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The Treating Expert: A Hybrid Role With Firm Boundaries

Lyn R. Greenberg
Los Angeles, California

Jonathan W. Gould
Charlotte, North Carolina

Ongoing or impending litigation may have a substantial impact on treatment, affecting parents' and children's interactions with the therapist and the structure and content of treatment. Psychologists must be prepared to think forensically as well as clinically and have the requisite expertise to support children's needs, accomplish interventions, and, if appropriate, provide information to the forensic evaluator or the court. S. Greenberg and D. Shuman's (1997) conceptualization of the treating expert is expanded and applied to the child custody or dependency case, with an emphasis on role boundaries, standards of expertise, and suggestions for professional practice.

Although mental health professionals are often involved with families in crisis, they are often poorly prepared for the impact that the family's involvement with a court process has on treatment. Divorce and child protective services (CPS) cases focus on high-intensity issues such as whether either parent poses a risk to the child's safety and which parent is best suited to have primary custody. Such disputes may impact on core emotional issues for parents and children, such as the children's attachment to and relationships with their parents, parents' self-esteem, or the conflicts that led to the marital dissolution.

Divorcing parents frequently have concerns about each others' parenting. Such concerns may be based on behavior witnessed during the marriage (e.g., abuse of the parent or child, substance abuse, etc.), or they may derive primarily from the parent's feelings about the other parent. A parent fighting for custody may go to considerable lengths to prevail in the conflict, recruiting extended family members and friends to assist in the parent's cause. Johnston and Roseby (1997) coined the term *tribal warfare* to describe the alignment of a parent with his or her family of origin against the other parent and his or her family of origin. The impact of tribal warfare on family conflict may be even more intense when there is an allegation of abuse or the CPS system becomes involved.

Lyn R. Greenberg received her PhD from the California School of Professional Psychology—Los Angeles. She practices clinical and forensic psychology in Los Angeles, CA, and is chair of the Forensic Committee of the L.A. County Psychological Association.

Jonathan W. Gould received his PhD from the State University of New York at Albany in 1985. He practices clinical and forensic psychology in Charlotte, NC.

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Correspondence concerning this article should be addressed to Lyn R. Greenberg, 12304 Santa Monica Boulevard, Suite 205, Los Angeles, California 90025. Electronic mail may be sent to lrgreenberg@earthlink.net.

Just as parents may recruit friends and extended family members to support their position in a custody conflict, litigating parents may also request the services of mental health professionals to assist them during this time of crisis. Psychologists may be hired as evaluation experts by either side or may be appointed by the court, a role that has been extensively covered elsewhere (Galazer-Levy, 1999; Gould, 1998, 1999a, 1999b, 1999c; Gould & Bell, 2000; Gould & Stahl, 2000; Stahl, 1999). Psychologists may also be retained to provide treatment to divorcing parents, their children, or both (Gould & Greenberg, 2000; Greenberg, Gould, Gould-Saltman, & Stahl, 2001; Greenberg, Lund, & Shatz, 2000). Any of these roles may bring with it a parent's expectation that the psychologist will support that parent's position in the custody conflict.

The emotional distress associated with divorce and the legal proceedings that surround it often result in a decision to involve children in psychotherapy. The growing research base regarding risks to children of high-conflict divorce (Garrity & Baris, 1994; Ellis, 2000; Johnston & Roseby, 1997), children's suggestibility (Ceci & Bruck, 1995; Hewitt, 1999; Kuehnle, 1996), and the coping skills that children need for successful adjustment (Chaffin et al., 1997; Fields & Prinz, 1997; Runtz & Schallow, 1997) underscores the importance of children receiving appropriate, unbiased treatment from therapists who possess the requisite expertise to work in the context of a court case. A treating therapist may have frequent, regular contact with a child over an extended period of time, and the course of treatment may have a profound effect on both the child's adjustment and the progress of a case.

The purpose of this article is twofold. The first is to assist the treating therapist to avoid becoming entangled in the "tribal warfare" (Johnston & Roseby, 1997) of these high-conflict family systems.[1] The second purpose is to provide a conceptual framework for treating therapists who participate in all aspects of high-conflict divorce interventions—a framework that can be used

[1] In the present context, the term *high conflict* refers to those separated, divorced, and/or court-involved family systems in which there is ongoing conflict that interferes with the parents' ability to support the children's needs.

when thinking about the familial context and children's needs. This requires that therapists learn to think *forensically* about the familial context without exceeding the boundaries of their role or aligning with one side of the family or the other. This may require consideration of a variety of issues, including the motivations of both parents, the alignment and influence of the extended family system with one parent or the other, the child's vulnerability to external influence, the influence of the sibling subsystem on the child client, the preseparation alignment of family members, the postseparation 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, the therapist's need to help, and other relevant variables. In dependency cases, 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.

The treatment process must be based on an understanding of children's development and on familiarity with the research relevant to the child's situation. Treatment should include the expectation that parents support their children in mastering developmental tasks and in developing effective coping skills. This type of systemic thought process promotes effective treatment while minimizing the risk that the therapist will violate role boundaries or become overly entangled in the family dispute. Otherwise, both the child and the child's treatment may become a pawn in the destructive process that often ensues in contested divorce and dependency cases.

