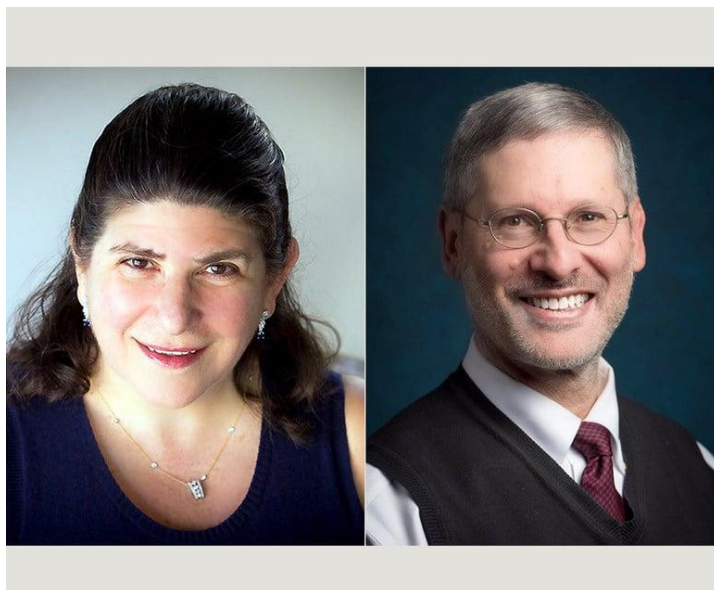


'Concept Creep' in Family Law: What Is It and How Should You Address It?

Elisa Reiter and Daniel Pollack | July 5, 2024



Many psychological concepts have undergone a phenomenon known as “concept creep.” Concept creep was first named by Nick Haslam in 2016, who identified its effects on the concepts of abuse, bullying, trauma, mental disorder, addiction and prejudice. In “[Concept Creep: Psychology’s Expanding Concepts of Harm and Pathology](#),” Haslam contends that “in every case there had been a series of extensions to working definitions, which summed to large increases in the applicability of each concept.” Others have identified the effect of concept creep on terms like “gaslight” and “emotional labor.” Another aspect of concept

creep is hyperbole, or labeling that is hijacked from diagnostic terms, and pirated into common parlance in a way that alters the initial definition of the terms.

As Language Evolves, So Must Law

Concept creep can expand in more than one direction. “Horizontal” creep is evidenced by extending the use of the word “bullying” from the schoolyard to corporate boardrooms. “Vertical” creep ... occurs when a concept’s meaning extends downwards to encompass less extreme or intense phenomena than it did previously, such as when ‘bullying’ came to include unrepeated actions, ‘prejudice’ encompassed subtle micro-aggressions, and ‘autism’ incorporated high-functioning people with Asperger’s syndrome.”

Many states now require mental health professionals, attorneys, and judges to have a minimum number of hours of continuing education in specific areas, such as trauma. Concept creep has impacted the term “trauma” in many ways. No longer is trauma simply associated with the battlefield. In addition to post traumatic stress disorder, trauma is associated with:

- Culturally driven events, prone to a generational cycle.
- Stress.
- Abuse—physical, emotional, sexual or financial.

Trauma is no longer simply within the province of psychology. Haslam opines that PTSD may now include “childbirth, sexual harassment, infidelity, and emotional losses such as abandonment by a spouse or loss or a sudden move or loss of a home.” ADHD is another such area. Parents

may have disparate views on how to deal with a child who demonstrates learning differences.

Parents of children with ADHD, whether married, separated, or divorced, often experience disagreements regarding: the severity of the child's symptoms, how to best manage the child's behavior, and what treatment approach, if any, to take. Whether an ADHD child should be placed on medication for this disorder is frequently a source of dispute among both intact and divorced families.

In the context of family law and divorcing families, concept creep can have significant implications, potentially leading to the mischaracterization of behaviors and situations, and consequently, inappropriate legal interventions. For instance:

- **Overdiagnosis of Abuse and Trauma:** Broadening of concepts like abuse and trauma may lead to situations where normal parental disciplinary actions or conflicts within a marriage are labeled abusive or traumatic.
- **Mischaracterization of Mental Health Issues:** When mental health concepts are expanded into the common parlance in an idiosyncratic fashion, the result can be the pathologization of regular emotional responses in the context of family disagreements or divorce. A parent's sadness or a parent's flash of anger during divorce may be misinterpreted as being indicative of a mental health disorder, potentially impacting custody decisions and/or leading to unnecessary treatment recommendations.
- **Making Matters Worse:** When certain behaviors are (mis)labeled with clinical or diagnostic terms, doing so can exacerbate conflicts

between divorcing parties. Using loaded language may create an environment of victimization and of defensiveness, exacerbating the situation and making it more difficult for parties to find common ground that allows them to reach amicable settlements.

- **Legal Interventions Run Amok:** We all strive to protect the best interests of children in family courts. However, if concept creep leads to the phenomenon of over diagnosing abuse, trauma and mental health issues, the pendulum swings, resulting in what may be inappropriate legal interventions, such as protective orders or orders mandating supervised access to and possession of children. While well-intentioned, such interventions yield result in the disruption of family dynamics, with a net result of grave harm to children and families.

So, what can we do? In light of the pernicious presence of concept creep in our language, here are some suggestions:

- **Education:** Judges, mental health professionals and legal professionals should engage in training on the phenomenon of concept creep and the impact of concept creep on family law cases. Education would help such professionals to evaluate claims and evidence, and increase the likelihood of informed decisions.
- **Expert Testimony:** In cases where abuse, trauma, or mental health allegations are raised, courts should rely on testimony from qualified experts who can provide objective assessments based on established diagnostic criteria and professional standards.
- **Clear Definitions:** To the extent possible, family law statutes and court rules should provide clear and specific definitions of concepts

like abuse, trauma, and mental health issues. We need established clinical criteria, not idiosyncratic labels.

- **Focus on the Best Interests of Children:** Family law decisions should focus on and prioritize the best interests of children. Courts must weigh the potential impact of their interventions—which may be driven by concept creep—against the potential harm they may wreak on family relationships and stability.

Be aware of the phenomenon of concept creep. Implement appropriate safeguards. The family law system can better serve the needs of divorcing families and protect the well-being of children while upholding the principles of fairness and due process if everyone understands that one definition may not hold for all applications of one concept.

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