CHAPTER 80B
EXPERT WITNESSES IN CHILD CUSTODY PROCEEDINGS*

SCOPE

This chapter discusses the role of the psychiatrist, psychologist, and social worker, whether retained by a party or the court, as expert witnesses in child custody proceedings. The established psychiatric approaches, psychological tests, and social work evaluation methods are outlined and evaluated. The practitioner is guided through the selection of the expert witness, the expert interview, the expert report, and the evaluation report. Forms that are commonly used with regard to these expert witnesses are included as well. This chapter also discusses and provides model questions for the qualification, direct examination, and cross-examination of these expert witnesses.

*In this chapter, Part B. Psychiatrists was reviewed by George Williford, M.D., an American Board Certified psychiatrist who is also a member of the American Psychiatric Association and private practice in Austin is open to clients and business problems of children and adolescents. Part C. Psychologists was reviewed by Robert S. Goff, Ph.D., psychologist, who has practiced in Texas since 1976. He has a psychiatric counseling practice and is currently a psychologist and Director of Service in the North Texas Psychiatric Clinic in Austin. Part D. Social Workers was reviewed by Betty Ohl-Blackwood, MSW, from the Austin Social Worker Association. He works in a child and family development agency, Ms. Williford is currently associated with North Texas Psychiatric Clinic in Austin, where she is a visiting psychiatrist.
§ 608.23 Background in Psychology

[1] Definitions

The practice of psychology is an offering to the public as rendering to individuals or groups any service, including computerized procedures, that involves but is not restricted to, the application of established principles, methods, and procedures of diagnosing, explaining, and analyzing behavior. The practice of psychology addresses normal behavior and the evaluation, prevention, and remediation of psychological, emotional, mental, interpersonal, learning, and behavioral disorders of individuals and groups, as well as the psychological consequences of medical problems, organizational structures, stress, and health. To offer psychological services, a person must be certified and licensed under the procedures outlined in the Psychologists’ Certification and Licensing Act.

[2] Training and Qualification

To be qualified for certification as a psychologist in Texas, a person must have received a doctoral degree based on a program of studies whose content was primarily psychological or its substantial equivalent in both subject matter and extent of training from a regionally-accredited educational institution. He or she must pass a national examination for professional practice in psychology, as well as jurisprudence and ethics examinations prescribed by the state board. For licensure for independent practice, a psychologist must have completed a two-year period of experience under the supervision of another licensed psychologist. Membership in the American Psychological Association (APA), as well as in state and regional psychological associations, is generally expected of practicing psychologists. A psychologist expert should be trained in the areas of clinical psychology of adults and children, developmental psychology, psychological tests and measurement, personality theory, scientific methodology, ethical principles, and professional ethical issues. A certified or clinical psychologist accredited by the American Board of Examiners in School Psychology, membership in the National Register of School Psychologists by the state education agency, appointment to a recognized college, university, or other professional agency, and sound clinical or research abilities of professional education and training are further indices of professional competence when child custody is involved.

[3] Established Psychological Approaches

[a] In General

There are several well-recognized psychological theories for psychologists apply, in custody-violation cases. The most of the "Neo-Freudians" are currently in practice. The "Neo-Freudians" is the "most" frequently used in practice. The "Neo-Freudians" also utilize the psychoanalytic theories of learning to analyze the effects of a given child's emotional development: (1) emotion conditioning, and (2) social learning.[7]

These established psychological theories provide guidelines for the psychologist when answering questions such as:

1. What type of custodial arrangement would be most beneficial to the child at the present time and into the future?

2. From the child's viewpoint, how would he feel the custody arrangement changes?

3. What type of custodial arrangement would be most beneficial to the child at the present time and into the future?

4. Should the child be placed with any relatives who are residing in the area?

5. Does the child have any special needs or requirements that would make it necessary for the child to be placed with a specific relative or friend?

6. Should the child be given the opportunity to spend time with any non-relatives who are living in the area?

7. Would it be more beneficial for the child to be placed with a non-relative who is living in the area?

8. Should the child be placed with a non-relative who is living in another area?

9. Would it be more beneficial for the child to be placed with a non-relative who is living in another area?

10. Should the child be placed with a non-relative who is living in another area?
1. What types of custodial arrangements would support the child's psychological well-being at the present time and throughout the expected period of custody?