In this article, we humbly undertake the task of providing an initial presentation of issues to be considered when providing treatment in the context of a court case. We hope that our suggestions will be of assistance to therapists in supporting the needs of families and to attorneys and judicial officers in assessing the qualifications and performance of a treating therapist. *It is our contention that effective treatment with court-involved families can occur only when the therapist is knowledgeable about the myriad of forensic mental health and legal issues that often are imposed on the therapist, the children, and the treatment itself during custodial disputes.*

Merging Paradigms

The literature on court involvement by mental health professionals has traditionally focused on the role of the forensic expert who conducts evaluations or provides expert testimony to assist the court. In recent years, there have been increasing calls in the literature for the use of scientifically defensible methods of evaluation and analysis (Austin, 2000a, 2000b, 2000c, 2000d, 2000e; Gould, 1998, 1999a, 1999b; Gould & Bell, 2000; Gould & Stahl, 2000). Mental health professionals are also increasingly serving as mediators, parent coordinators, reunification therapists, special masters, and treating therapists to the child or parents. Specialized training programs have been developed for mediators and special masters, and there is an emerging literature base regarding these areas (e.g., Garrity & Baris, 1994; Johnston & Roseby, 1997).

The role of the treating professional in the family law case has recently, though briefly, been addressed in articles or books primarily focused on the role of the evaluator (e.g., Galazer-Levy, 1999; Greenberg & Shuman, 1997). Most of these articles and books address the role of the treating therapist only to the degree necessary to contrast this role from that of the evaluator. Much of this literature appears to draw a clear distinction between forensic and clinical roles. However, there are areas of forensic work that emphasize the treatment components of court involvement, and these roles have only minimally been addressed in the literature (e.g., Elwork, 1992; Gould & Greenberg, 2000; Greenberg et al., 2001; Kenney-Markan & Vigil, 1995). These hybrid treatment roles are clinical in function yet require a level of forensic sophistication necessary for effective intervention. This article provides a conceptual framework for this quasi-forensic clinical function.

Treating therapists may become involved in the legal system in at least two different ways. A psychologist may be retained to provide treatment to the children of separating or divorcing families or to a divorcing parent. Mental health professionals may also be directed by the courts to provide treatment for a specific purpose. Examples might include assisting children or other members of high-conflict, postdivorce families in making the transition to a binuclear (Ahrons, 1994) family structure or providing reunification or conjoint therapy to rebuild a relationship between a parent and child. In a dependency case, examples of such treatment might include providing conjoint therapy between an abused child and other family members, assisting a child or family in adjusting to a new permanent plan, and providing therapeutic visitation. A therapist may be involved prior to the onset of litigation or may begin providing treatment during or immediately after the legal case. In some cases (often the most complex ones), a mental health provider who was involved with family members prior to the legal case may remain on the case after the legal process begins and is asked to continue in the role of treating therapist while also having reporting responsibilities to the court. We have recently addressed aspects of this challenging role in a series of articles (Gould & Greenberg, 2001; Greenberg, 1998; Greenberg et al., 2001; Maloney, Greenberg, & Doi Fick, 1996).

A therapist may become snared in the tribal warfare (Johnston & Roseby, 1997) of a high-conflict dispute by uncritically accepting the statements of the parent or child whom the therapist is treating, without recognizing that the client's statements may be heavily influenced by outside factors (e.g., the parent's position in the custody conflict, the child's exposure to the custodial parent's concerns, or the status of the legal case). In such a case, the therapist unintentionally biases treatment by supporting the client's expressed view and by advocating for that view as the most appropriate outcome for the case. In the process, the therapist may unintentionally stray beyond the boundaries of his or her role and into ethical or legal trouble.

For example, a well-intentioned clinician may become involved when one parent brings the children in for treatment and convinces the therapist not to involve the other parent. The argument forwarded is that the parent wants to find a safe place for the children to talk about their feelings. Involving the other parent, the therapy-involved parent says, would jeopardize the children's perceived sense of safety. Of course, what often results is one parent bringing the children for treatment and the therapist drawing inferences and conclusions about the children's well-being based on a one-sided view of the children's reality. Biased treatment may also convey the expectation that the children support the position of the parent

who is transporting them to treatment. As a result, children may have more difficulty expressing their independent perceptions and feelings. Typically, as this type of treatment progresses, the therapist's notes reflect how the children talk increasingly about misgivings about the therapy-uninvolved parent and seldom about their concerns about the therapy-involved parent.

Subsequently, the therapist may be asked by the therapy-involved parent's attorney to testify in court or prepare an affidavit or declaration that addresses the children's stated fears, concerns, and discomfort with the therapy-uninvolved parent. The therapist is convinced of the usefulness of his or her involvement with the children because the data on which the information to the court is based is coming directly from the children. Often, these well-intentioned therapists do not see how they have taken sides and, consciously or otherwise, helped the children to avoid emotional issues or maintain an unbalanced view of each parent's contribution to their lives. These therapists are often surprised to find themselves undergoing an intense cross-examination by the attorney for the therapy-uninvolved parent, who may not even have known of the therapist's involvement in the case until he or she received the therapist's affidavit or declaration. If the therapist has not interacted with the therapy-uninvolved parent but has made statements about the parent's relationship with the child, the therapist may be brought before a licensing board or ethics committee on charges of unethical practice. At a minimum, the therapist may discover that he or she has unwittingly colluded with the therapy-involved parent to violate a court order that required both parents' involvement in health care decisions.

