rorschach
 - IQ
 - Academic achievement
 - Projective story
 - Yields “Parental Custody Index”
 - Science = none

Parental Alienation Syndrome

Richard Gardner (2004)

- Claim: Medical syndrome like Down syndrome
 - Diagnosis indicates cause (unlike any other psychiatric diagnosis??)
 - Science or rhetoric? “74 courts of law in the United States, Canada, Australia, Germany, Great Britain, and Israel have recognized PAS”
- “My follow-up study... only PAS study...”
 - 99 cases in which Gardner directly involved
 - In 22 cases, contact with “alienator” limited (Gardner’s recommendation)
 - Child symptoms reduced in all cases: “100% success rate”
 - “increase in PAS symptomatology” in 90.9% of other 77 cases
 - If Gardner is right, why did court reject his recommendation so often??
- “Diagnosis” has swept through various courts
 - Not a shred of scientific evidence
 - “I suppose expert witnesses are free to testify, ‘In my opinion, this child is a victim of deliberate alienation on the part of the custodial parent’ – provided that they add, ‘But I do not have a shred of scientific evidence to back up my clinical impressions.’ (Emery, 2005)

Joint Custody

- Bauserman (2002) meta-analysis (*J of Family Psych*)
 - 33 studies: Children better adjusted in joint custody
- The “Chicken McNugget” problem
 - Apples and oranges: Self-selection into joint custody
 - Random assignment: The “magic” of science
 - Effect size .23 (equivalent to 520 v. 500 SAT)
 - 22 of 33 studies unpublished (21 unpublished dissertations)
 - Joint legal (.22) same benefits as joint physical (.29)
 - Could use to argue joint legal is “good enough”?
 - No interaction with conflict
 - Less conflict in joint custody (self selection evidence)
 - Joint custody best and worst arrangement?
- Also inconsistent with father contact research

