

CHILD CUSTODY ASSESSMENT: A FIELD SURVEY OF SPANISH FORENSIC PSYCHOLOGISTS' PRACTICES

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Abstract

The participation of forensic psychologists has become common practice in proceedings involving families in dispute over child custody, and also to assess the suitability of joint custody. In order to know the practice, methodology, and decision-making criteria of Spanish forensic psychologists experienced in family cases, 66 Spanish forensic psychologists (error margin ± 0.06) responded to a Spanish adaptation of the questionnaire for the assessment of child custody evaluation practices by Keilin and Bloom (1986) and Ackerman and Ackerman (1997). The results showed that it was indifferent for the respondents to be retained by the court or one of the parties, and that the evaluation included a document review, each parent's individual interview, each child's individual interview, psychological tests run to parents and children, observation of parent-child interaction, and reports by other professionals. As regards the custody type, most of them chose sole custody. As for decision-making criteria for sole custody, the results showed that Spanish forensic psychologists follow a hierarchical decision-making model that begins, firstly, with the application of criteria concerning the child's protection (e.g. cruelty, abuse, negligence), then moving on to parental abilities. The decision over joint custody also follows a hierarchical decision-making model, where suitability is assessed initially and, if applicable, a decision is made based on its possible success or failure.

Keywords: Divorce, Separation, Child custody, Sole custody, Joint custody, Forensic assessment, Decision-making criteria.

Resumen

La participación del psicólogo forense en procedimientos judiciales de familia en disputa por la guarda y custodia, con objeto de asesorar al juez o tribunal en la recomendación de la guarda y custodia de los menores, así como para estimar la viabilidad de la custodia compartida, se ha convertido en habitual. Con el objetivo de conocer la práctica, metodología y criterios de decisión de los psicólogos forenses españoles con experiencia en casos de familia, 66 psicólogos forenses españoles (margen de error ± 0.06) respondieron a una adaptación española del cuestionario para evaluación de las prácticas en la evaluación de la guarda y custodia de los hijos de Keilin y Bloom (1986) y Ackerman y Ackerman (1997). Los resultados mostraron que a los participantes les resultaba indiferente trabajar a petición del juzgado o de una parte; que la evaluación incluía la revisión documental, la entrevista individual con cada progenitor, la entrevista individual con cada menor, la aplicación de pruebas psicológicas a progenitores e hijos, la observación de la interacción progenitor-hijo y los informes de otros profesionales. En relación a la modalidad de custodia optaron mayoritariamente por la custodia exclusiva. En lo referido a los criterios de decisión sobre la guarda y custodia exclusiva los resultados mostraron que los psicólogos forenses españoles siguen un modelo de decisión jerárquico empezando por aplicar, primeramente, criterios orientados a la protección del menor (p.ej., maltrato, negligencia, abuso), pasando posteriormente a las habilidades parentales. La decisión sobre la custodia compartida también sigue un modelo de decisión jerárquico con un primer nivel que deciden si es viable y, de ser el caso, toman una decisión en función de la presencia de criterios vinculados al éxito y fracaso de ésta.

Palabras clave: Divorcio, Separación, Guarda y custodia, Custodia exclusiva, Custodia compartida, Evaluación forense, Criterios de decisión.

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Introduction

The increase in divorce rates is an international constant. Statistical estimates during the 1990s (U.S. Bureau of the Census, 1992; Center for Disease Control and Prevention/National Center for Health Statistics, 1995) already indicated that almost half of the marriages in North America ended up in divorce, which meant that almost one million children faced this situation every year. In 2005, most of the states in the USA recorded a divorce rate of over 3 per 1,000 inhabitants, some of them doubling that rate (e.g. Arkansas, Nevada). In the European Union (EU-27), the crude divorce rate in 2007 was 2.1 per 1000 inhabitants, 0.6 points higher than the 1980 rate, with Spain as one of the leading countries (Eurostat, 2009).

In Spain, whose legislation is recent (Ley 11/1981; Ley 30/1981), the evolution has been exponential, going from 16,363 dissolutions of marriage (6,880 separations and 9,483 divorces) in 1981 to 127,473 (7,960 separations and 119,513 divorces) in 2010 (Consejo General del Poder Judicial, 2010). Along with this reality, and in a parallel way, the functions of forensic psychologists in family proceedings have been progressively consolidated. As a matter of fact, the 1981 divorce law [Ley del Divorcio de 1981] explicitly includes the participation of professionals to aid the court by introducing the “specialist’s report” [“dictamen de especialistas”] into the Civil Code [Código Civil]. Forensic psychologists were consulted on different matters (e.g. adoption, filiation). However, the main request of judges and magistrates is basically that a report be made on the suitability of child custody in married couples—or domestic partnerships—in dispute going to one parent or the other or to both jointly, according to the “child’s best interest”. In this respect, it is estimated that at least 80% of requests for expert psychological opinion in family courts are related to marital problems, and approximately half of them are reports on child custody (Bow, 2006; Ramírez, 2003).

In this respect, judges and courts demand that forensic psychologists conduct scientifically endorsed evaluations which also use scientific decision-making criteria, that is to say, valid, reliable instruments and criteria. That is why protocols and forensic psychological evaluation models have been validated (e.g. Ackerman, 1995) for the evaluation of disputed custodies between parents, litigious custodies (i.e. those

involving numerous lawsuits between the parents), and more recently, joint custodies. It was necessary to adapt those to Spain's specific legal realities, such as the following laws: Ley 11/1981, Ley 30/1981, and Ley 15/2005. This resulted in particular protocols and measures for the Spanish legal context (i.e., Fariña & Arce, 2006; Fariña, Arce, & Sotelo, 2010; Fariña, Seijo, Arce, & Novo, 2002; Ramírez, 2006).