Role Differentiation

Therapists may be particularly vulnerable to the type of errors described above if they fail to appreciate the differences between traditional clinical treatment and treatment in the context of a court case. 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. Treatment experiences vary based on available resources (i.e., insurance coverage), the theoretical orientation of the therapist, the concerns and personality of the client, and the specific circumstances of treatment. Most psychotherapy still includes the basic elements of rapport between the client and therapist, free expression of perceptions and emotions by the client, and a primary focus on helping the client to function better in the areas that he or she has chosen to address. 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. The psychotherapist–client privilege was established to facilitate this information exchange by decreasing the risk that a client's thoughts and feelings (as described through his or her words and behavior) can be revealed to others without the client's permission.

These two factors lead many psychotherapists to adopt an uncritical attitude toward information they receive from their clients, supporting their clients' perspective and, at times, underestimating the level of bias in their clients' perceptions. Therapists are often trained to accept, support, and advocate for their clients' needs, an orientation that can promote a supportive atmosphere but that may also lead to a reluctance to challenge the client's assumptions, interpretations, or dysfunctional behavior.

Treatment in the context of a legal case differs in several respects from the model described above. Although interpersonal conflict often leads clients to seek psychotherapy, the conflict involved in a legal dispute often goes far beyond the individual client and his or her immediate interpersonal world. The course of the legal conflict may be affected by an adult or child's progress in treatment, and the expectations of the parents, counsel, and the court may profoundly affect the course of treatment in any number of ways.

The Legal Context May Influence Clients or Parents' Choices

Parents involved in dependency or family court may be ordered to seek treatment for themselves or to provide access to treatment for their child. Parents in family court cases are assumed to be competent to parent their children, although in reality they may have widely different parenting abilities. However, the court may order treatment for a parent or children in order to address specific issues identified by a psychological evaluation or to resolve specific problems, such as disrupted visitation. A parent's custody or visitation with children may be limited—or, in a dependency case, removed completely—pending a parent's ability to improve in specific areas or pending the resolution of a specific issue, such as domestic violence or the undermining of the other parent–child relationship. In these cases, treatment may be ordered for the parent, the child, or the parent–child dyad.

Parents in intact families often have the option of selecting any treatment provider, unless their choices are limited by their insurance or other factors. In a legal case, however, their choices are often limited. A therapist may be designated or appointed by the court, or the parties may agree on a limited number of candidates whom both parents will interview, with the ultimate selection to be determined by the court or to be negotiated between the parties.

Choices regarding the issues to be addressed during treatment may be influenced by statutory issues—for example, the presumption in family court that children should have relationships with both parents or, in dependency court, that the first goal of the court should be to make "reasonable efforts" to reunify children with their parents. These choices may also be influenced by statutory limitations on the duration of treatment that may be ordered by the court or by legislation, such as the Adoptions and Safe Families Act (1997), which has decreased the time parents have to address issues and regain custody of their children.

Implicit in any of the above situations may be an expectation that the therapist provide information about treatment to a psychological evaluator, one or both parents, CPS, a guardian ad litem, minors' counsel, the court, or any combination of these. Parents may still be technically entitled to privilege, but they are often subject to demands and/or incentives that they waive that privilege. For example, juvenile dependency courts often order CPS to obtain reports from both parents' therapists and the children's therapist as part of CPS's regular progress reports to the court. The content of these reports and/or a parent's refusal to waive privilege may be weighed by the court in making decisions about the outcome of the case.

The Legal Struggle May Influence Parents' Perceptions of Their Children's Best Interests, the Parents' Ability to Separate Their Own Needs From Those of the Children, and the Parents' Interactions With the Treating Professional

For example, although most parents are genuinely concerned for their children, parents may arrange treatment as part of a general strategy for achieving a particular outcome in the legal case. Although they may genuinely believe this outcome to be in the best interest of their children, this judgment may be heavily influenced by their own emotional reactions to the divorce or by their conflict with the other party. As a result, they may overestimate the risk that the other parent will endanger or harm the children while underestimating the importance of this relationship to the children's emotional well-being and future development. Research has demonstrated that predivorce parenting behavior may not be predictive of postdivorce parenting behavior (e.g., Hetherington, Stanley-Hagan, & Anderson, 1989) and that children who are able to maintain quality relationships with both parents often have better outcomes (Amato & Gilbreth, 1999; McLanahan, 1999; Whiteside & Becker, 2000). These findings underscore the degree to which a contesting parent's beliefs may be at odds with the social science research and an "objective" assessment of their child's needs. Parents may also underestimate their children's exposure to the parental conflict and the harm that such exposure can cause (Johnston & Roseby, 1997; Kelly, 2000).

Adults who are intent on achieving a particular outcome may alter their interaction with the treating professional to achieve their overall goal. The more permeable privilege of court-related treatment may result in clients being less forthcoming and engaging in more editing of treatment information (Nowell & Spruill, 1993). The ongoing family conflict may also lead clients or parents to deliver more distorted or biased presentations of events. All of these actions alter the information base available to the therapist. This may be compounded by events occurring outside of treatment that may alter children's perceptions of events, emotional reactions, and presentation in treatment. 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, greater emotional dependence on the child, or an implicit demand that the child choose between those he or she loves. Multiple studies have demonstrated that 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 (e.g., Bruck, 1998; Ceci & Bruck, 1995; Stahl, Greenberg, Gould-Saltman, & Paul, 2001).