2. What type of psychological climate would allow the custody options offer the child at the present time and throughout the expected period of custody?

3. erosion from the stage with a depressive outlook on life or a sad, somber, or "passive" attitude.

4. Autonomy versus doubt and shame. This stage occurs during a child's second year of life. The key issue is the child's search for autonomy while the parents introduce measures to inhibit the child's creativity. This stage refers to the learning of cultural acceptable behaviors and attitudes. If a child is not given autonomy and confidence during this stage, then he or she may emerge with a strong sense of independence. A restrained child may emerge with a sense of shame and doubt.

5. Initiative versus guilt. This stage occurs when a child is a preschooler. The key issue is the relation of the child to authority. A child learns that if he or she does what the parents want, then the parents will return the favor. A child who is punished often is likely to "play the game." An infant who is not trusted to make decisions may develop with an overcontrolling sense of guilt.

6. Industry versus inferiority. This stage occurs during the elementary school years until puberty. The key issue is the child's development of skills and attitudes needed to become, eventually, an industrial contributor to his or her society. If the child is treated unfairly or is not allowed to participate, one may develop with a sense of inferiority, but with a sense of inferiority.

7. Identity versus identity diffusion. This stage begins at puberty and renews itself as the individual grows toward adulthood. During this stage, one must make choices about a career, marriage, or family. Some people will be unable to establish an identity and will never find themselves.

8. Intimacy versus solitude versus isolation. This stage occurs during a person's twenties and thirties. The key issues concern love, marriage, and parenthood.
It is believed that a person will develop a sense of inferiority or, if he or she fails to achieve these ideals. 7. Generativity versus self-absorption. This stage begins during a person's forties and lasts until the retirement period. The key issue is generativity versus stagnation or self-absorption. It is believed that a person needs a connection with children and youth (future generations) to gain a sense of community with the ever-changing world. A person who is unable to find this connection may feel a sense of purposelessness and barrenness.

8. Integrity versus despair. This stage occurs during the retirement period. The key issue is for a person to come to terms with his or her own life. A sense of integrity will strengthen if the person believes he or she has lived a full life and has made the most of the opportunities he or she has offered the person. A person who has not lived assertively may realize that it is too late to change and may then feel a sense of despair.

Examples of Basic Theories of Learning

[i] Classical Conditioning Theory

Classical conditioning is also known as "learning through association." It is believed to determine how people acquire their loves, hates, fears, and other emotional responses. Under this theory, it is believed that if two stimuli are repeatedly paired, they become functionally equivalent. The conditioned response, or acquired habit, results from the repeated pairing with the stimulus. Conditioned responses can be extinguished by repeatedly presenting one of the stimuli alone without it being followed by the other stimulus. However, nothing that is learned is ever completely lost; it is only extinguished. Conditioned responses can be relearned with fewer paired trials than were originally required.

[ii] Operant Conditioning Theory

Operant conditioning is also known as the modification of behavior by reward ("positive reinforcement") or by punishment ("negative reinforcement"). According to the principle of reinforcement, behavior is learned by a process of trial-and-error. If a behavior is followed by a stimulus that increases the frequency of the behavior, the behavior is said to be reinforced. If a behavior is followed by a stimulus that decreases the frequency of the behavior, the behavior is said to be punished.

Social Learning Theory

Social learning is also referred to as learning through observation and imitation of a model. It is based on two main principles: inhibitory effect and disinhibitory effect. Inhibitory effect refers to the tendency of a child to avoid behaviors for which he or she was a model punished. Disinhibitory effect refers to a child's tendency to indulge in forbidden behaviors for which he or she sees a model in not punished or is rewarded.

Established Testing Theories and Techniques

[i] General Criteria for Tests

There are certain agreed-upon general criteria by which the psychological profession weights the value of a given test result in a given case. These include the following:

1. Standard conditions. This means that every person taking the particular test does so under substantially similar environmental circumstances. For example, it would be unreasonable to compare the hearing test results of two persons when one person has been tested in a noisy room and the other person has taken the test in a quiet environment.