Nevertheless, having valid and reliable media of proof does not mean they are being used by forensic psychologists on a daily basis. Ackerman and Ackerman (1997) and Keilin and Bloom (1986) found out that, in the American context, forensic psychologists generally performed good practices, but they detected dysfunctions such as the use of non-valid, unreliable projective instruments. In the Spanish legal context, no studies have been carried out on the practice, methodology, and decision-making criteria followed by forensic psychologists for their recommendation on sole custody, and for their assessment of the suitability of joint custody. That is why we considered a field survey aiming to define the practices, methodology, and decision-making criteria on which Spanish forensic psychologists base their recommendations on child custody in dispute cases and their assessment of the suitability of joint custody.

Method

Participants

66 Spanish forensic psychologists specialized in child custody evaluation participated in the study, and therefore, under the maximum uncertainty principle and a 95% confidence level, a $\pm .06$ error was set (estimated under maximum indetermination and for unknown-size populations). Most of the participants (75.8%) were women, and the mean age was 40.42 years ($SD = 8.28$). 78.8% of them designated their primary employment setting as private practice; the average time gone by since graduation was 16.63 years ($SD = 7.72$); they averaged 14.27 years of practice ($SD = 7.83$); and 7.73 years in the forensic and child custody evaluation field ($SD = 5.24$).

As regards their theoretical orientation, 53% defined themselves as followers of cognitive-behavioral therapy, and 18.2% as eclectic. As for their training, a high percentage, 62.1%, had taken postgraduate courses and 9% were doctoral-level psychologists.

Material and instruments

A questionnaire based on the items used by Keilin and Bloom (1986) and Ackerman and Ackerman (1997), in their respective studies, was developed. The original questionnaires, by the aforementioned authors, were adapted to the Spanish context in two phases. Firstly, they were translated into Spanish and the translation was checked by a back-translation system. Later, the Spanish version was reviewed by two experts in child custody evaluation in order to verify the items' adjustment to the current Spanish context. In addition, criteria obtained from analyzing Spanish court sentences were added (Fariña, Arce, & Seijo, 2005). The final questionnaire (Arch, 2008) comprises 93 items grouped in three blocks. The first one, comprising 11 items, includes (personal and professional) demographic data. The second one requests information related to a variety of evaluation aspects, techniques, and procedures used by the professionals by means of 10 items. Finally, the third section explores sole (42 items) and joint (30 items) custody criteria, responded through a 9-point scale (with the poles *not important at all* and *very important*, with no other values in between) about the criterion's relevance in decision making. Moreover, they were requested to state, according to that sole criterion, whether they would recommend custody for a specific parent in the case of sole custody, and to indicate suitability or not in the case of joint custody. The questionnaire on custody criteria proved to be reliable ($\alpha = .86$) and valid, a high inter-judge consensus (92.3%) was observed in estimating the relevance of custody criteria (Arch, 2008).

Procedure

The universe of participants of interest for our study was defined as forensic psychologists practicing in Spain and expert in child custody evaluation. Bearing in mind that, at the time of the study, the capacity of "forensic psychologist" in Spain did not match any official academic degree or employment capacity, participant selection was conducted in three ways: the collaboration of the 23 head offices of the Colegio Oficial de Psicólogos [Spanish Psychological Association] was requested in order to invite the professionals in their experts' lists to participate; invitations were also sent to professionals who practice in the technical teams of Spanish family courts; and finally, to the professionals listed as experts in public Internet databases.

Two inclusion criteria were established: a) The *Keilin and Bloom Criterion* (1986), i.e., participants having conducted at least four custody evaluations; and b) participants having at least two years' experience in clinical psychology.

All the psychologists whose information was available were invited to participate according to the aforementioned criteria. Letters were mailed to them informing them about the study's general goal, and discussing privacy and pertinent ethical aspects. The questionnaire was enclosed along with a stamped envelope to return the answers. All the letters were sent at once. The recovery coefficient was concordant with the current bibliography, as it was between 1/4 and 1/3 of the questionnaires sent out.

Data Analysis

Given the exploratory nature of the study, a basic descriptive statistical study was conducted for the sample's demographic and professional variables. To analyze sole and joint custody recommendation criteria, the importance given to every item was analyzed by estimating the arithmetic mean of the observed distribution for every item. Once they had been sorted from highest to lowest mean value, the confidence interval was calculated for the smallest statistically significant distance between two observed means (d), with a 95% confidence level, following the procedure described by Jones and Kenward (1989). This interval estimation ($IC = d \pm e$) is defined as the absolute value of the significant difference between two observed means in two paired samples, and it was calculated according to the following expression [1]:

$$IC = d \pm t_{\alpha} SQR (S_{Yd}/(n-1)) = d \pm e \quad [1]$$

" t_{α} " is the theoretical value in Student-Fisher's t distribution with $n-1$ degrees of freedom with a 95% confidence level.

" S_{Yd} " is the standard deviation value of the difference between two items as estimated from the observed distribution ($Item_k - Item_j$).

" n " is the sample size.

" e " is the maximum error with which the two limits of IC are generated.

Thus, for any pair of items already sorted (k and j), the observed difference (Y_d) is obtained for both means and compared to the minimum statistically significant value

$|d \pm e|$. In this case, if $(Y_d) > |d \pm e|$ then we assume that the difference between both observed means is statistically significant.

Likewise, the possible relationship between the importance designated to the item and the recommendation was analyzed by means of contingency tables and polychoric correlations (for categorical variables of ordinal scale). In some cases too, the point-biserial correlation coefficients were used, given that the distributions of some variables behaved as dichotomous, since there was a massive recommendation for one of the parents (one category obtained 0% occurrence). In addition, in cases of statistically significant relationship, the determination coefficient was included as the effect size estimate in order to establish the intensity of those relationships. To do that, the usual interpretation criterion in these cases was applied in agreement with Cohen's criteria (1992), albeit with the correction usually done in the case of ordinal correlations that considerably reduces the interpretation of the effect size under what is known as attenuation correction (Carrera, Feixas, & Guàrdia, 2010).