An emphatic presentation of particular concerns to a therapist (e.g., an allegation of abuse by the other parent) may result in the therapist focusing more on that issue, altering the tone of the session, or subtly (or not so subtly) directing the session toward eliciting specific information and statements rather than exploring a variety of concerns significant to the child. Parents may disagree regarding the focus and purpose of a child's treatment—for example, one may desire that the therapist provide general support to the child, the other may allege abuse, and both may hope to lead the therapist to an opinion that supports the parent's position in the legal conflict. The therapist may come under pressure to express an opinion on a psycholegal issue more appropriate to the role of evaluator (e.g., the validity of an abuse allegation, a custody recommendation, or parental capacity).

Often, parents are asked to waive privilege so that the child's therapist may speak with a child custody evaluator, who has been appointed by the court to gather information and make recommendations to the court. The scope of such an evaluation may be limited to specific issues or may encompass all of the custody and visitation issues being considered by the court. A therapist may be subpoenaed to testify regarding (a) information gained in treatment, (b) changes over time, (c) parent cooperation with the therapist's requests, (d) the therapist's clinical opinion on any number of issues, and (e) the therapist's statements to the evaluator. A parent's (or both parents') commitment to paying for services may depend on whether the therapist supports that parent's position or on whether the therapist is willing to accommodate the parent's requests that the therapist participate in the legal process.

As a result of all of these issues, some therapists have chosen to recuse themselves entirely from the court process or even from speaking to the child custody evaluator (Silbergeld, 1997). In this structure, often described as *safe haven therapy*, parents sign a legal stipulation agreeing to limits on the therapist's role or on their own access to treatment information (e.g., an agreement that the therapist cannot testify in a custody trial or speak to a psychological evaluator). Some authors (e.g., Shuman, Greenberg, Heilbrun, & Foote, 1998) have even proposed that therapists be barred from the courtroom altogether. Therapists who advocate this stance emphasize that to provide a safe environment for a child or adult to explore emotional issues, privilege must be maintained and the therapist must be excluded from the resolution of the child custody case. The alternate perspective is that the therapist (particularly children's therapists) may have information that would be difficult for the evaluator to obtain otherwise and that may be important to an evaluator's analysis of a case. In some cases, this information may be vital for the protection of the child. Therapeutic information may be particularly important when cases involve a high level of conflict, allegations of maltreatment, or other circumstances in which information about the child's reality or functioning are critical issues in the court's decision making. Examples of such situations include when (a) a case has been going on for years, (b) the child's overt behavior has changed over time, (c) there is an allegation of abuse that is several years old, (d) the therapist has observed the child under other custody arrangements, (e) the child is being or has been exposed to the parental conflict for an extended period of time, or (f) other information relevant to the custody evaluation has become evident in treatment (Greenberg et al., 2000, 2001).

It may indeed be advantageous to treatment to create the "safety zone" described above for parents, who need a safe place to express their concerns about their former spouse and address other important issues. With respect to children's treatment and conjoint or reunification therapy, however, the decision to withhold information may have a significantly negative impact on the child's life, most profoundly by depriving the court of needed information helpful to its decision making. The most reasonable stance may be to consider the impact that either decision (i.e., the decision to disclose treatment information or not to disclose treatment infor-

mation) is likely to have on both the treatment process and the child's life outside of treatment. Although anything said to an evaluator may ultimately be disclosed at trial, most evaluators make reasonable attempts to protect the child's treatment and respect boundaries that may be set by the treating therapist in this area.

The Treating Expert: Limits of Role and Standards of Expertise

The provision of "specialized treatment service to individuals involved with the legal system" is a recognized, if underdiscussed, activity of the forensic psychologist (American Board of Forensic Psychology, 1999, p. 2). Although other activities of forensic psychologists, such as child custody evaluation, have been treated extensively in the psychological literature (Galazer-Levy, 1999; Gould, 1998; Stahl, 1999), relatively little attention has been devoted to the role of the treating psychologist in divorce and dependency cases. Similarly, discussions of expert testimony (e.g., Galazer-Levy, 1999; Strasburger, Gutheil, & Brodsky, 1997) have been largely limited to contrasting the role of the fact witness, whose testimony is often limited to firsthand observations, with that of forensic experts, who are appointed by the court or engaged by the parties to gather information and address the psycholegal issues being considered by the court.

Greenberg and Shuman (1997) have noted that there are actually two types of expert witnesses, treating experts and forensic experts. As they noted,

> What distinguishes expert witnesses from fact witnesses is that expert witnesses have relevant specialized knowledge beyond that of the average person that may qualify them to provide opinions, as well as facts, to aid the court in reaching a just conclusion. Psychologists and psychiatrists who provide patient care can usually qualify to testify as treating experts, in that they have the specialized knowledge, not possessed by most individuals, to offer a clinical diagnosis and prognosis. However, a role conflict arises when a treating therapist also attempts to testify as a forensic expert addressing the psycholegal issues in the case (e.g., testamentary capacity, proximate cause of injury, parental capacity). (Greenberg & Shuman, 1997, p. 51)

Although the distinction between treating and forensic experts is accepted by much of the professional community and treating therapists are often qualified to testify as experts, the qualifications and limits of the treating expert's role remain largely undefined in the professional literature. In this section, we make an attempt to arrive at such a conceptualization, at least as it applies to the family and dependency courts.