2. Suitable norms. This indicates that there is a history of large scale use of the particular test by persons similar to the examinee in terms of age, sex, education, language background, subculture, and other group traits. These norms enable the psychologist to generally know what behaviors or results may be expected from the examinee.

3. Reliability. This refers to a test's established reliability, consistency, dependability, interrater agreement, or inter-rater reliability. A test which is not reliable cannot be used.
stability over substantial time periods. For example, a test score may prove reliable if there is evidence that the response of a tester, if retested, would obtain the same score or rating. Thus, a test is considered reliable, though, its results may still not be valid.

4. Validity. This refers to the truthfulness of a test result. Validity is the ultimate consideration in determining a test's value in a given situation. Unfortunately, few psychological tests, including IQ tests, do not provide clear answers in validity questions. For example, the concept of "intelligence" has no clear definition or obvious behavioral indicators. For example, in a test, a psychological test is considered valid to the extent that it successfully predicts the type of behavior the person wants to predict. For instance, a standard intelligence test has demonstrated that people in terms of having predicted successively school grades,toe, pass-rates, and performances on other established intelligence tests.

[b] Major Types of Psychological Tests

[b] Intelligence and Related Cognitive Tests

There are several types of intelligence tests commonly used by psychologists. They are classified and described as follows:

1. Wechsler Intelligence Test. There are three Wechsler tests: (1) Wechsler Preschool and Primary Scale of Intelligence (WPPSI) for children ages four to six and a half; (2) Wechsler Intelligence Scale for Children, for children ages five through 15 (WISC, original form), or for children six through 16 (WISC-R, revised form); and (3) Wechsler Adult Intelligence Scale, original or revised form (WAIS or WAIS-R), for ages 16 and above. Each Wechsler test yields three scores: (1) Verbal IQ; (2) Performance IQ; and (3) Full Scale IQ. The tests have orally-presented questions and questions, but do not require reading or writing. The verbal tests measure a person's...
3. Sorting Test: In this test, the examiner is able to apprise her or her concept formation behavior. The psychologist employs a standard assortment of 50 objects in everyday use and instructs the examinee to group these objects into subgroups. The psychologist records the groupings made and the reasons for the grouping. This task light on the examiner’s thought processes and reflects any impairments by maladjustment. For example, unusual groupings that are disconnected, strangely value-laden, or illogical may reflect a type of disordered thought process commonly found in cases of mental, emotional, and social maladjustment. Children’s sorting of this type of usually considered too passive since such sorting may indicate immaturity rather than mental disorder. The sorting test is not used as widely as the Wechsler or Stanford-Binet IQ tests, but it can serve as a valuable adjunct to these intelligence tests when an examinee’s concept formation skill is in question.

[II] Projective Techniques

Projective tests, in which a person is asked to interpret or respond to a standard series of ambiguous stimuli, are used by the psychologist to analyze the person’s cognitive, emotional, social, personality, and behavior potential. A psychologist with an extensive background of experience with projective tests can use the test responses, in conjunction with the person’s history, observed behaviors, and performance on other tests to formulate important conclusions about the person. Prudence dictates that the psychologist use such corroborative evidence with the projective test results. Projective tests have been criticized for having little or no scientific basis, and the psychologist can expect to be thoroughly examined on the test results.

There are a variety of projective tests employed by psychologists. They include the following:14

1. Rorschach Test: Tropic Rorschach inkblot numbered I through X are administered in numerical order and in a fairly

14 J. Clark, H., The Rorschach as a Test of Personality (1937, 2nd ed., Grune & Stratton.)

when the examiner has an inhibited, constructed personality, the test results frequently lead to reveal this persona, style structure but not much more.

3. Children's Attribution Test (CAT). This is a mental picture story test that was designed for use with children between the ages of three and 11. There are 18 pictures in all. The CAT is administered and interpreted in the same manner as the TAT. It is believed that in child custody cases, it is especially important to allow children to speak directly to attorneys, in an evaluative way, about their parents. Sometimes, a child's past or divided loyalty may be avoided by focusing on external images of animal or character, rather than on family matters.