Results

Methodology of custody evaluation

Origin of retainment and preferences

The usual origin of retainment pointed out by participants was equally, $\chi^2(1) = 2.18$, *ns*, private (i.e., by request of only one parent) (59.09%) or the court (40.91%). It was indifferent to them, $\chi^2(1) = 2.97$, *ns*, whether they were retained by a party or the court.

Techniques and instruments used

Very frequently used evaluation techniques (>90%) included: document review, individual interview with each parent, individual interview with each child, and psychological tests run to children. The following were also mentioned as quite frequently used techniques (>80%): direct observation of parent-child interaction, tests run to adults and reports by other professionals.

Frequently used instruments (>60%) in child evaluation were the Family Drawing *projective test* in 75.4% of the cases, and the TAMAI *psychometric test*

(Hernández, 2002), which evaluates failure to adapt in personal, school, and social life, along with family dissatisfaction, 66.7% of the time. As for adults, the most frequently used tests were the 16PF-5 questionnaire (Catell, Catell, & Cattell, 1995) in 68.8% of the cases; the MMPI-2 (Hathaway & McKinley, 1999) in the 60.4%; and the MCMI-II (Millon, 2005) in the 60.4%.

Opinion and assessment of custody alternatives

Forty-seven percent of the participants chose sole custody with wide visitation rights on alternate weekends, half of the vacations, and several midweek afternoons but without overnight stay. To this we should add 15.2% who made the same choice but included overnight stay in midweek visits. Therefore, sole custody is the forensic psychologists' preferred choice, $\chi^2(1) = 4.91, p < .05$. Joint custody, with different choices of alternation (daily, weekly, monthly, or quarterly) was chosen by 22.7% of the participants, i.e., 1/4 of the population of forensic psychologists. In turn, participants evaluated this custody choice (modal opinion) as having a "moderately good" level of success according to their own experience. As regards split custody, it was generally viewed (69.7%), $\chi^2(1) = 10.24, p < .001$, as non-recommendable, apart from exceptional cases that justify its adequacy.

Custodial decision and recommendation

To study the relationship between each situation and the participants' recommendations as regards sole or joint custody, the procedure mentioned above in the Data Analysis section was applied. For each case (sole or joint custody), minimum distance between two paired observed means (d) was calculated, which ranged from 0.12 to 0.46 according to each pair of items (sample size and standard deviation value). According to whether a significant difference was observed between the means of two consecutive items, the most important items were identified included those with the lowest means, and therefore, least important according the participating psychologists' assessments. Moreover, Cohen's criteria were applied to the determination coefficients (R^2) that were estimated on the basis of the ordinal correlations between each item's importance and the recommendation associated to the situation.

Sole custody recommendation criteria

As can be seen in Table 1, which summarizes the results of sole custody recommendation criteria, the following are regarded as *very important* to evaluate custody: alcoholism (custody recommendation is dismissed for alcoholic parents with a large effect size); sexual abuse charge (custody recommendation is dismissed for parents charged with sexual abuse with a medium effect size); child alienation (custody recommendation is dismissed for alienating parents with a medium effect size); inflicting physical punishment on the child (custody recommendation is dismissed for parents who inflict physical punishment on their children with a medium effect size); child battering (custody recommendation is dismissed for parents who batter their children with a medium effect size).

In turn, the following are regarded as *quite important* decision-making criteria: parents with a history of psychiatric illness (custody recommendation is dismissed for parents with a history of psychiatric illness with a medium effect size); status quo previous to separation prevails (custody is recommended for the parent who was taking care of the child before the separation with a medium effect size); the child's wish, age 15 or older, which, though being quite an important criterion for decision making, is not linked to the custody recommendation for the parent chosen by the child as a custodian; threats of relocation by a parent (parents who threat to remove their children from their usual residence are ruled out as custodians with a medium effect size); a parent's criminal record (custody recommendation is dismissed for parents with a criminal record with a medium effect size); a parent's psychological stability (the more psychologically stable parent is preferred for custody with a small effect size); parental abilities (the parent with better parental abilities is preferred for custody with a medium effect size); previous failure to comply with court rulings (custody is not recommended for parents who have failed to comply with previous court orders with a medium effect size).

The remaining criteria, in the Spanish forensic psychologists' opinion, play a role of *medium, little or very little importance* in the custodial recommendation, while also being mostly indifferent for custody recommendation (see Table 1).

Table 1. Summary of sole custody decision-making criteria.

	Criteria	M(SD)	% Custody Determined Prog. A	% Custody Determined Prog. B	% Indifferent Custody Determination	Kendall/ Biserial correlation	ES(R ²)
Very Important	B is an active alcoholic.	8.45 (0.81)	98.5	1.5	0.0	.821***	Large (.674)
	Sexual abuse allegation has been made against A.	8.28 (1.33)	1.5	80.3	18.2	.335*	Medium (.112)
	B alienates the child.	7.94 (1.09)	81.8	1.5	16.7	.320**	Medium (.102)
	A tends to use physical punishment.	7.75 (1.21)	1.5	74.2	24.2	.447***	Medium (.199)
	Physical abuse allegation has been made against B.	7.74 (1.66)	68.2	4.5	27.3	.325**	Medium (.106)
Quite Important	B has a history of psychiatric hospitalization.	7.29 (1.46)	66.7	3	30.3	.304**	Medium (.092)
	A actively participates in children's education.	7.21 (1.32)	69.7	1.5	28.8	.344**	Medium (.118)
	The child would prefer to live with A, age 15 or older.	7.08 (1.02)	75.8	1.5	22.7	.122	
	A threatens to take the child to another town.	7.09 (1.59)	1.5	59.1	39.4	.325***	Medium (.105)
	A has a criminal record.	6.92 (1.66)	3	43.9	53	.354***	Medium (.125)
	B seems to be more psychologically stable than A.	6.81 (1.41)	4.5	47	48.5	.298***	Small (.177)
	A exhibits better parenting than B.	6.80 (1.44)	56.1	1.5	42.4	.421***	Medium (.177)
	A has not been cooperative with previous court orders.	6.76 (1.84)	1.5	48.5	50	.444***	Medium (.197)
Of Medium Importance	B is more tolerant of visitation than A.	6.53 (1.76)	1.5	42.4	56.1	.332***	Medium (.110)
	The child exhibits serious physical handicap.	6.52 (2.14)	6.1+	0.0 ++	93.9	.371**	Medium (.137)
	The child is mentally handicapped.	6.47 (2.21)	4.5+	0.0++	95.5	.344**	Medium (.118)
	Before the divorce, A had primary responsibility for the child.	6.39 (1.65)	42.4	0.0	57.6	.132	
	The child has a closer emotional bonding with B.	6.36 (1.13)	3.1	36.9	60	.346***	Medium (.119)
	A exhibits anger and bitterness about the family break-up.	6.35 (1.64)	3	27.3	69.7	.091	
	B is taking psychiatric medication.	6.21 (1.78)	21.2	0.0	78.8	.343***	Medium (.117)
	A is more aware of the child's future needs.	6.21 (1.57)	18.2	0.0	81.8	.434***	Medium (.188)
	The child would prefer to live with A, age 10 or older.	6.18 (1.69)	43.9	0.0	56.1	.403***	Medium (.162)
	The child exhibits currently diagnosed psychopathology.	6.15 (2.24)	4.5+	0.0++	95.5	.002	