Distinction From the Forensic Expert

The essential characteristic of the treating psychologist's role, as distinguished from the child custody evaluator, is that the goal is intervention. The purpose of a child custody evaluation is to gather information to answer specific questions about the family's functioning, (e.g., parenting competencies or the child's safety with either parent). The focus of the evaluation is driven by the court, and the expectation is that the court will use aspects of the evaluator's recommendations in determining a solution for the family. In contrast, the purpose of the therapeutic assessment is to ascertain the child's, family's, and/or parent's status throughout treatment; to define therapeutic goals; to guide the development or modification of a treatment plan; and to *create change* in support of the child's developmental needs.

The limits on appropriate opinion testimony would seem to follow directly from these differences in purpose. In contrast to the broad scope with which an evaluator views a family, the treating psychologist's focus is narrower, more intimate, and more longitudinal. This provides a depth and richness of information that may be essential to helping a child or family master developmental challenges and may be an important part of the information considered by the child custody evaluator. Treating psychologists may therefore 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. However, the treating therapist does not have the distance, fact-finding focus, or breadth of information considered by the child custody evaluator. The very aspects of the treatment role that add power to the therapist's ability to track behavior, support children's needs over time, and support them and their parents in achieving developmental tasks are inconsistent with the more distant, neutral, fact-finding focus of the child custody evaluator. This is not to say that the child's therapist doesn't need to maintain a balanced treatment perspective and professional objectivity in assessing behavior and conducting treatment. However, the therapist does not have access to the breadth of information, documentary evidence, psychological test data, and fact-finding focus that come with the evaluator's time-limited role. It is therefore not appropriate for treating therapists to render opinions on psycholegal issues (parental capacity, child custody, validity of an abuse allegation, etc.) that are the province of the child custody evaluator and, ultimately, the court.

These issues also arise in the overloaded dependency (CPS) system. Dependency courts often order therapy for both children and parents, to address the issues that led to the alleged abuse and to help the family progress toward conjoint therapy and reunification. The court reviews the family's progress periodically, often ordering that reports be supplied by both parents' and children's therapists. Therapists in these cases can appropriately express opinions about children's or parents' progress in treatment, how the child is coping with the alleged abuse, children's feelings about their relationships with their parents or events occurring during visits, children's and parents' readiness for conjoint therapy, and so forth. However, as a consequence of both the structure and the lack of resources in the system, treating therapists also come under intense pressure to render opinions on issues that would normally be reserved to the forensic evaluator (e.g., custody issues, whether the family is ready to reunify, what the children's legal status should be, or whether parental rights should be terminated). These issues have been intensified by changes in the law, such as the Adoptions and Safe Families Act, which have shortened the time available for parents to reunify with their children before permanent placement services begin.

It is often appropriate for therapists to consult with children's attorneys, the guardian ad litem, and CPS social workers regarding the children's needs. However, the therapist who strays beyond these boundaries to express opinions on psycholegal issues has an enormous potential to harm the child—not least by missing emotional issues that may not be consistent with the therapist's posi-

tion or with information that the therapist has focused on in treatment. Therapists retained by CPS or a child's foster parents may never meet a child's natural parents and may be heavily exposed to biased information from (a) a foster or adoptive parent who wants custody or (b) a CPS social worker who opposes reunification with the natural family. If the therapist has not seen the natural parent with the child, making statements about this parent–child relationship would likely be a violation of APA ethical standards (APA, 1992, Standards 7.02–7.03). Moreover, the therapist is likely to miss the ambivalence and identity issues that will impact the child as he or she grows older (Brodzinsky, Smith, & Brodzinsky, 1998).

How Reliable and Valid Is the Treating Expert's Opinion?

Shuman and Greenberg (1998) and Shuman and Sales (1998) have written eloquently on criteria for assessing the quality of expert opinion testimony. Shuman and Greenberg (1998), referencing established ethical standards on psychology, have argued that an expert's adherence to those standards should have a bearing on both the admissibility and the weight of the expert's opinion. Shuman and Sales (1998) noted that forensic opinion testimony can range on a continuum from opinions based totally on scientific research to entirely clinical opinions (i.e., statements that are based only on the opinion of the expert and that ignore or contradict relevant scientific research). The midrange would include (a) opinions that are based in scientific research but extrapolate beyond established results, (b) opinions that are based in the expert's experience but also acknowledge relevant research results, and (c) opinions resulting from systematic data-gathering techniques.

Greenberg and Shuman (1997) have emphasized the differences between treatment and evaluation roles, and we agree with this distinction. It seems evident, however, that the quality of treating-expert testimony can be evaluated by criteria that are somewhat parallel to those proposed in the articles cited above. A treating expert's opinion can be based on more or less systematic methods of gathering and tracking data, a thorough or cursory knowledge of relevant research, treatment methods that maintain balance and professional objectivity versus being in the "camp" of either parent, and interventions based on research about children's coping needs and adjustment versus ideologically or emotionally driven ideas of what is best for children.

For example, it is not uncommon in contested divorces for children to complain in therapy about the behavior of one or both parents. When conflict between parents is intense, children may begin to exhibit difficulty during transitions between their parents or may begin to say that they do not want to spend time with a parent. Many inexperienced children's therapists have taken positions that they believe are supportive to their clients—for example, supporting a child's expressed desire to avoid contact with a parent with whom the child is having difficulty. In doing so, the therapist may not consider alternative hypotheses, the effects of external influence and developmental issues, relevant research, or alternative interventions that may be more supportive to the child's needs than an interruption in contact.

