

# **Never Paint by the Numbers: A response to Kelly & Lamb (2000), Solomon (2001), & Lamb & Kelly (2001)**

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## **Abstract**

As the debate continues on ways of thinking about access between separated and never-married parents and their very young children, the authors suggest a way that child custody evaluators can integrate this discussion into their evaluations. They conclude that evaluators must pay attention to family dynamics and all of the research when making specific recommendations to parents and the courts regarding the access and residential arrangements of very young children.

In recent issues of this review, (Whiteside, 1998; Kelly and Lamb, 2000; and Warshak, 2000) there have been ongoing discussions and proposed new ways of thinking about access between separated and never-married parents and their very young children. As is obvious in the article by Solomon (2001) and the response by Lamb & Kelly (2001) in this issue, the debate continues. As the guest editor for the issue on child custody evaluations who solicited the original Kelly and Lamb article (Stahl) and as child custody evaluators who have written about and trained others on the art and science of child custody evaluations (Stahl, 1994;1999; Gould, 1998, 1999a, 1999b; Gould & Bell, 2000, Gould and Stahl, 2000), we wanted to share our thoughts about how child custody evaluators might integrate these ongoing ideas into their work.

The thoughtful article by Kelly and Lamb (2000) and the comments about that article by Solomon (2001) as well as the follow up comments offered by Lamb & Kelly (2001) are continued examples of the diversity and complexity of our fields of study. Since its publication, we have found the Kelly and Lamb (2000) article useful in designing recommendations for young children in child custody evaluations. When we have taught workshops over the past two years, we have referred to the Kelly and Lamb (2000) article as necessary reading for all involved in child custody evaluations, along with the previous article by Whiteside (1998) and the article by Warshak (2000) on this topic. Solomon (2001) challenges Kelly and Lamb (2000) on several important issues, among them the research support for the recommendation that children under the age of two years of age will profit from overnight parenting by the non-custodial parent. Lamb and Kelly (2001) argue that the research is indeed strong enough to support their recommendations for overnight contact between very young children and their non-custodial parent.

As we read the articles, we were struck by the high quality of professional exchange and the need for such dialogue in all areas of child custody evaluation. We observe that it is likely

that different professional orientations might contribute to the different interpretation of the research. We recall that Emery (1999) suggested that those who read research must pay attention to the samples (size and heterogeneity), hypotheses, and biases of the researchers when they reach conclusions and discuss their findings. Ultimately, as consumers of these research articles and practitioners who use their recommendations, we are struck by the need to figure out how we can understand such divergent interpretations of the research and integrate them into our work.

We also believe that sometimes practitioners become confused when there is controversy over research findings and tend to shy away from using newer findings because of the lack of clarity in the research. Often, this results in practitioners making recommendations which are not based upon current research but upon their pet theories about human behavior.

Clinical experience and research are not parallel nor equivalent. It is research that helps us to frame questions about relevant child custody factors in deciding how to apply the research to a particular case. Research should guide the application of that concept to a particular family system. A good evaluator knows how to interpret and use the research. A critical distinction is between applying research to individual cases in contrast to deciding when to apply the research and when to ignore it. Many practitioners ignore research when the controversy over its meaning is unclear. That is, too many practitioners appear to decide to ignore research rather than consider how to apply the particular research to a particular family system.

A properly crafted evaluation entails knowing the relevant research and applying that research to individual cases. We would never support the second option of deciding when to apply research and when to ignore it. It is research which lays the foundation for our ability to explain human behavior within the context of science.

We believe that what is needed is a discussion about how child custody evaluators can utilize the research while embracing the differences in interpretation of the research in their custody recommendations. We suggest that decision rules about how to use the research apply to both positions represented in this interesting and important debate. We propose a multi-part analysis to deal with these issues.

First, when evaluators are asked to consider the best residential and access arrangement for a very young child, we need to look at the parenting history of the child. Whether one believes that very young children are able to have overnight parenting time with each parent as suggested by Kelly and Lamb (2000) or need to have a stable, single night placement as suggested by Solomon and George (2001), there is no substitute for researching the particular parenting history of the family being evaluated.

If the child has had a history of joint care taking and has shown little, if any, difficulty being parented and cared for by each parent while the family was intact, then one might look

closely at continuing the parenting arrangement which existed prior to the separation. That is, if both parents were actively involved in the infant and toddler's daily care and night time rituals, it might be developmentally appropriate to continue to foster the relationship between the young child and each parent by including overnight parenting time with the mother and father. If there has been one primary parent, and that parent has done the majority of care giving, it might be more appropriate to continue the primary relationship while gradually encouraging the other parent to increase his/her involvement with and parenting of the child.