Nonresident Father Involvement and Child Well Being

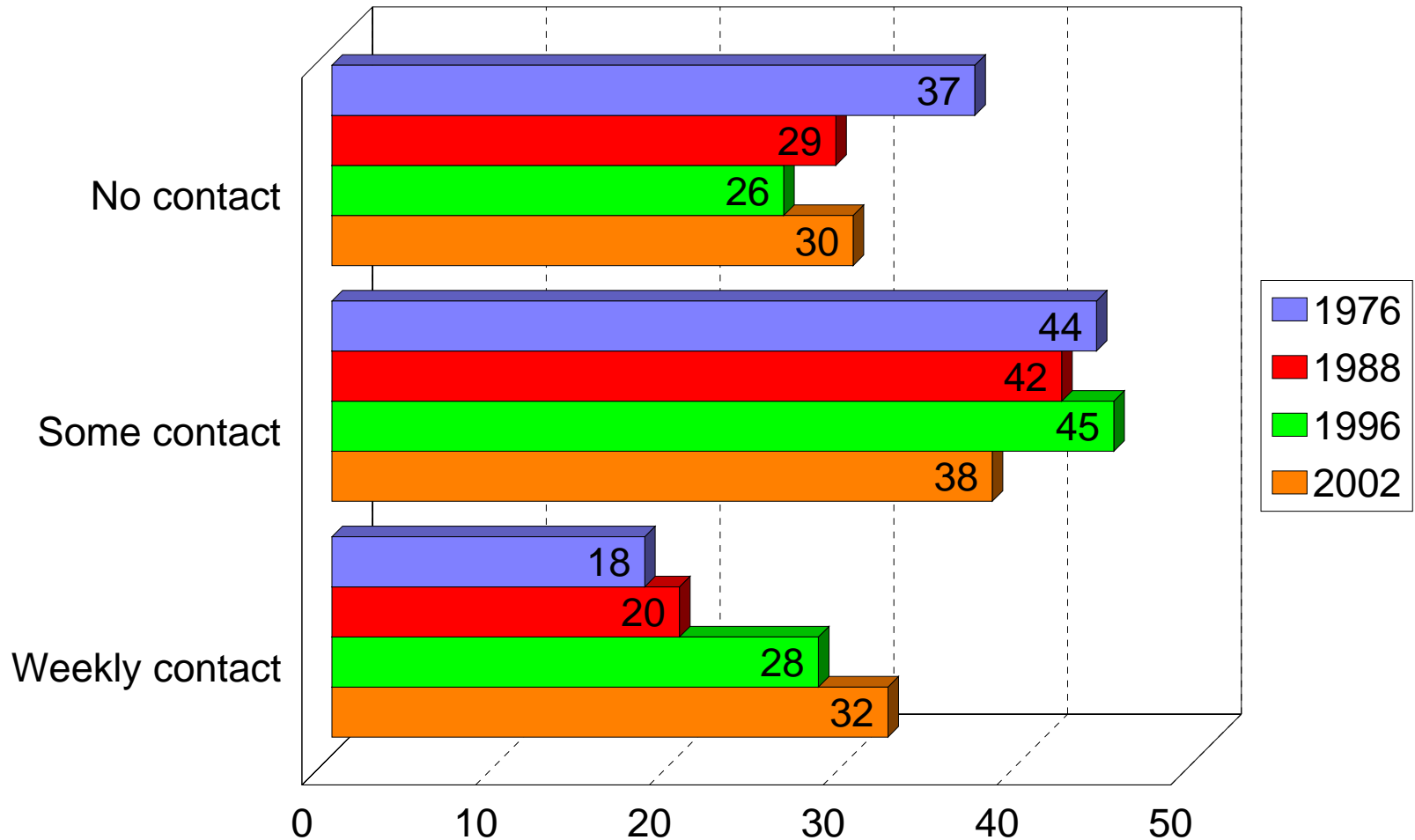
<i>Child well-being</i>	Pay support	Contact amount	Feel close	Authoritative father
<i>Academic success</i>	.09***	.03*	.06*	.15***
<i>Externalizing problems</i>	-.08***	-.02	-.05*	-.11***
<i>Internalizing problems</i>	-.01	-.03*	-.07*	-.12

Based on Amato & Gilbreth, 1999, meta-analysis of 63 studies

Joint Custody Demographics

- Many claim joint physical is increasing, normative
 - Lawyers at recent WI meeting: 95% of agreements
- National Center for Health Statistics (1995)
 - 16% of divorce agreements
 - But ??: 44% in Montana, 4% Nebraska
 - See Emery 1999
- Lack of data shocking
- New analysis of national cohorts over last 4 decades...
 - Amato & Emery, in progress

Nonresident Father-Child Contact



1976 = National Survey of Children (n = 367); 1988 = National Survey of Families and Households (n=636);
1996 = National Longitudinal Survey of Youth (n=950); 2002=National Survey of America's Families (n=3,270)

Changes in Father Involvement

- Weekly contact increasing significantly
- No significant change in dropouts
- Divorced Dads higher contact than never married Dads
- Far short of joint physical custody majority
- Change similar to Dads' proportion time in primary child care relative to Moms' (Bianchi, 2000)
 - 1965 = .24
 - 1998 = .55
 - More father involvement, mothers still doing most
 - Bianchi findings relevant to approximation rule?
- Strategic bargaining for lower child support payments?

Take Home Messages

- Goals for promoting children's mental health
 - Reduce conflict, encourage effective parenting and co-parenting
- Best interests standard
 - Custody evaluations can't answer an impossible question
 - And don't answer many simpler questions scientifically
- Joint physical custody
 - Good option for parents who choose it; encourage this choice
 - Demographically, appears to be unworkable for majority
 - Wrong option in high conflict, contested cases
- Custody reform: ALI recommendations reasonable
 - Parental self-determination leading principle
 - Procedure more important than substance (more on Friday)
 - Approximation rule
 - Pluralistic, seems fair on the surface, a clear rule should reduce conflict
- A parting question
 - Why does state intervene in parenting in divorce but refuse to in marriage?