For example, a number of studies have demonstrated that most children have better outcomes following parental divorce when they can develop or maintain quality relationships with both parents (e.g., Kelly & Lamb, 2000; Whiteside, 1996; Whiteside & Becker, 2000). Moreover, numerous studies with adults, adolescents, and children, including survivors of abuse, have demonstrated that children have better outcomes and better future adjustment if they learn to use active coping methods to resolve interpersonal problems (Contreras, Kerns, Weimer, Gentzler, & Tomich, 2000; Cooper et al., 1998; Fields & Prinz, 1997; Runtz & Schallow, 1997). Children who rely on more primitive approaches such as avoidance and suppression of emotions tend to have much poorer outcomes. Fields and Prinz (1997) found that even when children learn to use active problem-solving skills in school and apply them in social situations, they often continue to rely on maladaptive approaches (i.e., avoidance, suppressing emotions) in response to family problems. This research would contradict the position taken by the hypothetical child's therapist described above, who appears to be supporting avoidance rather than assisting the child in resolving issues with his or her parent.

Of course, research has also demonstrated the damaging effect on children of being caught in the middle of chronic or intense parental conflict (Johnston & Roseby, 1997; Kelly, 1998, 2000; Roseby & Johnston, 1998). When a parent is engaging in behavior that is distressing to a child, the therapist may need to request a behavior change from the parent, refer the parent for treatment or other services, or conduct structured conjoint sessions to address the issues in the relationship. This is also supportive of the child's developmental needs to establish emotional independence and learn appropriate coping skills. Of course, such interventions are not effective with all parents. When a parent's behavior presents a risk to a child and the parent is unwilling to address that behavior, it may be necessary for the therapist to articulate the impact of the parent's behavior on the child to other professionals or the court and/or to request that a child-custody evaluation be ordered to revisit the custody or visitation issues.

Although it is beyond the role of the treating expert to express an opinion about the validity of an abuse allegation, therapists are often asked questions designed to support or refute an allegation of abuse. For example, a child's therapist may be asked to describe a child's play behavior and to express an opinion on how consistent this behavior is with a diagnosis of abuse. Well-meaning therapists have often responded to these questions only on the basis of their clinical experience or on the basis of lists of possible symptoms in the child abuse literature. If the therapist doesn't seriously consider (a) alternative explanations for the child's behavior, (b) research on child abuse assessment, (c) the validity of play behaviors as a diagnostic indicator, and (d) children's suggestibility, then the therapist would (and should) be open to challenge on those issues.

A Plea for Standards

The stakes are high in dependency and child custody cases. Statements and decisions made by psychologists can have long-lasting effects on the lives of children and families. The high profile nature of the forensic evaluator's role has lead to calls for standards in the training and practice of child custody evaluators. To date, standards for child custody and child protection evaluations have been developed by the Association of Family and Conciliation Courts (1994). Guidelines for some types of forensic work have been developed by the American Psychological Association (APA, 1994), the Committee on Ethical Issues for Forensic

Psychologists (1991), and the American Professional Society on the Abuse of Children (1990, 1995).

Therapists help divorcing families every day, and not every case needs (nor can every family afford) a forensic psychologist to provide treatment. We would argue, however, that just as complex medical problems may require specialist care, complex dependency and divorce cases require therapists with forensic training. High-conflict divorce cases are among the fastest growing sources of ethical complaints against psychologists (L. Kenney-Markan, personal communication, July 15, 2000; Montgomery, Cupit, & Wimberly, 1999). Too often, such complaints result from role–boundary violations by well-intentioned therapists who were unaware of ethical boundaries or unprepared for the role they had undertaken. Although a few authors have written about the distinctions between treatment and evaluation roles (Greenberg & Shuman, 1997; Kuehnle, 1996) and even fewer have written about forensically informed treatment (e.g., Elwork, 1992; Greenberg et al., 2000, 2001; Kenney-Markan & Vigil, 1995), we have been able to find no set of guidelines or standards governing the role of a treating therapist in a family law or dependency case.

The APA's "Guidelines for Child Custody Evaluation in Divorce Proceedings" (APA, 1994) address many issues that are relevant to treatment in forensic cases as well as child custody evaluations. With adaptations based on the differences in role, these guidelines could easily generate an appropriate set of professional practice suggestions for the treating expert in a family law or dependency case. It is our hope that, after they have been reviewed and refined by our peers, the issues discussed in the body of this article—as well as the professional practice suggestions that we offer—will serve the following purposes: (a) to establish a clear definition of the *treating expert* as the concept applies in child custody and dependency cases, including the limitations of that role; (b) to suggest a tentative list of ideas to be considered in the future development of professional practice parameters for treating therapists in family law and dependency cases; (c) to suggest criteria that the courts, counsel, and mental health professionals may use in evaluating the qualifications, performance, reports, and testimony of a treating therapist; and (d) to suggest a minimum standard for qualification as a treating expert as well as a minimum standard for receiving a court appointment to provide specialized services to children and families involved with the courts. Fully aware of how imperfect our efforts are, we offer the following recommendations for the treating expert in child custody cases.