Table 1 (continued). Summary of sole custody decision-making criteria.

	Criteria	M(SD)	% custody recommendation Prog. A	% custody recommendation Prog. B	% indifferent custody recommen- dation	Kendall / Point- Biserial	
Of Little Importance	B is more aware of the children's developmental milestones.	5.83 (1.58)	0.0	24.2	75.8	<u>.352</u> ***	Medium (.123)
	A has worse MMPI results than B.	5.80 (1.86)	1.5	31.8	66.7	.447***	Medium (.199)
	Before the divorce, B had primary responsibility for disciplining the child.	5.79 (1.74)	0.0	16.7	83.3	<u>.496</u> ***	Medium (.246)
	B is aware of the child's relevant school information.	5.77 (1.58)	0.0	16.7	83.3	<u>.395</u> ***	Medium (.156)
	A lives in the original family home, while B moved to a distant place.	5.74 (1.71)	34.8	0.0	65.2	<u>.348</u> ***	Medium (.121)
	A is a recovered alcoholic.	5.68 (1.80)	1.5	12.1	86.4	.021	
	A needs extended family's help, while B does not.	5.61 (1.66)	0.0	24.2	75.8	<u>.412</u> ***	Medium (.169)
	B is significantly less intelligent than the child.	5.59 (1.95)	40.9	0.0	59.1	<u>.454</u> ***	Medium (.206)
	B has more extended family available.	5.53 (1.50)	0.0	15.2	84.8	<u>.003</u>	
	A seems to be more economically stable than B.	5.49 (1.12)	19.7	0.0	80.3	.437***	Medium (.190)
	A's new partner has children living with him/her.	5.43 (1.05)	0.0	9.1	90.9	<u>.033</u>	
	The child would prefer to live with B, age 5 or older.	5.32 (0.91)	0.0	18.2	81.8	.410***	Medium (.168)
Of Very Little Importance	B is currently involved in a homosexual relationship.	4.45 (2.09)	15.2	0.0	84.8	.003	
	A is much more socially active than B.	4.42 (1.90)	6.1	0.0	93.9	<u>.072</u>	
	B has engaged in a new heterosexual relationship, while B has not.	3.61 (1.97)	6.1	0.0	93.9	<u>.008</u>	
	A is the mother.	3.43 (2.11)	10.8	0.0	89.2	<u>.011</u>	
	B is the father.	3.38 (2.08)	1.5	3	95.5	.003	
	B is the same sex as the child.	2.88 (1.81)	0.0	0.0	100	<u>.890</u> ***	Large (.792)
	A is ten years older than B.	2.41 (1.68)	0.0	0.0	100	<u>.932</u> ***	Large (.868)

Note. + If A is the mother; ++ If B is the father in determination percentages. For the correlation coefficients * $p < .05$; ** $p < .01$; *** $p < .001$. Underlined correlation values have been estimated by means of point-biserial correlation coefficients given the dichotomy of the observed distributions' behavior (one of the categories presents a 0% occurrence). ES = Effect size.

Joint custody decision-making criteria

Table 2 summarizes the criteria used by forensic psychologists in joint custody decision making. These are the criteria regarded as *very important* by Spanish forensic psychologists: ability of both parents to separate their interpersonal difficulties from the parenting decisions; the parents' willingness to reach agreements; the existence of a quality relationship of the child with both parents; and one or both parents having problems with substance abuse. As for the effects in joint custody recommendation, the first three criteria are related almost exclusively with recommendation (large effect size); as for the fourth one, substance abuse, it is related with non-recommendation (medium effect sizes).

Five criteria are regarded as *quite important* for joint custody recommendation: the expressed wish of the child, age 15 or older, for this custody choice; before break-up, both parents had been equally involved in child caretaking; both parents have accepted and complied with previous court rulings; both parents are emotionally stable; and the amount of resentment between the parents. Out of these criteria, both parents' equitable involvement in child caretaking, both parents complying with court rulings, and both parents' emotional stability are related to the preference for joint custody (medium effect size). For their part, the child's wish for joint custody, though being quite an important criterion, does not mean the forensic psychologist will agree to it, since the unsuitability of joint custody derives from the resentment between the parents (medium effect size).

The following criteria of *medium importance* are related to the suitability of joint custody: geographic proximity of parental homes; flexibility in the parents' work schedule; and availability of extended family members (with medium effect sizes). In turn, the parents' discrepancy in educational matters is linked to the unsuitability of joint custody (small effect size). The remaining criteria are of *little* or *very little importance* and out of these, only the child's wish, age 10 or older (indetermined relationship with a medium effect size), and the provision of the law for this custody choice (unsuitability is dismissed with a large effect size) is related to child custody suitability.

Table 2. Summary of joint custody decision-making criteria.