4. Bender-Gestalt Test. This test provides a means of assessing a person's visual-motor eye-hand integration and coordination. The Bender-Gestalt consists of a standard set of nine distinct and geometric shapes, drawn in black and blue, individually mounted on punch-card boards. Each card is given in a prescribed order to the examinee, the psychologist will instruct him or her to copy the shapes into a single sheet of white paper, on which all the figures are to be drawn. The examiner's drawings tell the psychologist how the test stimuli were perceived, organized, interpreted, simplified, distorted, added to, or otherwise handled.

5. Sentence Completion Test. In this test, the examinee is presented with "sentences," such as "I get angry when . . ." or "Father usually . . ." The examinee is told to complete the sentence. Adults and children 12 years or older are usually given the test in written form, whereas younger children are given an oral test. Often, the psychologist will tailor selection of sentence stimuli to the needs of an individual case. In child custody cases, often, the psychologist will select items likely to reveal family life attitudes.

6. Drawing Test. In this projective technique, the psychologist designates samples of drawings from the adults and children examined. The examiner is provided with pencils, erasers, and paper, and instructed to draw a picture of a whole person and

In response to the examiner's question of the way in which the drawings are used to estimate a person's intellectual level, or to determine a person's personality strengths, weaknesses, and problems, Family drawings are particularly useful in examining the relationship dynamics. Drawing tests have been criticized for their lack of validity and reliability.

5. Word Association Test. Under this approach, the example is asked to respond with the first word that comes to mind after the stimulus word is read to him or her. The psychologist will usually select stimulus words based on the particular issues of the case. The responses are analyzed for clues to the examinee's thoughts, feelings, attitudes, values, and conflicts. (usually slow or fast reactions, mental blockages (able to respond), evaluative responses, and unusual emotional displays may indicate that the examinee has "complexes" or defenses). The test has been criticized because it does not provide sufficient material to describe the personality of a meaningful whole, and it evokes indices of emotional disturbance without indicating the nature of the disturbance. Thus, this test is not used frequently by psychologists.

6. Projective Questions Test. In this test, certain questions of an evaluative nature are included in personality assessments of people, especially children. For instance, the examinee may be asked: What type of animal would you most like to be? Why? The psychologist will use the responses to the test or means of rating issues and eliciting attitudes, and then use formal tests and/or interview to analyze these issues and attitudes.

7. Diagnostic Play Observations. It is believed that young children, through their spontaneous play, will reveal to the observer whatever it is that they do in formal interviews or structured tests. A psychologist may use this technique to form impressions of a child's mental, emotional, social, and other psychological characteristics and needs. Under this approach, the child is invited to use, as desired, any number of provided reproducible play materials. Comments...
types of play materials used include dolls, doll houses, puppets, soldier and police toys, arts and crafts materials, costume hats, and table-top gardens for solitary or competitive play. Critics of this approach caution against overestimating a given play episode, since the factors influencing a child's play remain to a large extent unknown, and children's play, like other behavior, can be altered if signs of approval or disapproval are displayed by the adult in charge. Thus, the psychologist must guard against "shaping" the child's play so that it conforms to his or her expectations or hypotheses. Prudence dictates that conclusions drawn from the diagnostic play be compared with the results of other tests administered to the child.

10. Ramzow's Picture-Frustration Study. There are two forms of this test: one for children ages 4 to 12, and another for adolescents and adults ages 14 and over. Under this technique, the examinee is presented with a booklet of cartoon pictures portraying frustrating social interactions. Usually, the "aggressor" is shown at having stated something to which the target must respond by writing in the Wag of the victim. The psychologist analyzes the written responses for clues as to how the examinee characteristically reacts to frustrating life experiences. The responses are classified in accordance with the type and the direction of the implied aggression. Types of aggression include, for example, "bully", "bully's brother", (when the focus is on the aggressor's characteristics), and "ego-definition" (where the focus is on the victim's referring). Direction of aggression includes, for example, "provocative", "verbally-directed", or "self-directed." The examinee's percentage of the different types and directions of aggression are tabulated and compared with a norm. The examinee also receives a group conformity rating that compares his or her responses to the standardization sample's typical or "modal" responses. In child custody matters, the psychologist may also use individually-colored cartoons portraying situations relevant to the case at hand.