Recommendations for the Treating Expert in a Child Custody or Child Protection Case

Definition of Role

The treating expert in a child custody or child protection matter provides forensically informed treatment (Kenney-Markan & Vigil, 1995) to assist families who have become involved with the court. This may include assisting divorcing parents and the children of divorcing parents in making the transition to a binuclear family structure; facilitating the reunification of parents and children where long separations, abuse, domestic violence, or high-conflict dynamics have impacted on the parent–child relationship; assisting parents in cooperating to support the needs of the children; addressing parenting deficits identified by the court as a condition of reunification or increased visitation; and assisting a child in making the transition to a permanent placement when reunification is impossible. The forensically informed therapist addresses issues related to the matter before the court while promoting an environment in which children can master developmental tasks and develop the coping skills necessary to achieve a successful future adjustment.

Understanding of Court Context

The treating expert recognizes that the client's involvement in a child custody or child protection (dependency) court case is likely to impact treatment. The psychologist recognizes that the client may have fewer choices, the court or forensic evaluator may identify issues to be addressed in treatment, privilege may be more permeable, available time for treatment may decrease, and the client's progress in treatment may impact on his or her rights as a parent or the time that he or she is able to spend with his or her child. As appropriate to the court context and its impact on treatment, the psychologist adjusts informed consent procedures, information-gathering techniques, perspective on the client's or parent's information, and intervention methods.

The Child's Interests and Well-Being Are Paramount

In child custody and child protection matters, the child's interests and well-being are paramount. Although the psychologist recognizes the adult client's need for emotional support and assistance in coping with the family crisis, the psychologist should maintain focus on the impact of the situation on the child. This includes both supporting the child's needs and assisting the adult client to function more effectively as a parent (Greenberg et al., 2001).

Treatment Focus

The focus of forensically based treatment includes addressing issues identified by the court, promoting reunification, assisting the child in achieving healthy relationships with each parent, assisting parents in more effectively supporting the child's needs, and assisting adults and children in adjusting to a change in their family structure. Treatment may also include addressing other issues important to the adult or child, events or allegations in the family history, or other issues normally addressed in the course of psychotherapy. Therapists in forensic cases assist adults and children in developing realistic expectations based on the context of the court in which the family is involved and addressing those issues necessary to support the child.

Issues in Preparing for Court-Related Treatment

The role of the psychologist is that of a treating expert who balances professional objectivity with the active involvement necessary to create change. The psychologist should not act as a forensic expert who makes recommendations on psycholegal issues (e.g., custody, parental capacity) or as a generic psychotherapist who does not adjust treatment methods to the context of the court. The psychologist may assist the client's attorney in understanding psychological issues but is always mindful of the poten-

tial impact that his or her statements or actions may have on the child and the larger legal issues in dispute.

The child's therapist maintains balance and professional objectivity in treatment and promotes healthy relationships between the child and both parents. This includes respecting both parents' right to consent to treatment, learn about the child's progress, and make decisions on behalf of the child. The therapist should maintain a balanced approach to intervention and information gathering and support the child's needs independent of parental conflict. In the event that a child has been mistreated or a parent is not supporting the child's needs, the therapist should recommend appropriate treatment to the parent and work with the child, parent, parent's therapist, and other professionals toward resolving parenting deficits and issues in the parent–child relationship.

The treating expert should develop and maintain specialized competence. Although not all families require therapists with forensic training, the psychologist should carefully consider whether he or she has the requisite knowledge and skills to undertake treatment in more complex cases (e.g., high-conflict cases, cases involving allegations of abuse, domestic violence or the undermining of a parent–child relationship, long-term custody disputes, and cases that have moved between court systems). Competence in providing standard psychotherapy is not sufficient. Education, training, experience, and supervision in the areas of child and family development, child and family psychopathology, the impact of divorce on children, assessment of alleged child abuse, high-conflict dynamics, domestic violence, and children's suggestibility help prepare the psychologist to provide treatment effectively in a forensic case. The psychologist should also strive to become familiar with applicable legal standards and procedures, including laws governing consent to treatment for children and access to children's records.

The psychologist should be familiar with current research in each of the areas described in the above paragraph. If, during the course of treatment, issues arise that are outside the psychologist's expertise, the psychologist should seek additional consultation, supervision, or other means of obtaining specialized knowledge. If the issues in the case are sufficiently outside the psychologist's expertise that the quality or objectivity of treatment may be impacted, the psychologist should consider withdrawing from the case and referring the client to another treatment provider. In appropriate circumstances, the psychologist may also wish to consider requesting a forensic evaluation.

The treating expert should be aware of the potential impact of biases, personal historical issues, or strong beliefs that may interfere with his or her professional objectivity or impact treatment. The psychologist should make an affirmative effort to consider research, theory, and treatment data that may support a variety of hypotheses and should strive to overcome any personal or intellectual biases. A therapist who is unable to maintain professional objectivity should consider declining or withdrawing from a case.

The treating expert avoids multiple relationships and maintains appropriate role boundaries. Treating psychologists avoid conducting a child custody evaluation in a case in which the psychologist has served in a therapeutic role for the child or another family member or has had other involvement that may compromise the psychologist's objectivity. The psychologist may testify as a fact witness or may be qualified as a treating expert to address issues such as diagnosis, prognosis, and other issues directly relevant to treatment. However, the treating psychologist should not express opinions on psycholegal issues which are the province of the child custody evaluator and the court (e.g., parental fitness or custody recommendations).