	Criteria	M(SD)	% suitable joint custody	% unsuitable joint custody	% indetermined joint custody	Kendall/ Point- Biserial Correlation	
Very Important	Ability of the parents to separate their interpersonal difficulties from their parenting decisions	8.48 (0.81)	98.5	0.0	1.5	<u>.821***</u>	Large (.674)
	Parents' willingness to reach agreements	8.41 (0.94)	98.5	0.0	1.5	<u>.795***</u>	Large (.632)
	The child has a quality relationship with both parents	8.39 (0.96)	92.4	0.0	7.6	<u>.774***</u>	Large (.599)
	One or both parents have problems with substance abuse	8.31 (1.43)	3.0	63.6	33.3	<u>.402**</u>	Medium (.161)
Quite Important	The child favors joint custody, age 15 or older	8.09 (1.15)	78.8	0.0	21.2	<u>.148</u>	
	Before the break-up, both parents had been equally involved in caretaking responsibilities	7.95 (1.40)	92.4	1.5	6.1	<u>.566**</u>	Medium (.320)
	Cooperation of both parents with previous court rulings	7.82 (1.37)	78.8	0.0	21.2	<u>.399**</u>	Medium (.159)
	Both parents exhibit emotional stability	7.77 (0.22)	89.4	0.0	10.6	<u>.408**</u>	Medium (.177)
	Large amount of resentment observed between the parents	7.77 (1.55)	4.5	63.6	31.8	<u>.331**</u>	Medium (.109)
Of Medium Importance	Geographic proximity of parental homes	7.41 (1.43)	83.3	0.0	16.7	<u>.351**</u>	Medium (.150)
	Flexibility in the parents' work schedules	7.40 (1.40)	73.3	1.5	21.2	<u>.322**</u>	Medium (.120)
	The parents' educational styles are different	7.08 (1.80)	12.1	43.9	43.9	<u>.261**</u>	Small (.085)
	The child exhibits serious physical handicap	7.03 (1.99)	21.1	21.2	57.6	<u>.010</u>	
	Both parents are economically stable	6.92 (1.58)	66.7	0.0	33.33	<u>.090</u>	
	The child is mentally handicapped	6.92 (2.03)	27.7	10.8	61.5	<u>.099</u>	
	Support from extended family	6.85 (1.76)	54.5	0.0	45.5	<u>.438***</u>	Medium (.192)
	The child exhibits currently diagnosed active psychopathology	6.79 (2.06)	27.3	15.2	57.6	<u>.007</u>	
	One or both parents have been in trouble with the law	6.77 (2.31)	9.2	24.6	66.2	<u>.022</u>	

Note. * $p < .05$; ** $p < .01$; *** $p < .001$.

Tabla 2 (continued). Summary of joint custody decision-making criteria.

	Criteria	M(SD)	% suitable joint custody	% unsuitable joint custody	% indetermined joint custody	Kendall/ Point- Biserial	ES(R ²)
Of Little Importance	The child clearly expresses preference for joint custody, age 10 or older	6.67(2.0)	40.9	1.5	57.6	.421***	Medium (.177)
	The fact that current Law considers joint custody	6.18(2.67)	54.5	0.0	45.5	<u>.561</u> ***	Large (= .314)
	The child will need a baby-sitter while one of the parents is at work	5.47(2.18)	33.3	10.6	56.1	.001	
	The child clearly expresses preference for joint custody, age 5 or older	5.38(2.50)	42.4	3.0	54.5	.020	
	The parents have different religious beliefs	4.98(2.44)	32.3	7.7	60.0	.030	
	One of the parents is involved in a homosexual relationship	4.98(2.52)	40.0	7.7	52.3	.089	
	Economic differences between parental homes	4.71(2.33)	37.9	6.1	56.1	.061	
	Marital status of each parent (e.g. cohabiting, single)	4.59(2.54)	42.4	0.0	57.6	.004	
Of Very Little Importance	Number of children	4.27(1.32)	42.4	0.0	57.6	<u>.018</u>	
	Age of the parents	4.27(2.13)	42.4	0.0	57.6	<u>.031</u>	
	Differences between parental homes (e.g. size, comfortability)	4.21(2.45)	37.9	3.0	59.1	.060	
	Gender of the child	2.50(1.98)	42.4	1.5	56.1	.011	

Note. * $p < .05$; ** $p < .01$; *** $p < .001$. Underlined correlation values have been estimated by means of point-biserial correlation coefficients given the dichotomy of the observed distributions' behavior (one of the categories presents a 0% of occurrence).

Discussion and Conclusions

The results profile Spanish forensic psychologists who perform child custody evaluations as being mostly females who tend to keep their training up to date, and having a cognitive-behavioral or eclectic theoretical approach. According to the Consejo General de Colegios Oficiales de Psicólogos [Spanish Psychological Association] (personal communication), the following data fit the average Spanish psychologist: about 80% female, with a cognitive-behavioral or eclectic theoretical approach, and with continuous training update. The informed theoretical approach, along with the methodology analysis followed during custody evaluation—which

involves using psychometric and projective instruments, document review, interviews, and direct observation of parent-child interaction—leads us to a similar interpretation to the one described in the American context (Ackerman & Ackerman, 1997; Bow & Quinell, 2001; Keilin & Bloom, 1986), i.e., in practice, intervention is eclectic. We sense that, either directly (specific forensic training) or indirectly (updates or extended training in psychology), they have postgraduate education, which indicates that forensic psychologists follow the recommendation by the Committee on Ethical Guidelines for Forensic Psychologists (1991) to keep their knowledge up to date with training activities after graduation.

In our study, expert evaluators were mostly retained by private parties, more specifically, from just one of the parents. However, forensic psychologists deem this intervention appropriate despite the fact that numerous experts have criticized them in the recent past, arguing a potential lack of impartiality of the technicians caused by working under these conditions (Del Río, 2000) and the fact that these interventions have frequently been reported to the Psychological Associations' Ethical Committees (Cayuela, Jarne, & Molina, 2004). This result differs from that obtained by Keilin and Bloom (1986) in the American context where, despite the same private retainment, forensic psychologists claimed to prefer to conduct the interventions under the *guaranteed impartial role* implied by being appointed by the court or retained by both parents.