11. Make A Picture Story Test. Under this approach, the examinee is asked to use cardboard cutout figures as actors against a stage background. The examiner is asked to dramatize a story of his or her own choosing. The psychologist will record the story told, and, on a standard form, record the figures used and their novel-placements. This test provides suggestive, but not definitive, evidence of the examinee's mental, emotional, and behavioral potential. The validity and reliability of this test also depends on the expert psychologist's clinical sensibilities and theories, rather than on any solid empirical data.

The objective test results are symbolically written as "true" or "false" responses to the questions. The examinee's responses are statistically compared to those of the norm group and other clinical samples. Three of the most common objective tests and scales used by psychologists include the following:

1. Minnesota Multiphasic Personality Inventory (MMPI, original test, and MMPI-2, revised 1989). The MMPI is the most widely used objective test for personality inventory. It was originally designed for persons aged 14 and older. The MMPI has norms that extend down to age 14, but the MMPI-2 has no norms for adolescents under age 15. The MMPI consists of 562 statements, rated either individually or in groups (on a computer-scored or hand-scored answer sheet). The examinee is asked to tick off or mark the answers, or rate the responses as "true," "false," or "cannot say." The statements involve many topics, including health, family, religious, and sexual attitudes, along with emotional and personality problems. The test items are arranged for analysis to clusters so that separate scales are created. There are hundreds of scales used by psychologists. An especially noteworthy feature of the MMPI is its set of "validity" scales, which show the degree to which an examinee's MMPI responses result from carelessness, deflected reading, multiplying, misunderstanding, and certain attitudes toward taking the test. There are also scales that examine a person's tendency

10 See [2], above.
to try to present himself or herself in a favorable light. The interpretation of MMPI results also takes into account the examiner's age and sex. Prejudice distorts that psychologists are aware of the differences in cultural and individual background when interpreting an individual's MMPI profile.

2. Visual Social Maturity Scale: The VSM is a newly used behavior rating scale that assesses the social development of individuals from infancy to 20 years of age. It is believed that it measures the abilities essential for social adequacy and occupational success. The test is scored on the basis of a number of structured interviews conducted with the parent, or with the parent of the examiner when the child is extremely young. In child custody cases, it may be used to ask a "social adult" who knows the young child well, to serve as the informant for the child's VSM rating. Parents are asked to examine a child custody dispute will usually present views of their child that they believe will best their side. The examiner is rated with a "social adult" and "social quotient" (which is based on Social Age divided by chronological age, as well as individual ratings in such areas as self-help, communication, behavior, and social behavior.

3. Structured Pediatric Psychological Interview (SPPI): The SPPI is a technique for systematically sampling children's expressions of life concerns and emotional distress. It may be used with children and adolescents ranging in age from five to 19. The SPPI is designed from other interviewing techniques in that there is a standardized set of 20 question scenarios. While the direct questions, the SPPI is not a test. Instead, it provides additional clues as to how the children perceive and express their psychosocial distress. In the SPPI interview, there is a list of response alternatives below each question, and the psychologist decides which alternative best describes the child's statement. The child's total responses are compared to the overall responses of other children of the same age and sex who have been interviewed by a psychologist of a specific sex. The SPPI, therefore, is an objective and established norm, which

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SECTION 2: EXPERT WITNESSES

§ 68B.77  Court-Appointed Psychologist

When the mental condition of a party, or of a person in the custody, conservatorship, or under the legal control of a party, is controverted, the court shall order the party to submit to a mental examination by a psychologist, to produce for examination the person in suit or her custody, conservatorship, or legal control. For purposes of this rule, a psychologist is a person licensed or certified by a state or the District of Columbia as a psychologist. In cases arising under Title II of the Family Code, the court, in its own motion or on motion of a party, may appoint one or more psychologists to make a finding and to appropriate mental examinations of the children who are the subject of the suit or any other parties.