A second dimension which the evaluator needs to critically examine is the attachment history between the infant and each parent. The evaluator needs to critically explore the skills which each parent brings to the task of parenting the infant and toddler. It might be necessary to assess parenting skills across different care taking domains to understand what access and living arrangements are best. This might include assessing both daytime parenting and care taking behaviors as distinct and separate from night time parenting and care taking rituals. This will help evaluators consider the different (or relatively equal) styles between parents and their children across both daytime and nighttime dimensions.

Third, evaluators must always recognize that parents have different strengths and weaknesses in their parenting. When living together, many parents tend to complement each other in various ways. An analysis of parenting skills may determine that the mother is competent in one area in which the father is less skilled while the father is more competent in some areas in which the mother is less skilled. When living apart, there is no complementary relationship for the child. Instead, each parent is asked to fulfill the responsibilities of both parents during the time that their child is in each of their care. This often results in more apparent weaknesses, with the child having to make adjustments to routines, rituals, schedules, and habits.

With this in mind, a competent evaluator needs to critically examine the complementary fit that existed during the marriage in order to understand the advantages and disadvantages each parent brings to the infant or toddler when parenting the child alone. Understanding the previous complementary parenting relationship might help shed light on the nature and quality of parenting the infant or toddler will be exposed to during the separation. We propose that, when there are significant differences in competence, the evaluator works to craft parenting recommendations that allow each parent to have care of his/her young child in a way to maximize the strengths and minimize the weaknesses of each parent and parent / child interactions.

A fourth dimension to be considered by the evaluator is the temperament of the child. Some children, regardless of the parents's relative strengths and weaknesses, may have a temperament which requires more stability and consistency, and a routine that is primarily with one parent. Other children, who are more flexible and easy-going, will be able to move more easily between households, as long as both parents are relatively equal in their

daytime and nighttime parenting abilities.

A fifth dimension to be considered is the communication between the parents. Even if parents can't discuss their child very well because of a high level of conflict, they can still use a "parent book" or some other mechanism to discuss important issues about their child. Parents who share information about a wide array of developmental issues (such as medications and illnesses, developing language, soothing techniques, sleeping and eating routines) are usually more successful in sharing their child than parents who cannot. Evaluators will want to explore how parents communicate about their child and which parent is more likely to be obstructing such communication when making recommendations. When there are problems in the communication, evaluators can recommend ways to enhance the communication about the child, regardless of overnight access.

A final dimension to consider is the care being given to the child by a care giver (or more than one care giver) other than the parents when both parents are unavailable. If parents use a nanny to go back and forth between each parent's home with the child, and if parenting competencies are relatively equal, it's more likely that the child can successfully spend relatively equal time with both parents. Since children potentially develop multiple attachments with multiple caregivers (both parents and one or two daytime caregivers), an analysis along this dimension will help the evaluator when considering access and residential arrangements.

In conclusion, it seems to us that regardless of whether you agree with the position that infants and toddlers are able to accommodate overnight parenting arrangements with each parent or need a single, stable overnight placement, the art of child custody evaluations is applying the results from aggregate research results to the specific, ideographic (and idiosyncratic) needs of a particular family. Research results are important in their ability to guide our thinking about how specific results might be relevant to a particular family system. However, there is never any substitute for exploring the parenting history and relevant dynamics of a particular family and then integrating that data with current research. Of course, evaluators will include collateral contacts along with interviews and direct observations in evaluating the above dimensions.

Then, evaluators can discuss, often directly in the evaluation report, or in direct testimony, how the research may or may not apply to the particular family system under examination. The evaluator should also be clear, both in the report and in testimony, to distinguish among clinical judgments, research-based opinions, and philosophical positions (American Bar Association, 2000). Evaluators need to work toward understanding all of the research on divorce (Kelly, 2000), the risk factors related to parenting (Ellis, 2001), and consider a risk assessment model which speaks to the psychological best interests of the child (Austin, 2000). We suggest that evaluators should never blindly apply research drawn from group data and presume that research will automatically apply to a particular family system, or reject research simply because it doesn't fit one's bias or because it is confusing. That is

why, in our recent article, we talked about the art and science of child custody evaluations (Gould & Stahl, 2000). The research and the family data are our brushes, but the evaluator is in charge of its application. We paint the canvas. Evaluators never paint by the numbers. We always need to consider the best application for each family we assess, integrating all of the research into our understanding of the particular family and the particular child's needs.

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