As regards the methodology of the evaluations, the results of this field survey show that the most widely used techniques included document review, interviews both with the parents and the children, running psychological tests to the children, direct observation of parent-child interaction, and reports by other professionals (e.g. teachers).

The instruments used in child evaluation comprised the *Family Drawing* projective test, which measures adaptation to the familial medium, and the TAMAI questionnaire (Hernández, 2002), designed to evaluate child adaptation on a personal, academic, and social level, family satisfaction, the parents' educational approaches, and educational discrepancy. Consequently, the instruments applied to children are designed to evaluate their adaptation, the educational approaches, and the level of conflict between the parents regarding their children's education.

Nevertheless, it must be noted that, among the instruments most widely used with children, the TAMAI (Hernández, 2002) provides psychometric guarantees, whereas the *Family Drawing* projective test does not. Moreover, the TAMAI is completely pertinent for child custody forensic evaluation since it reports on the child's adaptation and, by extension, the child's needs as well as educational approaches and level of conflict between the parents expressed as educational discrepancy (Mecerreyes, 1999).

However, the use of projective evaluation techniques such as the *Family Drawing* test in the forensic context has been widely questioned (Erickson, Lilienfeld, & Vitacco, 2007; Grisso, 1990; Hynan, 2003; Lally, 2001); given that they do not comply with the reliability and validity standards of psychological tests (American Psychological Association, 1985). The use of these dubious forensic validity techniques is due, it is our belief, to the almost absolute lack of psychometric tests for very young children which follow the relevant criteria for these evaluations and for acknowledging them as *masked tests* (Anastasi 1998).

For its part, expert evaluation of adults is intended to assess personality by means of 16PF-5 (Cattell, Cattell, & Cattell, 1995), and psychopathology, either through MMPI-2 (Hathaway & McKlinley, 1999) or MCMI-II (Millon, 2005). Despite the fact that, in general, we sense that the methodology followed by Spanish forensic psychologists complies with the generic recommendations of the Guidelines for Child Custody Evaluations in Divorce Proceedings (American Psychological Association, 1998), the results obtained reflect that, due to the lack of psychometric instruments and forensic protocols designed and validated for the Spanish context, Spanish forensic psychologists turn to specifically clinical instruments despite the limitations and warnings set forth by experts (Fernández-Ballesteros, 1983; Gardner, 1989; Karras and Berry, 1985).

The preferred custody choice of Spanish forensic psychologists is sole custody, with wide visitation rights for the non-custodian parent. As for joint custody, although according to the opinion based on experience, it has a *moderately good* level of success, it was only the preferred choice of approximately 1/4 of the forensic psychologists. This opinion differs from that of the general population of Spain—who consider *almost unanimously* (>95%) joint custody as the idoneous choice—and from the results of

empirical research, which indicate that joint custody adjusts better to the child's best interest (e.g. Fariña, Novo, & Seijo, 2010; O'Donohue, Beitz, & Tolle, 2009). We understand that this discrepancy comes from the lack of consolidated experience in Spain that endorses its reliability and the defense of the child's best interest. Accordingly, studies on court rulings show that, in approximately 90% of the cases, custody goes solely to the mother (Fariña & Arce, 2006; Montero, 2001) and joint custody occurs only when there is agreement between the parents (Arce, Fariña, & Seijo, 2005).

The criteria forensic psychologists deem *very important* for sole custody recommendation involve the child's protection to cruelty, abuse, or negligence by a parent (i.e. exposing the child to risk situations such as parental alcoholism, sexual abuse, alienation, physical punishment, and battery). As was to be expected, the presence of these criteria relates to the non-recommendation of custody. We would like to highlight that forensic psychologists include alienation among the very important criteria when they are under heavy pressure not to do so from social groups (see Bernet, 2010 for a discussion) and even political groups (e.g. in Spain the Ministry of Equality has repeatedly issued public communications denying the existence of alienation). The first goal of psychological evaluation is to protect the child against abuse.

On the second level of evaluation, i.e., *quite important* criteria, forensic psychologists relate factors pertaining to parental competence for caretaking (primary caretaker, parental abilities, psychological stability), the presence of psychiatric psychopathology in the parent, the child's expressed wish (15 years old), and the presence of antisocial and/or criminal behavior by a parent (i.e., failure to comply with court orders, criminal history, threats to relocate the child). Among these criteria, parental competence is linked to the recommendation of sole custody, whereas illegal conducts and psychopathology are linked to non-recommendation. The child's wish is not related to recommendation (i.e., the wish of the child, age 15 or older, is considered quite important by the forensic psychologists, but is not a deciding factor in endorsing the preferred parent, so as not to overburden the child).

The remaining psycho-socio-environmental criteria (i.e. emotional bond, the child's wish, age 10 or older, availability of the extended family, greater economic stability) are criteria of little, scant, or no relevance at all in determining sole custody

according to the forensic psychologists, and they do not bear them in mind when giving custody to one specific parent. Among the criteria of *very little importance*, the parent's gender is of note, since it is indifferent for custody recommendation. However, that information collides with studies of Spanish sentences that showed that, in over 90% of the cases, custody went to the mother (Arce et al., 2005), and it only went to the father when there was mutual agreement or the mother was incapable of exercising custody (e.g. alcoholism, substance abuse, abandonment, negligence) (Fariña, Seijo, Arce, & Egido, 2002).

To sum up, Spanish forensic psychologists follow a hierarchical decision-making model when deciding on sole custody recommendation. Firstly, they consider risk factors in order to protect the child: if parents expose the child to abuse, cruelty, or negligence, they are dismissed as custodians. Secondly, when no risk is observed, the recommendation pivots around parental competence as a positive criterion for the custodial recommendation, and the presence of psychopathology and illegal conducts as negative criteria.