Payment for psychological tests varies greatly from one jurisdiction to another. In most cases, the parties will have to pay for all or part of the tests.

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References:

For a detailed discussion of expert-appointed exams, see § 608.83(2). For favor of a motion and order for a mental examination, see §§ 608.11A, and 608.11B.

§ 608.32 Psychologist Retained by Party

Unless the parties or the attorneys are familiar with any particular psychologist, the first step in selecting a psychologist is to seek referrals. Referrals can be obtained from other attorneys. Other sources of information include any local psychological association, a department of psychology at a leading university, or a local mental health or child guidance clinic.

The practitioner should also evaluate the psychologist's qualifications and training. In particular, the practitioner should find out whether the psychologist is licensed in the state and whether the psychologist has experience in the psychological testing of adults and children. Any psychologist who is certified but not licensed for independent practice may be supervised by a psychologist who is licensed. The licensed psychologist is the legally responsible party as an evaluation that was made by a certified, but unlicensed, psychologist.

Additionally, the practitioner should find out whether the psychologist has prior expert experience as an expert witness in child custody cases. If the psychologist has prior training, in addition to the above qualifications, then he or she is well suited as an expert in a custody case.

The practitioner should further understand and evaluate the psychologist's orientation, that is, what testing theories and techniques are used by the psychologist. If, for example, the psychologist favors only the use of projective tests, the practitioner may not want to retain the psychologist since those types of tests are highly subjective to the examiner, and the results are often disputed by other mental health professionals.

§ 608.33 Interviews Conducted by Psychologist

The purpose of interviewing the child is to provide important psychological, educational, and mental information that may now be gathered when the child underwent psychological testing. One of the best ways to interview the child is to administer the Structured Pediatrical Psychomotor Interview (SPPI). When a psychologist does not use a standardized interview, such as the SPPI, the psychologist often asks questions similar to those incorporated in the SPPI, and uses clinical judgment and experience to interpret the results after that compare the child's responses to normative data. The following are some of the typical interview questions that the psychologist will ask the child:

1. In your school work too difficult or too easy?
2. What would you like to become when you grow up?
3. What types of things do you enjoy?
4. Is anyone in your family sick?
5. Do you have any health problems?
6. Do you ever have any trouble controlling your feelings?
7. Do you hear or see things that are not really there?
8. What types of dreams do you have?
9. What was the last time you really felt upset?

§ 608.79 Expert Testimony

Recommended practice is that the psychologist request and review previous reports prepared by the psychologist in child custody cases. The psychologist can then ask the names to ensure the confidentiality of the reports.

For a detailed discussion of expert testimony, see § 608.83(2).
10. Does anyone ever hurt your feelings or your body?
11. Are there some bad times that you cannot forget?
12. Who is your best friend?
13. What do you like to do when you are not at school?
14. Who lives at your house now?
15. Do you ever think of leaving home?
16. What would you like to do that your parents will not allow you to do?
17. What jobs do you have to do at home?
18. What types of things make you feel happy?
19. Who seems upset the most in your family?
20. Have you ever thought about hurting yourself?

When interviewing adolescents, it is often helpful to have them complete a Personal Problems Checklist for Adolescents (PPC). Their responses to the PPC can be used to gather more information regarding areas that trouble them, and they may be significant in making a custody recommendation. The PPC contains 24 potential problem areas to be explored, among which are (1) the adolescent's self-concept and social comfort, (2) family and parental problems, (3) school, financial, and moral issues, and (4) dating, sexual, and health concerns. Vocational issues and personal crisis should all be addressed during the interview with an adolescent involved in a custody situation.

Interview of Parent

The purpose of interviewing the parent is to assess the parent's emotional stability and the degree to which he or she has the ability to be a primary caregiver. Interviewing the parent is best facilitated by administering and then interpreting a battery of objective personality tests completed by the parent. More than one test should be given to ensure that there is agreement regarding the presence or absence of important personality traits. Whereas tests like the MMPI-2 can be...