Procedural Suggestions: Conducting Forensically Based Treatment in a Child Custody or Child Protection (Dependency) Matter

The scope and focus of treatment should be based on the therapeutic assessment, as consistent with the applicable laws and procedures of the court in which the case is proceeding. Although adults are accustomed to directing the focus of their own treatment, treatment that does not address issues of concern to the court is unlikely to lead to increased visitation for a parent. When the client is a child, the scope and focus of treatment is determined by the therapist's assessment of the child's needs and is based on the governing stipulation or court order (if any), the applicable laws and procedures of the court in which the case is proceeding, and the concerns expressed by the child's parents.

The psychologist should obtain informed consent from all adult participants, and, as appropriate, inform child participants. In undertaking treatment in a forensic case, the psychologist should ensure that any adult participant is aware of (a) the purpose and nature of treatment, (b) who has requested the psychologist's services, and (c) who will be paying the fees. If treatment has been ordered by the court, the psychologist informs any adult participant of (a) the nature of the court order, (b) any issues or goals that have been designated by the court to be addressed in treatment, (c) any limitations that have been imposed on treatment by the court, and (d) any foreseeable limitations on psychotherapist–patient privilege that may be required by law or that may result from the fact that treatment is related to an ongoing court case. Relevant information is provided to the child in a manner appropriate to the child's age and coping abilities. If one parent does not provide informed consent or in some other way disagrees with the child's involvement in therapy, the psychologist should consider not offering treatment until the parents, counsel, and/or the Court resolve the issue of the child's involvement in treatment.

The psychologist should inform participants about the limits of confidentiality and the disclosure of information. A psychologist conducting court-related treatment should ensure that the participants, including children (as appropriate to their age), are aware of the limits of confidentiality characterizing the professional relationship with the psychologist. The psychologist informs clients of any foreseeable limitations on privilege that may be required by law or that may result from the family's involvement with the legal system, including the likelihood that (a) the therapist may be asked to give information regarding treatment to a child custody evaluator, (b) a progress report may be requested by the court or its agent (i.e., CPS), and (c) that treatment records may be subpoenaed. A psychologist obtains a waiver of confidentiality from all participants, or from their authorized legal representatives, or ensures that the limits of confidentiality are specified in the court order or stipulation governing treatment.

The psychologist should consider multiple diagnostic hypotheses, use balanced methods of intervention and information gathering, and consider the impact of the legal conflict on information presented in treatment or by a parent. Children's therapists, in

particular, are mindful of the potential effects of suggestibility, repeated or leading questioning, children's exposure to adult information or their parents' emotional needs, and high-conflict dynamics as contributing factors in children's statements and behavior.

The psychologist stays abreast of current developments in professional practice and research and bases treatment methods on professionally accepted procedures and research. The psychologist considers the literature on (a) adults' and children's adjustment to divorce; (b) accepted diagnostic considerations and treatment methods for child abuse, domestic violence, high-conflict dynamics, and other specific issues (as applicable to the given case); and (c) research on children's development and adjustment.

The psychologist is mindful of the limitations and biases that may be present in data generated in treatment and interprets and communicates such information conservatively. The psychologist may track clients' behavior and responses over time and use such information to guide treatment or communicate it to the forensic evaluator or other professionals. However, the treating expert recognizes that he or she does not have the fact-finding role or broad information base that is available to the child custody evaluator. The psychologist acknowledges limitations in his or her role, information base, and treatment methods used and limits conclusions accordingly.

If requested to testify on behalf of a client or become otherwise involved in the legal process, the treating psychologist weighs the potential impact on the client and the treatment process. The psychologist reviews the potential impact on treatment with the adult client and, when appropriate, advises the client of what the psychologist is likely to say if required to testify. Children's therapists weigh the likely impact of disclosing information to the child custody evaluator or testifying on behalf of the child, including (a) potential repercussions to the child if his or her statements and behavior in treatment are revealed and (b) the potential impact on the child if information that has come to light in treatment is not available to the child custody evaluator or the court. The therapist addresses these issues with the child's parents and other involved adults and attempts to steer the course most supportive to the child's needs.

The psychologist limits testimony and opinions as appropriate to his or her role, clinical and research data available, and the psychologist's areas of expertise. A treating psychologist may testify as a fact witness or treating expert but limits any opinions expressed to issues that are directly relevant to treatment and adequately supported by the data available to the psychologist. Treatment-related opinions are based on articulated assumptions, data, interpretations, and inferences based on established professional and scientific standards. The treating expert generally declines to express opinions on psycholegal issues (e.g., custody recommendations and parental capacity) that are the province of the forensic evaluator and the court. Psychologists guard against relying on their own biases or unsupported beliefs in describing behavior and rendering opinions and acknowledge any limitations in data and treatment methods used.

The psychologist clarifies financial arrangements. Financial arrangements are clarified and agreed upon prior to commencing treatment. The psychologist does not misrepresent his or her services for reimbursement purposes.

All records obtained in the process of conducting court-related treatment are properly maintained and filed in accord with the *APA Record Keeping Guidelines* (APA, 1993), the *Specialty Guidelines for Forensic Psychologists* (Committe on Ethical Issues for Forensic Psychologists, 1991), and relevant statutory guidelines. Particularly in complex cases, cases involving allegations of abuse, high conflict cases, and children's treatment, treatment data are maintained with an eye toward possible review by other psychologists and the court.

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