This decision-making model is adjusted to the legal request to defend the child's best interest—thus preventing exposure to risk situations—and to the guidelines of the American Psychological Association (1994), which search for the best adjustment between parental abilities and the child's needs. However, the model is not exactly the same as the American one (Ackerman and Ackerman, 1997; Keilin and Bloom, 1986), since the American model does not include the child protection factor, and it goes straight to the search for the best adjustment between the parents' abilities and the child's needs.

In the case of joint custody and in view of the practical unanimity among forensic psychologists with regard to estimating joint custody suitability and the contents of the *very important* criteria (i.e. “both parents being able to separate their interpersonal difficulties from the parenting decisions”, “both showing willingness to reach agreements”, “the existence of a quality relationship between the child and both parents”), these criteria should be regarded as *essential* requirements for joint custody.

On the other hand, Spanish forensic psychologists, also almost unanimously, rule out joint custody if one of the parents has a substance abuse problem (exclusion criterion). Given the occurrence of the essential conditions for considering joint custody

and the absence of the exclusion criterion, the suitability of joint custody would depend on the criteria regarded as *quite important* for decision making (i.e., the child's wish, age 15 or older, but unrelated to any tendency in evaluating joint custody; equal involvement in the child's caretaking previous to the break-up; both parents complying with previous court rulings; the parents' emotional stability; presence of resentment between the parents).

Due to its effect on estimating the suitability of joint custody, the share of responsibilities, complying with previous court rulings, and the parents' emotional stability are linked to the recommendation of joint custody; whereas the resentment observed or expressed between the parents is a negative criterion for joint custody.

Consequently, it all indicates that Spanish forensic psychologists follow a hierarchical decision-making model. Firstly, they decide whether joint custody is suitable and, if that were the case, they would make a decision based on the presence of criteria linked to its success and the absence of negative ones.

For their part, psycho-socio-environmental criteria (e.g. conditions of the household, gender, economic situation, pathologies, psychopathologies, sexual orientation) have a relative or scant impact on the recommendation of joint custody.

Finally, it is noteworthy that forensic psychologists avoid overburdening the child with the responsibility of the decision by either giving them little influence on the forensic decision, or by not linking it to any specific tendency of recommendation.

References

- Ackerman, M. J. (1995). *Clinician's guide to child custody evaluations*. New York: John Wiley and Sons.
- Ackerman, M. J., & Ackerman, M. C. (1997). Custody evaluation practices: A survey of experienced professionals (revisited). *Professional Psychology: Research and Practice*, 28, 137-145. doi: [10.1037/0735-7028.28.2.137](https://doi.org/10.1037/0735-7028.28.2.137)
- American Psychological Association. (1985). *Standards for educational and psychological testing*. Washington, DC: Author.

- American Psychological Association. (1994). Guidelines for child custody evaluations in divorce proceedings. *American Psychologist*, 49, 677-680. doi: [10.1037/0003-066X.49.7.677](https://doi.org/10.1037/0003-066X.49.7.677)
- Anastasi, A. (1998). *Test psicológicos*. México: Aguilar.
- Arce, R., Fariña, F., & Seijo, D. (2005). Razonamientos judiciales en procesos de separación: Análisis cognitivo y de contenido de las motivaciones. *Psicothema*, 17, 57-63.
- Arch, M. (2008). *La intervención de los psicólogos forenses en las evaluaciones de la guarda y custodia de los niños*. Retrieved from <http://www.tesisenred.net/TDX-1103108-114532>
- Bernet, W. (2010). *Parental alienation, DSM-5, and ICD-11*. Springfield, IL: Charles C. Thomas Publisher Ltd.
- Bow, J. (2006) Review of empirical research on child custody practice. *Journal of Child Custody*, 3, 23-50. doi: [10.1300/J190v03n01_02](https://doi.org/10.1300/J190v03n01_02)
- Bow, J. N., & Quinnett, F. A. (2001). Psychologists' current practices and procedures in child custody evaluations: Five years after American Psychological Association guidelines. *Professional Psychology: Research and Practice*, 32, 261-268. doi: [10.1037/0735-7028.32.3.261](https://doi.org/10.1037/0735-7028.32.3.261)
- Carrera, M. J., Feixas, G., & Guàrdia, J. (2010). Effect of attenuation correction for the reduction of bias in psychological measurement. *Advances and Applications in Statistics*, 16, 49-64.
- Cattell, R. B., Cattell, A. K. S., & Cattell, H. E. P. (1995). *16 PF-5. Cuestionario de personalidad para adultos* (5th ed.). Madrid: TEA Ediciones.
- Cayuela, R., Jarne, A., & Molina, A. (2004). Estudio descriptivo de las denuncias atendidas por la comisión deontológica del colegio oficial de psicólogos de Cataluña en relación con las intervenciones periciales. In R. Arce, F. Fariña, & M. Novo (Eds.), *Psicología jurídica* (pp. 247-255). Santiago de Compostela: Xunta de Galicia.
- Cohen, J. (1992). A power primer. *Psychological Bulletin*, 112, 155-159. doi: [10.1037/0033-2909.112.1.155](https://doi.org/10.1037/0033-2909.112.1.155)

- Eurostat. (2009). *Statistics. Marriage and divorce*. Retrieved from http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database?pire_f458_1209540_458_211810_211810.node_code=tps00013
- Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior*, 15, 655-665. doi: [10.1007/BF01065858](https://doi.org/10.1007/BF01065858)
- Consejo General del Poder Judicial. (2010). *La justicia dato a dato*. Retrieved from <http://www.poderjudicial.es>
- Del Río, C. (2000). Informes de parte en conflictos matrimoniales: Implicaciones deontológicas. *Infocop*, 10, 15-20.
- Erickson, S. K., Lilienfeld, S. O., & Vitacco, M. J. (2007). Psychological testing and child custody evaluations in family court: A dialogue. A critical examination of the suitability and limitations of psychological tests in family court. *Family Court Review*, 45, 157-174. doi: [10.1111/j.1744-1617.2007.00136.x](https://doi.org/10.1111/j.1744-1617.2007.00136.x)
- Fariña, F., & Arce, R. (2006). El papel del psicólogo en casos de separación o divorcio. In J. C. Sierra, C. Jiménez, & G. Buela-Casal (Eds.), *Psicología forense: Manual de técnicas y aplicaciones* (pp. 246-271). Madrid: Biblioteca Nueva.
- Fariña, F., Novo, M., & Seijo, D. (2010). Estudio de opinión de los universitarios españoles sobre igualdad de género y custodia compartida. In F. Fariña, R. Arce, M. Novo, & D. Seijo. D. (Eds.), *Separación y divorcio: Interferencias parentales* (pp. 253-263). Santiago de Compostela, Spain: Nino.
- Fariña, F., Arce, R., & Sotelo, A. (2010). ¿Es efectivo el estudio psicométrico estándar del peritaje del estado clínico y de la disimulación en progenitores en litigio por la guarda y custodia de menores? *Revista Iberoamericana de Psicología y Salud*, 1, 65-79.
- Fariña, F., Seijo, D., Arce, R., & Egido, A. (2002). Sentenze giudiziali in separazione e divorzio: Motivazione dell'attribuzione dell'affidamento del minore. *Psychofenia. Ricerca ed Analisi Psicologica*, 4, 73-81. doi: [10.1285/i17201632vVn8p73](https://doi.org/10.1285/i17201632vVn8p73)
- Fariña, F., Seijo, D., Arce, R., & Novo, M. (2002). *Psicología jurídica de la familia: Intervención en casos de separación y divorcio*. Barcelona: Cedecs.

- Fernández-Ballesteros, R. (1983). *Psicodiagnóstico*. Madrid: Universidad Nacional de Educación a Distancia.
- Gardner, R. A. (1989). *Family evaluation in child custody mediation, arbitration and litigation*. Cresskill, NJ: Creative Therapeutics.
- Grisso, T. (1990). Evolving guidelines for divorce/custody evaluations. *Family & Conciliation Courts Review*, 28, 35-41. DOI: [10.1111/j.174-1617.1990.tb01228.x](https://doi.org/10.1111/j.174-1617.1990.tb01228.x)
- Hathaway, S. R., & McKinley, J. C. (1999). *MMPI-2. Inventario multifásico de personalidad de Minnesota-2*. Madrid: TEA Ediciones.
- Hernández, P. (2002). *Test autoevaluativo multifactorial de inadaptación infantil (TAMAI)* (3rd. ed.). Madrid: TEA Ediciones.
- Hynan, D. J. (2003). Parent-child observations in custody evaluations. *Family Court Review*, 41, 214-223. doi: [10.1111/j.174-1617.2003.tb00885.x](https://doi.org/10.1111/j.174-1617.2003.tb00885.x)
- Jones, B., & Kenward, M. G. (1989). *Design and analysis of cross-over trials*. London: Chapman and Hall.
- Karras, D., & Berry, K. (1985). Custody evaluations: A critical review. *Professional Psychology*, 16, 76-85. doi: [10.1037/0735-7028.16.1.76](https://doi.org/10.1037/0735-7028.16.1.76)
- Keilin, W. G., & Bloom, L. J. (1986). Child custody evaluation practices: A survey of experienced professionals. *Professional Psychology: Research and Practice*, 17, 338-346. doi: [10.1037/0735-7028.17.4.338](https://doi.org/10.1037/0735-7028.17.4.338)
- Lally, S. J. (2001). Should human figure drawings be admitted into court? *Journal of Personality Assessment*, 76, 135-149. doi: [10.1207/S15327752JPA7601_8](https://doi.org/10.1207/S15327752JPA7601_8)
- Ley 11/1981, de 13 de Mayo, de Modificación del Código Civil en Materia de Filiación, Patria Potestad y Régimen Económico del Matrimonio. *BOE*, 1981(119), 10725-10735.
- Ley 30/1981, de 7 de Julio, por la que se modifica la regulación del Matrimonio en el Código Civil y se determina el procedimiento a seguir en las Causas de Nulidad, Separación y Divorcio. *BOE*, 191(172), 16457-16462.

- Ley 15/2005, de 8 de Julio, por la que se modifican el Código Civil y la Ley de Enjuiciamiento Civil en Materia de Separación y Divorcio. *BOE*, 2005(163), 24458-24461.
- Mecerreyes, L. J. (1999). La práctica pericial psicológica en los juzgados de familia. *Papeles del Psicólogo*, 73, 16-22.
- Millon, T. (2005). *MCMI-II, Inventario clínico multiaxial de Millon II*. Madrid: TEA Ediciones.
- Montero, J. (2001). *Guarda y custodia de los hijos*. Valencia: Tirant lo Blanch.
- O'Donohue, W. T., Beitz, K., & Tolle, L. (2009). Controversies in child custody evaluations. In J. L. Skeem, K. S. Douglas, & S. O. Lilienfeld (2009). *Psychological science in the courtroom: Consensus and controversy* (pp. 284-308). New York, NY: Guilford Press.
- Ramírez, M. (2003). *Cuando los padres se separan: Alternativas de custodia para los hijos (guía práctica)*. Madrid: Biblioteca Nueva.
- Ramírez, M. (2006). El peritaje psicológico en el ámbito del derecho de familia. In J. C. Sierra, E. Jiménez, & G. Buela-Casal (Eds.), *Psicología forense: Manual de técnicas y aplicaciones* (pp. 223-245). Madrid: Biblioteca Nueva.
- U.S. Bureau of the Census. (1992). *Marriage, divorce, and remarriage in the 1990's* (Current Population Reports, P23-180). Washington, DC: U.S. Government Printing Office.
- Center for Disease Control and Prevention/National Center for Health Statistics. (1995). *Monthly vital statistics* (Report 43, No. 13). Washington, DC: U. S. Department of Health and Human Services, Public Health Service.